Commission of Inquiry into Money Laundering in British Columbia

Interim Report

November 2020

The Honourable Austin F. Cullen
Commissioner

Commission of Inquiry
into Money Laundering in British Columbia
Austin F. Cullen, Commissioner
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November 16, 2020

The Honourable David Eby, QC
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AND TO:

The Honourable Carole James
Minister of Finance
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Dear Mr. / Madam Attorney and Minister:

Re: Interim Report

I am pleased to deliver to you the Interim Report of the Public Inquiry into Money Laundering in British Columbia, pursuant to section 4(2)(c)(i) of the Terms of Reference of this Inquiry, established by Order in Council 2019-238.

This Interim Report outlines the steps which the Commission has been taking and the steps which I anticipate the Commission will continue to take to fulfill its mandate.

Yours truly,

Austin F. Cullen,
Commissioner

AFC:lp

Enclosure

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Details of how members of the public may contact the Commission are posted on the website.

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7. Austin F. Cullen

Contents

Appendices

Acknowledgements

The mandate for this Commission of Inquiry is a broad one covering a wide range of sectors of British Columbia's social and economic life. The breadth of the Commission's Terms of Reference coupled with the elusive nature of the subject matter – money laundering – made the creation of an effective Inquiry team a challenge. I am grateful to the many people who have helped bring this Commission – its organization and focus – into existence. Shortly after I was appointed Commissioner, I was able to draw on the experience and wisdom of the Hon. Bruce Cohen and the Hon. Dennis O'Connor, both distinguished former judges who presided over significant commissions of inquiry in their respective provinces. I was equally fortunate to have the chance to consult Madam Justice France Charbonneau of the Quebec Superior Court who presided over the inquiry into corruption in the management of public construction contracts in Quebec. I received excellent advice and guidance from those three distinguished judges.

I also received early and significant contributions from various officials in the Ministry of the Attorney General who, while recognizing the independence of the Commission, provided much needed practical and logistical support in its creation. Early on I was able to retain two senior lawyers, Brock Martland, QC, and Patrick McGowan, to assume the roles of joint senior Commission counsel. The commitment of both Mr. Martland and Mr. McGowan to building the Commission team, focusing its approach, and preparing for the hearings has been exemplary. Both of them bring great experience, judgment, and energy to their roles in the Commission.

On the administrative side, Dr. Leo Perra, the executive director of the Commission, has been and continues to be a tower of strength in liaising with the government, building and administering the budget, looking after a myriad of issues that arise in an endeavour such as this one, and keeping everyone on track and on task. Dr. Perra has been very competently assisted by the Commission's manager of administrative and financial services, Cathy Stooshnov. Both Dr. Perra and Ms. Stooshnov have had extensive experience with commissions

of inquiry and bring considerable skill and ability to the challenges of this Commission. The efforts of the staff have been heroic. The tasks of building and operating a commission are challenging enough in ordinary times, but the onset of the pandemic called for a level of commitment and adaptability that has been and continues to be extraordinary. I cannot properly detail all of the contributions that members of the staff have made, but I offer my thanks to Scott Kingdon, Sarah LeSage, Phoenix Leung, Shay Matters, my executive assistant Linda Peter, Natasha Tam, and Mary Williams. We have recently been joined by John Lunn in a backup role and I have no doubt he will contribute similarly to the Commission.

The Commission has been well served by the investigative and analytical efforts of Doug Kiloh, Don Panchuk, and Adam Ross, who have unearthed, assessed, and followed up on important information, evidence, and data vital to our work.

Ruth Atherley of AHA Creative Strategies Inc. signed on as director of communications. She has performed an essential role with great skill in liaising with the media, arranging interviews, providing needed information to the public, and keeping me and the legal team up to date on information and publications affecting our work. Ms. Atherley has provided invaluable advice and guidance on keeping the public informed of what we are doing.

The core work of the Commission is being done by a group of dedicated, hardworking, and highly skilled lawyers including associate Commission counsel Nicholas Isaac, Alison Latimer, and Eileen Patel; and junior counsel Steven Davis, Kyle McCleery, and Kelsey Rose. They have been working tirelessly across the spectrum of subject matters to put together hearings that will enable the Commission to fulfill its mandate. Recently the Commission hired Charlotte Chamberlain to assist in the challenging task of reviewing the vast numbers of documents that have lately been produced to Commission counsel.

When the Commission was originally formed, Christine Judd assumed the role of policy counsel and brought her considerable skills to bear on creating the applicable rules of practice and procedure governing the Commission and its participants. Ms. Judd, unfortunately, for family reasons, had to withdraw from the Commission, but happily, we were able to engage Tam Boyar, who has done an excellent job of preparing the groundwork for the Commission to consider, analyze, and make recommendations on vital issues of policy and practice.

The Commission was fortunate to have the benefit of advice from Professor Gerry Ferguson, who shared his expertise and insights gained from many years of writing about corruption and money laundering.

Finally, I would be remiss if I did not acknowledge the wisdom and experience of Keith Hamilton, QC, who has served in a consulting role with the Commission and provided expertise, judgment, and guidance across a wide range of topics.

I am pleased to acknowledge the past and ongoing dedication of all these people as we move forward in fulfilling the mandate of the Commission.

Executive Summary

On May 15, 2019, the Lieutenant Governor of British Columbia issued an Order in Council establishing the Commission of Inquiry into Money Laundering in British Columbia and appointing me as the sole Commissioner.

The Commission was established in the wake of significant public concern over the nature and extent of money laundering in British Columbia as well as the institutional effectiveness of those charged with combatting it. Media reports alleged that a staggering amount of money was being laundered through Lower Mainland casinos, and reports commissioned by the province suggested that money laundering was a significant problem in other sectors of the economy.

The Order in Council and attached Terms of Reference give me a broad mandate to inquire into and report on money laundering in British Columbia. More specifically, I am required to conduct hearings and make findings of fact with respect to

- the extent, growth, evolution, and methods of money laundering in various sectors of the economy;
- the acts or omissions of responsible regulatory agencies and individuals, including whether those agencies or individuals have contributed to money laundering in the province and whether their acts or omissions amount to corruption;
- the scope and effectiveness of the anti–money laundering powers, duties, and functions exercised or carried out by the regulatory agencies and individuals referenced above; and
- barriers to effective law enforcement.

I am also empowered to make any recommendations I consider necessary and advisable with respect to the conditions that have allowed money laundering to thrive.

Part One of this Report addresses various issues relating to the mandate and organization of the Commission, including the principles that have guided the work of the Commission, the individuals and organizations that have been granted participant status, and the thoughtful submissions made by members of the public at the Commission's public meetings. It also reviews some of the work

undertaken by the Commission to date, including the preparation of overview reports, consultations with experts, and investigations into money laundering activity in various sectors of the economy.

While Commission counsel have been required to overcome some obstacles in obtaining documents and information from the federal government (Canada), it appears that Canada is now collaborating with Commission counsel with a view to giving the Commission the documents and information it needs to fulfill its mandate.

Part Two of this Report reviews the findings and recommendations contained in four previous reports concerning money laundering in British Columbia:

- *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia*, Peter M. German, QC, March 31, 2018 (*Dirty Money 1*);
- *Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, Peter M. German, QC, March 31, 2019 (*Dirty Money 2*);
- *Real Estate Regulatory Structure Review* (2018), Dan Perrin (Perrin Report); and
- *Combatting Money Laundering in BC Real Estate*, Maureen Maloney, Tsur Somerville, and Brigitte Unger, March 31, 2019 (Maloney Report).

While these reports have contributed in a substantial way to an understanding of the problem, it is important to emphasize that the Commission is an independent body charged with using the powers granted by the *Public Inquiry Act* to make its own findings and recommendations with respect to money laundering in British Columbia. Moreover, the findings and recommendations contained in these reports are not universally accepted, and I have summarized the submissions made by each participant in response to those findings and recommendations.

Part Three of this Report outlines some of the issues to be addressed during the evidentiary phase of the Commission process, which is scheduled to run from October 2020 to May 2021. These issues include

- whether money laundering is a problem worth addressing;
- whether it is possible to quantify the volume of illicit funds being laundered through the BC economy;
- common methods and techniques used to launder illicit funds;
- the response to money laundering at senior levels of government;
- the extent, growth, evolution, and methods of money laundering in each sector identified in my Terms of Reference;
- approaches to money laundering in other jurisdictions;
- barriers to effective law enforcement;
- asset forfeiture; and
- other money laundering vulnerabilities, including vulnerabilities in emerging sectors not identified in my Terms of Reference.

While the Commission has much to accomplish during these evidentiary hearings, I am confident that the evidence led by Commission counsel, and developed by participants through the hearing process, will allow the Commission to fulfill its mandate in a timely and effective way.

Money laundering is an issue of great importance to the citizens of British Columbia. It is a crime that strikes at the heart of our collective values and corrupts the fabric of a free and democratic society. The Commission will do its utmost to uncover the nature and scope of the problem and ensure that those involved in the fight against money laundering have the tools they need to address it.

Part One:

Mandate, Organization, and Work of the Commission

Terms of Reference

On May 15, 2019, the Lieutenant Governor of British Columbia issued Order in Council No. 2019-238 establishing the Commission of Inquiry into Money Laundering in British Columbia and appointing me as the sole Commissioner under section 2 of the *Public Inquiry Act,* SBC 2007, c 9.[1]

The Commission was established in the wake of significant public concern over the nature and extent of money laundering in British Columbia as well as the institutional effectiveness of those charged with combatting it. Media reports alleged that a staggering amount of money was being laundered through Lower Mainland casinos, and reports commissioned by the province suggested that money laundering was a significant problem in other sectors of the economy.[2]

The Order in Council and Terms of Reference give me a broad mandate to inquire into and report on money laundering in British Columbia. More specifically, I am required to conduct hearings and make findings of fact with respect to

- the extent, growth, evolution, and methods of money laundering in various sectors of the economy;
- the acts or omissions of responsible regulatory agencies and individuals, including whether those agencies or individuals have contributed to money laundering in the province and whether their acts or omissions amount to corruption;

1 The Order in Council (and attached Terms of Reference) appears as Appendix A. Section 1 of the Terms of Reference defines money laundering as "the process used to disguise the source of money or assets derived from illegal activity." Generally speaking, that involves the placement of illicit funds into the financial system; the circulation of those funds through various economic sectors, companies, and financial transactions to obscure any connection to their criminal source; and the integration of those funds into the legitimate economy, where they can be used for personal or criminal purposes. However, it is important to recognize that money laundering schemes vary widely in their level of sophistication and may not always include all three phases.

2 A list of significant media reports appears as Appendix B. The four reports commissioned by the province can be found at the following link: https://cullencommission.ca/other-reports. All of these reports have been invaluable in identifying issues to be investigated by the Commission.

- the scope and effectiveness of the anti–money laundering powers, duties, and functions exercised or carried out by the regulatory agencies and individuals referenced above; and
- the barriers to effective law enforcement.

I am also empowered to make any recommendations I consider necessary and advisable with respect to the conditions that have allowed money laundering to thrive.

In carrying out these functions, I have been directed to review and consider four recent reports commissioned by the provincial government (collectively, Terms of Reference Reports):

- *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia,* Peter M. German, QC, March 31, 2018 (*Dirty Money 1*);
- *Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing,* Peter M. German, QC, March 31, 2019 (*Dirty Money 2*);
- *Real Estate Regulatory Structure Review* (2018), Dan Perrin (Perrin Report); and
- *Combatting Money Laundering in BC Real Estate,* Maureen Maloney, Tsur Somerville, and Brigitte Unger, March 31, 2019 (Maloney Report).

While these reports have contributed in a substantial way to an understanding of the problem, it is important to emphasize that the Commission is an independent body charged with making its own findings and recommendations with respect to money laundering in British Columbia. It is also important to recognize that the authors of these reports did not have the statutory powers available to the Commission, such as the power to compel documents and witnesses.

It is my hope and expectation that the availability of these statutory powers will allow for a more thorough examination of money laundering in British Columbia as well as the conditions that have allowed it to thrive.

Guiding Principles

In carrying out my mandate, I have been guided by the fundamental principle that the Commission is an independent body which owes its allegiance solely to the people of British Columbia. Public inquiries are creations of the Executive Branch but are not answerable to it.[3] The public interest will be served only when such inquiries remain independent from government and examine all matters falling within their mandate.[4]

I have also been mindful of certain principles common to all public inquires which have guided the work of the Commission. First, the Commission must be effective and proceed in a timely way, though not at the expense of being thorough or respecting the rights of those involved in the Inquiry. The Commission has been called upon to address a pressing social problem, and the public rightly expects that it will proceed expeditiously with its work.

While the COVID-19 pandemic has created a number of significant and unexpected challenges, the Commission has continued its work, albeit

3 *Starr v Houlden,* [1990] 1 SCR 1366 [*Starr*] at 1423 citing A. Wayne MacKay, "Mandates, Legal Foundations, Powers and Conduct of Commissions of Inquiry" (1990), 12 *Dalhousie Law Journal* 34.

4 *Phillips v NS (Westray Mine Inquiry),* [1995] 2 SCR 97 *[Westray Mine Inquiry],* 137–38 ("[i]nquiries are, like the judiciary, independent; unlike the judiciary, they are often endowed with wideranging investigative powers. In following their mandates, commissions of inquiry are, ideally, free from partisan loyalties and better able than Parliament or the legislatures to take a long-term view of the problem presented"). For another perspective on the independence of public inquires, see Tamar Witelson, "Declaration of Independence: Examining the Independence of Federal Public Inquiries," in Allan Manson & David Mullan (eds.), *Commissions of Inquiry: Praise or Reappraise* (Toronto: Irwin Law, 2003), 313 ("[t]he independence of a public inquiry serves the public interest in providing the government with the best information and advice concerning a matter of significant concern").

with some adjustments, in the belief that it will improve the social and economic well-being of the province when the effects of the pandemic subside and the province returns to a more familiar state of affairs. A description of some of the steps taken in response to the pandemic is set out below.

Second, the Commission must be fair and ensure that it respects the rights and interests of the many individuals and agencies that participate in the commission process. Many of these participants are involved because they have useful information, experience, and insights to convey. Moreover, the search for truth does not excuse the violation of individual rights, no matter how important the work of an inquiry may be.[5]

Third, the Commission must be thorough and perform its work with a view to restoring public confidence in the institutions being investigated and the democratic process as a whole.[6] Being thorough does not mean that every line of inquiry must be followed. Rather, it means that the lines of inquiry that are followed are those that meaningfully contribute to an understanding of the issues within the mandate of the Commission in a proportionate and efficient manner. Doing less would undermine public confidence in the Inquiry. Doing more would sacrifice coherence and foster an endless proceeding.

Fourth, the Commission must be transparent and conduct open public hearings so as to ensure that the public is able to understand and form its own views about the issues being investigated and the solutions being proposed.[7] While there may be a need for some evidence and information to be treated differently because of particular sensitivity, those instances should be limited and the hearings must be public as much as possible.

Commission Staff

One of my first tasks as Commissioner was to put together a senior leadership team to manage the work of the Commission.

On July 29, 2019, I announced the appointment of Brock Martland, QC, and Patrick McGowan as senior Commission counsel. Both have significant experience in the conduct of public inquiries, and I have relied on them to manage the substantive work of the Commission, including the identification of issues to be examined and the presentation of evidence at the hearings stage.

I also appointed Dr. Leo Perra as executive director and Cathy Stooshnov as manager of finance and administration. Both have considerable knowledge and expertise in the administration of public inquiries and have assisted me immeasurably in fulfilling my mandate.

Mr. Martland and Mr. McGowan have been assisted by a talented team of associate and junior counsel who have contributed significantly to the work of the Commission. These individuals include Nicholas Isaac, Alison Latimer, Eileen Patel, Steven Davis, Kyle McCleery, and Kelsey Rose.

Keith Hamilton, QC, who brings a wealth of experience from his role as policy counsel on many previous inquiries, has shared his wisdom and experience with members of the legal team. Since January 2020, Tam Boyar, a senior lawyer with a broad range of experience, has served as policy counsel.

Early in the investigative process, senior Commission counsel made the decision to create counsel teams for each sector identified in the Terms of Reference as well as other topics relevant to the Commission's mandate. Each team was led

5 *Canada (Attorney General) v Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 at 458–59.

6 *Westray Mine Inquiry* at 138.

7 *Westray Mine Inquiry* at 138–39. See also *Starr* at 1424 citing Law Reform Commission of Canada, Working Paper 17, *Administrative Law: Commissions of Inquiry* (Ottawa: Law Reform Commission, 1977 at 19 ("[o]n occasion allegations are made that create widespread public disquiet, perhaps even a crisis of confidence. On such occasions, confidence must be restored, and that can only be done by an investigation operating as much as possible in the public eye").

by Mr. Martland or Mr. McGowan, working with one associate and one junior lawyer.[8]

Constitutional Limitations

While the province has a legitimate constitutional interest in calling a public inquiry to address the nature and prevalence of criminal activity within the province,[9] there are a number of well-established constitutional principles that must be respected.

First, the Commission cannot allow its process to be transformed into an investigation of specific offences alleged to have been committed by specific persons. Doing so would encroach on the exclusive jurisdiction of the federal government to enact legislation relating to criminal law. It would also compromise the substantive and procedural rights guaranteed to those being investigated by the *Criminal Code* and related statutes.[10]

While not strictly a constitutional issue, it is also essential that the Commission avoid making findings with respect to criminal or civil liability. Public inquiries do not operate with the same evidentiary and procedural rules as the courts and were never intended to be used as a means of finding criminal or civil liability.[11] No matter how carefully the hearings are conducted, they cannot provide all the evidentiary and procedural safeguards that exist at trial.[12]

At the same time, the Commission is not precluded from making findings relevant to its mandate, including findings that individuals or organizations are at fault in some way. Indeed, the efforts of most commissions would be pointless if they could not make findings about what went wrong and why.[13]

What is to be avoided are findings that incorporate a judgment based on a legal standard or that otherwise reflect the requirements of civil or criminal liability. In *Hartwig v SK (Inquiry into Matters Relating to the Death of Neil Stonechild*), 2008 SKCA 81, Richards JA (as he then was) expressed these principles as follows:

> The restriction against making determinations of criminal or civil liability does not mean a commission of inquiry is precluded from making findings of fact. Rather, speaking generally, it means commissions may not assess factual matters with reference to normative legal standards.[14]

Second, a provincial commission of inquiry cannot make findings or recommendations with respect to the administration and management of

8 A full list of the topic areas and the responsible lawyers appears as Appendix C.

9 See *Di Iorio v Warden of the Montreal Jail*, [1978] 1 SCR 152 at 201 and *Quebec (AG) and Keable v Canada (AG)*, [1979] 1 SCR 218 at 254–55 [*Keable*] ("[t]he investigation of the incidence of crime or the profile and characteristics of crime in a province, or the investigation of the operation of provincial agencies in the field of law enforcement, are quite different things from the investigation of a precisely defined event or series of events with a view to criminal prosecution. The first category may involve the investigation of crime generally and may be undertaken by the invocation of the provincial enquiry statutes"). See also *O'Hara v BC*, [1987] 2 SCR 591 at 610, Dickson CJ ("[t]he administration of justice in this country is reflected in and ensured by the provision of police services and other enforcement agencies responsible for the investigation, detection and control of crime within the respective provinces").

10 *Starr* at 1397–98.

11 *Canada (AG) v Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 at para 53.

12 *Canada (AG) v Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 at para 53.

13 *Hartwig v SK (Inquiry into Matters Relating to the Death of Neil Stonechild)*, 2008 SKCA 81 [*Hartwig*] at para 38, citing *Canada (AG) v Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 at para 40 ("[I]t simply would not make sense for the government to appoint a commissioner who necessarily becomes very knowledgeable about all aspects of the events under investigation and then prevent the commissioner from relying upon this knowledge to make informed evaluations of the evidence …").

14 *Hartwig* at para 35, citing *Canada (AG) v Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440 at para 38.

federal agencies such as the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) or the Canada Revenue Agency (CRA). In *Quebec (AG) and Keable v Canada (AG),* [1979] 1 SCR 218 (*Keable*), Mr. Justice Pigeon expressed that principle in the following terms:

> I thus must hold that an inquiry into criminal acts allegedly committed by members of the R.C.M.P. was validly ordered, but that consideration must be given to the extent to which such inquiry may be carried into the administration of this police force. It is operating under the authority of a federal statute, the *Royal Canadian Mounted Police Act,* (R.S.C. 1970, c. R-9). It is a branch of the Department of the Solicitor General, *(Department of the Solicitor General Act,* R.S.C. 1970, c. S-12, s. 4). Parliament's authority for the establishment of this force and its management as part of the Government of Canada is unquestioned. It is therefore clear that no provincial authority may intrude into its management. *While members of the force enjoy no immunity from the criminal law and the jurisdiction of the proper provincial authorities to investigate and prosecute criminal acts committed by any of them as by any other person, these authorities cannot, under the guise of carrying on such investigations, pursue the inquiry into the administration and management of the force.* [Emphasis added.][15]

At the conclusion of the evidentiary hearings, I will invite submissions with respect to the precise scope of that principle as it relates to the work of the Commission. However, I do not understand this constitutional limitation to prohibit an examination of the nature and effectiveness of the federal anti–money laundering regime, including the role played by federal agencies such as FINTRAC, the Royal Canadian Mounted Police (RCMP), and the Canada Border Services Agency in the fight against money laundering.

What is prohibited, as I understand it, is interference in the management and administration of those agencies through recommendations that invite changes to their rules, policies, and procedures. In *Bentley v Braidwood,* 2009 BCCA 604, the BC Court of Appeal stated:

> [45] Policing, in general, is a matter assigned to provincial jurisdiction by s. 92(14) of the *Constitution Act*. To the extent, however, that the provincial function is performed by the RCMP, a police force created by federal legislation (the *Royal Canadian Mounted Police Act*, R.S. 1985, c. R-10), the province is limited from interfering in or directing its management or administration: *Attorney General of Quebec and Keable v. Attorney General of Canada*, [1979] 1 S.C.R. 218, 90 D.L.R. (3d) 161; *Attorney General of Alberta v. Putnam,* [1981] 2 S.C.R. 267, 123 D.L.R. (3d) 257.[16]

Third, the Commission must ensure that it does not interfere with ongoing criminal investigations or inquire into matters relating to the exercise of prosecutorial discretion. Both principles are included in the Terms of Reference and must be respected by the Commission in carrying out its mandate.

15 *Keable* at 242.

16 *Bentley v Braidwood*, 2009 BCCA 604 at paras 44–45. See also *Canadian National Railway Co. v Courtois*, [1988] 1 SCR 882, where Beetz J interpreted *Keable* as standing for the proposition that a provincial inquiry cannot be empowered to investigate a federal institution for the purpose of recommending changes to its services, rules, policies, and procedures.

Participants

Because the Terms of Reference require me to consider a variety of issues in multiple sectors of the economy, I considered it necessary and appropriate to hear from a wide range of voices and granted participant status to 21 individuals and organizations.[17] Some of these participants were given standing with respect to all issues before the Commission, while others were given standing with respect to specific issues. In what follows, I provide some information on each of these participants and comment on the perspectives they bring to the work of the Commission.

Province of British Columbia

The Province of British Columbia has participated in the Inquiry through the Ministry of Finance and the Gaming Policy and Enforcement Branch. Both entities have been highly responsive to the many document and interview requests made by Commission counsel.[18]

Ministry of Finance

The Ministry of Finance has responsibilities in many of the sectors identified in the Terms of Reference, including the real estate, corporate, and financial sectors. It has also been involved in the development and implementation of a provincial anti–money laundering strategy, including

- the creation of a beneficial ownership registry in the real estate sector;[19]
- the establishment of the British Columbia Financial Services Authority to replace the Financial Institutions Commission;
- the amendment of the *Mortgage Brokers Act*, RSBC 1996, c 313, to keep pace with evolving national and international standards;
- the creation of the Financial Real Estate and Data Analytics Unit to develop the analytical capacity to support anti–money laundering initiatives and tax policy analysis;
- the creation of a federal-provincial working group to better address issues relating to fraud, money laundering, and tax evasion in the real estate sector;
- the amendment of the *Business Corporations Act*, SBC 2002, c 57, to require private companies to maintain records of beneficial owners; and
- the commencement of the consultation process for a beneficial ownership registry for corporations, trusts, and partnerships.

I am encouraged that the province has taken concrete steps to address the problem and comment on some of these initiatives in Part Two (below).

Gaming Policy and Enforcement Branch

The Gaming Policy and Enforcement Branch is responsible for the overall integrity of gaming and horse racing in the province and has regulatory oversight of the British Columbia Lottery Corporation (BC Lottery Corporation), gaming service providers, the horse-racing industry, and licensed gaming events. It is also responsible for providing advice to the Attorney General on all gaming policy matters, including both regulatory and operational matters.

I expect that the Gaming Policy and Enforcement Branch will be an important source of infor-

17 The list of participants and counsel can be found in Appendix D.

18 I am particularly grateful to counsel for the province for their efforts in navigating a number of complex issues around the disclosure of cabinet documents.

19 In basic terms, a beneficial ownership registry is a registry of information about individuals who have an indirect or "beneficial" interest in land (e.g., those who own an interest in land through a corporation, trust, or partnership). The use of corporations, trusts, and nominee owners to purchase property has been identified as a significant money laundering vulnerability, and the creation of a beneficial ownership registry will help to ensure that those who purchase property through a corporation, trust, or partnership cannot remain anonymous.

mation about the facts known to decision makers at relevant times as well as the steps the province has taken to implement the recommendations in the Terms of Reference Reports.

Government of Canada

The Government of Canada (Canada) plays a central role in the fight against money laundering and has enacted an anti–money laundering regime composed of various agencies and institutions.

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, is the centrepiece of the federal anti–money laundering regime. Broadly speaking, it creates mandatory record-keeping and reporting requirements for financial institutions and other businesses, such as casinos, where money laundering is believed to occur.[20] Examples of these requirements include suspicious transaction reports, which must be filed where there are reasonable grounds to suspect that a transaction is related to the commission or attempted commission of a money laundering offence; large cash transaction reports, which must be filed when reporting entities receive $10,000 or more in cash in a single transaction or a series of transactions within a 24-hour period; and electronic fund transfer reports, which must be filed when reporting entities process cross-border electronic fund transfers of $10,000 or more.[21]

In addition, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* creates a "financial intelligence unit" (FINTRAC) that is responsible for receiving and analyzing information relating to money laundering activity. Under section 55(3), the unit is required to disclose certain information to law enforcement agencies where it has reasonable grounds to believe that the information is relevant to the investigation or prosecution of a money laundering offence. Moreover, it is authorized to conduct research into money laundering trends and developments and to inform reporting entities, law enforcement authorities, and the public about the nature and extent of money laundering in Canada and internationally.

Other federal agencies involved in the fight against money laundering include the Office of the Superintendent of Financial Institutions, the Public Prosecution Service of Canada, the RCMP, the CRA, and the Canada Border Services Agency.

The Office of the Superintendent of Financial Institutions is responsible for supervising and regulating more than four hundred federally regulated financial institutions and twelve hundred pension plans. Although it does not manage the substantive operations of these institutions, it plays an important regulatory and oversight role by assessing the strength of their regulatory compliance and risk management practices.

The Public Prosecution Service of Canada has exclusive jurisdiction to prosecute criminal offences under federal statutes other than the *Criminal Code*. Examples include the *Controlled Drugs and Substances Act*, SC 1996, c 19; the *Income Tax Act*, RSC 1985, c 1 (5th Supp); the *Immigration and Refugee Protection Act*, SC 2001, c 27; and the *Firearms Act*, SC 1995, c 39. In prosecuting such offences, it can seek authorization from the province to prosecute related offences such as those set out in sections 354 and 462.31 of the *Criminal Code*. It also has the power to seek the forfeiture of illegal proceeds and offence-related property in the sentencing process.

The RCMP, the CRA, and Canada Border Services Agency, play a critical role in the investigation of money laundering offences, often in conjunction with provincial and international partners.

While I was heartened when Canada applied for participant status, its level of engagement has, in a few respects, fallen short of expectations.

20 Examples of these entities (sometimes called "reporting entities") include banks, credit unions, life insurance companies, trust and loan companies, real estate agents, notaries, accountants, and casinos.

21 *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, ss 7, 9, and 12.

One area of particular concern involves Canada's compliance with its obligation to identify the nature and character of documents in its possession or control.[22] Identification of relevant documents is one of the basic obligations of participants and provides a critical starting point for the work of the Commission. From that identification and listing process, Commission counsel can seek relevant documents and information, without creating an overload of records.

Many federal agencies have been slow to comply with these obligations, and the lists that have been produced often appear to be incomplete. For example, FINTRAC's initial list of documents was composed entirely of materials that were publicly available on its website, despite the fact that it generates a wide range of specialized strategic research for regime partners, policy makers, and businesses. When Commission counsel raised that point, FINTRAC added a total of seven documents to its list and took the position that its document production obligations were complete.

Another concern is that many of the documents produced by Canada have been redacted to the point that they provide no meaningful information. While Canada has revisited some of these redactions in recent months, the copious redactions in its original production impeded the work of the Commission. Moreover, the significant discrepancy between its original production and the revised version of these documents casts doubt on the validity of the original redactions.

Finally, I note that Canada has refused to allow Commission counsel to conduct in-person interviews with members of the Public Prosecution Service of Canada. Instead, it has asked that Commission counsel submit any questions in writing. I appreciate that the Commission's Terms of Reference direct that I not inquire into areas of Crown discretion. However, it seems apparent that federal prosecutors will have valuable insight into the challenges faced by law enforcement officials and prosecutors in the handling of money laundering offences and the approach taken by Canada will not allow these issues to be explored in an effective way.

In recent months Canada has accelerated its document production and become more engaged with the work of the Commission. I take this as a positive development and, I hope, an indication of a change in approach. However, I consider it necessary to comment on these matters because of the central role played by Canada in the fight against money laundering and the importance of having its full engagement in the Commission process.

Law Society of British Columbia

The Law Society of British Columbia (Law Society) is responsible for the regulation of lawyers in the province. It operates independently of government and is responsible for upholding the public interest in the administration of justice, including the independence, integrity, honour, and competence of lawyers practising in British Columbia.

Legal professionals play a critical role in many areas vulnerable to money laundering. It is essential for the Commission to examine the ways in which lawyers facilitate or otherwise become involved in money laundering activity.[23]

In *Canada (Attorney General) v Federation of Law Societies of Canada,* 2015 SCC 7, the Supreme Court of Canada struck down the client identification and record-keeping requirements imposed on lawyers by the *Proceeds of Crime*

22 Rule 13(a) of the Commission's *Rules of Practice and Procedure* requires each participant to identify the nature and character of records in their possession or control which are relevant to the subject matter of the Inquiry.

23 In *Dirty Money 2,* Peter German comments that lawyers can facilitate money laundering activity by acting as a nominee, conducting financial transactions, incorporating companies, and handling real estate transactions. He also notes that the use of trust accounts to mask sources of funds in real estate transactions is an area of concern given what he describes as "drastic underreporting by realtors" (p 59).

(Money Laundering) and Terrorist Financing Act and associated regulations. In striking down those provisions, the majority reasoned that the state cannot impose duties on lawyers that interfere with their duties to their clients. Doing so would effectively turn lawyers into agents of the state and undermine the solicitor-client relationship in a number of important ways.

As a result of that decision, there is a heavy onus on the Law Society to ensure that its members do not facilitate or otherwise become involved in money laundering activity.[24] Areas of particular concern include real estate transactions, the creation of complex legal and financial structures, and the use of trust accounts to transfer funds.[25] However, there are many other areas where legal professionals can become involved in money laundering activity.

The Law Society has been exemplary in complying with its document production obligations, and I expect it will be a valuable source of information about the regulations currently in place as well as the manner in which those regulations are enforced. I expect it will also have insight into the regulatory models in effect in other jurisdictions and the extent to which those models are transferable to British Columbia.

Society of Notaries Public of British Columbia

The Society of Notaries Public of British Columbia is responsible for the regulation of notaries in British Columbia.

Under section 18 of the *Notaries Act,* RSBC 1996, c 334, notaries are entitled to provide a range of legal services in the province, including services relating to the purchase and sale of real estate. The Society of Notaries Public submits that its members were involved in 88,956 real estate transactions in the 12 months preceding February 15, 2020 – a number that constitutes a significant percentage of real estate transactions in the province.

Unlike lawyers, notaries are reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the Society of Notaries Public submits that it regularly co-operates with law enforcement agencies in the investigation of criminal offences.

I expect the Society of Notaries Public will be an important source of information and insight with respect to the role of notaries in real estate transactions as well as any vulnerabilities in the current regime. It also wishes to make submissions with respect to the *Land Owner Transparency Act*, SBC 2019, c 23, the collection of tax and ownership information, and the need for better information sharing among regulators and law enforcement agencies.[26]

British Columbia Lottery Corporation

The BC Lottery Corporation is a Crown corporation responsible for the "conduct and management" of gaming in the province.[27] In furtherance of that mandate, it has entered into operational service agreements with gaming service providers, who are responsible for the day-to-day operation of casinos. These agreements incorporate detailed standards, polices, and procedures that must be followed by gaming service providers in operating their facilities.

The BC Lottery Corporation has various reporting obligations under the *Proceeds of Crime*

24 Provincial law societies are not considered an arm of the state and can therefore audit and investigate the work of lawyers while at the same time protecting the interests of clients who seek out a lawyer's advice or assistance.

25 See, for example, Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, paras 27 and 50.

26 Opening statement of the Society of Notaries Public of British Columbia, paras 13, 28–29, and 32.

27 *Gaming Control Act*, s 7.

(Money Laundering) and Terrorist Financing Act and the *Gaming Control Act*. However, it is not a law enforcement agency and has no authority to enforce anti–money laundering laws or to conduct criminal and regulatory investigations.

In its opening statement, the BC Lottery Corporation submits that *Dirty Money 1* contains a number of inaccuracies concerning its role in combatting money laundering and "does not fairly or adequately state what [it] has done to address the problem."[28] Examples of these efforts include

- implementing policy changes to enable casinos to offer patron gaming-fund accounts and eliminate the need to bring cash into a casino;
- establishing a dedicated anti–money laundering unit staffed with internationally certified anti–money laundering investigators and certified intelligence analysts;
- establishing an information-sharing agreement with the RCMP to assist the BC Lottery Corporation in identifying and banning certain individuals from casinos;
- implementing anti–money laundering training for BC Lottery Corporation and service-provider staff to allow them to better identify, report, and help prevent money laundering;
- establishing a requirement that casinos clearly label all cheques as "return of funds" or "verified win" cheques to reduce the risk of casino cheques being used to launder illicit funds;
- placing certain players on sourced-cash conditions to ensure they cannot purchase casino chips with any amount of cash without proving that their funds were sourced from an approved financial institution or constitute confirmed previous winnings;
- implementing a policy requiring that anyone attempting to buy-in with $10,000 or more in cash be required first to prove the source of those funds;
- implementing a "know your customer" process to assist in identifying any money laundering risks; and
- working with the provincial government to implement the recommendations made in *Dirty Money 1*.[29]

The BC Lottery Corporation seeks the opportunity to address what it perceives as inaccuracies in *Dirty Money 1* as well as other issues relevant to the Commission's mandate, including the significant benefits that flow from responsible gaming in the province.[30]

Great Canadian Gaming Corporation

The Great Canadian Gaming Corporation (Great Canadian) is a publicly traded corporation that operates gaming facilities in British Columbia, Ontario, Nova Scotia, and New Brunswick. Currently, it operates 10 gaming facilities in British Columbia, including two of the largest casinos in the province and the only two race tracks that continue to host live horse racing.[31]

Great Canadian is regulated by the Gaming Policy and Enforcement Branch and must abide by

28 Opening statement of BC Lottery Corporation. The BC Lottery Corporation also submitted that much of what has been said publicly about its role in combatting money laundering in BC casinos is misinformed and seeks, therefore, to provide a "more complete and accurate factual record of BCLC's past efforts to combat money laundering and its continuing efforts to do so."

29 Opening statement of BC Lottery Corporation, para 8.

30 Opening statement of BC Lottery Corporation, paras 3 and 8–14.

31 Each of these facilities is operated by Great Canadian's wholly owned subsidiaries: Great Canadian Casinos Inc., Hastings Entertainment Inc., Orangeville Raceway Limited, Great Canadian Entertainment Centres Ltd., and Chilliwack Gaming Ltd.

the standards, policies, and procedures established by the BC Lottery Corporation. Importantly, it also assists the BC Lottery Corporation in complying with its reporting obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* by identifying and reporting certain transactions to the BC Lottery Corporation. These reports include

- large cash transaction reports, which must be filed whenever gaming service providers receive $10,000 or more in cash in a single transaction or in a series of transactions within a 24-hour period;
- foreign exchange reports, which must be filed whenever gaming service providers exchange foreign currency in an amount of $10,000 or more;
- casino disbursement reports, which must be filed for cash-outs and jackpots of $10,000 or more; and
- unusual transaction reports, which must be filed when there are reasonable grounds to believe that a transaction could be related to a money laundering offence.

The BC Lottery Corporation has published a list of 43 indicators to assist gaming service providers in determining when to report such activity. Once a report is received, it determines whether to file a suspicious transaction report with FINTRAC.[32]

In its opening statement, Great Canadian submits that it has taken all appropriate steps to comply with its reporting obligations and that any errors it makes in identifying and reporting such transactions are statistically few in number, of a minor nature, or the result of inadvertent human error.[33] It further submits that, in many cases, it goes beyond its mandatory obligations by directly reporting certain suspect activities or transactions to the police and assisting the BC Lottery Corporation, the Gaming Policy and Enforcement Branch, and police investigations in whatever way it can.[34]

Gateway Casinos and Entertainment Inc.

Gateway Casinos and Entertainment Inc. (Gateway) is a gaming service provider that operates three of the largest gaming and entertainment facilities in the Lower Mainland as well as a number of smaller gaming sites in Vancouver, Vancouver Island, and the Okanagan Valley.[35]

In its opening statement, Gateway submits that it has a "vested interest" in the integrity of casino gaming in the province and that it has worked with the Gaming Policy and Enforcement Branch and the BC Lottery Corporation to document, report, and act on concerns about money laundering activities related to gaming.[36]

Gateway also makes a number of submissions with respect to the recommendations in *Dirty Money 1*, including the need to delineate clear roles and responsibilities for the Gaming Policy and Enforcement Branch and the BC Lottery Corporation, the adoption of a standards-based model[37] for the regulation of gaming within the province, and the suggestion that gaming service providers submit reports directly to FINTRAC.

While supportive of each of these recommendations, including, in particular, the

32 Opening statement of Great Canadian, para 20.

33 Opening statement of Great Canadian, para 22.

34 Opening statement of Great Canadian, para 22.

35 Gateway also operates the Grand Villa and Starlight casinos in Edmonton and 11 gaming and entertainment facilities in Ontario.

36 Opening statement of Gateway, para 7.

37 A standards-based regulatory model (sometimes referred to as a principles-based regulatory model) is one in which the regulator develops a set of high-level standards with respect to a certain activity but gives registrants the flexibility to determine the most efficient and effective way to meet those standards. I return to this issue in Part Two.

transition to a standards-based regulatory model, Gateway submits that the costs occasioned by changes to the current regulatory regime may affect the economics of its agreements with the BC Lottery Corporation. In addition, Gateway submits that the obligation to make reports to FINTRAC must be balanced against the privacy rights of its patrons.

Canadian Gaming Association

The Canadian Gaming Association is a not-for-profit organization that works to advance the evolution of Canada's gaming industry; promote the economic value of gaming in Canada; use research, innovation, and best practices to help the industry advance; and create productive dialogue among relevant stakeholders.[38] Its members include leading gaming operators such as Gateway and Hard Rock casinos as well as law firms and suppliers to the industry.[39]

In its opening statement, the Canadian Gaming Association submits that the gaming industry generates more than $5 billion in annual revenue for the province and employs more than 29,000 people. It further submits that gaming is one of the most heavily regulated industries in the country. Gaming service providers, it argues, are playing their part in the fight against money laundering by identifying and reporting suspicious transactions to FINTRAC and other regulators. What is required, in its view, are increased efforts by law enforcement officials to act on that information. It also suggests that "committed, long-term funding" for permanent units will allow law enforcement officials to build expertise and be more effective in all areas of enforcement.[40]

British Columbia Government and Service Employees' Union

The British Columbia Government and Service Employees' Union (BC Government and Service Employees' Union) is one of the largest labour unions in British Columbia. It represents more than 80,000 members who work in almost every sector of the economy, including the public service, the financial services industry, and the gaming sector. While some of the topics addressed in its opening statement are beyond the scope of the Inquiry, it may have relevant information with respect to matters such as the training provided to front-line workers and whether there is a need for enhanced whistle-blower protections.

Robert Kroeker

Robert Kroeker has held a number of senior positions in the gaming industry, including chief compliance officer and vice-president (legal, compliance, and security) at the BC Lottery Corporation and vice-president (compliance and regulatory affairs) at Great Canadian. From 2006 to 2012, he was involved in the creation and operation of the BC Civil Forfeiture Office, where he worked extensively with police and other enforcement agencies in British Columbia and beyond.

In his opening statement, Mr. Kroeker submits that there are a number of errors and falsities in the public domain about the state of money laundering and anti–money laundering measures in the BC gaming industry, including several "inaccuracies and inconsistences" in *Dirty Money 1*. He submits that the BC Lottery Corporation and

38 Application for standing (Canadian Gaming Association), para 3.

39 Opening statement of the Canadian Gaming Association, p 2.

40 Opening statement of the Canadian Gaming Association, p 5. The Canadian Gaming Association also suggests that suspicious transaction reports completed by gaming service providers be submitted directly to FINTRAC and that policy makers look seriously at a "comprehensive approach to preventing money laundering across the broader economy – regardless of sector – and focus compliance and reporting obligations on certain at-risk activities and transactions, versus trying to define specific industries" (p 6).

gaming service providers worked diligently to comply with anti–money laundering legislation, prevent the occurrence of money laundering, and track down offenders. However, their requests for investigations were repeatedly ignored, and policy changes aimed at reducing money laundering risks were not endorsed by the Gaming Policy and Enforcement Branch.

Further, Mr. Kroeker submits that Dr. German "never met with [him] individually or sought out [his] detailed knowledge of BCLC" and that Dr. German's sole interaction with him on money laundering controls was "a single hour and a half group meeting."[41]

Mr. Kroeker requests an opportunity to correct what he perceives as "disinformation" in the public domain and to provide a fair, accurate, and complete picture of the actions taken by the BC Lottery Corporation to combat money laundering as well as the "true gaps and failures in the system."[42]

BMW Canada Inc. and BMW Financial Services

BMW Canada Inc. (BMW) is the Canadian subsidiary of BMW AG, a German multinational company that manufactures and distributes luxury vehicles and mobility services through its retail network in Canada. BMW Financial Services, a division of BMW, provides financial services, including leasing and financing of vehicles, to BMW customers in Canada.

In its opening statement, BMW submits that it has vital information to provide with respect to the luxury vehicle sector, including the use of cash (and cash-like instruments) to purchase luxury vehicles, the unlawful export of luxury vehicles, the use of straw buyers and nominees to effect those exports, and the various attempts it has made to prevent the export of luxury vehicles.

BMW also makes a number of suggestions with respect to steps that could be taken to strengthen the current regime as it relates to luxury vehicles. These suggestions include

- a prohibition on cash purchases for vehicles in an amount over $10,000;
- a prohibition on the use of cash and cash-like instruments to pay off manufacturer loans, except where an instrument has sufficient information to link it to a specific account at a reporting entity such as a financial institution;
- regulation of the export of vehicles from Canada to increase the difficulty of exporting luxury vehicles unlawfully; and
- increased enforcement of unlawful exports, including a dedicated police presence at Canadian ports.

I expect that BMW's participation in the Inquiry will inform recommendations made by the Commission with respect to money laundering in the luxury goods sector.

British Columbia Civil Liberties Association

The British Columbia Civil Liberties Association (BC Civil Liberties Association) is a non-profit advocacy group with a mandate to defend, maintain, and extend civil liberties and human rights in Canada. It has expertise in a wide range of civil liberties matters, including criminal law reform, police accountability, access to justice, due process, and the impact of investigative and enforcement mechanisms on privacy interests.

I expect that the BC Civil Liberties Association will bring a much-needed civil liberties perspective to the work of the Commission, particularly as it relates to policy matters

41 Opening statement of Robert Kroeker, para 41.

42 Opening statement of Robert Kroeker, paras 1 and 47.

such as the potential expansion of police and regulatory powers, the increased collection of personal information by law enforcement and regulatory agencies (including mass data sharing among public and private institutions), and the introduction of measures such as unexplained wealth orders.[43]

British Columbia Real Estate Association

The British Columbia Real Estate Association (BC Real Estate Association) is a professional association representing more than 23,000 commercial and residential real estate agents in the province. It does not have any legislative or regulatory powers and works with its member boards on matters such as professional development, advocacy, economic research, and the development of standard forms.

In its opening statement, the BC Real Estate Association commented on many of the findings and recommendations set out in the Terms of Reference Reports, including

- the recommendation that the Office of the Superintendent of Real Estate and the Real Estate Council of British Columbia be merged into the Financial Institutions Commission as the single regulator with responsibility for public education, licensing, professional conduct, and administrative policy;
- the recommendation that the Ministry of Finance control the development of real estate policy in collaboration with the regulator;
- the recommendation that real estate agents accept funds only in forms that are verifiable through Canadian financial institutions;
- the recommendation that mandatory anti–money laundering training be introduced for all real estate professionals to ensure they are better able to recognize and report suspicious transactions and foster a culture of compliance;
- the recommendation that the federal government require FINTRAC compliance by lawyers, law firms, and unregulated lenders to the greatest extent possible; and
- the recommendation that the province create a beneficial ownership registry for real estate ownership.

I fully expect that the participation of the BC Real Estate Association in the Inquiry will inform any recommendations the Commission makes with respect to these matters.

James Lightbody

James Lightbody is president and chief executive officer of the BC Lottery Corporation. He has held that position since February 2014, when he was promoted from vice-president for casinos and community gaming. Mr. Lightbody submits that *Dirty Money 1* provides an "inaccurate narrative" of the evolution of money laundering in the gaming sector and that the BC Lottery Corporation made "active" efforts to respond to money laundering concerns within the gaming sector as they emerged and evolved.[44] He further submits that Dr. German obtained "minimal input" from key people at the BC Lottery Corporation and seeks an opportunity to address those concerns through the Commission process.[45]

43 In basic terms, unexplained wealth orders are a tool available in some jurisdictions whereby an individual can be ordered to provide information with respect to the source of funds used to purchase a particular asset, usually real property. If the individual is unable to provide a satisfactory explanation, the asset can be seized by authorities.

44 Opening statement of James Lightbody, paras 15–16.

45 Opening statement of James Lightbody, para 24.

Canadian Bar Association and the Criminal Defence Advocacy Society

The Canadian Bar Association is a professional organization representing the interests of more than 36,000 legal professionals, including lawyers, law students, academics, and judges.

Founded in 1896, the Canadian Bar Association was formally incorporated by an Act of Parliament in 1921 and has branches in every province and territory. The British Columbia branch has more than 7,000 members in a wide range of practice areas, including criminal justice, real estate, corporate law, family law, and civil litigation.

The Criminal Defence Advocacy Society was founded in 2015 by members of the criminal defence bar in British Columbia. It is particularly concerned with the rule of law, the independence of the bar, and the constitutional rights of accused persons.

Because of the substantial overlap between the proposed contributions of these organizations, I directed that they share a single grant of standing.

Both organizations acknowledge that money laundering has become a serious problem that warrants the attention of the Commission. At the same time, they warn that the "zealous" search for solutions to the money laundering problem could lead to investigative and regulatory overreach that endangers the independence of lawyers, the privacy of private citizens, and the rights of all Canadians to a free and just society. They further submit that lawyers have been denigrated as "black holes" in many of the Terms of Reference Reports and suggest that these comments fail to recognize the fundamental importance of solicitor-client privilege as well as the role played by the Law Society in the regulation of lawyers.

Transparency International Canada, Canadians for Tax Fairness, and Publish What You Pay Canada

Transparency International Canada, Canadians for Tax Fairness, and Publish What You Pay Canada (Transparency Coalition) is a coalition of public interest advocacy groups that has been campaigning to increase corporate transparency and establish a publicly accessible beneficial ownership registry in Canada.

In its opening statement, the Transparency Coalition submits that Canada has "some of the weakest corporate transparency laws in the world" and that there are "more rigorous checks to obtain a library card than to set up a shell company."[46] It further submits that Canada's weak beneficial ownership regime gives criminals entry to our communities, where they do significant harm, and that a beneficial ownership registry is a critical tool in the prevention, detection, and investigation of money laundering activity.

The Transparency Coalition also makes a number of recommendations with respect to the components of a beneficial ownership registry, including the threshold for beneficial ownership disclosure, the data fields to be collected, enforcement and penalties for the failure to disclose the required information, validation of beneficial ownership information, and the appropriate balance between privacy and disclosure.

Additional Participants

In a series of rulings[47] dated September 23, September 29, and October 16, 2020, I granted participant status to three additional participants: Brad Desmarais, vice-president of casino and community gaming at the BC Lottery Corporation; the Chartered Professional Accountants of

46 Opening statement of the Transparency Coalition, para 12.

47 The Commissioner's ruling's are available at: https://cullencommission.ca/rulings.

British Columbia (BC Chartered Professional Accountants); and the Chartered Professional Accountants of Canada.

While I did not have the benefit of an opening statement from these participants, I look forward to their perspectives on the issues in respect of which they have been granted standing.

Public Meetings

From October 23 to November 14, 2019, the Commission conducted public meetings in Vancouver, Victoria, Kelowna, Prince George, and Richmond. The purpose of these meetings was to seek input from some of the communities most affected by money laundering.

While participants were free to speak on any topic relevant to the Commission's mandate, the following questions were posed in advance of the meetings:

- What are the most significant money laundering issues facing your community in British Columbia and in Canada?
- What areas of our mandate would you like us to focus on or address in our process?
- What have been the major consequences of money laundering in your community?
- What do you think is required to address the issues you have identified?
- How can the Commission keep you informed on our activities and findings?
- How can community members participate or stay involved in the process?

In the five sections that follow, I provide a summary of the ideas and concerns expressed by members of the public at each of these meetings.[48]

Vancouver

On October 23, 2019, the Commission held a public meeting in Vancouver and heard presentations from 12 individuals. Concerns expressed by these individuals included

- the increase in criminal activity on the streets of Vancouver;
- the prevalence of money laundering in the gaming industry, including the lack of meaningful action taken by the Gaming Policy and Enforcement Branch, the BC Lottery Corporation, and gaming service providers to combat money laundering in BC casinos;
- the involvement of lawyers in money laundering activity, including the absence of any reporting obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the use of trust accounts to facilitate illegal transactions;
- the suppression of relevant information and evidence by different levels of government;
- the need to strengthen whistle-blower protections, particularly in the gaming industry;
- the use of illicit funds to purchase real estate in British Columbia;
- the infiltration of casinos by organized crime figures; and
- the failure of law enforcement and regulatory agencies to actively (or effectively) prosecute money laundering offences.

Many of these individuals spoke to their personal experiences and observations with these matters, including efforts to inform the RCMP and other relevant authorities about suspicious activity they believed to be connected to money laundering.

Kelowna

On October 29, 2019, the Commission held a public meeting in Kelowna and heard presentations from three individuals. One of these individuals was a former manager of a real estate company who expressed concerns about the process for tracking money in

48 While, in some cases, the number of speakers was limited, many other people attended these meetings – a reflection of the degree of public concern about the nature and extent of money laundering in British Columbia.

real estate transactions as well as the lack of compliance with FINTRAC regulations. This speaker also expressed concern about the potential use of rental income as a way of laundering illicit funds.

A second individual made submissions with respect to financial crime and the inability of the BC Securities Commission to properly regulate the market. He urged the Commission to examine the conduct of large financial institutions as well as the regulators themselves.

A third individual expressed concern that organized crime and money laundering has infiltrated the community to such an extent that people are afraid to speak out.

Victoria

On November 4, 2019, the Commission held a public meeting in Victoria and heard presentations from six individuals on the following topics:

- the high proportion of money laundering cases involving white-collar professionals;
- the need to better regulate lawyers;
- the lack of compliance among reporting entities with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
- the prevalence of money laundering in BC casinos, including the fact that government has largely "ignored" the problem;
- the need to protect whistle-blowers;
- the impact of money laundering on housing affordability; and
- the lack of enforcement of anti–money laundering laws in comparison with other countries.

One of these individuals spoke to the "regrettable" decision to disband the Integrated Proceeds of Crime police units and suggested that substantial money laundering leads submitted to the RCMP have not been acted upon. He also suggested that the sanctions for failing to report suspicious transactions to FINTRAC were not significant enough to act as an effective deterrent and that FINTRAC should take additional steps to audit reporting entities to ensure compliance.

Among the solutions these individuals proposed were a beneficial ownership registry and the use of unexplained wealth orders.

Richmond

On November 7, 2019, the Commission held a public meeting in Richmond and heard presentations from 20 individuals. A consistent theme in these presentations was the impact of money laundering on the real estate sector, including the impact on housing affordability and the construction of "mega mansions" on agricultural land. Such encroachment pulls good farmland out of production, drives up the cost of real estate, and allows criminals to enjoy the proceeds of crime. Other concerns expressed by these individuals included

- the prevalence of money laundering in the gaming sector;
- the exemption of lawyers from the financial reporting requirements set out in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
- cash payments in the construction industry as a potential weakness in the current anti–money laundering regime;
- lack of compliance with reporting obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, particularly among real estate agents; and
- the lack of any meaningful enforcement of anti–money laundering laws by law enforcement agencies.

Many of these speakers said that the current state of affairs is contrary to Canadian values, discouraging for British Columbians, and a "black eye" on the history of our country. They also expressed considerable support for unexplained wealth orders as well as increased corporate transparency, including the creation of a beneficial ownership registry in the corporate sector.

Prince George

On November 14, 2019, the Commission held its fifth public meeting, in Prince George, and heard presentations from three individuals.

Speakers expressed concern that the Commission's work may have no lasting effect, particularly where law enforcement agencies have been subject to significant cutbacks and have failed to act on matters related to money laundering.

Written Submissions

In addition to holding public meetings, the Commission invited members of the public who could not attend a public meeting or preferred to share their perspectives in writing to make written submissions to the Commission. To date, the Commission has received a large number of written submissions from concerned members of the public. These submissions identify many of the same concerns and perspectives raised at the public meetings summarized above.

Work of the Commission

Since May 2019, the Commission has taken various steps to advance its understanding of money laundering and prepare for its evidentiary hearings. These steps are summarized below.

Terms of Reference Reports

One of the first steps taken by the Commission was to thoroughly review and analyze the Terms of Reference Reports as well as other studies, reports, and legislation concerning money laundering in British Columbia. While aspects of these reports are in dispute, they have been invaluable in identifying issues to be investigated and solutions to be explored. A full discussion of these reports is set out in Part Two (below).

Witness Interviews and Document Production

Another important aspect of the Commission's work has been interviewing potential witnesses and obtaining relevant documents from participants and others. Extensive interviews have been conducted with government officials, regulators, gaming service providers, professionals, financial service providers, and non-profit organizations, to name a few. Many of these individuals will be testifying at the evidentiary hearings, and others have provided important leads for the Commission to pursue.

The Commission has also obtained hundreds of thousands of documents from a wide range of public- and private-sector organizations including

- Canada
- the Province of British Columbia[49]
- the Gaming Policy and Enforcement Branch
- the Law Society of British Columbia
- the BC Lottery Corporation
- the Great Canadian Gaming Corporation
- Parq Vancouver Limited Partnership
- the Vancouver Police Department[50]
- the BC Securities Commission
- the Canadian Association of Chiefs of Police
- the Land Title Survey Authority
- the Registrar of Mortgage Brokers
- the Vehicle Sales Authority
- BMW
- Robert Kroeker
- the BC Government and Service Employees' Union

49 I am particularly grateful for the co-operation of the current and previous governments in authorizing the release of cabinet records from 1996 to the present.

50 Although not a participant, the Vancouver Police Department has been highly engaged in and supportive of the Commission's work.

- the City of Richmond
- the Canadian Jewellers Association
- the Art Dealers Association of Canada
- various car dealerships
- various financial institutions

I note that some of these documents were received under section 15 of the *Public Inquiry Act*, which allows the Commission to restrict access to certain documents where the government asserts privilege over them or where the Commission has reason to believe that the order is necessary for the effective and efficient fulfillment of the Commission's Terms of Reference.

Experts

The Commission has also consulted with a number of highly qualified experts including

- Stephen Schneider, a professor at St. Mary's University, Halifax, and one of Canada's foremost authorities on organized crime, financial crime, and money laundering;
- Simon Lord, a senior officer and money laundering expert at the National Crime Agency in the United Kingdom;
- Oliver Bullough, an investigative journalist and the author of *Moneyland: The Inside Story of the Crooks and Kleptocrats Who Rule the World* (New York: St. Martin's Press, 2019);
- William Gilmore, a professor at the University of Edinburgh with expertise in international anti–money laundering measures;
- Michael Levi, a professor at Cardiff University with a distinguished track record of research and advisory work on money laundering and transnational organized crime;
- Peter Reuter, a professor at the University of Maryland School of Public Policy and Department of Criminology and an expert on illegal markets and organized crime;
- Sir Robert Wainwright, the executive director of Europol from 2009 to 2018 and a senior partner at Deloitte based in the Netherlands, with expertise in technology, information sharing, and criminal threat assessment, including the growth of professional money laundering networks;
- Jason Sharman, a professor of politics and international studies at the University of Cambridge and an expert on money laundering, corruption, terrorism, and transnational crime;
- Stephanie Brooker, a partner at Gibson Dunn and the former director of enforcement at the Financial Crimes Enforcement Network in the United States;
- Stefan Cassella, a former prosecutor at the US Department of Justice who was involved in the reform of anti–money laundering legislation and regulatory structures;
- John Cassara, a former US law enforcement official and the author of various books and articles on money laundering and anti–money laundering efforts;
- Maria Bergstrom, an associate professor at Uppsala University in Sweden with expertise in anti–money laundering regulation in the European Union;
- Dr. Mark Pieth, a professor of criminal law at Basel University who was involved in drafting the Swiss anti–money laundering legislation and acts as an international and national regulator, legal expert, judge, compliance monitor, and compliance advisor;
- Dr. Katie Benson, a professor at Lancaster University with expertise on money laundering, organized crime, and the legal profession;
- Barbara McIsaac, QC, a leading expert on privacy and access to information law and the co-author of *The Law of Privacy*

in Canada (Toronto: Thomson Reuters Canada, 2018);
- Dr. John Zdanowicz, a professor of finance at Florida International University and an expert in trade-based money laundering;
- Dr. Martin Bouchard, a professor of criminology at Simon Fraser University with expertise in the organization and dynamics of illicit markets, including methodologies used to estimate the size of illicit markets;
- Dr. Jonathan Caulkins, a professor of operations research and public policy at Carnegie Mellon University with expertise on proceeds of crime estimates;
- Dr. Tsur Somerville, a professor at the UBC Sauder School of Business with expertise in housing markets and real estate development;
- Dr. Brigitte Unger, a professor at the University of Utrecht with expertise in real estate finance, public economics, and money laundering, including methods used to quantify money laundering activity;
- experts with respect to the civil forfeiture regime in the United States, South Africa, the United Kingdom, Ireland, Australia, Manitoba, and Ontario; and
- experts with respect to the anti–money laundering regime in other jurisdictions, including Australia, New Zealand, the United Kingdom, and the United States.

Many of these experts are leaders in their respective fields and bring a wealth of knowledge and experience to the work of the Commission.

Overview Reports

Rule 32 of the Commission's *Rules of Practice and Procedure* allows the Commission to prepare "overview reports" with respect to certain matters falling within its mandate.[51] The purpose of these reports is to introduce background and otherwise uncontroversial facts into evidence without the need to tender that evidence through a witness.

Five such reports were tendered during the overview hearings,[52] and other reports are being prepared on the following topics:
- quantification of money laundering;
- history and regulatory structure of gaming in British Columbia;
- history and regulatory structure of horse racing in British Columbia;
- regulation of gaming and horse racing in Ontario;
- the Integrated Illegal Gaming Enforcement Team, including the formation, operation, and subsequent disbandment of that agency;
- information derived from the annual reports of the Gaming Policy and Enforcement Branch and the BC Lottery Corporation;
- past reports on possible reforms to the gaming industry;
- industry background (real estate);
- legislative structure (real estate);
- money laundering in the real estate industry;
- anti–money laundering initiatives in the real estate industry;

51 *Rules of Practice and Procedure*, Rule 32. Before these reports are finalized and entered into evidence, a copy of each must be provided to each participant with standing in respect of the subject matter of the report (Rule 34(a)). Those participants have 14 days to provide comments on the report (Rule 34(b)). Under Rule 34(c), the Commission is entitled to modify the draft overview report in response to comments received from participants. In addition, participants may propose witnesses to be called during the evidentiary hearings to support, challenge, or comment on the overview report in ways that are likely to contribute significantly to an understanding of the issues relevant to the Inquiry (Rule 35).

52 These reports cover a variety of topics, including the Financial Action Task Force, the Basel AML index, international anti–money laundering initiatives, parliamentary debates relating to the enactment of and subsequent amendment to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and reports created by the federal government with respect to money laundering. Each of these reports can be found at the following link: http://www.cullencommission.ca/exhibits.

- regulation of real estate agents in other jurisdictions;
- the practice of law (including the right to engage in the practice), relevant ethical obligations, professional regulation, and the *Federation of Law Societies* decision;
- historical and recent measures taken by the Law Society and the Federation of Law Societies to prevent or disrupt money laundering in legal transactions;
- Financial Action Task Force publications concerning the involvement of lawyers in money laundering;[53]
- the practice of accounting, including the amalgamation of the designations into the BC Chartered Professional Accountants, the exclusive right to perform specified services, ethical obligations, and professional regulation;
- historical and recent measures taken to prevent and disrupt money laundering in the accounting sector;
- Financial Action Task Force publications concerning the involvement of accountants in money laundering;
- the federal banking regime;
- the provincial credit union regime;
- Financial Action Task Force publications concerning money laundering and financial institutions;
- regulatory framework for money services businesses;
- publicly available information regarding money laundering in money services businesses;
- federal and provincial incorporation regimes in Canada, including recent amendments to the relevant statutes;
- shell companies and beneficial ownership registries;
- the securities sector, including the current regulatory framework and enforcement bodies;
- Financial Action Task Force reports concerning the use of corporations / securities to launder illicit funds;
- policing in British Columbia, particularly as it relates to money laundering;
- money laundering prosecutions in British Columbia, including the role of the Public Prosecution Service of Canada and the BC Prosecution Service;
- role and structure of other enforcement bodies such as the CRA and the Canada Border Services Agency;
- evolution of the enforcement and prosecution of money laundering in Canada;
- purpose and structure of FINTRAC, including recent amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
- Financial Action Task Force publications concerning FINTRAC;
- legislation and literature relating to money laundering in luxury goods markets, including vehicles, jewellery, precious metals, fine art, yachts, and clothing and apparel;
- asset forfeiture, including asset forfeiture provisions in federal and provincial legislation as well as information relating to the British Columbia Civil Forfeiture Office; and
- history of virtual asset regulation in Canada.

Extensive research and analysis are required for each of these reports. Undoubtedly, they will

53 The Financial Action Task Force is an organization created by the Group of Seven (G7) to foster the establishment of national and international measures to combat money laundering. It is primarily a standard-setting and policy-making body composed of 37 jurisdictions representing major financial centres and strategically important countries drawn from all parts of the world (see Exhibit 19, Report of Professor William Gilmore, para 3).

contribute to a better understanding of money laundering and allow for more efficient and focused evidentiary hearings.

Investigations

While some aspects of the Commission's mandate have been the subject of previous studies and reports, other aspects have not been closely studied. The Commission has therefore undertaken some of its own research and investigations.[54] Examples of that work include

- a two-part study seeking to quantify the total amount of money laundered from the illicit sale of fentanyl in British Columbia;
- a study seeking to measure the impact of the new beneficial ownership disclosure requirements on the real estate industry;
- a study on the flow of money from China to British Columbia;
- an investigation into the activities of unregulated mortgage lenders, including an analysis of mortgage investment corporations and sources of funds;
- various investigations with respect to the involvement of lawyers in money laundering transactions;
- investigations into money laundering in the corporate sector; and
- an investigation into the practices of luxury vehicle and yacht dealerships.

Although many of these investigations are still underway, I am hopeful they will advance the current state of knowledge about money laundering in British Columbia.

Overview Hearings

On May 25, 2020, the Commission began the overview portion of its evidentiary hearings. The purpose of these hearings was to provide an introduction to the topic of money laundering, including the nature and characteristics of money laundering, the effects of money laundering on the legitimate economy, and approaches to money laundering in other jurisdictions.

Professor Schneider was the first witness to testify at the overview hearings. He spoke to a literature review he prepared for the Commission on various topics including the nature and characteristics of money laundering, sources of illicit funds, the criminal organizations that pose the most significant money laundering threat, the so-called Vancouver model,[55] and the effects of money laundering on the legitimate economy.

The Commission also heard evidence from Simon Lord, Oliver Bullough, William Gilmore, Michael Levi, Peter Reuter, and Sir Robert Wainwright.

Simon Lord testified about various matters, including the definition of money laundering, the effects of money laundering, and money laundering techniques such as informal value transfer systems and trade-based money laundering.[56] He also gave evidence with respect to the Financial Action Task Force and the law enforcement response in the United Kingdom, including the role and function of agencies such as the National Crime Agency, the Serious and Organized Crime Agency, and the National Economic Crime Centre.

Oliver Bullough gave his perspective on a number of issues relevant to the Commission's

54 These investigations are in addition to other lines of inquiry being pursued by the Commission through document production and witness interviews.

55 Professor Schneider describes the Vancouver model as a "moniker" applied to the alleged money laundering operation used by Paul King Jin and Silver International Investments Ltd. to benefit wealthy Chinese nationals who are trying to transfer money to Canada from China, as well as criminal organizations involved in drug trafficking (see Exhibit 6, Money Laundering in British Columbia: A Review of Literature, pp 118–19).

56 In general terms, trade-based money laundering is the process of disguising the proceeds of crime and moving value through the use of trade transactions in an effort to integrate them into the legitimate economy.

mandate, including corruption, the flow of illicit funds across borders, the use of complex corporate structures to launder illicit funds, and the role of professional advisors in the creation of those structures. He also spoke to the challenges associated with the investigation of these issues, the need for transparent and verifiable information about the ownership structure of corporate entities, and money laundering in the real estate and luxury goods sectors.

Professor Gilmore spoke to a report prepared for the Commission on various topics relating to the Financial Action Task Force, including the development and evolution of anti–money laundering standards, the mutual evaluation process,[57] the Council of Europe Committee of Experts on the Evaluation of Anti–Money Laundering Measures and the Financing of Terrorism, and Canada's performance under the mutual evaluation process.

Professor Levi provided a critique of the traditional placement / layering / integration model of money laundering and spoke to various articles he has written on the laundering of organized crime money; the Financial Action Task Force mutual evaluation process, including the manner in which member countries are evaluated; and the use of cash in the money laundering cycle.

Professor Reuter explained the origin, advantages, costs, and implementation of the risk-based approach to the fight against money laundering adopted by the Financial Action Task Force. He also raised some important questions about the utility and cost of pursuing anti–money laundering initiatives and provided a critique of the national risk assessment process.

Sir Robert Wainwright gave evidence about various topics, including the emergence of international crime syndicates and the growth of professional money laundering networks. He also described how the globalized criminal landscape creates a pressing need to develop better systems of collaboration and information sharing across the public and private sectors, the importance of "targeting" in anti–money laundering regimes, and the need to focus on areas that are most vulnerable to money laundering activity.

On June 9–10, 2020, the Commission heard evidence from Chief Superintendent Robert Gilchrist, Inspector Leslie Stevens, and Ryland Wellwood, who gave evidence concerning organized crime in British Columbia, including the number and type of criminal organizations in the province and the techniques used by organized crime groups to launder illicit funds.

On June 11–12, 2020, the Commission heard evidence from Mark Sieben, Dr. Chris Dawkins, and Megan Harris, who gave evidence about the provincial anti–money laundering strategy, including the establishment of the Anti–Money Laundering Deputy Ministers' Committee, the initiatives undertaken by the province to implement the recommendations contained in the Terms of Reference Reports, and the areas in which the province is looking for guidance from the Commission. I will return to these matters in Part Two (below).

COVID-19

Since March 2020, the COVID-19 pandemic – and the public health measures taken to slow its spread – have had a profound impact on individuals, organizations, and businesses throughout the province. They have also created a number of significant challenges for the work of the Commission, including the fact that the Commission has been required to conduct its evidentiary hearings by way of videoconference. I am extremely

57 The mutual evaluation process is a process whereby members of the Financial Action Task Force evaluate one another on the implementation of anti–money laundering standards. Professor Gilmore describes this process as "in essence, an international system of periodic peer review under which each member is subject to a form of on-site examination. The process is conducted by an interdisciplinary team of experts drawn from other … members and assisted by officials from its Paris based Secretariat" (see Exhibit 19, Report of Professor William Gilmore, para 17).

grateful to Shay Matters, Kelsey Rose, Linda Peter, Phoenix Leung, Natasha Tam, Mary Williams, and Scott Kingdon for their dedicated efforts to create and run a virtual courtroom on extremely short notice. I would also like to thank participants and counsel for their continued engagement with the Commission during these difficult times. While there will no doubt be additional challenges to overcome, the Commission is strongly committed to continuing its work in the belief that it will benefit the people of British Columbia in the long run.

Part Two:
Terms of Reference Reports

Section 4(2)(b) of the Terms of Reference requires me to review and consider four recent reports on money laundering in British Columbia:

- *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia,* Peter M. German, QC, March 31, 2018 (*Dirty Money 1*);
- *Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing,* Peter M. German, QC, March 31, 2019 (*Dirty Money 2*);
- *Real Estate Regulatory Structure Review* (2018), Dan Perrin (Perrin Report); and
- *Combatting Money Laundering in BC Real Estate,* Maureen Maloney, Tsur Somerville, and Brigitte Unger, March 31, 2019 (Maloney Report).[1]

In what follows, I review the key findings and recommendations contained in each of these reports as well as the submissions made by each participant with standing in this Inquiry.[2]

Dirty Money 1

Dr. German's first report, *Dirty Money 1*, addresses various topics relating to money laundering in Lower Mainland casinos. These issues include the growth of money laundering in the gaming sector; the relationship between the Gaming Policy and Enforcement Branch and the British Columbia Lottery Corporation (BC Lottery Corporation); and the steps taken by each of these entities to address the problem. He writes that Lower Mainland casinos have long served as laundromats for organized crime and that the problem reached its apex in July 2015, when surveillance teams discov-

1 While these reports have provided a valuable starting point for the work of the Commission, the findings and recommendations contained in these reports will be explored in greater detail during the evidentiary hearings using the powers afforded to the Commission by the *Public Inquiry Act*.

2 On November 7, 2019, the Commission wrote to all participants and asked for their position on the recommendations contained in the Terms of Reference Reports.

ered that large amounts of unsourced cash were being dropped off at or near the River Rock Casino in Richmond and, later, presented in the casino by high-limit customers.[3] An Excel spreadsheet prepared by investigators from the Gaming Policy and Enforcement Branch suggested that $13.5 million in $20 bills was accepted during that month alone.[4] Dr. German concludes that the failure to address the problem effectively was a "system failure, which brought the gaming industry into disrepute in the eyes of many British Columbians."[5] While recognizing that subsequent actions have dramatically reduced the quantity of suspicious money entering BC casinos, Dr. German makes 48 recommendations aimed at strengthening the current anti–money laundering regime and ensuring that the problem does not resurface. These recommendations include

- amendments to the *Gaming Control Act*, SBC 2000, c 14, to clearly delineate the roles and responsibilities of the Gaming Policy and Enforcement Branch and the BC Lottery Corporation;
- the creation of an independent regulator;
- the adoption of a standards-based regulatory model;[6]
- the transfer of federal reporting obligations to gaming service providers;
- the creation of a provincial transaction analysis team to review suspicious transaction reports submitted to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and develop strategies to deal with them;
- the creation of a designated police unit to conduct criminal and regulatory investigations relating to the gaming industry;
- the continuation of the Joint Illegal Gaming Investigation Team;[7] and
- various operational recommendations, such as the implementation of source-of-funds declarations and the transfer of responsibility for cash alternatives to gaming service providers.

While some of these recommendations, such as the implementation of source-of-funds declarations, were accepted by all gaming sector participants, others, such as the transfer of responsibility for federal reporting to gaming service providers, were the subject of considerable disagreement. I discuss each of these recommendations below.

Clarification of Roles and Responsibilities

One of the key issues identified in *Dirty Money 1* is the need to clearly delineate the roles and responsibilities of the Gaming Policy and Enforcement Branch and the BC Lottery Corporation.[8] Dr. German states that there has long been a testy relationship between the two entities and that the "overriding emotion" at the Gaming Policy and Enforcement Branch is frustration at not having a clear mandate to deal with money laundering, being treated as the "poor cousin" of the BC Lottery Corporation, being wrapped within the constraints of government, and not having the independence to operate as a true regulator.[9] Dr. German also

3 *Dirty Money 1*, p 10.

4 *Dirty Money 1*, p 10.

5 *Dirty Money 1*, p 10.

6 A standards-based regulatory model is one in which the regulator develops a set of high-level standards but gives registrants the flexibility to determine the most efficient and effective way to meet those standards. Dr. German's recommendations with respect to this regulatory model are discussed below.

7 In *Dirty Money 1*, Dr. German referred to this team as the Joint Integrated Gaming Investigation Team.

8 *Dirty Money 1*, p 63.

9 *Dirty Money 1*, pp 147–48.

states that the two entities could have dealt with the money laundering crisis more effectively had they been better coordinated, and he recommends that the province amend the *Gaming Control Act* to clearly delineate the roles and responsibilities of these entities.[10]

All gaming sector participants expressed support for this recommendation, with many arguing that the lack of clearly defined roles between these entities contributed in a substantial way to the growth of money laundering in BC casinos.

I agree that this is an important issue to be addressed and expect to hear evidence with respect to this issue during the evidentiary hearings.

Creation of a New Regulator

Dr. German also recommends that the province create a new, independent regulator that is not "embedded within the bureaucracy of government."[11] More specifically, he recommends that

- British Columbia transition to an independent regulator in the form of a service delivery Crown corporation with a board of directors and a chief executive officer (CEO) / registrar;
- the board of directors be a governance board and that it not be responsible for appeals from decisions of the registrar;
- the BC Lottery Corporation be subject to the regulatory oversight of the regulator;
- the BC Lottery Corporation board, officers, and employees be subject to registration;
- investigators employed by the regulator be special provincial constables and meet certain core competencies;
- anti–money laundering be a responsibility of the regulator;
- the regulator institute mandatory training for front-line gaming personnel, including VIP hosts, with consideration of a "Play Right" program;[12]
- the regulator provide a continuous presence in major Lower Mainland casinos until a designated policing unit is in place;
- appeals from decisions of the registrar be sent to an administrative tribunal;
- funding of the regulator continue to be from gaming revenue; and
- the regulator have dedicated in-house counsel.[13]

The Gaming Policy and Enforcement Branch expressed support for these recommendations and indicated that the province has made various amendments to the *Gaming Control Act* to begin the process of creating a more independent regulator. These amendments include

- an amendment to section 28(2), allowing the general manager of the Gaming Policy and Enforcement Branch to give directives to the BC Lottery Corporation without ministerial approval;
- an amendment to section 92, giving the general manager the authority to forbid a person from entering a gaming facility where he or she believes that the presence of that person is undesirable; and
- an amendment to section 97(2.1) to include the BC Lottery Corporation on the list of organizations that commit an offence if they refuse to provide information requested by the Gaming

10 *Dirty Money 1*, p 148.

11 *Dirty Money 1*, p 203.

12 Dr. German describes this program as a "novel adaptation" of the Serving It Right program, which is required training for many individuals working in bars. In his view, it could provide a mandatory introduction to a number of topics related to regulation, including training in anti–money laundering and familiarization with the roles of the regulator and the police: see *Dirty Money 1*, p 206.

13 *Dirty Money 1*, pp 206–7.

> Policy and Enforcement Branch concerning an investigation or if they fail to report an incident involving the commission of an offence under the *Gaming Control Act* or the *Criminal Code*.

The Gaming Policy and Enforcement Branch also submits that the province will be taking steps to create an independent gambling control office with the "mandate, authority and independence" to maintain the overall integrity of gaming in British Columbia.[14] With respect to Dr. German's more specific recommendations, the Gaming Policy and Enforcement Branch submits that all investigators are special provincial constables, that BC Lottery Corporation employees have always been subject to regulation (though board members were not required to register until 2018), and that solicitors from the Legal Services Branch are (and have always been) assigned to provide legal advice to the Gaming Policy and Enforcement Branch.[15]

The BC Lottery Corporation took no position on the creation of an independent regulator, provided that adequate appeal mechanisms are in place. However, it strongly opposes the recommendation that the regulator be responsible for money laundering and, in particular, anti–money laundering training beyond what is necessary to maintain the overall integrity of gaming in the province. It submits that it has a much higher level of knowledge and expertise than the Gaming Policy and Enforcement Branch and is subject to significant penalties for non-compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17.

The BC Lottery Corporation also took issue with Dr. German's recommendation that it consider a Play Right program for anti–money laundering training. It submits that Play Right is a commercial product that should be purchased only if its own programming is inadequate and argues that "a thorough assessment of BCLC's training programs would reveal that … such an expenditure is unnecessary."[16]

The Canadian Gaming Association was supportive of most of these recommendations and noted that a "well-equipped, competent and independent regulator" is necessary if a standards-based regulatory regime is to be successful.[17]

The Great Canadian Gaming Corporation (Great Canadian) also stressed the need for a strong regulator and took the position that the regulator should be responsible for matters such as anti–money laundering training. It also indicated that it would welcome the continuous presence of regulatory authorities at its casinos 24 hours a day.

While not directly related to these recommendations, the British Columbia Government and Service Employees' Union (BC Government and Service Employees' Union) submits that greater attention should be paid to the need for more resources. It points out that the Gaming Policy and Enforcement Branch is allocated around $14 million annually to oversee a multibillion-dollar gaming industry. It also submits that any regulatory, compliance, and enforcement bodies put in place must be accountable to the broader public rather than to the industries they regulate.

Finally, the British Columbia Civil Liberties Association (BC Civil Liberties Association) expressed support for the creation of an independent regulatory body. However, it submits that any investigative powers given to that agency should be purely regulatory in nature and that investigators should not be designated as special provincial constables.

14 Opening statement of Gaming Policy and Enforcement Branch and Ministry of Finance, para 40.

15 The Gaming Policy and Enforcement Branch also submits that, because it is funded by an appropriation through the regular government estimates process, there is no direct link between gaming revenue and the funding of the branch.

16 BC Lottery Corporation Supplemental Response to Terms of Reference Report Recommendations, p 9.

17 Canadian Gaming Association Response to Terms of Reference Report Recommendations, p 3.

Standards-Based Regulatory Model

Another recommendation made by Dr. German is that the gaming industry transition to a standards-based regulatory model.[18] He also recommends that

- the "foundational" standards be developed through collaboration between industry and government, building on the Ontario model;
- the standards be periodically reviewed and renewed; and
- the CEO / registrar of the regulator be the "keeper of the standards."[19]

A standards-based regulatory model (sometimes referred to as a principles-based regulatory model) is one in which the regulator develops a set of high-level standards but gives registrants the flexibility to determine the most efficient and effective way to meet them.[20] It is generally distinguished from a rule-based regulatory model in which the regulator imposes a set of prescriptive requirements on registrants, such as the requirement that a source-of-funds declaration be completed whenever a specific monetary threshold is met. The reality, however, is that most complex regulatory schemes will be an amalgam of standards-based and rule-based principles.[21]

One of the benefits of standards-based regulation is that it encourages registrants to properly understand risk and makes them accountable for their failure to meet the standards imposed by the regulator.[22] At the same time, it is well recognized that a standards-based model must be accompanied by meaningful oversight or it will effectively become a form of self-regulation.[23]

The Canadian Gaming Association strongly supports the transition to a standards-based regulatory model. It submits that standards-based regulation is globally recognized as an effective measure to safeguard compliance and allocate resources in a risk-appropriate manner. Moreover, it points to some of the problems associated with systems that are too rule based, including that they can stifle innovation, create loopholes and loophole-oriented behaviour, make problem-solving less explicit, and impose costs related to inflexibility.

Gateway Casinos and Entertainment Inc. (Gateway) also supports the transition to a standards / risk-based model and points to some of the benefits associated with standards-based regulation. More specifically, it submits that risk-based standards

- create a shared understanding of how particular standards are designed to mitigate risk;
- provide clarity for service providers about the compliance markers that must be met;
- ensure that service providers have the flexibility to respond to the specific risks which arise in each gaming environment, allowing them to allocate resources efficiently and effectively;

18 *Dirty Money 1*, p 202.

19 *Dirty Money 1*, p 202.

20 For an example of these "high-level" standards, see those of the Alcohol and Gaming Commission of Ontario with respect to unlawful activity in the gaming industry: https://www.agco.ca/lottery-and-gaming/6-minimizing-unlawful-activity-related-gaming.

21 Cristie Ford, "Principles-Based Securities Regulation in the Wake of the Global Financial Crisis" (2010) 55 *McGill Law Journal* 257 at 266.

22 Legal scholars have pointed to the Three Mile Island nuclear accident as an example of the problems that can arise in a rule-based system. In examining the cause of that disaster, the Kemeny Commission found that the nuclear plant operators had been "educated by the regulatory system to be rule-following automatons" and failed to develop a systemic understanding of the complex safety problem they were managing. In theory, a standards-based system forces registrants to "grapple with the complexity of the problem more completely than presumptive rule-following permits" (see John Braithwaite, "Rules and Principles: A Theory of Legal Certainty" (2002) 27 *Australian Journal of Legal Philosophy* 47 at 66–67).

23 Ford, "Principles-Based Securities Regulation," 262.

- encourage service providers to properly understand their risks and be accountable for their failure to meet standards imposed by the regulator; and
- encourage service providers to adopt new technologies and take advantage of new opportunities to meet risk in a more flexible way.

Great Canadian does not oppose these recommendations and submits that it is familiar with a standards-based model because of its operations in Ontario, where it has implemented a comprehensive anti–money laundering compliance program. It also submits that a standards-based model has the benefit of allowing service providers to adapt their approaches and controls quickly in order to address evolving risks. However, it emphasizes that the standards-based model must be adopted by the Gaming Policy and Enforcement Branch (through regulation) and the BC Lottery Corporation (through contracts with gaming service providers).

The Gaming Policy and Enforcement Branch also supports the transition to a "more effective and flexible standards-based model" that allows the regulator to adapt and evolve with the gaming industry.[24] It submits that compliance standards must be "objective and measurable" and that the regulator should have the power to set prescriptive requirements where necessary.[25] In addition, it recognizes the need for an independent regulator with "strong administrative law powers for instances of non-compliance."[26]

The BC Lottery Corporation agrees with the recommendation that the gaming industry transition to a standards-based model but submits that different stakeholders have different understandings of what exactly that means. In its submission, the "central feature" of a standards-based model is flexibility in the application of the standards developed by the regulator to allow the registrant to adapt to changing risk levels and circumstances.[27] A standards-based model will, ideally, provide the BC Lottery Corporation and its gaming service providers with clear standards for gaming operations throughout the province. Risk-based considerations will then determine how it and the service providers apply those standards. Depending on the level of risk, the application of these standards may vary from site to site or game to game.

The BC Lottery Corporation also submits that it should maintain responsibility for assessing risk and developing policies and procedures to meet the standards set by the regulator in order to ensure "a consistent application of the risk analysis, and consistency in the [policies and procedures] developed around and in support of the standards."[28] Moreover, it cautions against reliance on one jurisdiction in developing the foundational standards for use in British Columbia. In its submission, the anti–money laundering program it has developed in British Columbia is more comprehensive than those in the two jurisdictions (Nevada and Ontario) that Dr. German relied on as his models. For example, Las Vegas casinos conduct extensive due diligence for players who wish to arrange credit (something not offered in British Columbia) but do little to address potential problems with cash buy-ins beyond asking for identification to satisfy federal reporting requirements. In short, it submits that no quick solution can be gained by adopting what other jurisdictions are doing. Rather, the model developed in British Columbia must reflect the "unique characteristics of … the BC gaming environment."[29]

24 Opening statement of Gaming Policy and Enforcement Branch and Ministry of Finance, para 39.

25 Opening statement of Gaming Policy and Enforcement Branch and Ministry of Finance, para 39.

26 Opening statement of Gaming Policy and Enforcement Branch and Ministry of Finance, para 39.

27 BC Lottery Corporation Supplemental Response to Terms of Reference Report Recommendations, pp 7–8.

28 BC Lottery Corporation Supplemental Response to Terms of Reference Report Recommendations, p 8.

29 BC Lottery Corporation Supplemental Response to Terms of Reference Report Recommendations, p 8.

Finally, the RCMP supports the transition to a standards-based system and suggests that the Commission examine the standards adopted by the Alcohol and Gaming Commission of Ontario in developing that system.

Federal Reporting

One of the more controversial recommendations made by Dr. German is that responsibility for FINTRAC reporting be shifted from the BC Lottery Corporation to individual gaming service providers.[30] More specifically, he recommends that

- gaming service providers be designated as reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
- gaming service providers be responsible for submitting all FINTRAC reports, including suspicious transaction reports;
- the BC Lottery Corporation be required to submit "corporate STRs" if its files contain relevant information not contained in a suspicious transaction report filed by a service provider;
- service providers develop the necessary capacity to assess risk and perform due diligence on suspicious transactions;
- service providers copy suspicious transaction reports to the BC Lottery Corporation, the regulator, and the RCMP; and
- unusual financial transaction reports and suspicious currency transaction reports be eliminated.[31]

In making these recommendations, Dr. German states that the current system "allows a third party, not present at the time of the transaction, to determine what is or is not suspicious. With trained personnel in the casinos, this should not be necessary."[32] He also states that service providers should be able to perform their own research and analysis to determine whether a transaction is suspicious and should be reported.

The BC Lottery Corporation strongly opposes these recommendations and submits that it is much better positioned than service providers to assess whether a transaction is suspicious and should be reported. When gaming service providers flag a transaction as suspicious or potentially suspicious, the BC Lottery Corporation undertakes a rigorous analysis of the transaction based on factors such as the player's gaming history, source of wealth information, known associates, law enforcement information, previous suspicious transaction reports, open source data, and confidential information derived from player interviews. Much of that information is not available to service providers.[33] Moreover, the completion of these reports requires significant time and resources, meaning that, if this recommendation were implemented, it would place an increased administrative burden on service providers.[34]

30 *Dirty Money 1*, p 95.

31 *Dirty Money 1*, p 95. Gaming service providers are required to submit these reports to the BC Lottery Corporation whenever there are reasonable grounds to believe that a transaction could be related to a money laundering or terrorist financing offence. The BC Lottery Corporation has published a list of 43 indicators to assist gaming service providers in determining when to report such activity.

32 *Dirty Money 1*, p 92.

33 Examples of information to which gaming service providers would not have access include information relating to the player's gaming history at other casinos and information obtained by the BC Lottery Corporation through information-sharing agreements with law enforcement agencies.

34 The concerns of the BC Lottery Corporation with respect to the administrative burden on service providers were supported by Parq Vancouver Limited Partnership, which took the position that direct reporting by service providers would result in the loss of "province-wide context" and that the additional resources required to submit reports would be cost prohibitive for smaller service providers. While not a participant in the Inquiry, Parq Vancouver was invited to provide comments on Dr. German's recommendations in *Dirty Money 1*.

The BC Lottery Corporation also submits that it is the designated reporting entity under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and has exposure to significant penalties for non-compliance with that legislation regardless of whether the error is made by the BC Lottery Corporation or a gaming service provider.[35]

The BC Lottery Corporation's position was supported by Robert Kroeker, who provided a detailed submission on the current reporting regime and the implications of the proposed changes. Mr. Kroeker submits that the shift from a comprehensive, sector-wide reporting process currently in place to a casino-based reporting structure has the potential to decrease the quality and comprehensiveness of suspicious transaction reports and increase the overall money laundering risk. He also submits that *Dirty Money 1* "does not make clear how money laundering transactions will be better averted, or how the … money laundering risk will be lowered, by shifting reporting entity status from BCLC to casino operators."[36]

Gateway suggests that shifting responsibility to gaming service providers "aligns with the standards-based / risk-based approach to regulation by encouraging service providers to take responsibility for and invest in the process of compliance with the PCMLTFA [*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*]."[37] It recognizes, however, that shifting responsibility to service providers must be reconciled with the BC Lottery Corporation's "conduct and manage" mandate and the potential benefits measured against the significant resources the corporation has already invested in developing its FINTRAC compliance program.[38]

Similarly, Great Canadian states that shifting responsibility to service providers would "remove one layer of reporting" and "streamline the [reporting] process."[39] However, it takes issue with Dr. German's finding that the BC Lottery Corporation "substitutes" its judgment for that of gaming service providers and "filters" what is or is not suspicious.[40]

The BC Civil Liberties Association expresses concern that the current approach, where multiple entities are responsible for collecting and analyzing information concerning suspicious transactions, may result in the over-collection of personal information without proper privacy protections. It therefore supports the recommendation that gaming service providers develop the necessary capacity to assess risk and perform due diligence on suspicious transactions. It also submits that such capacity building must include education with respect to privacy rights as well as the risks of discrimination and profiling.

When asked for its view on Dr. German's recommendations, the Government of Canada (Canada) stated that they "are of a technical nature and require additional time to properly assess and come to a final position."[41] While constitutional constraints prevent me from making recommendations with respect to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act,* these issues have an impact on other issues before this

35 While the BC Lottery Corporation acknowledges that service providers are responsible for the submission of large cash transaction reports and casino disbursement reports, it submits that these reports do not involve any subjective decision making and, as such, it is relatively easy to monitor compliance. The same cannot be said for suspicious transaction reports, which are based on a full overview of the player's history, much of which is not known to service providers.

36 Robert Kroeker Response to Terms of Reference Report Recommendations, p 12.

37 Gateway Casinos Response to Terms of Reference Report Recommendations, p 3.

38 Opening statement of Gateway Casinos, para 23.

39 Great Canadian Response to Terms of Reference Report Recommendations, p 3. Great Canadian also states that it is responsible for reporting to FINTRAC in other jurisdictions and that it has created a specialized anti–money laundering unit at its facilities with a view to identifying unusual or suspicious transactions.

40 Great Canadian Response to Terms of Reference Report Recommendations, p 3.

41 Government of Canada Response to Terms of Reference Report Recommendations, p 19.

Commission, and it would be immensely helpful to have Canada's position on these matters.

I also note that one of the primary criticisms of the FINTRAC model is its tendency to produce high-volume, low-quality information, and the analytical work currently being performed by the BC Lottery Corporation may help to ensure that it receives high-quality, actionable information.[42]

Each of these points underscores the need to obtain cogent information from FINTRAC with respect to the nature, extent, and timeliness of its disclosures to law enforcement.

Transaction Analysis Team

Dr. German also recommends that the province create a transaction analysis team composed of representatives from the Gaming Policy and Enforcement Branch, the BC Lottery Corporation, and law enforcement to review all suspicious transaction reports submitted to FINTRAC and to develop strategies to deal with them.[43]

With the exception of the BC Civil Liberties Association, this recommendation garnered widespread support among gaming sector participants. Moreover, I understand that the Gaming Policy and Enforcement Branch, the BC Lottery Corporation, and the Joint Illegal Gaming Investigation Team have taken steps to implement this recommendation through the creation of a gaming intelligence group.

The Gaming Policy and Enforcement Branch submits that the objective of that group is to "enhance the current anti–money laundering regime … by opening lines of communication to more broadly share information surrounding suspicious transactions, high risk patrons and threats of criminality."[44] It further submits that the group hold weekly teleconferences to share information about real-time incidents as well as monthly meetings that focus on identifying money laundering trends and improvements to current processes.

While supportive of these recommendations, a number of gaming service providers suggest they should have representation on the gaming intelligence group. They also argue that, in certain cases, the gaming intelligence group should consult with the service provider that submitted the suspicious transaction report to ensure that all relevant information has been provided.

The BC Civil Liberties Association cautions that Dr. German's recommendations "could result in the over-collection and retention of personal information" as well as the "increased disclosure of sensitive and highly-prejudicial information."[45] It further submits that there is no evidence to show that the creation of a transaction analysis team would lead to a more effective review of suspicious transaction reports or otherwise assist in the fight against money laundering.

iTrak

Dr. German recommends that Gaming Policy and Enforcement Branch investigators be given better access to iTrak, the BC Lottery Corporation's computerized incident reporting and risk management database.[46] While acknowledging that Gaming Policy and Enforcement Branch investigators are allowed access to two iTrak computers at BC Lottery Corporation offices, he states that this arrangement is "relatively unworkable … considering the logistics of driving to BCLC's offices simply to use a computer."[47]

42 See, for example, Nick J. Maxwell & David Artingstall, "The Role of Financial Information-Sharing Partnerships in the Disruption of Crime" (RUSI Occasional paper, October 2017).

43 *Dirty Money 1*, p 100.

44 Opening statement of Gaming Policy and Enforcement Branch and Ministry of Finance, para 53.

45 BC Civil Liberties Association Response to Terms of Reference Report Recommendations, p 3.

46 *Dirty Money 1*, p 95.

47 *Dirty Money 1*, p 148.

The BC Lottery Corporation agrees with that recommendation in principle. It submits, however, that appropriate measures must be taken to ensure robust access controls and compliance with applicable privacy laws. Likewise, the Gaming Policy and Enforcement Branch submits that it is important to give its investigators access to the iTrak system "while also maintaining protection of personal information."[48]

Mr. Kroeker provided a detailed submission with respect to the type of information stored in iTrak as well as the implications of giving unfettered access to the Gaming Policy and Enforcement Branch. He states that the information stored in iTrak includes various forms of personal information such as name, address, date of birth, country of residence, passport information, banking information, credit card information, gambling history, the dates / times / duration of visits to casinos, confidential information provided by law enforcement bodies, videos of customers whose play has been monitored, and information relating to customers who are believed to have a gambling problem or who have demonstrated behaviours indicative of a gambling addiction.

While giving the Gaming Policy and Enforcement Branch unfettered access to that information would no doubt create investigative efficiencies for regulators and police, Mr. Kroeker submits that it is directly analogous to a Canadian bank giving regulatory authorities or the RCMP direct access to confidential customer information and argues that it would likely be seen as sweeping aside important privacy rights such as the need to seek judicial authorization before accessing this type of information.

The BC Civil Liberties Association also opposes these recommendations, writing that "[t]he information collected and retained in iTRAK includes highly confidential personal information." It argues that giving police and regulatory bodies access to that information without lawful authority or reasonable grounds for obtaining it could well give rise to infringements of civil liberties, including the right to be free from unreasonable search and seizure.[49]

Designated Policing Unit

Another set of recommendations made by Dr. German relates to the creation of a specialized police unit for the gaming industry. More specifically, he recommends that

- a specialized police unit be created to conduct criminal and regulatory investigations relating to the legal gaming industry;
- the specialized police unit be an integral part of the new regulator;
- the specialized police unit not be responsible for investigating illegal gaming outside casinos;
- the specialized police unit contain an intelligence unit;
- the "duties" of the Ontario Provincial Police Casino Bureau and the Nevada Gaming Control Board Enforcement Division be reviewed in order to determine an appropriate role for the specialized police unit;
- the specialized police unit be funded from gaming revenue; and
- the BC Prosecution Service ensure it has prosecutors familiar with gaming law.[50]

While all gaming sector participants recognized the need for an effective law enforcement response, there was considerable opposition to the creation of a sector-specific police unit.

An analysis undertaken by the province concludes that the creation of a casino-specific police unit does not go far enough in delivering an appropriate enforcement solution and that "it is not

48 Gaming Policy and Enforcement Branch Response to Terms of Reference Report Recommendations, p 2.

49 BC Civil Liberties Association Response to Terms of Reference Report Recommendations, p 3.

50 *Dirty Money 1*, p 210.

financially feasible to create a new sector-specific [police unit] for every … sector facing money laundering challenges."[51] While the province is waiting for direction from the Commission, I understand that it is considering the creation of a financial intelligence and investigation unit to lead a coordinated and collaborative response to money laundering in all sectors of the economy.

The RCMP recommends the expansion of the Joint Illegal Gaming Investigation Team rather than the creation of a new unit. It also suggests that the province make an increased investment in this team to enhance its intelligence capacity.

The BC Lottery Corporation expresses support for the creation of a police unit with a specific focus on money laundering. However, it cautions against an industry-specific approach and suggests that the mandate of any new police unit not be restricted to the gaming industry.

Likewise, Mr. Kroeker submits that the creation of a specialized police unit for the gaming industry fails to appreciate the fact that money laundering does not occur in isolation in any single sector of the economy. What is needed, in his view, is an approach that looks across the entire economy and is capable of following illicit funds through and beyond any one sector. He further submits that the traditional policing model creates "substantial barriers to the effective investigation of complex financial crimes" and that what is needed is a "new multidisciplinary agency dedicated to financial crimes [and] staffed with people [such as lawyers, accountants, and securities experts] who have the specialized skill sets needed for the successful investigation of major frauds, proceeds of crime and money laundering offences."[52]

Mr. Kroeker also points to the "non-paramilitary structure" of the US Federal Bureau of Investigation as a good example of the structure needed to attract and retain staff with the specialized skill sets needed to successfully investigate complex financial crime. Moreover, he submits that police organizations often prioritize offences that pose an immediate threat of physical violence when making choices about resource allocation. He recommends that the Commission consider the creation of a separate agency, outside the RCMP, to ensure that resources dedicated to the investigation of financial crime are not diverted to other matters.[53]

The BC Civil Liberties Association opposes the expansion of police powers and sees no merit in creating a specialized police unit to conduct criminal and regulatory investigations arising from the legal gaming industry. More specifically, it questions whether there is sufficient evidence to suggest that a specialized police unit would be necessary or effective in combatting money laundering and suggests that the creation of such a unit must be considered in light of "existing policing capacity and … recommendations for further policing initiatives made in the [Terms of Reference] Reports."[54]

Joint Illegal Gaming Investigation Team

In addition to the creation of a specialized police unit for the gaming sector, Dr. German recommends that the Joint Illegal Gaming Investigation Team be given continued support for its investigative mandate.[55]

The Joint Illegal Gaming Investigation Team is a specialized police unit created on April 1, 2016, to provide a coordinated law enforcement response to unlawful activity at BC gaming facilities, including

51 Exhibit 60, Anti–Money Laundering Financial Intelligence and Investigations Unit – Draft Proposal (May 7, 2019).

52 Robert Kroeker Response to Terms of Reference Report Recommendations, p 26.

53 Robert Kroeker Response to Terms of Reference Report Recommendations, pp 28–29.

54 BC Civil Liberties Association Response to Terms of Reference Report Recommendations, p 6.

55 *Dirty Money 1*, p 135.

the disruption of organized crime and gang involvement in illegal gaming, the criminal investigation of illegal gambling activities, and the prevention of criminal attempts to legalize the proceeds of crime through gaming facilities.[56] The unit was created for a five-year period (which is set to expire on March 31, 2021) and a review is to be conducted in Year 4 to determine whether its mandate should be renewed.[57]

In March 2016, the Minister of Finance directed that the BC Lottery Corporation pay 70 percent of the cost of the Joint Illegal Gaming Investigation Team, with the balance to be paid by the federal government under the terms of the Provincial Policing Agreement. However, measures have been put in place to ensure that the BC Lottery Corporation does not have any involvement in its operations.[58]

Dr. German recommends that the Joint Illegal Gaming Investigation Team be provided with continuing support and that the province transition it to a "permanent, fenced funding model within the RCMP's provincial budget."[59]

Canada has expressed support for this recommendation and submits that "JIGIT's continued support from the Provincial Government is essential to maintaining the integrity of the legal gaming industry and protecting the BC economy from financial exploitation."[60]

The Gaming Policy and Enforcement Branch, the BC Lottery Corporation, and Great Canadian have all taken no position on these recommendations, though the Gaming Policy and Enforcement Branch has confirmed that it continues to second staff to the team for intelligence and investigative purposes. The BC Lottery Corporation also states that it "has always been and remains supportive of appropriate resources being provided to law enforcement in whatever form government considers appropriate."[61]

The BC Civil Liberties Association advocates for a "comprehensive and independent review of JIGIT to ensure that it is operating properly, successfully, and legally" and submits that any such review should "fully consider whether JIGIT is fulfilling a genuine need and whether this unit is the most efficacious, accountable and rights-protective means of addressing that need."[62] It further submits that any continued role for the Joint Illegal Gaming Investigation Team should be considered in light of the recommendations for further policing initiatives made in the Terms of Reference Reports and, in particular, the recommendation that a designated police unit be created to conduct criminal and regulatory investigations in the gaming industry.

The BC Civil Liberties Association also raises a number of operational concerns with respect to the mandate of the Joint Illegal Gaming Investigation Team, including the potential for "blurring" the distinct roles and responsibilities of the police and the Gaming Policy and Enforcement Branch investigators, the need to ensure that evidence is collected in a manner that is appropriately protective of civil liberties and privacy rights, and the potential conflict of interest that arises from the BC Lottery Corporation providing 70 percent of the agency's funding.[63]

Operational Recommendations

Dr. German also makes a number of operational recommendations aimed at reducing money laun-

56 *Dirty Money 1*, pp 130–31.

57 *Dirty Money 1*, p 131.

58 *Dirty Money 1*, p 131.

59 *Dirty Money 1*, p 135. In general terms, a fenced funding model is a model whereby funding provided to the Joint Illegal Gaming Investigation Team cannot be used for investigations outside its mandate.

60 Government of Canada Response to Terms of Reference Report Recommendations, pp 21–22.

61 BC Lottery Corporation Response to Terms of Reference Report Recommendations, p 4.

62 BC Civil Liberties Association Response to Terms of Reference Report Recommendations, p 4.

63 BC Civil Liberties Association Response to Terms of Reference Report Recommendations, p 4.

dering activity in BC casinos. I discuss each of these recommendations below.

Source-of-Funds Declarations

Dr. German's first operational recommendation is that gaming service providers be required to complete a source-of-funds declaration for cash deposits and other monetary instruments in excess of $10,000.[64] Further, he recommends that

- the BC Lottery Corporation, in conjunction with the Gaming Policy and Enforcement Branch and gaming service providers, review its source-of-funds declaration every year; and
- the BC Lottery Corporation reinforce the importance of gaming service providers not accepting cash and other "reportable" instruments if they are not satisfied with the information provided by the customer with respect to the source of the funds.[65]

In response to these recommendations, the BC Lottery Corporation implemented a new source-of-funds policy requiring patrons to provide a source-of-funds declaration and a receipt for all cash deposits and monetary instruments of $10,000 or more within a 24-hour period (the source-of-funds policy).[66] The source-of-funds policy also requires that gaming service providers refuse the transaction, document the refusal, and notify the BC Lottery Corporation where a customer does not provide the information required to complete the declaration, provides information that is clearly suspicious, or refuses to sign the source-of-funds declaration.

Both the BC Lottery Corporation and the Gaming Policy and Enforcement Branch have committed to reviewing the source-of-funds policy every year and have taken steps to monitor and assess service provider compliance.[67] However, a number of participants suggested that the requirement to complete a source-of-funds declaration for all cash deposits exceeding $10,000 does not fit naturally with a standards-based regulatory model, which seeks to avoid these types of prescriptive requirements. There are also indications that casino patrons have sought to avoid the completion of a source-of-funds declaration by entering into cash buy-in transactions just below the $10,000 threshold.

Cash Buy-ins

Another operational recommendation made in *Dirty Money 1* is that cash limits not be imposed on casino buy-ins (i.e., the purchase of casino chips for use in a casino).[68]

The BC Lottery Corporation strongly disagrees with this recommendation and states that "cash limits are an appropriate [anti–money laundering] control when they are implemented using a risk-based analysis to arrive at the appropriate dollar value cap."[69] It further submits that a cash limit encourages the use of cash alternatives, which, in turn, gives the BC Lottery Corporation greater "visibility" into player behaviour and facilitates more timely reporting to FINTRAC, the Gaming Policy and Enforcement Branch, and law enforcement. Cash limits also reduce the risk of refining

64 *Dirty Money 1*, p 221.

65 *Dirty Money 1*, p 69.

66 Importantly, the receipting requirement goes beyond what Dr. German recommended and requires patrons to produce a receipt that includes their name, the name of the financial institution that issued the funds, the location of the financial institution, and their bank account information.

67 The Gaming Policy and Enforcement Branch submits that it has conducted audits of the five largest casinos in the Lower Mainland to assess service provider compliance. The BC Lottery Commission submits that it has engaged a third-party auditor to monitor service provider compliance with the source-of-funds policy at Parq Vancouver, River Rock Casino and Resort, and Grand Villa Hotel and Casino.

68 *Dirty Money 1*, p 181.

69 BC Lottery Corporation Supplemental Response to Terms of Reference Report Recommendations, p 18.

(a money laundering technique in which smaller-denomination bills are exchanged for larger bills) and improve customer safety by discouraging customers from carrying large amounts of cash to and from casinos.

Similarly, Mr. Kroeker states that "[p]lacing a limit on the use of [cash] can lower money laundering risk by reducing the opportunity for placement of the funds into the financial system and putting barriers to the spending of proceeds of crime on gambling. It is a useful and effective control that does not have substantial negative impacts on business operations."[70]

Great Canadian is the only participant expressing support for the removal of limits on cash buy-ins. It states that removing these limits "seems logical if coupled with … enhanced source of funds declaration requirements and transaction reporting."[71]

Cash and Cash Alternatives

For many years, the only way to purchase casino chips for use at a BC casino was through the use of cash. Automated teller machines (ATMs) were available to customers, but gaming service providers were prohibited from processing debit- and credit-card transactions or otherwise accepting cash alternatives such as cheques, bank drafts, or electronic fund transfers.

In 2012, these rules were loosened to allow gaming service providers to start accepting alternative forms of payment.[72] Customers are now able to buy-in by using bank drafts, certified cheques, casino cheques, wire transfers, electronic fund transfers, debit-card transactions, and internet banking transfers (e-transfers) from authorized bank accounts. In order to facilitate the receipt of electronic funds, the BC Lottery Corporation created what are known as patron gaming-fund accounts. These accounts allow patrons to transfer funds from an approved deposit-taking institution to a gaming service provider, where they can be converted into casino chips. However, patron gaming-fund accounts have not been immune from controversy.

The Gaming Policy and Enforcement Branch has expressed concerns about third-party facilitators using bank drafts to launder significant amounts of money through patron gaming-fund accounts. Moreover, there are indications that these accounts impose a significant administrative burden on gaming service providers.

In light of these concerns, Dr. German recommends that responsibility for cash alternatives be transferred to service providers. He also recommends that patron gaming-fund accounts be eliminated.[73]

The BC Lottery Corporation submits that gaming service providers are already responsible for cash alternatives (subject to overarching standards) and that patron gaming-fund accounts are a strong anti–money laundering control which allows the corporation to fulfill its "know-your-client" obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. In its submission, arbitrarily eliminating these accounts will reduce the number of cash alternatives available to customers and decrease the likelihood of customers finding a viable cash alternative.

The BC Lottery Corporation also takes issue with Dr. German's finding that "most gamblers close [patron gaming-fund accounts] out shortly after gambling and obtain a cheque."[74] While

70 Robert Kroeker Response to Terms of Reference Report Recommendations, p 23. Mr. Kroeker also submits that the BC Lottery Corporation has done an analysis of various thresholds and ranges and that HLT Advisory has prepared a report entitled *Restriction to Table Games Buy-in Levels*, which examines the impact of placing a $10,000 limit on cash buy-ins.

71 Great Canadian Response to Terms of Reference Report Recommendations, p 5.

72 Patron gaming-fund accounts were first created in 2009 but were rarely used until they were reformed in 2012.

73 *Dirty Money 1*, p 181.

74 *Dirty Money 1*, p 176.

acknowledging that most players withdraw their funds at the end of a gambling session, it submits these accounts typically remain open and active and are often used again in the future.[75]

Likewise, Mr. Kroeker submits that the recommendation to transfer responsibility to service providers "largely reflects the status quo."[76] He further submits that, because transactions involving electronic fund transfers, wire transfers, certified cheques, and bank drafts require a customer account to process, the elimination of patron gaming-fund accounts would eliminate the ability of casinos to accept them.

Great Canadian, Gateway, and Parq Vancouver all expressed support for the recommendation that responsibility for cash alternatives be transferred to gaming service providers. They submit that service providers are the interface with customers and that "offering a variety of robust and practical cash alternatives is key to the success of the industry."[77] They disagree, however, with the recommendation that patron gaming-fund accounts be eliminated.

Great Canadian submits that patron gaming-fund accounts are a viable cash alternative and that responsibility for administering them should be transferred to service providers. Likewise, Gateway submits that these accounts improve visibility into the source of funds used to purchase casino chips and are a useful tool to mitigate risk in the gaming environment. Parq Vancouver submits that Dr. German's recommendation is based on a misunderstanding of how patron gaming-fund accounts are operated and maintained. It further submits that

> PGF accounts are operated and maintained by Service Providers and are considered a key AML [anti–money laundering] control because only sourced funds can be placed into a PGF account and all transactions are tracked. The use of PGF accounts significantly decreases the amount of cash entering and leaving the casino. The reduction in the use of cash is not only a benefit in terms of AML controls but also supports customer and community safety.[78]

Very Important Patrons

Another set of recommendations relates to the regulation of casino staff who deal with very important patrons (sometimes referred to as VIP hosts).[79] Dr. German recommends that

- VIP hosts not be permitted to handle cash or chips; and
- VIP hosts (and other persons working in VIP rooms) be provided with an independent avenue to report incidents of inappropriate conduct by patrons.[80]

The first recommendation arises from concerns that VIP hosts may face heightened pressure to give in to the demands of these patrons and is intended to ensure they are not in a position to facilitate unlawful transactions. The second recommendation

75 The BC Lottery Corporation states that the exception arises when a service provider offers incentives for opening a patron gaming-fund account. When that occurs, it often sees a flurry of closed accounts, followed by a number of new accounts being opened to take advantage of the promotion. The BC Lottery Corporation also submits that it "closely monitors PGF accounts" and has various automatic alerts in place to prevent abuse of the accounts in the manner noted by Dr. German.

76 Robert Kroeker Response to Terms of Reference Report Recommendations, p 22.

77 Parq Vancouver Response to Terms of Reference Report Recommendations, p 6.

78 Parq Vancouver Response to Terms of Reference Report Recommendations, p 7.

79 Dr. German describes very important patrons as those "prepared to gamble and lose tens, or hundreds of thousands of dollars, on the chance of winning a jackpot, or simply for the entertainment value" (para 724). He also states that VIP gaming is an important part of any large casino and that many casinos have VIP rooms or VIP floors where they provide a higher level of service not available on the regular gaming floor.

80 *Dirty Money 1*, p 172.

is intended to ensure that VIP hosts have recourse when they run into problems with a client.

The BC Lottery Corporation supports both recommendations. It states that no employee should be handling cash or chips outside a corporation-approved environment and that every employee should be provided with an independent avenue to report incidents of inappropriate conduct by casino patrons.

The BC Government and Service Employees' Union also expresses strong support for these recommendations and emphasizes the need for greater whistle-blower protections outside the VIP context. It submits that "[a]ccounts from the [Terms of Reference] reports, the media and [its] own communications with BCGEU [BC Government and Service Employees' Union] members suggest … that efforts by workers to 'blow the whistle' on illegal activity in the gaming sector have on multiple occasions been blocked by managers or even elected officials, with whistle-blowers subsequently facing sanctions up to and including dismissal."[81]

While recognizing that the province's recently enacted whistle-blower legislation "somewhat" improves the situation for workers in the public sector, the BC Government and Service Employees' Union submits that it falls short of best practices internationally and would not necessarily have enabled or protected previous attempts at whistle-blowing in the gaming sector. In order to enhance whistle-blower protection in the public and private sectors, it suggests that this Commission make the following recommendations to government:

- extend whistle-blower legislation and protections to employees in the private sector;
- expand legal protections for whistle-blowers who use the media as a channel for that activity; and
- establish formal systems and mechanisms to support whistle-blowing in high-risk sectors such as the gaming sector, the real estate sector, the financial services sector, and the luxury vehicle sector.[82]

Great Canadian supports these recommendations but states that VIP hosts do not handle cash or chips and that there is a complete separation between the roles of VIP hosts (who manage player experiences) and other personnel (who handle cash and chips). Moreover, it submits that it has implemented an enhanced whistle-blower program that is managed by an independent third-party administrator.

Parq Vancouver also states that employees working in this capacity are not permitted to handle cash or chips and that it has enacted two whistle-blower policies, including a whistle-blower hotline that allows anonymous complaints to be sent to an independent third party for review.

Gateway submits that risk-based standards around VIP gaming should be established by the regulator and that service providers should then be responsible for establishing policies and procedures to meet those standards.

Other Vulnerable Sectors

Finally, Dr. German recommends that the province take steps to investigate allegations of money laundering in other sectors of the economy, including the real estate sector, the horse-racing sector, and the luxury vehicle sector.[83] In response to these recommendations, the BC Lottery Corporation makes a number of submissions with respect to the type of activity its analysts regularly observe. It submits that its analysts have uncovered extensive ties between known casino cash facilitators and suspicious activity in the real estate and mortgage industries. It has also observed the use of nominee owners and notes that, in some cases, it has become aware of lawyers acting as nominee

81 BC Government and Service Employees' Union Response to Terms of Reference Report Recommendations, p 2.

82 BC Government and Service Employees' Union Response to Terms of Reference Report Recommendations, pp 2–3.

83 *Dirty Money 1*, p 218.

owners on behalf of foreign clients and registering private mortgages on behalf of known cash facilitators. These matters are discussed in the context of Dr. German's second report, *Dirty Money 2*.

Dirty Money 2

Dr. German's second report, *Dirty Money 2*, addresses various issues relating to money laundering in the real estate sector, the luxury vehicle sector, and the horse-racing sector. His report begins with a general discussion of organized crime, including a discussion of the "Vancouver model" and the presence of Asian, Mexican, and Iranian organized crime groups in the Lower Mainland. He then examines the nature and extent of money laundering in each of these sectors well as the response of regulators and law enforcement officials, whom he describes as "woefully unprepared" to deal with the problem.[84] In what follows, I review Dr. German's key findings in each of these areas.

Real Estate

Real estate is attractive both as a destination for laundered funds and as a channel to launder the proceeds of crime. It allows criminals to integrate illicit funds into the legal economy while providing a relatively safe investment and a veneer of legitimacy and respectability.

Dr. German begins by identifying a number of money laundering trends in the BC real estate sector. These trends include

- the movement of foreign capital into the real estate market by politically exposed persons;
- the use of underground banking networks to launder illicit funds;
- the use of "opaque" ownership structures to conceal beneficial ownership;
- the use of property for criminal operations such as drug production;
- the use of real estate to mix illicit funds with legitimate income (such as rental income), making detection and seizure more difficult;
- the use of cash to repay mortgages;
- the use of illicit funds to pay for construction and home renovations, which add value to the property and allow the owner to earn legitimate income through a subsequent sale;
- the manipulation of property values through the appraisal process; and
- the practice of flipping properties to disguise criminal income.[85]

Dr. German expresses particular concern about the lack of FINTRAC reporting by real estate agents and mortgage brokers, the lack of beneficial ownership transparency, the growth of the unregulated mortgage industry, and the role played by lawyers in real estate transactions. I discuss each of these issues in turn.

Lack of Reporting by Real Estate Agents and Mortgage Brokers

Dr. German states that the lack of FINTRAC reporting by BC real estate agents and mortgage brokers is a significant vulnerability in the real estate sector.

Real Estate Agents

From 2014 to 2018, BC real estate agents submitted a total of 62 suspicious transaction reports to FINTRAC – an average of about 12 per year.[86] Dr. German states that the "lack of reporting to FINTRAC is of tremendous concern as real estate agents are on the front line when dealing with clients who may wish to launder money in real estate."[87] He also states that it is difficult to understand what causes such poor reporting – whether

84 *Dirty Money 2*, p 18.

85 *Dirty Money 2*, pp 61–62.

86 *Dirty Money 2*, p 59.

87 *Dirty Money 2*, p 59.

it is inadequate training, a fear of reporting, indifference to the process, or outright repudiation of the law.[88] He goes on to say that it is "hard to believe that in the overheated market of Vancouver, while the casinos are submitting hundreds of STRs [suspicious transaction reports] through [the] British Columbia Lottery Corporation … the real estate industry is seeing virtually no suspicious conduct."[89]

The British Columbia Real Estate Association (BC Real Estate Association) submits that it is working with the Canadian Real Estate Association, FINTRAC, and member boards to improve compliance with the relevant provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. However, it emphasizes the need for better education and training with respect to the identification and reporting of suspicious transactions and recommends that

- FINTRAC implement policies to ensure consistency in the reports it receives, including immediate, specific suggestions for how real estate brokerages can improve their compliance systems;
- FINTRAC reach out to sector organizations to create resources that reflect real-world situations, including guidelines to identify suspicious transactions;
- FINTRAC implement public reporting practices that accurately represent the results of its analysis; and
- the Real Estate Council of British Columbia develop required anti–money laundering licensing and relicensing education for realtors.

These suggestions were echoed by a real estate working group drawn from the BC Real Estate Association, the BC Notaries Association, the Appraisal Institute of Canada (BC Association), the Canadian Mortgage Brokers Association (British Columbia), and the Real Estate Board of Greater Vancouver. One of the key recommendations made by that working group was mandatory anti–money laundering education for all real estate professionals to ensure they are trained in recognizing and reporting suspicious transactions. The working group also recommended that

- FINTRAC work with the real estate industry, regulators, and the provincial government to improve existing resources so they better reflect real-world situations;
- FINTRAC and other government agencies make better use of the "on the ground" experience of real estate professionals to develop compliance resources and foster a culture of compliance; and
- FINTRAC implement a framework to identify and report money laundering trends in language that is consistent and understandable to real estate professionals, the public, and the media.[90]

Although FINTRAC did not respond to Dr. German's specific comments in *Dirty Money 2*, it states that it "currently conducts extensive outreach and education activities with various reporting entities to ensure that they understand their responsibilities" and notes that the 2019 budget "earmarked funds to enhance compliance[,] outreach and examinations with a focus on real estate and the casino sector in [British Columbia]."[91]

88 *Dirty Money 2*, p 59.

89 *Dirty Money 2*, p 59.

90 The Maloney Report also identifies the need for better feedback, training, and education for reporting entities. The authors write that "[r]eporting entities do not feel that they generally get effective feedback" and that FINTRAC "reports little publicly that would help the public and policy makers understand the risk imposed by money laundering, the nature of money laundering or the effectiveness of AML [anti–money laundering] activities" (p 86). They also emphasize the need for FINTRAC to develop "education, training, and reporting processes, methods and requirements that reflect the realities of the different industries that are obligated to report" (p 87).

91 Government of Canada Response to Terms of Reference Report Recommendations, p 13.

FINTRAC also states that it is "working with the Real Estate Council of B.C. and the Real Estate Council of Ontario on online training courses specific to those working in the real estate sector."[92]

While I have no reason to doubt these statements, FINTRAC's lack of engagement with the Commission makes it difficult to assess the effectiveness of those efforts in ensuring that real estate agents are able to recognize and report suspicious activity.

Mortgage Brokers

Dr. German also raises concerns about the involvement of mortgage brokers in suspicious transactions and the fact that they are not subject to any reporting requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.[93]

He notes that a 2004 study of 83 money laundering cases found that 78 percent involved a mortgage that was repaid with illicit funds, and he goes on to comment that mortgage brokers are well positioned to observe and report suspicious activity to FINTRAC.[94]

The Maloney Report also highlights the opportunity for mortgage brokers to observe and report suspicious transactions and recommends that the BC Minister of Finance suggest to her federal counterpart that mortgage brokers be added to the list of reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.[95]

While constitutional constraints prevent the Commission from recommending changes to that legislation, I am encouraged to hear that the inclusion of mortgage brokers as reporting entities is being reviewed and assessed by the federal government.

Lack of Beneficial Ownership Transparency

Dr. German also stresses that the use of corporations, trusts, and nominee owners to purchase property is a significant vulnerability in the real estate sector which allows the true (or beneficial) owner of real property to remain anonymous and vastly complicates efforts to detect and investigate money laundering offences.[96] These concerns are particularly acute where the legal owner purchases the property without external financing (without obtaining a mortgage) or borrows money from a private lender who is not subject to government oversight.[97] In such cases, the beneficial owner can bypass much of the anti–money laundering scrutiny that would be imposed by regulated financial institutions such as banks and credit unions.[98]

Dr. German conducted an analysis of properties held by corporate entities and found that there were approximately 92,280 such properties in British Columbia, with an assessed value of more than $150 billion. More than 47 percent of those properties were vacant, and 29 percent had been acquired without a mortgage.

Dr. German also analyzed the number of properties held by trusts. He was able to identify 3,379 properties owned through registered trusts, with an aggregate assessed value of $6.28 billion.[99] More than half of those properties (58 percent) were purchased without a mortgage, and their declared value was $1.53 billion.

92 Government of Canada Response to Terms of Reference Report Recommendations, p 13.

93 *Dirty Money 2*, p 60.

94 *Dirty Money 2*, p 67.

95 Maloney Report, p 6.

96 *Dirty Money 2*, p 74.

97 *Dirty Money 2*, p 74.

98 *Dirty Money 2*, p 74.

99 Dr. German notes that his analysis captures only trusts registered on title, which he believes to be a minority of the extant trusts affecting real estate ownership in the province.

While it is more difficult to determine the number of properties held by nominee owners, Dr. German's analysis revealed that, in the last 20 years, 33,292 residential properties have been acquired by purchasers who identified their occupation as "student," "homemaker," or "unemployed" and that 88 of those homes had an assessed value in excess of $10 million. He also states that the RCMP found multiple layers of nominee buyers in its E-Pirate investigation,[100] forcing it to abandon further investigation of many properties that were thought to have been used in the money laundering scheme.

I pause here to note that the mere fact that a property was purchased by a corporation, a trust, or a nominee owner does not mean that it was purchased with laundered funds. Nor does the fact that it was acquired without a mortgage or that it is vacant. However, Dr. German's figures provide some insight into the scale of corporate / nominee ownership in British Columbia as well as the opportunities available to organized crime groups intent on parking illicit funds in the BC real estate market.

On May 16, 2019, the BC Lieutenant Governor in Council gave royal assent to the *Land Owner Transparency Act*, SBC 2019, c 23. With certain exceptions, that legislation will require any corporation, partnership, or trustee that is a registered owner of an interest in land, or that becomes a registered owner of an interest in land, to file a "transparency report" containing certain information about the corporation, partnership, or trust as well as any person who is an "interest holder" in the corporation, partnership, or trust.[101] It also creates a beneficial ownership registry where certain "primary" information about beneficial owners (such as name, citizenship, and principal residence) will be accessible by the public, and other information (such as date of birth, social insurance number, and tax number) will be accessible by law enforcement, regulators, and tax authorities. Where the owners fail to file a transparency report or file a transparency report containing false or misleading information, they are subject to fines of up to $50,000 or 15 percent of the assessed value of the property, whichever is greater.[102]

During the evidentiary hearings I expect to hear evidence about whether, how, and to what extent the use of corporations, trusts, and nominee owners to purchase property in British Columbia is a vulnerability in the current regime.

Unregulated Mortgage Lenders

Dr. German also expresses concerns about the growth of the private lending industry – which he describes as a "major money laundering vulnerability."[103] He writes that private lenders, such as mortgage investment companies,[104] are regulated for market conduct purposes but are not subject to any meaningful anti–money laundering requirements.[105] As a result, criminals can invest

100 E-Pirate is the project name for a police investigation into a significant money laundering operation allegedly being run by Paul King Jin and Silver International Investments Ltd.

101 The term "interest holder" includes the beneficial owner of land registered in the name of a trustee (as defined in section 2), a "corporate interest holder" (defined in section 3 as including the registered or beneficial owner of more than 10 percent of the issued shares of a relevant corporation, or the registered or beneficial owner of issued shares that carry more than 10 percent of the rights to vote at general meetings), or a "partnership interest holder" (defined in section 4 to include a partner in the partnership or a corporate interest holder of a corporation that is a partner in the relevant partnership).

102 *Land Owner Transparency Act*, s 92. For persons other than an individual, the maximum fine is $50,000 or 15 percent of the assessed value of the property (ss 92(2)). For individuals, the maximum fine is $25,000 or 15 percent of the assessed value of the property (ss 92(3)).

103 *Dirty Money 2*, p 13.

104 The Maloney Report notes that most (but not all) private lenders structure themselves as mortgage investment companies because the net income earned by the company can then flow through to investors directly, providing them with a tax advantage.

105 *Dirty Money 2*, p 91. Dr. German acknowledges that mortgage investment companies are subject to a form of regulatory oversight by the Financial Institutions Commission (now the BC Financial Services Authority) and the BC Securities Commission.

dirty money in mortgage investment companies "without spurring uncomfortable questions ... regarding the source of [their] funds."[106] In many cases, those funds are loaned to borrowers, with the criminal receiving "clean" money when the mortgage is repaid.[107] Dr. German also writes that criminals can access clean funds by obtaining mortgages from private lenders which can be "quietly" repaid using dirty money.[108]

An analysis conducted by Dr. German in *Dirty Money 2* revealed that mortgages from private lenders were a common feature of properties that had known or suspected ties to criminal activity. They also featured disproportionately in his analysis of other money laundering indicators, such as unusual loan-to-value ratios and instances where a titleholder obtained multiple successive mortgages that were quickly repaid.

Dr. German makes two key recommendations with respect to the regulation of private lenders:

- that the government expand the list of reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to include certain classes of unregulated lenders; and
- that the province explore additional measures – such as beneficial ownership disclosure and financial reporting – for entities such as mortgage investment companies to deter the use of private mortgages as a conduit for money laundering.[109]

The Maloney Report also recognizes the need to regulate private lenders and recommends that the *Mortgage Brokers Act*, RSBC 1996, c 313, be replaced with new legislation that would

- establish business authorization requirements for all mortgage lenders except individuals lending to a small number of friends and family members;
- include modern regulatory powers and requirements;
- establish a governance structure with a designated management responsible for compliance vis-à-vis mortgage lenders and mortgage brokers; and
- make a distinction between the regulation of mortgage lenders and the regulation of mortgage brokers, with appropriate provisions for both aspects of the industry.[110]

The BC Ministry of Finance acknowledges that the *Mortgage Brokers Act* has not kept pace with evolving national and international standards. It has released a consultation paper to elicit discussion and feedback with respect to new legislation that would require the licensing of all mortgage brokers, provide for minimum standards of conduct, and also increase transparency. One of the key questions raised in the consultation paper is whether, and to what extent, private lenders should be regulated by the province.[111]

Likewise, the federal government submits that it is aware of vulnerabilities in the mortgage-lending space. It states that these matters are being "assessed and reviewed in the context of the Parliamentary review of the [*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*]."[112]

The BC Civil Liberties Association is the only participant that opposes these recommendations. It submits that increasing the number of reporting entities under the *Proceeds of Crime (Money Laun-*

106 *Dirty Money 2,* p 91.

107 *Dirty Money 2,* p 91.

108 *Dirty Money 2,* p 91.

109 *Dirty Money 2,* pp 13–14.

110 Maloney Report, p 79.

111 BC Ministry of Finance, *Municipal Brokers Act Review,* Public Consultation Paper (January 2020), p 6.

112 Government of Canada Response to Terms of Reference Report Recommendations, p 5.

dering) and Terrorist Financing Act poses a significant threat to privacy rights, without sufficient evidence to demonstrate whether the collection and retention of this type of information are effective in meeting its stated goal:

> The BCCLA opposes increasing the number of reporting entities under the PCMLTFA [*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*] given that this recommendation would continue to erode Canadians' right to privacy. Adding more reporting entities will inevitably capture a greater number of innocent transactions and the personal information of innocent individuals. If more entities are required to act as *de facto* agents of the state, collecting information solely for the purpose of reporting it, the government will acquire vast amounts of personal information for investigatory purposes without having ever shown reasonable grounds for obtaining this information …
>
> Similarly, BCCLA opposes increasing the scope of information that FINTRAC is able to collect. These recommendations pose a significant threat to privacy rights, as they will lead to the over-collection and retention of personal information, without sufficient evidence to demonstrate why such information is necessary and whether its collection and retention is effective in meeting its stated goal.[113]

I expect that evidence with respect to the unregulated mortgage industry will form a significant part of the evidence led during the real estate portion of the evidentiary hearings.

Role of Lawyers in Real Estate Transactions

Dr. German also raises a number of concerns about the role played by legal professionals in real estate transactions. His primary concern relates to the alleged failure of the federal government to respond to the decision of the Supreme Court of Canada in *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 [*Federation of Law Societies*]. He writes that Canadians have waited almost four years for the federal government to develop a "workaround" that would prevent trust accounts from becoming a sanctuary for dirty money. He also characterizes trust accounts as the "black hole" of real estate and money movement generally and insists that there must be some visibility in terms of what enters and leaves a lawyer's trust account. The "simplest solution," he suggests, may be to look to the United States, where lawyers are required to file reports on any transaction in which they receive more than $10,000 in cash.[114]

In response to these comments, the federal government submits that it "continues to work toward integrating the legal profession into Canada's [anti–money laundering / anti–terrorist financing] regime."[115] For example:

- In 2018, the Department of Finance opened a dialogue with the Federation of Law Societies, which subsequently revised its model rules to align more closely with certain aspects of the federal anti–money laundering / anti–terrorist financing framework.
- In 2019, the federal government formed a working group with the Federation of Law Societies to address the money laundering risks that may arise in the practice of law.

113 BC Civil Liberties Association Response to Terms of Reference Report Recommendations, pp 8–9.

114 *Dirty Money 2*, pp 159–60. In making these comments, Dr. German notes that the Law Society of British Columbia "has some of the strongest rules in place for lawyers" and "takes the issue seriously."

115 Government of Canada Response to Terms of Reference Report Recommendations, p 6.

- The Department of Finance is working with FINTRAC and other partners to seek ways in which money laundering vulnerabilities can be addressed while also respecting the *Federation of Law Societies* decision and the Canadian Charter of Rights and Freedoms.[116]

The RCMP is supportive of that work and submits that "the reporting of suspicious transactions by the legal profession could provide law enforcement enhanced visibility [into] a sector currently susceptible to exploitation."[117]

The Law Society of British Columbia (Law Society) provided a detailed submission on the steps it has taken to respond to these concerns. It recognizes that it plays a vital role in the aftermath of the 2015 *Federation of Law Societies* decision and submits that its role as a professional regulator is to recognize the risks that the legal profession faces and to address those risks in a proactive manner through the enforcement of ethical conduct rules, the implementation of enhanced protections to address emerging issues, the conduct of compliance audits, and the education of legal professionals.

The Law Society further submits that it has taken active steps to respond to three areas identified by Dr. German as being of particular risk:

- the completion of real estate transactions with funds received from foreign jurisdictions;
- the use of trust accounts for purposes unrelated to the provision of legal services; and
- the receipt of cash for the payment of bail, legal fees, and expenses.

With respect to the first area of risk, the Law Society submits that it has developed model rules that require lawyers to obtain and record the source of money received from their clients. As a result, BC lawyers are now required to obtain and record source-of-funds information for any financial transaction – a requirement that extends beyond the scope of real estate and the deposit of funds from foreign jurisdictions.

With respect to the second area of risk, the Law Society submits that lawyers cannot accept funds into trust unless those funds are directly related to legal services being provided and that lawyers are expected to make reasonable inquiries to prevent their trust accounts from being used for an improper purpose. Failure to abide by these obligations is taken seriously and, if proven, will result in disciplinary action against the lawyer.

With respect to the third area of risk, the Law Society states that lawyers are not permitted to engage in any conduct that assists in any crime, dishonesty, or fraud and reiterates that its efforts to address money laundering risks are supported by its investigation and audit powers.

The Law Society also indicates that it would welcome the receipt of information from FINTRAC with respect to potential lawyer misconduct and notes that it has developed protocols with Crown counsel and law enforcement agencies for the search of law offices. In its submission, these protocols give law enforcement agencies access to information while, at the same time, properly addressing issues of privilege.

The Canadian Bar Association of British Columbia emphasizes a number of fundamental points argued in the *Federation of Law Societies* case, including

- the fundamental importance of an independent bar and respect for solicitor-client privilege;
- the need to ensure that lawyers are not conscripted to become agents of the state; and
- the concomitant need for self-regulation by the provincial law societies.

It also submits that the overwhelming majority of lawyers in Canada adhere to the highest legal and

116 Government of Canada Response to Terms of Reference Report Recommendations, p 6.

117 Government of Canada Response to Terms of Reference Report Recommendations, p 7.

ethical standards and, like all citizens, are bound by the provisions of the *Criminal Code*.

The Criminal Defence Advocacy Society expresses concern about numerous aspects of *Dirty Money 2*, including Dr. German's characterization of lawyers as "black holes" and his reference to solicitor-client privilege as something that "lawyers enjoy, and jealously guard."[118] It submits that these comments are highly disturbing insofar as they "disregard or delegitimize the pro-social and essential role that lawyers and solicitor-client privilege play in developing and sustaining a free and democratic society."[119] Moreover, it argues that solicitor-client privilege exists principally to protect the rights of private citizens who, as they make important life decisions, seek an understanding of the legal implications of those decisions.

I pause here to note that I do not necessarily read Dr. German's comments as disparaging the important role that lawyers (and solicitor-client privilege) play in a free and democratic society. His main point, as I understand it, is that the use of trust accounts is a major impediment to the detection and investigation of money laundering activity in the real estate sector.[120]

I agree with Dr. German that this issue needs to be examined and look forward to hearing evidence and submissions with respect to this issue during the evidentiary hearings.

Luxury Vehicles

Dr. German states that money laundering through automobiles is an international problem that has never been examined in detail in Canada. It typically involves the purchase of a luxury vehicle with cash or cash-like instruments, allowing the purchaser to convert illicit funds into an asset that can later be sold.[121] In a slight variation of that strategy, criminals can also obtain manufacturer financing to purchase a luxury vehicle and pay off the loan through the use of illicit funds.[122] At present, there are no mandatory reporting obligations on luxury vehicle dealerships. The sector is largely unregulated, with no restrictions on the use of cash to purchase luxury vehicles. Moreover, the "grey market" export of luxury vehicles to other countries is a well-known money laundering strategy which allows the purchaser to realize a significant profit on the sale of the vehicle and apply for a provincial sales-tax rebate at home.[123]

Dr. German states that it is difficult to draw a distinction between bags of cash arriving in a casino and bags of cash arriving at a luxury car dealership. He strongly recommends that luxury car dealerships be added as reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. He also recommends that consideration be given to a prohibition on the receipt of $10,000 or more in cash as well as geographic targeting orders.[124]

118 *Dirty Money 2*, pp 124, 159.

119 Criminal Defence Advocacy Society Response to Terms of Reference Report Recommendations, p 6.

120 Indeed, Dr. German's statement that lawyers are the "black hole" of real estate and money movement is preceded by the statement that they are in that position "through no fault of their own" (*Dirty Money 2*, p 159).

121 *Dirty Money 2*, p 164.

122 *Dirty Money 2*, pp 164–66. Other money laundering strategies include the payment of a cash deposit to "hold" a luxury vehicle, with those funds being returned, by cheque, the following day when the prospective purchaser changes his or her mind about the purchase. Dr. German notes that $100,000 can quickly be laundered by organized crime groups by having straw buyers undertake that strategy at a few luxury car dealerships.

123 *Dirty Money 2*, pp 183 and 197–98.

124 *Dirty Money 2*, p 192. Geographic targeting orders are a tool used in jurisdictions such as the United States to combat money laundering. In basic terms, they place heightened reporting obligations on financial institutions and other reporting entities in geographic areas where significant money laundering activity is believed to be occurring.

BMW Canada Inc. (BMW) was the only participant that provided a substantive response to these findings and recommendations. While supportive of a prohibition on the receipt of cash in excess of $10,000, it opposes Dr. German's recommendation that luxury car dealerships be added as reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Rather, it submits that a provincial regulatory body should be formed to collect information from luxury car dealers and make its own assessments and reports to FINTRAC. It further submits that a provincial regulatory body created for that purpose would be "more effective than FINTRAC at establishing working relationships with the local dealer network, gathering necessary information and determining which information is actionable."[125]

BMW also expresses concern about the export of stolen and fraudulently obtained vehicles from British Columbia. It submits that the grey market is unregulated from a financial crime perspective, resulting in very little being known about the persons and companies involved. BMW urges this Commission to consider recommending that the province and the federal government take steps to regulate the export of luxury vehicles from British Columbia.

Horse Racing

Dr. German states that the horse-racing industry is vulnerable to money laundering in many of the same ways as the gaming sector.[126] However, horse racing also involves a number of unique money laundering opportunities, such as the purchase of racehorses with illicit funds.

While recognizing that the horse-racing industry is much less of a concern than other sectors of the economy, he recommends that

- source-of-funds declarations be used both at horse-racing venues and when individuals are purchasing racehorses;
- anti–money laundering training be provided to all staff who work at live horse-racing and tele-theatre venues;
- regulation of the horse-racing sector be transitioned from the Gaming Policy and Enforcement Branch to the independent gambling control office; and
- horse racing be added to the mandate of the designated police unit for the gaming industry.[127]

The Gaming Policy and Enforcement Branch submits that the province is considering the regulatory structure of the horse-racing industry as part of its review of the *Gaming Control Act.*

Likewise, Great Canadian, which operates the two live racetracks in British Columbia, does not oppose the use of source-of-funds declarations at horse-racing venues. It further submits it has already taken steps to implement anti–money laundering training programs for its racetrack employees.

Other Forms of Money Laundering

Dr. German also identifies other areas of the BC economy that are vulnerable to money laundering. These areas include

- money services businesses;
- illegal cannabis cultivation and sales;
- luxury boat sales;
- pianos and high-value musical instruments;
- auctions;
- fisheries licences;
- public and private colleges;
- cryptocurrency;
- misuse of trade transactions (referred to as "trade-based money laundering"); and
- use of foreign credit cards.

125 BMW Response to Terms of Reference Report Recommendations, p 8.

126 For example, it provides opportunities for refining, where small-denomination bills are converted into large-denomination bills.

127 *Dirty Money 2*, p 211.

I expect that many of these vulnerabilities will be the subject of evidence during the evidentiary hearings.

Law Enforcement Response

Dr. German concludes with some findings and recommendations with respect to the response of law enforcement agencies. He writes that the federal government has created an anti–money laundering regime that is focused on compliance but has "not infused equivalent resources into enforcement and prosecution [of money laundering offences]."[128] He also states that many reporting entities are critical of the federal anti–money laundering regime because of the lack of tangible results and that FINTRAC is nothing more than a collector of information unless the intelligence in its database is readily available to law enforcement agencies.[129] The perceived need for better transmission of information from FINTRAC to law enforcement is a recurring theme in the work performed by the Commission to date and will be the subject of evidence during the evidentiary hearings.

The Maloney Report

On March 31, 2019, Professors Maureen Maloney, Tsur Somerville, and Brigitte Unger delivered a report to the BC Minister of Finance on money laundering in the real estate sector (the Maloney Report). The report reviews the political, social, and economic harms caused by money laundering in real estate and attempts to quantify the total amount of money laundered through the BC economy as well as the impact of money laundering activity on housing prices.

It also contains a series of recommendations aimed at closing regulatory gaps and strengthening the current anti–money laundering regime.

Political, Social, and Economic Harms of Money Laundering

The Maloney Report begins with some comments about the political, social, and economic harms caused by money laundering. Among other things, the authors note that

- money laundering and its effects "corrode the very fabric of society" and make an impact on all spheres of a functioning democracy;
- where money launderers gain a stronghold in a country, province, or city, their influence will have significant adverse consequences for democracy and the rule of law;
- wealthy criminals not only import crime and the proceeds of crime but engage in widespread corruption and bribery of officials and political actors, to ensure that their activities can continue unimpeded; and
- money laundering encourages criminal activity and has disruptive effects on the economy by increasing market prices and negatively affecting legal businesses.[130]

The authors then attempt to quantify the total amount of money laundered through the BC economy as well as the impact of money laundering activity on housing prices. They estimate that approximately $7.4 billion was laundered through the BC economy in 2018 (up from $6.3 billion in 2015) and that money laundering activity has made housing prices 3.7 percent to 7.5 percent higher than they would have been in the absence of money laundering.[131]

While these figures provide a useful starting point for the work of this Commission, it is important to recognize the limitations associated with

128 *Dirty Money 2*, p 274.

129 *Dirty Money 2*, p 274.

130 Maloney Report, pp 13–14.

131 Maloney Report, pp 48, 57.

these numbers. In estimating the total amount of money laundered through the BC economy, the authors used an economic model known as the "gravity model." In basic terms, that model uses national crime data to calculate the revenue generated from various types of criminal activity as well as the percentage of those funds that are laundered (as opposed to being reinvested in the criminal enterprise). The model then attempts to calculate the percentage of laundered funds that are laundered within the province (as opposed to other jurisdictions) as well as the "inflow" of illicit funds from other jurisdictions to be laundered in British Columbia. At each stage of the process, it is necessary to make a variety of estimates and assumptions, often in the absence of any reliable data.

While the authors are fully transparent about the limitations of their approach and quite properly acknowledge that there is a "large margin of error due to [the] lack of measured data,"[132] I have concerns about the use of the gravity model to make decisions about public policy. I will return to these issues in Part Three (below).

Recommendations

The Maloney Report also makes 29 recommendations aimed at closing regulatory gaps and strengthening the current anti–money laundering regime in the real estate sector.

Beneficial Ownership Transparency

One of the key recommendations in the Maloney Report is that the province take steps to create a land-owner transparency registry as quickly and effectively as possible.[133]

I have addressed that issue in the context of *Dirty Money 2* (above).

Corporate Transparency

A second set of recommendations relates to the need for greater beneficial ownership transparency in the corporate sector. More specifically, the authors recommend that

- the provincial government fulfill a commitment made under the Agreement to Strengthen Beneficial Ownership Transparency to require corporations to maintain beneficial ownership information and to require existing bearer shares to be converted into shares compliant with the *Business Corporations Act*, SBC 2002, c 57;
- the BC Minister of Finance encourage other finance ministers to implement the Agreement to Strengthen Beneficial Ownership Transparency; and
- the provincial government develop a discussion paper with draft legislation to begin consultations with respect to the implementation of a full corporate beneficial ownership registry.[134]

In response to these recommendations, the provincial government amended the *Business Corporations Act* to require private companies to maintain a transparency register with accurate and up-to-date information with respect to the identity of "significant individuals" (defined in section 119.11 as individuals holding 25 percent or more of the issued shares of a company, or issued shares of the company that carry 25 percent or more of the right to vote at general meetings).[135]

The province has also released a consultation paper on a public beneficial ownership registry in which it sought input on matters such as

- public access to the registry;
- verification of beneficial ownership information;

132 Maloney Report, p 46.

133 Maloney Report, p 75.

134 Maloney Report, p 76.

135 The amendments also require existing bearer shares to be converted to shares compliant with the *Business Corporations Act* in order to exercise any rights attached to those shares.

- the potential impact on business operations;
- compliance and enforcement; and
- issues relating to the extension of the beneficial ownership registry to trusts and partnerships.

These efforts have garnered support from various participants, including the RCMP and the BC Real Estate Association, though a number of issues identified in the consultation paper are deserving of further study.[136]

Regulatory Compliance

Another recommendation contained in the Maloney Report is that individual real estate licensees be responsible for compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the *Real Estate Services Act,* SBC 2004, c 42.[137] The authors state that the current regulatory model, in which each real estate brokerage has a "managing broker" responsible for compliance, was developed when the predominant business model involved brokerages owned and managed by senior real estate practitioners who employed a group of salespeople working under their direction. Today, the dominant business model involves salespeople operating independently and sharing certain business costs and services with other salespeople, and the authors write that having a managing broker is simply a business cost they are forced to share:

> Today the business models common in the real estate industry are based on salespeople not being employees but rather operating independently and sharing certain business costs and services with other licensees. For them, having a managing broker is a business cost that they are forced by the regulatory structure to share. The managing broker works for the licensees, not the other way around, and there is an incentive to have as many salespeople as possible under a given managing broker in order to reduce costs. In practice, these business models, together with large numbers of salespeople, give the managing broker little or no authority to oversee the activities of the licensees or ensure that they comply with RESA or PCMLTFA.[138]

On October 17, 2019, the Office of the Superintendent of Real Estate published a discussion paper on the role of managing brokers in the BC real estate industry. The discussion paper included various options for "reframing" that role, and a summary of the feedback received from the real estate industry was published on July 8, 2020.

While shifting more responsibility to licensees makes sense from an anti–money laundering perspective, there may be other ways of approaching the problem, and I expect to hear evidence with respect to these issues during the evidentiary hearings.

Real Estate Services Act *Exemptions*

The Maloney Report also states that the exclusion of developers and their salespeople from the licensing requirements contained in the *Real Estate Services Act* is a "gap" in the province's anti–money laundering regime, and it recommends that the statute be amended to remove that exemption. It also recommends that the province consider whether appraisers and home inspectors should be licensed under that legislation.[139]

136 For example, the federal Standing Committee on Finance has taken the view that access to the beneficial ownership registry should be limited to law enforcement and regulators, whereas the authors of the Maloney Report submit that it should be "transparent, public and easily accessible."

137 Maloney Report, p 78.

138 Maloney Report, p 78.

139 Maloney Report, pp 78–79.

The RCMP supports these recommendations and suggests that specialized expertise be developed within the industry to address issues of non-compliance.

The BC Real Estate Association also supports these recommendations insofar as they apply to developers' salespeople (and potentially home inspectors). However, it submits that licensing for developers has the potential to complicate the regulatory framework for the real estate industry.

Mortgage Brokers and Mortgage Lenders

One of the more significant recommendations made in the Maloney Report is that the BC Minister of Finance recommend to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* be amended to include mortgage lenders and mortgage intermediaries in the list of reporting entities.[140]

The Maloney Report also recommends that the *Mortgage Brokers Act* be replaced with new legislation that would

- establish business authorization requirements for all mortgage lenders except individuals lending to a small number of friends and family members;
- include modern regulatory powers and requirements;
- establish a governance structure with designated management responsible for compliance vis-à-vis mortgage lenders and mortgage brokers; and
- make a distinction between regulation of mortgage lenders and regulation of mortgage brokers, with appropriate provisions for both aspects of the industry.[141]

I have discussed these matters in the context of Dr. German's second report (*Dirty Money 2*).

Money Services Businesses

Another important recommendation in the Maloney Report is that the provincial government consider developing a regulatory regime for money services businesses to be operated by the Financial Institutions Commission (now the BC Financial Services Authority).[142]

Money services businesses are reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and account for the largest number of suspicious transaction reports submitted to FINTRAC. However, the regulation of financial businesses is not FINTRAC's core mission and "concerns have been raised about the effectiveness of the FINTRAC registry as a regulatory regime."[143]

Indeed, the BC Lottery Corporation conducted an extensive review of the anti–money laundering compliance regime of money services businesses and was "unable to identify any Canadian [money services business] with an acceptable [anti–money laundering] compliance regime that would adequately mitigate or prevent money laundering or terrorist financing risks."[144]

The RCMP strongly supports this recommendation and states that "unregistered and underground MSBs pose a particular challenge."[145] While law-abiding entrepreneurs who want to open a money services business will usually register with FINTRAC, the use of unregistered money services businesses to launder illicit funds is an area of significant concern.

The Ministry of Finance also supports this recommendation. In March 2020, it released a consul-

140 Maloney Report, pp 83–84.

141 Maloney Report, p 79.

142 Maloney Report, p 81. In basic terms, money services businesses are businesses that provide payment, money transfer, and foreign exchange services.

143 Maloney Report, p 80.

144 BC Lottery Corporation Supplemental Response to Terms of Reference Report Recommendations, p 20.

145 Government of Canada Response to Terms of Reference Report Recommendations, pp 3–4.

tation paper on the potential regulation of money services businesses and is currently reviewing the feedback received by stakeholders.[146]

I agree that money services businesses are an area of vulnerability and expect to hear evidence with respect to these issues during the evidentiary hearings.

Unexplained Wealth Orders

One of the more controversial recommendations contained in the Maloney Report is that the province consider introducing unexplained wealth orders as a measure to combat money laundering in the real estate sector.[147] Unexplained wealth orders are an anti–money laundering tool used in jurisdictions such as the United Kingdom to seize assets that are suspected of being purchased with illicit funds. Where a specific threshold is met, courts can make orders requiring the owners of particular assets to establish that they were purchased with legitimate funds. If the owner is unable to do so, the state can take steps to seize the assets.

While the threshold for making such an order varies from state to state, the UK *Criminal Finances Act*, 2017 (c 22), provides a good example of the types of requirements that could be imposed. Under that statute, a court can make an unexplained wealth order only where it is satisfied that the person against whom the order is made is a politically exposed person or that there are reasonable grounds to suspect that the person is, or has been, involved in a serious crime, whether in the United Kingdom or elsewhere, or is connected with a person who is, or has been, involved in such a crime. The court must also be satisfied that

- the value of the property is greater than £50,000;
- the person against whom the order is made "holds" the property; and
- there are reasonable grounds to suspect that the person's known sources of lawfully obtained income would have been insufficient to allow the respondent to obtain the property.[148]

Unexplained wealth orders can be a useful tool in cases where the difficulty of gathering evidence precludes a criminal prosecution or the use of civil forfeiture tools. They may also deter the use of the BC real estate industry as a safe haven for people hiding wealth, whether from legitimate or illegitimate sources. However, the viability of these orders in the Canadian context is a matter of debate, and they are staunchly opposed by civil liberties groups. The BC Civil Liberties Association expresses particular concern about the erosion of privacy rights, the presumption of innocence, and constitutional protections against unreasonable search and seizure:

> The implementation of [unexplained wealth orders] would be fraught with serious civil liberties implications, including an erosion of privacy rights, doing away with the presumption of innocence and subverting the rights that shield Canadians from unreasonable search and seizure. [Unexplained wealth orders] are specifically focussed on questionable sources of wealth and allow confiscation [of property] *without finding a crime*. With [unexplained wealth orders], anyone targeted by the government would be required to prove that they bought their property using legitimate sources of income. The Province would not need to show any link to criminal activity and the onus would then lie on the property-

146 The consultation paper can be found at https://engage.gov.bc.ca/govtogetherbc/impact/38496/.

147 Maloney Report, p 81.

148 Under section 362F, a statement made in response to an unexplained wealth order may not be used in evidence against that person in criminal proceedings. A copy of that legislation can be found at: https://www.legislation.gov.uk/ukpga/2017/22/introduction/enacted.

> owner to show that the property was obtained lawfully. [Emphasis in the original.][149]

I look forward to hearing evidence and submissions with respect to these important issues during the evidentiary hearings.

Oversight of Provincial Regulators

The Maloney Report also builds on one of the recommendations made in the Perrin Report (*Real Estate Regulatory Structure Review*) and suggests that the provincial government consider options for setting regulatory practice standards for all government regulators, including self-regulatory organizations such as the Law Society. The authors go on to state that the United Kingdom has established oversight bodies for self-regulatory organizations in the health and professional sectors and suggest that "such an approach might help ensure the competence and effectiveness of government regulators … requiring them to meet overarching standards related to regulatory practice."[150]

Legal Professionals

Another recommendation in the Maloney Report is that the BC Minster of Finance suggest that her federal counterpart consider incorporating legal professionals in the anti–money laundering framework by requiring them to report suspicious transactions to the Law Society (as opposed to FINTRAC).[151] While I have concerns about the ability of the Law Society to act as a financial intelligence unit, I look forward to hearing evidence and submissions with respect to this proposal during the evidentiary phase of the Commission's process.

Beneficial Ownership Information

The Maloney Report also recommends that the BC Minister of Finance suggest to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* be amended to require reporting entities in the real estate sector to conduct know-your-customer due diligence on beneficial ownership.[152]

At present, there is no obligation on reporting entities to confirm the identity of any person who has an ownership interest in a corporate client and the authors write that looking beyond legal ownership to beneficial ownership seems to be a reasonable know-your-customer requirement. They also recommend that the threshold for beneficial ownership verification be reduced from 25 percent (the threshold recommended by the Financial Action Task Force) to 10 percent.[153]

The BC Real Estate Association opposes these recommendations in large part because of the administrative burden they would place on real estate agents. In a presentation made to the federal Standing Committee on Finance, the Canadian Real Estate Association stated that many real estate brokers are frustrated and confused about the "overwhelming" reporting and record-keeping requirements created by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. It also warned that imposing new requirements around beneficial ownership and politically exposed persons would "cause significant frustration and increase the cost of compliance drastically."[154]

The BC Civil Liberties Association also opposes these recommendations. It submits that reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* serve as de facto

149 BC Civil Liberties Association Response to Terms of Reference Report Recommendations, p 7.

150 Maloney Report, p 82.

151 Maloney Report, p 84.

152 Maloney Report, p 84.

153 Maloney Report, pp 84–85.

154 BC Real Estate Association Response to Terms of Reference Report Recommendations, p 13.

agents of the state, collecting information solely for the purpose of reporting it to FINTRAC. It cautions that increasing the type of information collected by real estate brokerages poses a significant threat to privacy rights, without sufficient evidence to demonstrate whether the collection and retention of this type of evidence are effective in meeting their stated goal.[155]

Information Sharing with Provincial Regulators

The Maloney Report also recommends that the BC Minister of Finance suggest to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* be amended to authorize FINTRAC to provide information to a wider group of regulators and investigative agencies.[156] At present, FINTRAC is entitled to disclose actionable information only to the following agencies:

- police forces;
- the Canada Revenue Agency;
- the Agence du revenue du Québec;
- the Canada Border Services Agency;
- the Communications Security Establishment;
- the Competition Bureau; and
- an agency or body that administers the security legislation of a province.

Moreover, FINTRAC can disclose information to those agencies only where it has reasonable grounds to suspect that the information would be relevant to specific criminal or quasi-criminal offences, as set out in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

The Maloney Report suggests that these limitations are not consistent with international best practices and argues that the disclosure of actionable information to regulators in a Charter-compliant manner would strengthen the anti–money laundering regime by allowing regulators to take action beyond the investigation and prosecution of money laundering offences as a crime.

FINTRAC acknowledges that there are limits on its ability to disclose information but submits that "other avenues exist for collaboration between FINTRAC and provincial regulators."[157] In support of that submission, it points to the information-sharing partnerships it has pursued with agencies such as the Real Estate Council of British Columbia and the Investment Industry Regulatory Organization of Canada.

The BC Civil Liberties Association strongly opposes these recommendations and submits that expanding the ability of FINTRAC to share information with regulators will inevitably lead to the over-collection of sensitive information. That excess, in turn, will result in a "blurring of mandates between institutional bodies in a manner that could give rise to violations of privacy rights and individual liberties."[158]

Data-Sharing Framework

Another recommendation contained in the Maloney Report is that the province take steps to implement a comprehensive data-sharing framework among regulatory agencies. More specifically, the authors recommend that

- the provincial government implement a data-sharing framework that provides each

155 The BC Civil Liberties Association also opposes the amendment of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to add mortgage brokers and mortgage lenders to the list of reporting entities. It submits that adding more reporting entities will inevitably capture a greater number of innocent transactions and allow the government to acquire vast amounts of personal information for investigatory purposes, without reasonable grounds for obtaining that information.

156 Maloney Report, pp 85–86. On a related note, the report also recommends that the BC Minister of Finance suggest to her federal counterpart that the list of agencies in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* for which judicially authorized disclosure of information from FINTRAC can be sought be expanded.

157 Government of Canada Response to Terms of Reference Report Recommendations, pp 8–9.

158 BC Civil Liberties Association Response to Terms of Reference Report Recommendations, p 9.

anti–money laundering agency with access to public-domain data, including land data, in a way that facilitates analysis and investigation; and
- the provincial government conduct a comprehensive review of data sharing and confidentiality relating to anti–money laundering activities to ensure that the best use is made of government data in combatting money laundering and market manipulation while respecting privacy and confidentiality.[159]

Both recommendations garnered widespread support from participants, including the RCMP, the Ministry of Finance, the Law Society, the BC Real Estate Association, and BMW. The only participant opposed to these recommendations was the BC Civil Liberties Association, which cautions that mass data sharing between government agencies would constitute a serious breach of privacy and cause a "blurring" of governmental mandates and responsibilities.

Investigation and Enforcement

One of the final recommendations in the Maloney Report is that the BC Ministry of Finance create a specialized, multidisciplinary, financial investigations unit to assist regulatory agencies in taking action against money laundering. The report also recommends that the Ministry of Finance create formal coordination mechanisms between the financial investigations unit and the various federal and provincial regulators with an anti–money laundering mandate.[160]

In response to that recommendation, the Ministry of Finance created the Finance Real Estate and Data Analytics Unit to develop the analytical capacity to support anti–money laundering initiatives and tax policy analysis. Moreover, the Attorney General of British Columbia is considering an anti–money laundering fusion centre to support a "collaborative, integrated and coordinated" regulator response to money laundering.[161]

The Perrin Report

On April 18, 2018, the BC Minister of Finance retained Dan Perrin to undertake a review of the current state of real estate regulation and to develop recommendations on how best to ensure the effective regulation of real estate activity in British Columbia.

Mr. Perrin's report, entitled *Real Estate Regulatory Structure Review*, concludes that regulatory structure is a significant factor contributing to the dysfunction in the relationship between the Office of the Superintendent of Real Estate and the Real Estate Council of BC and recommends four key changes to the current regulatory structure:

- that the regulatory enforcement responsibilities of the Office of the Superintendent of Real Estate and the Real Estate Council of BC be amalgamated with the Financial Institutions Commission (now the BC Financial Services Authority);
- that the public policy development function be controlled by the Ministry of Finance;
- that the provincial government consider whether there should be oversight for regulators in British Columbia; and
- that the government conduct a policy review of real estate regulatory requirements, including a review of the existing requirements contained in the *Real Estate Services Act* and a review of those not currently subject to regulation.[162]

159 Maloney Report, p 91.

160 Maloney Report, p 94.

161 Exhibit 61, BC Compliance and Enforcement Anti–Money Laundering Fusion Centre (Slide Deck) (May 2019).

162 Perrin Report, p 4.

While these recommendations raise a broad set of policy concerns, many of which are unrelated to the work of the Commission, three of them have particular relevance to the issue of money laundering. The first relates to the recommendation that responsibility for public education, education of licensees, and professional conduct be transferred to the Financial Institutions Commission (now the BC Financial Services Authority). Many stakeholders in the real estate sector have emphasized the need for better training and education for real estate professionals, and any new regulator created by the province must be given responsibility for those matters.

The second relates to the recommendation that supervisory and accountability mechanisms be put in place to ensure that regulators maintain rigorous practice levels. While these types of mechanisms may ensure that regulators enforce strict anti–money laundering requirements, it may be possible to achieve the same effect through other means.

The third relates to the recommendation that the government conduct a policy review of real estate regulatory requirements, including a review of the existing requirements contained in the *Real Estate Services Act* and a review of those not currently subject to regulation. Both the Maloney Report and *Dirty Money 2* suggest that the province should consider imposing anti–money laundering requirements on certain professionals who may be in a position to observe and report suspicious transactions and argue that any such review should take into account the opportunities available to these professionals to observe and report suspicious behaviour.

Part Three:
Issues to Be Addressed

Because of the breadth of the Commission's mandate, a significant component of its work to date has been identifying relevant issues to be addressed. These issues include:

- whether money laundering is a problem worth addressing;
- whether it is possible to quantify the volume of illicit funds being laundered;
- the methods and techniques used by those engaged in money laundering activity;
- the response to money laundering at senior levels of government;
- the extent, growth, evolution, and methods of money laundering in each sector identified in the Terms of Reference;
- approaches to money laundering in other jurisdictions;
- barriers to effective law enforcement;
- asset forfeiture; and
- other money laundering vulnerabilities.

In what follows, I provide an overview of each of these issues and comment on the evidence I expect to hear during the evidentiary hearings.

Is Money Laundering a Problem Worth Addressing?

Money laundering is a crime in Canada – and has been since 1990. Its roots in the soil of criminal law are not deep, but they have taken hold as those involved in criminal activity have exploited Canada's economic system to disguise the profits of their illegal activity.

Despite the expansion of the law respecting money laundering, a 2016 evaluation of Canada's anti–money laundering regime indicates that "law enforcement results are not commensurate with the [money laundering] risk and asset recovery is low."[1] Where the underlying (or predicate) offence occurs in Canada, there is a tendency for law enforcement agencies to pay more attention to that offence as opposed to related money laundering offences.

Where the predicate offence takes place outside Canada, the expense, complexity, and difficulty of securing evidence has often hindered investigations and prosecutions.

1 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, p 3.

Canada's Participation in the Evolution of Anti–Money Laundering Policies and Procedures

Despite the paucity of investigations and convictions for money laundering in Canada, the regime that has grown up around Canada's commitment to an anti–money laundering response is both elaborate and expensive. This system, along with Canada's criminal sanctions against money laundering, arises from a resolution at the Paris Summit of the Group of Seven (G7) countries in 1989 to support an international effort to stem the tremendous profits generated from drug trafficking by targeting attempts to bring those profits into the legitimate economy.

The G7 resolution prompted the creation of the Financial Action Task Force to examine money laundering techniques and trends, review action taken at both the national and the international level, and identify additional measures that could be taken to prevent money laundering activity.

The Financial Action Task Force developed a list of 40 recommendations (the Forty Recommendations) that provide the foundation of anti–money laundering regimes in the G7 and many other countries throughout the world. The Forty Recommendations called for "the strengthening of domestic criminal justice systems with a particular emphasis on the development of legislative and enforcement techniques … designed to undermine the financial power of trafficking networks and similar crime groups."[2] They also involved private financial-sector participants in the efforts to detect and prevent money laundering (something that had not been tried before) and embraced the need for wide-ranging and high-quality international co-operation. Subsequently, in 1995–96, the Financial Action Task Force recommended extending the predicate offences for money laundering beyond the original area of concern – drug trafficking – and expanded the recommended list of private-sector participants to include certain non-financial businesses. In June 2003, the Financial Action Task Force adopted a new version of the original Forty Recommendations. The significant modifications were as follows:

- specification of a list of crimes that must underpin the money laundering offence;
- expansion of the due diligence process in regard to customers for financial institutions;
- enhanced measures for higher-risk transactions and customers, including correspondent banking[3] and politically exposed persons;
- extension of anti–money laundering measures to designated non-financial businesses and professions (casinos; trust and company service providers; real estate agents; dealers of precious metals / stones; accountants; and lawyers, notaries, and independent legal professionals);
- inclusion of key institutional measures, notably those regarding international co-operation;
- improvement of transparency requirements through adequate and timely information on the beneficial (true) ownership of legal persons such as companies or arrangements such as trusts;
- extension of many anti–money laundering requirements to cover terrorist financing; and
- prohibition of shell banks.[4]

2 Exhibit 19, Report of Professor William Gilmore, May 2020, p 5.

3 In general terms, correspondent banking refers to the practice of one financial institution providing financial services to another financial institution (usually in another country). The practice allows financial institutions in one country to access financial services and provide a variety of cross-border payment services to customers in other jurisdictions.

4 Exhibit 19, Report of Professor William Gilmore, May 2020, para 8.

In 2012, the Financial Action Task Force made further changes to the Forty Recommendations which include the following:

- extension of the scope of predicate offences for money laundering to include tax crimes;
- strengthening of the regime as it relates to corruption, especially in the context of the treatment of politically exposed persons;
- enhancement of requirements relating to transparency with regard to the ownership and control of legal persons and arrangements (e.g., companies, trusts);
- introduction of more stringent expectations concerning the role of law enforcement agencies and financial intelligence units[5] in efforts to combat money laundering and the financing of terrorism; and
- application of a risk-based approach to money laundering and terrorist financing.[6]

The Financial Action Task Force has played a continuing role in the anti–money laundering regimes of Canada and the other countries that have adopted the Forty Recommendations. It monitors members' implementation of its recommendations and carries out "an ambitious external relations programme to promote the greatest possible mobilisation of effort in the wider international community to counter [money laundering] activity."[7]

For the purposes of this section, I do not find it necessary to go into detail about the scope or the impact of the Financial Action Task Force recommendations or its ongoing efforts to monitor and evaluate compliance with the Forty Recommendations. It is sufficient, rather, to quote from Professor Gilmore's report:

> While the expectations contained in the FATF package of countermeasures have become progressively broader in scope and more challenging and detailed in nature, they have also come to be widely accepted by the international community as a whole. Indeed, the 40 Recommendations have been endorsed by in excess of 200 separate jurisdictions.[8]

As a G7 country, Canada quickly adopted and pursued the implementation of the various Financial Action Task Force recommendations. The criminalization of money laundering was accomplished in Canada through the 1990 amendments to the *Criminal Code*. Moreover, the call for an elaborate reporting and tracking system for institutions and agencies regarded as vulnerable to money laundering was heeded by Canada's enactment of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.[9] As set out above, that legislation led to the creation of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), the primary financial intelligence agency in Canada.

The BC Experience

In response to the findings and recommendations contained in *Dirty Money 1*, *Dirty Money 2*, and the Maloney Report,[10] the provincial government, acting through the Anti–Money Laundering Deputy

5 Financial intelligence units are units, such as FINTRAC, which collect and analyze information provided by reporting entities such as financial institutions and casinos.

6 Exhibit 19, Report of Professor William Gilmore, May 2020, para 11.

7 Exhibit 19, Report of Professor William Gilmore, May 2020, para 8.

8 Exhibit 19, Report of Professor William Gilmore, May 2020, para 14.

9 SC 2000, c 17.

10 *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia*, Peter M. German, QC, March 31, 2018 (*Dirty Money 1*); *Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, Peter M. German, QC, March 31, 2019 (*Dirty Money 2*); and *Combatting Money Laundering in BC Real Estate*, Maureen Maloney, Tsur Somerville, and Brigitte Unger, March 31, 2019 (Maloney Report).

Ministers' Committee and an anti–money laundering secretariat, is exploring an approach that involves the creation of two new units and targets multiple sectors of the economy in which money laundering is said to flourish. The first unit is described as the Financial Intelligence and Investigation Unit and would primarily collect and analyze intelligence in aid of criminal investigations. It would consist of a blend of federal and provincial police and regulators, such as the Gaming Policy and Enforcement Branch, and would primarily investigate money laundering–related offences.

The second unit has been informally named the Fusion Centre. Envisaged as a clearing house for sharing regulatory information, its purpose would be to enhance the effectiveness of regulators across a variety of sectors, including gaming, real estate, luxury goods, financial institutions, and money services businesses. In fulfillment of that mandate, it would receive information akin to that provided to FINTRAC in the form of unusual transaction reports from various sectors vulnerable to money laundering. All information collected would be available to both investigators and regulators. In concept, the unit would be a dedicated anti–money laundering unit, but discussions about fenced-off, or protected, funding have not yet been undertaken.

At this point, the Commission has heard that the work on costing the Fusion Centre is incomplete. The proposal was made shortly before this Commission was established, and the deputy ministers' committee concluded its work before proceeding further with a broader perspective that took all priorities into account.

A provincial panel composed of Mark Sieben (deputy minister, Ministry of the Solicitor General), Megan Harris (executive director and lead, Anti–Money Laundering Secretariat, BC Ministry of Attorney General), and Dr. Christina Dawkins (executive lead, Finance Real Estate Data Analytics, BC Ministry of Finance) described these units as "police-heavy." While acknowledging that an emphasis on policing was "not necessarily a bad thing," Mr. Sieben stated that additional work is taking place in other sectors, where "many regulators … [want] to up their game."[11] He noted that the response has to be holistic, integrated, and "commensurate with the [amount of money laundering] we're seeing."[12] His estimate of the costs of the proposed units was around $18 million to $20 million for the initial start-up costs and an annual budget of $15 million to $20 million. While describing the proposal as a good one, he testified that, "given the price tag," the government "[would like to] receive the benefit of the [Commission's] advice" before committing to it.[13]

The evidence given by these individuals was intended to outline the province's current and developing strategies with respect to money laundering and allow the Commission to evaluate them against the evidence given by other witnesses.

In effect, the provincial panel, particularly Mr. Sieben, advocated a cost-benefit analysis in relation to the proposed enforcement response. This analysis would require an assessment, first, of the magnitude of the money laundering problem in British Columbia and, second, of the likelihood of achieving success in resisting the problem by the proposed approach or by some alternative method.

Raising the Issue: Is a Robust Provincial Anti–Money Laundering Regime Justifiable?

The issue that underlies all the province's efforts to date – including the creation of the Terms of Reference Reports, the work of the anti–money laundering secretariat, the work and direction of the Anti–Money Laundering Deputy Ministers' Committee, and the proposed implementations of the recommendations in the Terms of Reference

11 Transcript, June 11, 2020, p 85.

12 Transcript, June 11, 2020, p 85.

13 Transcript, June 11, 2020, p 86.

Reports – is whether it is important to mount a considered and coordinated attack against money laundering in the first place. This question is not simply rooted in contrarianism. It recognizes the value of seeking to obstruct and disrupt those who wish to enjoy the profits of their criminal wrongdoing, but questions whether there is a larger impact that needs to be mitigated.

Professor Stephen Schneider

In his literature review and in his evidence, Professor Schneider provided a critical perspective on what he termed the "dominant narratives on the effects of money laundering."[14] He expressed skepticism about "a lot of … arguments of the wide-ranging pernicious effects of money laundering … because we've really never had any rigorous study that truly documents the impact of money laundering on financial markets, on economies, on companies, on society as a whole."[15] He ventured that relative to the size of the Canadian economy, "it's a very small proportion of it, very tiny, and really doesn't have an impact."[16]

Professor Schneider also expressed skepticism that money laundering "perpetuates" organized crime and argued that it is demand (rather than the ability to launder the proceeds of crime) which drives "consensual crimes" such as drug trafficking, bookmaking, prostitution, or human smuggling.[17]

Professor Schneider acknowledged that, in a particular jurisdiction or sector, such as the Vancouver real estate market, money laundering could have an impact.[18] He did not, however, agree with an assertion by the Criminal Intelligence Service of Canada that money laundering can "undermine the legitimate economy, giving illegitimate businesses unfair advantages, having an effect on the integrity of financial institutions and the loss of investor and public confidence."[19] Nor did he accept the study by McDowell and Novis that states: "[M]oney laundering has potentially devastating economic, security, and social consequences" and "[l]eft unchecked, it can 'erode the integrity of a nation's financial institutions,'" including by adversely affecting currencies and interest rates.[20]

Professor Schneider's skepticism stems primarily from the lack of rigorous models showing that economies, including provincial economies, are seriously affected by money laundering. Moreover, he testified that the source of many of the most dire arguments about the devastating effects of money laundering come from government and law enforcement agencies that "have a clear vested interest in … drawing attention to the high … threat level of a particular problem."[21] He described these warnings as an attempt to "inflate the scope of the problem" internationally, and particularly by the United States, which "has been trying to impose their anti–money laundering system … for years."[22]

14 Exhibit 6, Dr. Stephen Schneider, Money Laundering in British Columbia: A Review of the Literature, p 128.

15 Transcript, May 26, 2020, p 34.

16 Transcript, May 26, 2020, p 34.

17 Transcript, May 26, 2020, p 34.

18 Transcript, May 26, 2020, p 38. Professor Schneider also acknowledged that there have been effects on the prevalence of drug trafficking in Vancouver.

19 Transcript, May 26, 2020, p 36. See also Criminal Intelligence Service Canada, *Annual Report on Organized Crime in Canada* (2004), p 39.

20 Transcript, May 26, 2020, p 36. See also J. McDowell & G. Novis, "The Consequences of Money Laundering and Financial Crime" (2001) 6 (2), *The Fight Against Money Laundering: Economic Perspectives, An Electronic Journal of the U.S. Department of State*, 6–8.

21 Transcript, May 26, 2020, p 37.

22 Transcript, May 26, 2020, p 38.

In addition, Professor Schneider testified that he did not consider it possible to measure the quantum of money laundering or gauge its effects. He regarded the data on which the estimates are based to be tenuous, and the models producing the estimates as unreliable. He posed the question whether money laundering really does contribute to the perpetuation of organized crime and criminal activity. He suggested we should be focusing on the international transfer of funds – an activity that is "not necessarily money laundering." His overall view is that "money laundering and organized crime [are] extremely resilient" and that "as long as [you] have demand, you're going to have supply."[23]

Professor Michael Levi and Professor Peter Reuter

Professor Schneider's views about the lack of reliable data are shared by others. In an article co-authored by Professor Michael Levi, Professor Peter Reuter, and Terrence Halliday, the authors assert:

> Evaluation is a touchstone of contemporary policy making; good policy requires systematic and transparent evaluation. AML [anti–money laundering] is just the kind of broad policy intervention that requires evaluation to improve its design and operation, *if not to justify its existence*. Despite the publication of national Mutual Evaluation Reports, (MERs) and, more recently, National Risk Assessments, the fact is that there has been minimal effort at AML evaluation, at least in the sense in which evaluation is generally understood by public policy and social science researchers, namely, how well an intervention does in achieving its goals. [Emphasis added.][24]

The authors conclude that, in particular, the Financial Action Task Force mutual evaluation process demonstrates little use of data. They point out that the various "regulatory, criminal procedure and criminal justice enhancements are not the same as serious and 'organized' crime *reduction* [emphasis in original]," and they express the view that anti–money laundering systems "will continue to reflect faith and process rather than build upon reliable evidence of actual positive impacts on institutions and social wellbeing."[25]

In his evidence, Professor Reuter described anti–money laundering as useful "not because it could reduce money laundering but [because] it could reduce the activities that generate money laundering, money to be laundered."[26] He went on to say that measuring money laundering does not serve as a useful measure of effectiveness because money laundering itself does not cause harm. In his view, the measure of effective anti–money laundering is the extent to which it contributes to a reduction in predicate offences.[27]

Professor Reuter continued that one author, Joras Ferwerda, identified 25 distinct possible harms from money laundering. However, he opined that there is no evidence of any of them, "in the sense that nobody has done a study which has shown that money laundering has generated these specific harms to any large extent."[28] He cited the case of the Dominican Republic in 2003 and "one

23 Transcript, May 26, 2020, p 49.

24 Exhibit 26, M. Levi, P. Reuter, T. Halliday, "Can the AML System be Evaluated Without Better Data?" (2018) *Crime, Law, and Social Change* 69, 310. Professor Levi and Professor Reuter testified on June 5 and June 8, 2020.

25 Exhibit 26, "Can the AML System Be Evaluated Without Better Data?" at 325.

26 Transcript, June 5, 2020, p 62.

27 Transcript, June 5, 2020, p 62.

28 Transcript, June 8, 2020, p 25.

of the Baltic countries" in the 1990s, where monetary and fiscal instability were caused on a macro level. In those cases, according to Professor Reuter, "it was very hard to say it was money laundering as opposed to AML [anti–money laundering] that generated the problem."[29] He conceded that money laundering may have serious consequences, but there is "no empirical evidence to say that they're substantial enough to be worth mentioning."[30]

When Professor Reuter was asked why he chose to study money laundering, given the lack of evidence about its harms, he replied that, for that very reason, he focused on anti–money laundering. In his opinion, the real question is "[h]ow effective are the control efforts?"[31] He pointed out that, in Europe, expenditures on anti–money laundering are in the tens of billions of dollars and stated that "AML is important. Money laundering may not be important … It is a part of the illegal markets … But AML is clearly important, and figuring out how to do it better matters."[32]

Professor Levi also emphasized the need to distinguish between the harms that arise from control and those that arise from money laundering itself. He testified it was important "to separate out the harms that arise from the predicate crimes[,] from the harms [caused by the] money laundering itself."[33] One potential harm from money laundering, for example, is whether lawyers or gaming operators become corrupted by the money laundering process. For that reason, he said, "we need to think much more clearly about the harms of money laundering than we often do."[34] He observed that "it's hard to see the connection between the efforts that we make in controlling money laundering in many areas, and how criminals go about their business."[35]

Without a doubt, there is a significant cost to the attempt to control or abate money laundering. Professor Reuter estimated that banks in Europe have spent "tens of billions of dollars" on anti–money laundering.[36] Sir Robert Wainwright, the executive director of Europol from 2009 to 2018, put the total at approximately $5 billion annually. In a paper entitled "Does Crime Still Pay? Criminal Asset Recovery in the EU," that agency estimates that only about 1.1 percent of criminal profits (or $1.2 billion of approximately $110 billion annually) was finally confiscated.

The Commission's Approach

Clearly, governments have many competing priorities, all of which have costs and benefits associated with them. When, why, and how one initiative is selected to be a priority over another initiative is a complicated process worthy of careful analysis and consideration. Without knowing the extent of money laundering in the province, its actual or even its potential impact on the provincial economy, its institutions, or its citizens, is it possible to make any meaningful choices about whether to address it, how to address it, and to what extent it needs to be addressed? Those are important questions that will be considered by this Inquiry as it unfolds in the coming months.

Ultimately, the question of whether combatting money laundering is an important priority

29 Transcript, June 8, 2020, p 25.

30 Transcript, June 8, 2020, p 25.

31 Transcript, June 8, 2020, p 26.

32 Transcript, June 8, 2020, p 26.

33 Transcript: June 8, 2020, p 26.

34 Transcript: June 8, 2020, pp 26–27.

35 Transcript, June 8, 2020, p 27.

36 Transcript, June 8, 2020, p 26.

can be definitely answered only by increasing our understanding of its nature, its extent, the implications of addressing it, and how it can be addressed most effectively. The Commission is committed to looking at all facets of the anti–money laundering regime that prevails in British Columbia and whether and how it can be improved. It is also aware of the problems associated with measuring the size and impact of money laundering activity as well as the effectiveness of the proposed solutions.

At the same time, it is important to recognize that it may be necessary to take action against the threat even though it cannot be empirically measured. As a society, we must resist threats that strike at the heart of our collective values. Money laundering is a crime that occurs in the aftermath of other, more overtly and directly destructive offences: drug trafficking, human trafficking, prostitution, extortion, theft, fraud, and trafficking in child pornography. Deterring money laundering thwarts those for whom the crime is motivated by profit and repudiates the evils of the offences that produce the demand for it. Moreover, the failure to respond to money laundering activity alleged to be occurring in numerous sectors of the BC economy sends a message that unlawful and socially destructive activity will be tolerated.

Allowing money laundering to flourish because its harmful effects cannot be empirically measured cedes to offenders the right to enjoy the fruits of their offences. It also leaves custodians of the political and economic system open to criticism that they are complicit in that enterprise of criminality and encourages those involved in criminal conduct to continue their unlawful behaviour, whether in relation to money laundering or other related offences.

I expect to hear evidence and submissions with respect to all of these issues during the evidentiary hearings.

Quantification

A second and related issue relates to the quantification of money laundering (i.e., the amount of money being laundered through the BC economy each year). Quantification is important as a way of understanding the scope of the problem and as a way of measuring the success of initiatives aimed at combatting it. However, the difficulties associated with quantification are enormous, with many experts opining that the methodologies that have been employed are wild and imprecise, if not downright wrong, and cannot serve any useful policy purpose because of the imprecision of the estimates they provide.[37] The key issue for the Commission is whether these methodologies (either individually or in combination) are capable of providing a reliable estimate of the volume of money laundering activity in British Columbia or, at the very least, whether they are capable of giving policy makers a sense of the magnitude of the problem.

In what follows, I review some of the methodologies used by economists and criminologists to quantify the problem, including the International Monetary Fund (IMF) consensus range, extrapolation from capital mobility data and discrepancies, extrapolation from measurements of the shadow (or underground) economy, extrapolation from suspicious transaction reports or other indicators of potential money laundering, and extrapolation from proceeds-of-crime data. I also review some of the original research undertaken by the Commission with a view to ascertaining the magnitude of the problem.

The IMF Consensus Range

An oft-cited number in agency reports and the academic literature is that money laundering constitutes 2 percent to 5 percent of global GDP.

37 P. Reuter & E. Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Washington, DC: Institute for International Economics, 2004), 10; P. Reuter, "Are Estimates of the Volume of Money-Laundering Either Feasible or Useful?" in B. Unger & D. van der Linde (eds.), *Research Handbook on Money Laundering* (Cheltenham, UK: Edward Elgar, 2013), 224.

This range originated in a 1998 speech by Michel Camdessus, who was, at the time, the managing director of the International Monetary Fund. Although frequently used as a reference point, the methodology used to arrive at that estimate has never been shared, and questions have been raised about the applicability of the estimate in the Canadian context as well as the continued relevance of that estimate, given the evolution of both financial crime and the world economy in the 22 years since Mr. Camdessus arrived at that estimate.

Extrapolation from Capital Mobility Data and Discrepancies

Several quantification methods seek to use capital mobility data to estimate the total amount of money laundering activity worldwide. These methods include

- the hot money method, which relies on net errors and omissions in balance of payments accounts and recorded capital outflows from the private sector to estimate the total amount of money laundering activity;
- the residual method, which seeks to measure capital flight by looking at the difference between unrecorded inflows and outflows of funds;
- the Dooley method, which uses capital outflows within a country's balance of payments account and adjusts them to detect unrecorded capital outflows, using errors and omissions as well as changes in external debt and international market interest rates;
- the trade mispricing method, which estimates the extent of money laundering based on observations of abnormal pricing, such as the under-invoicing and over-invoicing of imports and exports, using "unmatched" partner country international trade data; and
- the Global Financial Integrity method, which uses a combination of the trade mispricing method and either the residual or the hot money method to estimate the extent of money laundering activity.

Each of these methods is what are known as "top-down" approaches that seek to quantify the extent of money laundering using analyses of statistical discrepancies. Although it may be theoretically possible to quantify the problem using these methods, they all suffer from data limitations and problematic assumptions that cast doubt on the reliability of their estimates.

Extrapolation from Estimates of the Shadow or Underground Economy

A third approach to quantification seeks to estimate the extent of money laundering by extrapolating from the shadow or underground economy. These methods include

- the currency demand method, which compares the amount of money printed with the amount of money circulating;
- latent variable approaches such as the Dynamic Multiple-Indicators Multiple-Causes model, which seeks to use two sets of observable variables to estimate the total amount of money laundering within a particular jurisdiction; and
- the two sector / general equilibrium model, which uses economic theory to estimate the value of the underground economy and then acts as a measure of money laundering.

Among the criticisms of these approaches is the fact that not all activity in the shadow or underground economy constitutes money laundering, leading to a significant overestimate of the amount of money being laundered through the economy. Other criticisms of these approaches are that the Dynamic Multiple-Indicators Multiple-Causes model uses variables that are arbitrary and not empirically based and that the theoretical reasoning

underpinning the equilibrium model requires simplification and abstraction to such an extent that it is removed from reality.

Extrapolation from Suspicious Transaction Reports and Other Indicators of Money Laundering

A fourth approach to quantification seeks to estimate the total amount of money laundering by extrapolating from suspicious transaction reports and other indicators of money laundering. While initially attractive, there are a number of problems associated with the use of suspicious transaction reports (and other similar measures) to quantify money laundering.

One such problem is that suspicious transaction reports are not always indicative of money laundering activity. In many cases, suspicious transaction reports are filed in respect of legitimate financial transactions unrelated to money laundering. Moreover, it is well recognized that many suspicious transactions escape the notice of reporting entities. A second problem relates to the fact that multiple reports can be filed in respect of the same funds, leading to double or even triple counting. Finally, it is important to recognize that suspicious transaction reports are subject to multiple interpretations and may not always include the value of the transaction. All of these factors have led FINTRAC to conclude that this approach is not rigorous enough to be a stand-alone methodology for quantifying money laundering.

Extrapolation from Proceeds-of-Crime Data

A fifth approach to quantification involves extrapolation from proceeds-of-crime data. One of the more important studies in this area is a 2004 study by Stephen Schneider and Margaret Beare in which they conducted a review of RCMP case files with a view to analyzing how proceeds of crime are laundered through the Canadian economy. While this approach provides significant insight into the behaviour of launderers (what they consume, where they launder, etc.), problems arise where information derived from individual cases is extrapolated more broadly.

First, there is no guarantee that the RCMP case files reviewed by the authors represent the entirety of the assets associated with a particular conspiracy, and it follows that any attempt at extrapolation could significantly underestimate the total amount laundered through the Canadian economy. Second, the authors' reliance on police cases meant that examples of money laundering contained in the study were skewed toward those identified and investigated by the RCMP and are not necessarily representative of the entirety of money laundering activity in the country. Third, the analysis depended on the quality and completeness of information in the RCMP Management Information System, and the authors expressly note that important information was missing from the RCMP database and that the inventory of proceeds-of-crime cases was not, in fact, comprehensive. Many of the same problems have been encountered in other studies that have sought to use proceeds-of-crime data to examine the scope of the problem.

The gravity model is a more sophisticated attempt to quantify money laundering activity using proceeds-of-crime data. As set out in Part Two (above), that model uses proceeds-of-crime data and econometric modelling to estimate the total amount of money laundering activity within a particular jurisdiction.

While the gravity model has a number of advantages, including the fact that it avoids double counting, is easy to understand, and can be applied to all countries and jurisdictions in the world, it has a number of limitations, including the fact that it makes a variety of estimates and assumptions often in the absence of any reliable empirical data.

I expect to hear evidence with respect to the advantages and limitations of the gravity model during the evidentiary hearings.

Original Research

Given the importance of quantification as a way of understanding the scope of the problem, and measuring the success of initiatives aimed at combatting it, the Commission has undertaken some of its own research attempting to quantify the illicit proceeds derived from the sale of fentanyl in British Columbia.

Phase 1 of that study will be supervised by Dr. Martin Bouchard, a professor of criminology at Simon Fraser University, who will analyze data collected by the BC Centre on Substance Use to calculate the proceeds derived from the sale of fentanyl in British Columbia. Learning the size of these fentanyl proceeds may furnish valuable information about the resulting money laundering activity. Phase 2 will be conducted by Professor Peter Reuter and Professor Jonathan Caulkins, who will provide an expert opinion on how that number can be extrapolated to determine the percentage of fentanyl proceeds that are laundered. While the results of that study will provide only a snapshot of illicit economic activity in British Columbia, my hope is that it will provide reliable information from which the province can make meaningful choices about how best to address the money laundering problem. The study may also provide a roadmap for further attempts at quantification with respect to profits derived from the drug trade and other predicate offences.

Money Laundering Methods and Techniques

A third issue relates to the identification of common methods and techniques for laundering money through the BC economy. Any discussion of money laundering methods and techniques almost invariably begins with the traditional three-step model that has been promoted by US law enforcement agencies since the 1980s.[38] That model posits that there are three stages in the money laundering process: *placement*, where the illicit funds physically enter the legitimate financial system; *layering*, where the illicit funds are circulated through various economic sectors, companies, professionals, and financial transactions to obscure any connection to the criminal source; and *integration*, where the illicit funds are fully integrated into the legitimate economy and used for personal or criminal purposes. Academic commentators have elaborated on this model by adding additional stages, such as a preliminary stage that precedes placement, where cash is physically smuggled abroad or exchanged for other currencies before being deposited into the financial system;[39] a justification stage, where a false paper trail is created to give the perception that the source of funds is legitimate; and an extraction / repatriation stage, where the laundered funds are returned to the offenders in the jurisdiction where they reside.[40]

While useful on a conceptual level, the traditional model has several shortcomings and provides little insight into the methods and techniques used to launder illicit funds in British Columbia. First, the model assumes a single, linear method of laundering illicit funds, when money laundering schemes vary widely in their level of sophistication and may not include all three phases. For example, when financial fraud results in the transfer of legitimate money into a bank account controlled by a criminal, the proceeds of crime are already in the financial system and do not need to be "placed." Likewise, when illicit funds are used to purchase assets directly (as often occurs in the luxury goods sector), the placement and layering stages can be skipped altogether.[41]

38 Exhibit 25, Understanding the Laundering of Organized Crime Money, p 4.

39 Exhibit 25, Understanding the Laundering of Organized Crime Money, p 4.

40 Exhibit 6, Money Laundering in British Columbia: A Review of the Literature, p 2.

41 Exhibit 25, Understanding the Laundering of Organized Crime Money, p 5.

Second, the model assumes that the ultimate goal is to integrate illicit funds into the legitimate economy. In reality, however, illicit funds do not always need to be laundered and integrated. While criminal activity may be primarily about generating money, it is not necessarily the case that all criminals are committed to a lifestyle of legitimacy and respectability. Indeed, some experts argue that the legitimate origins of cash do not matter in the criminal underworld, in which illicit transactions abound, and that the "chaotic lifestyle of leisure consumption" enjoyed by many criminals does not require that illicit funds be fully integrated into the legitimate economy.[42]

Third, the model assumes that money laundering is always a well-thought-out plan when much of it may be "adventitious and influenced by chance meetings, success or failure in interpersonal connections and … criminals' own reflections on possible methods."[43]

In order to gain a comprehensive understanding of the nature and extent of money laundering in British Columbia, it is essential to move beyond the traditional model and examine the diversity of sources, transfer mechanisms, and destinations for illicit funds. While much of that analysis is sector specific, a number of money laundering techniques are not unique to one particular sector. These techniques include trade-based money laundering and the use of informal value-transfer systems to launder illicit funds.

I heard evidence with respect to some of these issues during the overview hearings and expect to hear additional evidence on these matters over the coming months. I also expect to hear evidence with respect to the use of professional money launderers (defined by the Financial Action Task Force as those who provide specialized money laundering services in exchange for a commission, fee, or other type of profit).

Government Response to Money Laundering

Another issue I have been called on to address is the response to money laundering at senior levels of government. In general terms, the issues that will be addressed in this portion of the hearings include whether senior government officials were aware of the problem, when they became so aware, and what steps (if any) they took in response. I expect the Commission will also explore issues relating to the government's plan to address the problem.

Sector-Specific Issues

Section 4.1 of the Terms of Reference requires the Commission to conduct hearings and make findings of fact with respect to the extent, growth, evolution, and methods of money laundering in various sectors of the economy. These sectors include gaming and horse racing; real estate; financial institutions; the corporate sector; professional services, including the legal and accounting sectors; and the luxury goods sector. I expect these matters will take up a significant portion of the evidentiary hearings. I address each of them below.

Gaming and Horse Racing

Alleged money laundering in the gaming industry has attracted significant attention; it was the primary focus of *Dirty Money 1* and was undoubtedly one of the factors leading to the establishment of the Commission. It is also unique because of the large number of participants with standing in this sector, the sheer volume of records created (and produced) by gaming sector participants, and the number of witnesses expected to testify at the evidentiary hearings.

While a comprehensive review of the evidence to be led at the evidentiary hearings is beyond the

42 Exhibit 25, Understanding the Laundering of Organized Crime Money, p 5.

43 Exhibit 23, Money Laundering Typologies: A Review of Their Fitness for Purpose, p 32.

scope of this Report, I expect to hear evidence with respect to the following issues:

- whether money laundering occurred in BC casinos and, if so, whether it was dispersed throughout the province or primarily restricted to the Lower Mainland;
- whether media reports concerning the nature and scope of money laundering in BC casinos are accurate;
- whether activities relating to money laundering were identifiable by casinos, the British Columbia Lottery Corporation (BC Lottery Corporation), and/or the Gaming Policy and Enforcement Branch;
- whether concerns associated with money laundering were reported to superiors, the BC Lottery Corporation, the Gaming Policy and Enforcement Branch, FINTRAC, and/or law enforcement agencies;
- whether there was adequate or effective use of reporting and/or investigation of money laundering activity by FINTRAC, law enforcement, the BC Lottery Corporation, the Gaming Policy and Enforcement Branch, and/or gaming service providers;
- whether there were adequate or effective preventive policies and actions in place, including know-your-customer policies, source-of-funds policies, and policies relating to chip tracking, cash limits, and cash alternatives;
- whether such policies and actions were implemented by the BC Lottery Corporation, the Gaming Policy and Enforcement Branch, and/or gaming service providers;
- whether adequate and/or effective measures were taken in respect of players suspected of being involved in money laundering activities;
- whether regulatory and/or policy changes made by the BC Lottery Corporation, the Gaming Policy and Enforcement Branch, and/or gaming service providers – including table bet increases, introduction of new table games, introduction of VIP rooms, and enhanced know-your-customer requirements – had a positive or a negative impact on the money laundering risk in BC casinos;
- whether there was a dysfunctional relationship between the Gaming Policy and Enforcement Branch and the BC Lottery Corporation and, if so, whether it contributed to the proliferation of money laundering in BC casinos; and
- whether any money laundering vulnerabilities continue to exist in BC casinos and, if so, what additional steps can and should be taken to address those vulnerabilities.

I also expect to hear evidence and submissions with respect to the recommendations contained in *Dirty Money 1*.

Real Estate

Money laundering in the real estate sector is a matter of significant public concern and was addressed in *Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*; and in the Maloney Report, *Combatting Money Laundering in BC Real Estate*.

Immediately before the establishment of this Commission, the province made a number of significant changes to the legal and regulatory framework in this area, including the 2016 decision to end self-governance rights for real estate agents; the enactment of the *Speculation and Vacancy Tax Act*, SBC 2018, c 46; and the creation of a beneficial ownership registry.

While it is expected that these changes will make it more difficult to launder money through the real estate sector, their precise impact has not been

assessed. Moreover, a number of significant issues remain to be addressed. These issues include:

- *FINTRAC Reporting by Real Estate Agents.* One of the recurring themes in the Commission's discussions with real estate agents is FINTRAC's inability to communicate effectively with the profession. The Commission has heard repeated complaints about the lack of feedback on substantive reporting, including the perception that FINTRAC compliance examiners are preoccupied with minor clerical errors in the recording of information instead of providing information on how to identify suspicious transactions. These comments echo those made by the British Columbia Real Estate Association in response to *Dirty Money 2* and are of significant concern to the Commission, given the important role played by real estate agents in the identification of suspicious transactions. The Commission is also exploring issues surrounding FINTRAC's understanding of money laundering typologies in the BC real estate market and the extent to which that understanding is communicated to real estate agents so they can better identify and report suspicious transactions.
- *FINTRAC Reporting by Mortgage Brokers.* Another important issue in the real estate sector is whether mortgage brokers should be required to submit suspicious transaction reports to FINTRAC or a provincial body set up for that purpose. Both the Maloney Report and *Dirty Money 2* highlight the fact that mortgage brokers have no reporting obligations under the current regime, and I expect to hear extensive evidence with respect to their important role in real estate transactions as well as the opportunities they have to observe suspicious conduct.
- *Regulatory Oversight.* Actors in the real estate industry are overseen by a number of regulators, including the Real Estate Council of British Columbia, the Office of the Superintendent of Real Estate, and the British Columbia Financial Services Authority. Moreover, there are plans to merge the Real Estate Council of British Columbia and the Superintendent of Real Estate into a single regulator that will (like the Office of the Superintendent of Mortgage Brokers) become part of the British Columbia Financial Services Authority (itself a relatively new entity, having been created on November 1, 2019, to replace the Financial Institutions Commission). One of the issues to be addressed at the evidentiary hearings is the extent to which these regulators have the mandate and resources to address money laundering, and whether any additional measures (such as access to relevant databases and the removal of constraints on information sharing) can be taken to improve their ability to confront that issue.
- *Beneficial Ownership.* The Maloney Report describes the creation of a beneficial ownership registry as "the single most effective measure that a government can take to combat money laundering."[44] I expect to hear evidence with respect to the nature and efficacy of the Land Owner Transparency Registry, which I understand to be the first of its kind in Canada.
- *Private Lending.* Private lending has been identified as a major money laundering vulnerability. I expect to hear evidence with respect to money laundering opportunities in the regulated private lending industry (e.g., mortgage investment companies and others that invest in mortgages on a commercial scale) as well as the unregulated private

44 Maloney Report, p 75.

lending space (e.g., individuals and entities lending on an ad hoc basis, using mortgages to enforce other debts, etc.).

- *Commercial Real Estate.* While the Terms of Reference Reports focused mostly on money laundering activity in the residential real estate sector, there are also a number of money laundering vulnerabilities in the commercial real estate sector. I expect to hear evidence with respect to those vulnerabilities over the coming months.
- *Housing Affordability.* Housing affordability is an issue of great importance to residents of British Columbia, and the impact of money laundering on real estate prices was a recurring theme during the Commission's public meetings. While the Maloney Report estimated that money laundering may have had a 5 percent inflationary effect on the price of real estate, there are a number of significant concerns with that estimate. As set out above, the Commission is taking steps to examine the causes of price increases in the housing market as well as the extent to which those price increases can be causally connected to money laundering.

Financial Institutions

Financial institutions – such as banks, credit unions, and money services businesses – are highly vulnerable to money laundering activity and can be viewed as the "common thread running through the myriad of [money laundering] schemes used by criminal enterprises."[45] First, these institutions can be used to convert the cash proceeds of crime into less suspicious assets (such as cheques, bank drafts, and term deposits). Second, they can be used to access other money laundering vehicles such as real estate and motor vehicles. Third, the services provided by these institutions can be used in tandem with other money laundering techniques intended to conceal the criminal origins of illicit funds (as happens when a bank account is opened in the name of a shell corporation or nominee owner). Finally, these institutions (and the services they provide) can be used to create the perception that illicit funds were derived from legitimate sources.[46]

Money services businesses are particularly vulnerable to money laundering because of the simplicity and certainty of the services they provide, their worldwide reach, the cash character of their transactions, the less stringent customer identification rules that apply, and the brevity of their relationships with clients. Moreover, there is evidence that a number of unregistered money services businesses have been operating in the Lower Mainland.

Issues to be addressed in this portion of the hearings include the techniques used to launder money through financial institutions, the policies and procedures put in place by those institutions to combat money laundering activity, the extent to which intelligence is shared among financial institutions, and the use of money services businesses to launder or otherwise transfer illicit funds.

The Corporate Sector

While entities such as corporations and trusts play an important role in Canada's economy, they also have characteristics that can be exploited for money laundering purposes. For example, they can be structured to conceal the true (or beneficial) owner of the company and used to disguise and convert illicit funds. A recent report from the Department of Finance (Canada) gave corporations and trusts a "very high" vulnerability rating and assigned a "high" vulnerability rating to life insurance companies, registered charities, securities dealers, and trust and loan companies.

One of the key issues to be examined in this portion of the hearings is beneficial ownership transparency, which has been identified as a critical step

45 Exhibit 6, Money Laundering in British Columbia – A Review of the Literature, p 47.

46 Exhibit 6, Money Laundering in British Columbia – A Review of the Literature, p 47.

in the fight against money laundering. While the province has already taken steps to enhance beneficial ownership transparency by requiring corporations to maintain beneficial ownership information and by circulating a consultation paper on a beneficial ownership registry, a number of issues remain to be addressed. These issues include public access to the registry, verification of beneficial ownership information, and the extension of the registry to trusts and partnerships.

The Commission will also examine the issue of money laundering in the capital markets, which has been acknowledged as a problem in other countries because of the complexity of capital markets and the sophistication of money laundering schemes that seek to take advantage of them. While securities dealers are reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, an April 2013 report from the securities sector shows that these dealers filed only 20 large cash transaction reports and 1,235 suspicious transaction reports between 2007 and 2011, and that only 14 percent of those reports came from British Columbia. Moreover, it appears there are few provincial efforts to combat money laundering in the capital markets.

Professional Services

Lawyers, accountants, and notaries often play an important (though sometimes unwitting) role in money laundering schemes. Dr. German concluded that it is "difficult and often impossible, to launder large amounts of money without the assistance … of professional intermediaries."[47] A 2015 Department of Finance (Canada) report states that the legal and accounting sectors both have a large number of practitioners across Canada who have specialized knowledge and expertise that may be vulnerable to being exploited, wittingly or unwittingly, for illicit purposes. In the legal domain, that expertise encompasses the creation of corporations and trusts and the facilitation of real estate and securities-related transactions (often with the use of lawyer trust accounts). In the accounting domain, it encompasses financial and tax advice as well as company and trust formation. Key issues to be addressed in this portion of the hearings include

- money laundering typologies, including the role played by lawyers, accountants, and notaries as facilitators, gatekeepers, and intermediaries in respect of money laundering;
- the federal response (if any) to the 2015 *Federation of Law Societies* decision;[48]
- the response of provincial law societies, including the Law Society of British Columbia, to the *Federation of Law Societies* decision (and money laundering more generally);
- the use of lawyer trust accounts in connection with large financial transactions;
- the response of the Chartered Professional Accountants of British Columbia to money laundering;
- audits, training, and discipline; and
- co-operation and information sharing with other agencies and stakeholders.

Luxury Goods

Luxury goods may provide fertile ground for money laundering activity because of the attractiveness of these goods as commodities and the opportunities they provide to introduce illegal funds into the legitimate economy (often in the absence of any meaningful oversight). The Commission is currently exploring money laundering activity in the following markets: luxury vehicles, jewellery and precious metals, luxury yachts, and fine art.

Luxury Vehicles

Dirty Money 2 identifies the use of cash to purchase or make lease payments on luxury vehicles as an area of risk for money laundering. Cash purchases

47 *Dirty Money 2*, p 37.

48 *Canada (AG) v Federation of Law Societies of Canada*, 2015 SCC 7.

allow those involved in money laundering activity to convert illicit funds into a different type of asset (the vehicle) that can be used to store or transfer value. It also provides an additional layer of distance between the funds and their criminal origins, permits criminals to make use of the proceeds of their offences, and provides an innocent explanation for the origins of the funds when the vehicle is sold.

A related typology involves the use of cash to make deposits on luxury vehicles, with the suspects returning the next day, advising that they have changed their mind and requesting the return of the deposit. Because the dealerships have already deposited the cash in the bank, they issue a cheque to the suspects to repay the funds.

Dirty Money 2 identifies a number of other typologies in this sector, including the seizure of vehicles by casino loan sharks as repayment for loans made to casino patrons (allowing the loan shark to obtain legal funds when the vehicle is resold) and the export of luxury vehicles purchased with proceeds of crime to other jurisdictions where they can be resold at a profit.

Jewellery and Precious Metals

While Dr. German did not identify jewellery, precious metals, and stones as a vulnerable sector, the market for these commodities has been recognized both internationally and within Canada as being at high risk for money laundering activity. Dealers in precious metals and stones are identified in the Financial Action Task Force's Forty Recommendations as businesses to which customer due diligence and record-keeping requirements should apply, and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* gives effect to that recommendation.

The Financial Action Task Force has also produced two typology reports concerning money laundering in the market for gold and diamonds. These reports indicate that the high value of these goods, the retention of that value over time, the difficulty of tracing these metals, and the fact that they are easily exchanged for other assets make these sectors particularly vulnerable to money laundering.[49]

Luxury Yachts

Dr. German identifies luxury yachts as an area of significant risk for money laundering. The purchase of a luxury yacht allows those involved in criminal activity to park their money in an asset they can continue to use. It also allows them to recoup most of their cost when reselling. Dr. German was advised by one law firm that its lawyers handled $10 million every year in small-vessel sales using escrow accounts. These transactions are not subject to FINTRAC reporting.

Fine Art

Fine art is another area of money laundering risk, and a number of high-profile economists, prosecutors, and academics have called for greater regulation of the global art market. Major risk factors include traditions of confidentiality and discretion in the art world, and the fact that works of art can be highly valuable and easily transportable.

Issues to Be Addressed

I expect that the following issues will be addressed in this portion of the hearings: methods and techniques used by criminals to launder illicit funds through luxury goods markets; awareness of the issue in each of these industries; practices of dealerships and brokerages; and regulatory oversight, such as reporting obligations and restrictions on the use of cash to purchase luxury goods.

Other Jurisdictions

One of the more significant aspects of the Commission's work has been the study of anti–money laundering strategies in other jurisdictions, including the United Kingdom, Ireland, Australia, New Zealand, the United States, Germany, the Netherlands,

49 Exhibit 4, Overview Report: Financial Action Task Force, Appendices WW and XX.

and Switzerland. My hope is that the study of these jurisdictions will lay the foundation for recommendations about how to address money laundering in British Columbia. During the overview portion of the evidentiary hearings, I heard evidence with respect to a number of other jurisdictions – most notably, the United Kingdom. I strongly believe that the international comparative evidence will be invaluable in making recommendations with respect to the matters set out in my Terms of Reference.

Barriers to Effective Law Enforcement

The Terms of Reference direct me to make findings of fact and recommendations respecting "the barriers to effective law enforcement respecting money laundering in British Columbia." One of the key issues is whether the current configuration of law enforcement agencies with responsibilities for anti–money laundering in British Columbia is effective in fulfilling this role or whether it is a barrier to effectiveness.

Evolution of Canada's Anti–Money Laundering Regime

As set out above, the international community's fight against money laundering began in earnest in 1989, when the G7 established the Financial Action Task Force. At that time, the principal concern was drug trafficking and the vast cash profits generated by that trade.

In accordance with the Forty Recommendations,[50] participating countries, including Canada, established financial intelligence units with the objective of collecting information about deposits and providing that information to law enforcement. They also enacted legislation requiring financial institutions and other reporting entities to file reports with their national financial intelligence units.[51]

Customers were not prevented from completing such transactions but, in the case of Canada at least, the legislation requires that the financial intelligence unit (FINTRAC) analyze the reports submitted by reporting entities and alert law enforcement agencies when its analysis reveals possible money laundering.

Emerging Patterns

During the evidentiary phase of the Commission process, I will hear evidence and submissions on the wide range of issues set out in the Terms of Reference. On that evidentiary record, and not before, I will make findings of fact and recommendations to government.

In preparation for these hearings, the Commission is reviewing the relevant literature and interviewing many experts. We have held initial hearings under the rubric of "overview" topics, which have described international efforts to combat money laundering as well as approaches taken in some specific countries. Even at this early stage of our work, several patterns have emerged.

First, internationally, anti–money laundering regimes are almost invariably established at a country's national level, even in the case of federal states such as Canada. Second, some anti–money laundering regimes rely on a structure that includes the following characteristics:

- a legal and regulatory scheme;
- an intelligence capacity;
- an investigative / law enforcement capacity;
- prosecutorial expertise;
- an asset recovery capacity; and
- an integrated organizational structure.

Third, in some regimes, the various components work as an integrated team, with extensive information sharing and decision making, even though not all the components may be located together. Whether that model (which has not been

50 See http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html.

51 Examples include suspicious transaction reports and large cash transaction reports.

adopted in Canada) is effective and should be emulated requires further evidence and submissions, to enable a proper assessment.

Essential Elements of Canada's Anti–Money Laundering Regime

Legal and Regulatory Scheme

Countries participating in the Financial Action Task Force's anti–money laundering regime are expected to create criminal offences for specified financial activities, criminalize the possession and laundering of the proceeds of crime, provide for the forfeiture of the proceeds of crime, and develop legal powers to assist in the investigation of money laundering activities. This regime contemplates that the regulatory system will be established at the federal / national level through the establishment of a financial intelligence unit such as FINTRAC. That regime places the onus on the private sector, such as financial institutions and other "reporting entities," to report various types of financial transactions to the financial intelligence unit. These units, in turn, have developed complex systems to enforce compliance with their rules and procedures.

In accordance with the Financial Action Task Force's Forty Recommendations, Canada made significant amendments to federal legislation such as the *Criminal Code* and the *Controlled Drugs and Substances Act*,[52] enacted the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and passed regulations to implement the FINTRAC regulatory scheme.

Based on my initial understanding, it appears that Canada's approach to date has been to seek to implement the Financial Action Task Force regime at the national level rather than through collaborating with the provinces and territories in a constitutionally compliant way.

Intelligence Capacity

Under the Financial Action Task Force regime, it was up to each participating country to decide where to locate its financial intelligence unit in its bureaucratic system and to specify the extent to which it would, if at all, be part of the investigatory element of the country's anti–money laundering regime. Different countries have taken different approaches to this question of where to situate, and how to structure, their financial intelligence unit.

Canada chose to locate its financial intelligence unit, FINTRAC, within the federal Department of Finance. By section 40(a) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the object of the legislation is to "establish an agency that … acts at arm's length and is independent from law enforcement agencies and other entities to which it is authorized to disclose information."

Today, FINTRAC is the centrepiece of Canada's anti–money laundering regime. It is headquartered in Ottawa, with three regional offices, and has an annual budget of more than $50 million.[53] In the 2018–19 fiscal year, it received more than 28 million financial transaction reports:[54]

large cash transaction reports	10,055,099
electronic fund transfer reports	17,627,947
suspicious transaction reports	235,661
cross-border currency / seizure reports	61,583
casino disbursement reports	201,145
Total reports	28,181,435

During that same period, FINTRAC made about 1,900 unique disclosures of financial intelligence respecting money laundering to police and law en-

52 SC 1996, c 19.

53 See FINTRAC's Annual Report, 2018–19, p 33, available at https://www.FINTRAC-canafe.gc.ca/publications/ar/2019/ar2019-eng.pdf.

54 See FINTRAC's Annual Report, 2018–19, Annex C, p 37, available at https://www.FINTRAC-canafe.gc.ca/publications/ar/2019/1-eng#s11.

forcement across the country, of which 332 were sent to British Columbia.[55] FINTRAC's website asserts that it also generates valuable strategic intelligence, including specialized research reports and trends analysis. It is important that Canada share information about these reports with the Commission.

The Commission obtained the statistical information cited above from FINTRAC's most recently published annual report and other information on its website. Although FINTRAC has supplied the Commission with aggregate data about reporting from BC reporting entities, many of the Commission's requests to Canada for more detailed empirical information from FINTRAC remain outstanding. FINTRAC is Canada's richest depository of financial intelligence respecting money laundering, a point that Canada emphasized in its opening statement to the Commission: "FINTRAC receives the information that it needs to generate actionable financial intelligence for Canada's police, law enforcement and national security agencies."[56] It also conducts strategic analysis, producing a wide range of products that reveal existing and developing forms of illegal money movements.

The Commission expects Canada to provide information from FINTRAC that would improve its understanding of the nature and extent of money laundering in the province so the Commission can assess the effectiveness of the current anti–money laundering regime as far as British Columbia is concerned. In particular, the Commission needs Canada to work collaboratively with Commission counsel to ensure timely production of detailed information about matters such as the following:

- the nature and extent of reporting to FINTRAC from reporting entities based in British Columbia; and
- disclosures sent to British Columbia, including, for example, information about the proportion that was prompted by Voluntary Information Records,[57] the timeliness of FINTRAC disclosures, and whether the disclosures led to prosecutions and/or asset forfeiture.

Internationally, FINTRAC has entered into more than one hundred bilateral agreements with foreign financial intelligence units, leading to a two-way exchange of financial intelligence. It is a member of Canada's delegation to the Financial Action Task Force and participates in FATF-style regional bodies such as the Asia / Pacific Group and the Caribbean Financial Action Task Force. It works closely with its counterpart organizations within the Five Eyes community (consisting of Australia, Canada, New Zealand, the United Kingdom, and the United States) and is also a member of the Egmont Group, made up of 158 international financial intelligence units.

Investigative / Law Enforcement Capacity

The Financial Action Task Force's Forty Recommendations include provisions respecting law enforcement, including section 30, which states, in part:

> Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/CFT [anti–money laundering / combatting the financing of terrorism] policies. At least in all cases related to major proceeds-generating offences, these designated law enforcement authorities should develop a pro-active parallel financial investigation when pursuing money laundering, associated predicate offences and terrorist financing.

In 1996, the federal government established a national anti–money laundering investigative entity

55 See FINTRAC's Annual Report, 2018–19, p 2, available at https://www.FINTRAC-canafe.gc.ca/publications/ar/2019/ar2019-eng.pdf.

56 Opening statement of the Government of Canada, para 46.

57 Voluntary Information Records are reports submitted to FINTRAC by members of the public where they have suspicions about money laundering or financing of terrorist activities.

consisting of 13 Integrated Proceeds of Crime units across the country, but that program was terminated in 2012. According to the evidence of a provincial deputy minister,[58] the Joint Illegal Gaming Investigation Team is the only law enforcement entity in British Columbia with a specific anti–money laundering mandate. It is a provincial entity. Canada, in its opening statement, stated that in the federal sphere, the Financial Integrity Program within the RCMP's Federal and Serious Organized Crime unit houses two specialized money laundering teams. These teams are tasked with the intelligence-led detection, disruption, and enforcement of organized crime groups involved in money laundering operations in British Columbia, nationally and internationally. Evidence is needed to clarify whether and to what extent these federal and provincial entities are dedicated to and fully operational in pursuing an anti–money laundering mandate.[59]

I will need to hear detailed evidence respecting matters such as the number of sworn officers and civilian employees assigned to the two Federal and Serious Organized Crime teams, the number actually engaged in their anti–money laundering investigations, and the number of anti–money laundering investigations currently underway.

I also look forward to hearing evidence from Canada respecting anti–money laundering initiatives, including new funding of about $16 million annually, which were announced in the federal government's 2019 budget:[60]

- to establish an Anti–Money Laundering Action, Coordination and Enforcement Team, a five-year pilot project that will strengthen federal inter-agency coordination and identify and address significant money laundering and financial crime threats;
- to create a four-year Trade-Based Money Laundering Centre of Expertise to strengthen the ability of the Canada Border Services Agency and FINTRAC to target these growing threats; and
- to strengthen FINTRAC's capacity to tackle modern financial practices such as virtual currencies, foreign money services businesses, and prepaid products; to expand public / private partnerships; and to assist British Columbia's outreach and examinations of money laundering in casinos and real estate.

Prosecutorial Expertise

In some anti–money laundering models, prosecutors have been embedded within a country's anti–money laundering investigative entity to provide legal advice, make court applications, and prepare for trial. In Canada, federal and provincial prosecutors were previously embedded within the RCMP's Integrated Proceeds of Crime units, which have now been disbanded.

Asset Recovery Capacity

According to the Financial Action Task Force's Forty Recommendations:

> Countries should ensure that competent authorities have responsibility for expeditiously identifying, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Countries should also make use, when necessary, of permanent or temporary multi-disciplinary groups specialised in financial or asset investigations.

Canada has a bifurcated asset recovery regime. Criminal forfeiture is provided for in federal legislation such as the *Criminal Code* and the *Controlled Drugs and Substances Act*. It typically requires a crim-

58 Testimony of Mark Sieben, Transcript, June 11, 2020, p 79.

59 Opening statement of the Government of Canada, para 76.

60 See https://www.budget.gc.ca/2019/docs/plan/chap-04-en.html.

inal conviction as a precondition to applying to the court for forfeiture as part of the sentencing process.

Most provincial governments, including British Columbia,[61] have enacted legislation establishing civil forfeiture schemes. They involve *in rem* proceedings[62] against the proceeds or instruments of unlawful activity rather than legal action against an individual.

Federal / Provincial Integration

There are, to my understanding, mechanisms that permit municipal and provincial police departments and other law enforcement agencies to provide information to FINTRAC. In response, and as a result of its own analysis, FINTRAC makes actionable financial intelligence disclosures. Other federal departments and agencies, including the Canada Revenue Agency and the Canada Border Services Agency, investigate and take enforcement action within their own specific mandates, such as for violation of Canada's laws regarding income tax, customs, and cross-border transport of cash.

One aspect of Canada's anti–money laundering regime that is likely to attract attention in the evidentiary hearings is whether, and, if so, to what extent, the flow of intelligence and information from FINTRAC to British Columbia's law enforcement agencies is deficient and represents a barrier to effective law enforcement in the province with respect to money laundering. Another topic of interest will be whether limitations on the development of information-sharing partnerships (including operational intelligence) among financial institutions, other reporting entities, and BC-based law enforcement agencies similarly create barriers to effective investigations. To the extent that either of these issues represents a barrier to effective law enforcement, I will have to consider how British Columbia can most effectively overcome these barriers. One option under consideration is the creation of a dedicated provincial anti-money laundering unit.

The Situation in British Columbia

Given that this Commission is established by the provincial government, I am most interested in learning about the incidence of money laundering in British Columbia as well as what measures might be taken to combat that money laundering. At the same time, I am mindful that Canada, in its opening statement, provided an informative overview of the various federal agencies that investigate, prosecute, and take asset recovery action against those who possess and/or launder the proceeds of crime. Canada acknowledged that "Canada's AML/ATF [anti–money laundering / anti-terrorist financing] Regime as a whole is a federal responsibility, stemming from the criminal law power."[63] Canada also made the point that there are many areas of shared jurisdiction with the provinces and territories, including company incorporation, land registration, regulation of some financial services businesses, and provincial and municipal law enforcement agencies which are able to conduct criminal investigations, including investigations based on disclosures from FINTRAC.

To date, Canada's approach appears to have been to fulfill the expectations of the international Financial Action Task Force model, generally by adopting a national (as opposed to province-by-province) approach to money laundering, and questions have been raised about the adequacy of the law enforcement response.

I have already had the benefit of an insightful body of evidence from the province, in particular, a panel of witnesses led during the overview hearings in June 2020.[64] It appears that the province has been working to develop anti–money laundering

61 *Civil Forfeiture Act*, SBC 2005, c 29.

62 Meaning a legal action taken "against" or in relation to an item of property rather than a person.

63 Opening statement of the Government of Canada, para 199.

64 Evidence of Mark Sieben (deputy solicitor general, BC Ministry of Public Safety and Solicitor General), Dr. Christina Dawkins (executive lead, Finance Real Estate Data Analytics, BC Ministry of Finance), and Megan Harris (executive director and lead, Anti–Money Laundering Secretariat, BC Ministry of Attorney General), June 11–12, 2020.

strategies, and I am confident it will continue to support the Commission with useful evidence on these issues.

In order for me to most effectively address the complex problem of money laundering in this province, I will need the engagement and co-operation of both the provincial and the federal governments. Both are participants in this Inquiry. Both have valuable expertise and experience. I expect to receive, from British Columbia and Canada, a full body of evidence about past efforts and future plans for tackling money laundering in the province.

Canada recognizes that our country's anti–money laundering regime as a whole is a federal responsibility. In assessing what steps British Columbia must take to effectively combat money laundering in the province, I must understand:

- whether the RCMP plans to establish in British Columbia a federal anti–money laundering entity or to work with British Columbia in developing a joint federal-provincial anti–money laundering investigative entity, above and beyond the teams located in the RCMP's Federal and Serious Organized Crime Financial Integrity Program; and, if so,
  - whether that entity's mandate will include the identification and investigation of money laundering arising in British Columbia; and
  - an indication of the level of funding that the RCMP is prepared to commit to such an entity, including proposed staffing levels for sworn police officers and for civilian employees with expertise in forensic accounting and the tracing of funds nationally and internationally; and
- whether Canada is contemplating changes to its legal and regulatory anti–money laundering regime
  - to allow authorized members of such an investigative entity to have direct access to FINTRAC's records obtained from reporting entities;
  - to authorize other federal partners in Canada's anti–money laundering regime, including FINTRAC, the Canada Revenue Agency, the Canada Border Services Agency, and the Public Prosecution Service of Canada to work within an integrated organizational structure with the investigative entity; and
  - to foster information-sharing partnerships with financial institutions and other reporting entities.

Unless and until the Commission receives answers to the questions posed above, its ability to understand and fully engage with the issues raised by its Terms of Reference may be compromised, and its ability to make well-informed recommendations to address those issues may be correspondingly affected.

I assure readers that the Commission's research is continuing and that no final decisions will be made about any of the issues in the Terms of Reference until all of the evidence and submissions have been received and thoughtfully considered.

Asset Forfeiture

Dr. German described asset forfeiture as a "valuable tool in the arsenal of the government when dealing with suspicious cash."[65] Not only does it reduce the quantity of illicit funds in need of laundering but it disrupts the activities of organized crime and provides a significant disincentive (or deterrent) for laundering illicit funds in British Columbia. The Commission's work in this area has primarily involved interviews with leading asset forfeiture experts from various jurisdictions, including Ontario, Manitoba, the United States, the United Kingdom, Australia, Ireland, and South Africa. Key issues to be addressed include

- unexplained wealth orders, including the advisability and viability of such

65 *Dirty Money 2*, p 292.

orders in the Canadian context and the policy considerations surrounding their implementation;
- whether the BC Civil Forfeiture Office should be given enhanced investigative powers, including the autonomy and capacity to identify its own targets;
- whether the BC Civil Forfeiture Office would be more effective if staffed with investigators, analysts, and other professionals (and, if so, what special status, if any, should they be given);
- whether there are ways to enhance information sharing and other forms of co-operation between the BC Civil Forfeiture Office and other relevant agencies;
- whether the self-funding model currently being used in British Columbia is the most efficacious way of combatting money laundering; and
- the impact of any changes to the BC civil forfeiture model on the liberty and privacy interests of BC residents.

Other Money Laundering Vulnerabilities

Finally, the Commission will be exploring money laundering vulnerabilities in emerging areas such as virtual assets.

Virtual assets were the subject of a Financial Action Task Force Report published in June 2019 which prompted changes to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to introduce new obligations for businesses that deal in virtual currencies.

Issues to be addressed in this area include:
- the nature and extent of money laundering in this sector;
- typologies of money laundering in this sector;
- the impact of recent amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* concerning virtual assets;
- the ability of law enforcement to deal with money laundering in this sector;
- the role of public-private partnerships in gathering and sharing intelligence about financial crimes through virtual assets; and
- the money laundering risks that arise from the inability of virtual asset service providers to access traditional banking services.

I anticipate hearing evidence about each of these issues during the evidentiary hearings.

Conclusion

While the Commission has much to accomplish during its evidentiary hearings, I am confident that the evidence led by Commission counsel and developed by participants through the hearing process will allow the Commission to fulfill its mandate in a timely and effective way.

Money laundering is an issue of great importance to the citizens of British Columbia. It is a crime that strikes at the heart of our collective values and corrupts the fabric of a free and democratic society. The Commission will do its utmost to uncover the nature and scope of the problem and ensure that those involved in the fight against money laundering have the information and tools they need to address it.

I am very grateful to participants and counsel for their continued engagement with the Commission and look forward to giving the citizens of British Columbia the answers they deserve.

Appendices

Appendix A

Order in Council – Terms of Reference

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 238 *, Approved and Ordered* May 15, 2019

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the attached order is made, as it is considered in the public interest, to establish the Commission of Inquiry into Money Laundering in British Columbia.

Attorney General

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Public Inquiry Act*, S.B.C. 2007, c. 9, ss.2 and 5

Other:

O20321227

page 1 of 3

COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA ORDER

Definitions

1 In this order:

"Act" means the *Public Inquiry Act*;

"commission" means the commission established under section 2 of this order;

"money laundering" means the process used to disguise the source of money or assets derived from illegal activity.

Establishment of commission

2 (1) A study and hearing commission called the Commission of Inquiry into Money Laundering in British Columbia is established under section 2 of the Act.

(2) The Honourable Justice Austin F. Cullen is the sole commissioner of the commission.

Purposes of commission

3 The purposes of the commission are as follows:

(a) to inquire into and report on money laundering in British Columbia;

(b) to make recommendations referred to in section 4 (2) (a).

Terms of reference

4 (1) The terms of reference of the commission are to conduct hearings and make findings of fact respecting money laundering in British Columbia, including the following:

(a) the extent, growth, evolution and methods of money laundering in the following sectors:

(i) gaming and horse racing;

(ii) real estate;

(iii) financial institution and money service, including unregulated entities and persons who provide banking-like services;

(iv) corporate, in relation to the use of shell companies, trusts, securities and financial instruments for the purposes of money laundering;

(v) luxury goods;

(vi) professional service, including legal and accounting;

(b) the acts or omissions of regulatory authorities or individuals with powers, duties or functions in respect of the sectors referred to in paragraph (a), or any other relevant sector, to determine whether those acts or omissions have contributed to money laundering in British Columbia and whether those acts or omissions have amounted to corruption;

(c) the scope and effectiveness of the powers, duties and functions exercised or carried out by the regulatory authorities or individuals referred to in paragraph (b);

(d) the barriers to effective law enforcement respecting money laundering in British Columbia.

(2) Further terms of reference of the commission are as follows:

(a) to make recommendations the commission considers necessary and advisable, including recommendations respecting the following:

(i) the regulation of the sectors referred to in subsection (1) (a) or any other relevant sector;

(ii) the acts or omissions referred to in subsection (1) (b);

(iii) the powers, duties and functions referred to in subsection (1) (c);

(iv) the barriers referred to in subsection (1) (d);

(b) to review and take into consideration the following reports:

(i) *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia*, Peter M. German, Q.C., March 31, 2018;

(ii) *Vancouver at Risk—Turning the Tide—An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, Peter M. German, Q.C., March 31, 2019;

(iii) *Real Estate Regulatory Structure Review* (2018), Dan Perrin;

(iv) *Combatting Money Laundering in BC Real Estate*, Maureen Maloney, Tsur Somerville and Brigitte Unger, March 31, 2019;

(c) to submit to the Attorney General and the Minister of Finance

(i) an interim report on or before the date that is 18 months after the date this order is made, and

(ii) a final report on or before the date that is 2 years after the date this order is made.

(3) If the commissioner has reasonable grounds to believe that any information obtained during the inquiry may be useful in the investigation or prosecution of an offence under the *Criminal Code*, the commissioner must forward that information to the appropriate authorities.

(4) The commission is to carry out the inquiry in such a way as to ensure the inquiry does not jeopardize any ongoing criminal investigation or proceeding.

(5) The commission may not inquire into any matter respecting the exercise of prosecutorial discretion.

Expenses

5 Subject to the directives of Treasury Board, the commissioner is entitled to be reimbursed for reasonable travelling and living expenses at the rates specified for Group III employees set out in the government's Core Policy and Procedures Manual.

Appendix B
Media Reports

Date	Title	Author	Outlet
January 4, 2011	*'Dirty money' suspected in B.C. casino deals*	Chris Brown, Lisa Johnson, Curt Petrovich and Eric Rankin	CBC News
August 10, 2015	*Money laundering accusations are a raw deal, casinos say*	Glen Korstrom	Business in Vancouver
April 1, 2016	*Real estate scams need high-tech attention, say Vancouver and Canadian experts*	Sam Cooper	The Vancouver Sun
September 16, 2016	*Vancouver real estate used for money laundering, international agency says*	Sam Cooper	The Vancouver Sun
September 29, 2016	*Richmond MP and lawyer named in fraud lawsuits filed by Chinese immigrant investors*	Sam Cooper	The Vancouver Sun
October 7, 2016	*Closing loopholes in anti-money laundering laws could hurt clients' rights, says lawyer*	Anna Dimoff	CBC News
December 9, 2016	*MP's law firm sued in case involving allegations of Chinese underground banks and missing millions*	Sam Cooper and Chuck Chiang	The Vancouver Sun
February 27, 2017	*Battle over lawyers' money laundering loophole shapes up in B.C.*	Sam Cooper	The Vancouver Sun

March 23, 2017	*Federal budget measures aim to toughen money laundering rules*	James Bradshaw	The Globe and Mail
May 25, 2017	*Fraser Valley board warns offshore clients seeking to misuse realtor bank accounts*	Sam Cooper	The Vancouver Sun
September 17, 2017	*RCMP shelved hundreds of organized-crime cases after terror attacks*	Colin Freeze	The Globe and Mail
September 26, 2017	*Former finance minister warned BCLC about large casino cash transactions*	Sam Cooper	The Vancouver Sun
September 29, 2017	*Exclusive: How B.C. casinos are used to launder millions in drug cash*	Sam Cooper	The Vancouver Sun
October 4, 2017	*RCMP casino money laundering probe uncovered alleged 'terrorist financing' links*	Sam Cooper	The Vancouver Sun
October 7, 2017	*Organized crime a 'viable threat to public safety' in B.C. casinos: 2017 gov't report*	Sam Cooper	The Vancouver Sun
October 11, 2017	*Highest proportion of high-rollers at River Rock Casino are real estate professionals: internal audit*	Sam Cooper	The Vancouver Sun
October 16, 2017	*B.C. casinos knowingly accepted 'banned' cash: Confidential report*	Sam Cooper	The Vancouver Sun
October 19, 2017	*Charges laid in probe of alleged B.C. drug-cash money-laundering*	Sam Cooper	The Vancouver Sun
October 21, 2017	*River Rock-BCLC meetings in 2014 show depth of concern over big-cash gamblers*	Sam Cooper	The Vancouver Sun
October 23, 2017	*Casino boss 'proud of our track record' in face of money laundering review*	None Provided	CBC News
October 24, 2017	*Illegal gaming unit killed in 2009 due to BCLC 'funding pressure'*	Sam Cooper	The Vancouver Sun
October 30, 2017	*Ontario PCs urge halt to Toronto casino deal during B.C. money-laundering probe*	Allison Jones	The Globe and Mail

November 23, 2017	*Victoria gives BCLC more teeth to regulate B.C. casinos*	Sam Cooper	The Vancouver Sun
November 23, 2017	*B.C. Lottery Corp given more oversight to monitor casinos amid review*	Dirk Meissner	CBC News
November 29, 2017	*B.C. attorney general orders ICBC to investigate claims linked to casino money-laundering probe*	Sam Cooper	The Vancouver Sun
December 5, 2017	*Richmond lawyer says trust-fund cash was stolen, laundered through a B.C. casino and sent to China*	Sam Cooper	The Vancouver Sun
December 6, 2017	*Money-laundering at B.C. casinos: Review calls for increased reporting of big cash deposits*	Sam Cooper	The Vancouver Sun
December 13, 2017	*Ontario probes alleged money laundering in B.C. casino*	Karen Howlett	The Globe and Mail
December 14, 2017	*Gang police and 'transaction assessment team' now operating in B.C. casinos, documents show*	Sam Cooper	The Vancouver Sun
December 20, 2017	*Documents point to $5,000-chip problems at River Rock Casino*	Sam Cooper	The Vancouver Sun
December 21, 2017	*B.C.'s top slot machine players rake in millions in jackpots, review shows*	Sam Cooper	The Vancouver Sun
January 8, 2018	*China's hunt for corrupt officials could affect BCLC 'whale' gambler revenue*	Sam Cooper	The Vancouver Sun
January 10, 2018	*B.C. rolls out new casino rules aimed at tackling money laundering*	Justine Hunter	The Globe and Mail
January 12, 2018	*Chinese developer took $2.68-million cash loan in Richmond coffee shop, legal filings allege*	Sam Cooper	The Vancouver Sun
January 25, 2018	*River Rock VIP host deregistered after B.C. government probe*	Sam Cooper	The Vancouver Sun
February 2, 2018	*Huge B.C. money-laundering investigation pivots to drugs and guns*	Sam Cooper	The Vancouver Sun

February 15, 2018	*River Rock Casino's top VIP hostess no longer at the casino following de-registration*	Sam Cooper	The Vancouver Sun
February 16, 2018	*B.C. vows crackdown after Globe investigation reveals money-laundering scheme*	Kathy Tomlinson and Xiao Xu	The Globe and Mail
February 24, 2018	*Police probed calls made from Burnaby casino to E-Pirate suspect Paul King Jin*	Sam Cooper	The Vancouver Sun
March 13, 2018	*Massive BCLC casino cheque payouts were mostly returned funds*	Sam Cooper	The Vancouver Sun
March 16, 2018	*Confidential report: Anti-money-laundering measures will significantly reduce BCLC casino revenue*	Sam Cooper	Vancouver Sun
April 19, 2018	*How Chinese gangs are laundering drug money through Vancouver real estate*	Sam Cooper	Global News
May 30, 2018	*EXCLUSIVE: VIP linked to top Chinese officials, real estate, corruption allegations, gambled with $490k at B.C. casino*	Sam Cooper	Global News
June 6, 2018	*'High roller' suspected of laundering $855M arrested in B.C., ordered deported*	None Provided	CBC News
June 27, 2018	*B.C. casinos 'unwittingly served as laundromats' for proceeds of crime: report*	Rhianna Schmunk	CBC News
June 28, 2018	*RCMP casinos report raises questions about previous B.C. Liberal government response on money-laundering*	Mike Hager	The Globe and Mail
June 28, 2018	*How institutional infighting allowed money laundering to flourish at B.C. casinos*	Jason Proctor	CBC News
June 30, 2018	*'They didn't want to listen': Fired gambling inspector feels vindicated by report*	Jason Proctor	CBC News

July 1, 2018	*'Sometimes your outcomes aren't perfect,' says former minister on B.C. money laundering report*	Rhianna Schmunk	CBC News
July 10, 2018	*Warnings ignored: Investigator fired after raising concerns about casino money laundering*	Jon Woodward	CTV News
July 24, 2018	*Alleged partnership of Canadian casino company with gambling tycoon could trigger new investigation*	Sam Cooper	Global News
July 25, 2018	*British Columbia toughens requirements for property purchased by corporations, trusts*	Mike Hager	The Globe and Mail
August 17, 2018	*B.C.'s gaming regulator investigating 'deeply concerning allegations' of sex assault, harassment at River Rock Casino*	Sam Cooper	Global News
August 20, 2018	*Exclusive: Peter German denies conflict in B.C. casino probe despite sitting on board with casino executive*	Sam Cooper	Global News
August 29, 2018	*Exclusive: River Rock Casino warned employees may have shred large cash transaction records*	Sam Cooper	Global News
September 6, 2018	*Hidden ownership loopholes make Canada a 'pawn in global game of money laundering' report says*	Sam Cooper	Global News
October 1, 2018	*Former River Rock Casino dealers caught in raid on suspected illegal gaming house*	Jason Proctor	CBC News
September 28, 2018	*Exclusive: Documents allege complicity in money laundering in major investigation of River Rock Casino*	Sam Cooper	Global News
October 5, 2018	*Exclusive: B.C. casino review contractor previously consulted for River Rock Casino*	Sam Cooper	Global News
October 24, 2018	*Bonuses paid to B.C. Lottery Corp. investigators raise concerns*	Paisley Woodward	CBC News

November 26, 2018	*An introduction to Fentanyl: Making a Killing*	Stewart Bell, Sam Cooper, and Andrew Russell	Global News
December 2, 2018	*Failed B.C. money-laundering case shows 'snow-washing' is thriving in Canada*	Barrie McKenna	The Globe and Mail
December 3, 2018	*If helping China hunt fugitives is the price of stemming deadly fentanyl flow, should Canada pay?*	Sam Cooper and Amanda Connolly	Global News
January 3, 2019	*$20 bills in duffel bags 'obvious' money laundering, warnings ignored: letter*	Jon Woodward	CTV News
January 9, 2019	*EXCLUSIVE: Crown mistakenly exposed police informant, killing massive B.C. money laundering probe*	Sam Cooper	Global News
January 11, 2019	*B.C. gaming investigators repeatedly warned bosses of 'horrendous' money laundering*	Eric Rankin	CBC News
January 17, 2019	*Ontario casino regulator probing whether B.C. casino staff were connected to money-laundering suspects*	Sam Cooper	Global News
January 18, 2019	*B.C. attorney general says money launderers will exploit 'gaps' in information sharing in Canada*	Sam Cooper	Global News
January 22, 2019	*David Eby hopes for action after federal minister pledges help on money laundering*	Bethany Lindsay	CBC News
January 28, 2019	*Nearly $2 billion in dirty money may have flowed through B.C. casinos, far more than official estimates*	Sam Cooper	Global News
January 31, 2019	*B.C. casino 'knowingly accepted' millions from banned loan shark, audit alleges*	Sam Cooper	Global News
February 7, 2019	*Justin Trudeau looking for answers but doesn't commit to B.C. casino public inquiry*	Sam Cooper	Global News

February 7, 2019	*'BCLC could have stopped this': Former casino investigators question whether officials unwilling to stop criminal activity*	Sam Cooper	Global News
February 7, 2019	*Agency that tracks money laundering and terrorist financing to boost transparency*	James Bradshaw	The Globe and Mail
February 11, 2019	*RCMP arrest 15 people in Montreal and Toronto allegedly tied to international money-laundering scheme*	None Provided	The Globe and Mail
February 12, 2019	*As RCMP investigated casino money laundering, police distrust of B.C. government grew*	Sam Cooper	Global News
February 28, 2019	*Toronto man arrested with $1M in cash may have ties to international money launderer. Now, he's allegedly fled Canada*	Sam Cooper and Stewart Bell	Global News
March 6, 2019	*Casinos, real estate flagged as vulnerable to money laundering as far back as 2014*	Mike Hager	The Globe and Mail
March 13, 2019	*Federal watchdog unable to reliably estimate scope of Canada's money-laundering problem: report*	Mike Hager	The Globe and Mail
March 19, 2019	*Canada proposes national money laundering task force in budget 2019*	Sam Cooper	Global News
March 19, 2019	*Federal budget 2019: Ottawa invests in anti-money laundering task force*	Mike Hager	The Globe and Mail
March 21, 2019	*Toronto's real-estate market risky for money laundering, with $28B in opaque investments: report*	Sam Cooper	Global News
March 26, 2019	*B.C. Liberal minister intervened to raise betting limits, ignoring money laundering warnings about Chinese VIPs*	Sam Cooper	Global News
April 2, 2019	*U.S. deems Canada 'major money laundering country' as gangs exploit weak law enforcement*	Sam Cooper	Global News

April 2, 2019	*B.C. unveils Canada's first beneficial ownership registry*	Wendy Stueck	The Globe and Mail
April 2, 2019	*Canada needs to do more to curb money laundering, U.S. report says*	Mike Hager	The Globe and Mail
April 3, 2019	*Man arrested in money-laundering probe had stacks of $100 bills in his pocket, court documents say*	Jason Proctor	CBC News
April 8, 2019	*No federally funded RCMP officers dedicated to money laundering in B.C., report reveals*	None Given	CBC News
April 8, 2019	*B.C.'s anti-money laundering efforts deserve praise, but more needs to be done*	Kevin Comeau	The Globe and Mail
April 9, 2019	*RCMP's embrace of civil forfeiture letting money launderers off the hook in B.C., experts say*	Mike Hager	The Globe and Mail
April 9, 2019	*Scotiabank spending $300-million a year in anti-money-laundering efforts*	James Bradshaw	The Globe and Mail
April 10, 2019	*It's long been known in B.C. that RCMP not investigating money laundering, sources reiterate*	Sam Cooper	Global News
April 15, 2019	*B.C. real estate industry recommends amending federal money laundering laws to improve enforcement*	Sam Cooper	Global News
April 16, 2019	*Former RCMP proceeds of crime head warned bosses of weakened dirty money investigations*	Paisley Woodward	CBC News
May 1, 2019	*Former B.C. casino supervisor blows whistle on when Macau-style money laundering may have exploded*	Sam Cooper	Global News
May 2, 2019	*Whistle-blower warned B.C. casino in 2000 of alleged 'cooperation with organized crime'*	Sam Cooper	Global News

May 3, 2019	*B.C. casino's $18K severance agreement prevented public criticism about gangs, former employee claims*	Sam Cooper	Global News
May 7, 2019	*Fast cars and bags of cash: Gangsters using B.C. luxury car market to launder dirty money*	Karin Larson	CBC News
May 7, 2019	*Bag containing $100K allegedly stolen as thieves foil Chinese money 'exchange'*	Jason Proctor	CBC News
May 13, 2019	*Alberta questioning B.C.'s money-laundering report*	Justine Hunter and Mike Hager	The Globe and Mail
May 15, 2019	*B.C. launches public inquiry to delve into money laundering*	Mike Hager and Justine Hunter	The Globe and Mail
May 16, 2019	*Alleged 'heavyweight' gangster could be poster child for B.C.'s public inquiry into money laundering*	Sam Cooper and Brian Hill	Global News
May 22, 2019	*Crackdown on money laundering does not include federal public inquiry, Bill Blair says*	Dirk Meissner	The Globe and Mail
May 28, 2019	*B.C. asks universities, colleges to review cash policies after money laundering report*	None Provided	CBC News
May 29, 2019	*How Canada's legal system helped an alleged Chinese gangster avoid deportation for decades*	Brian Hill and Sam Cooper	Global News
May 30, 2019	*Money-laundering watchdog to share information with securities regulator*	Mike Hager	The Globe and Mail
June 11, 2019	*Alleged gang kingpin may have used Liberal MP's law firm to launder money through B.C. condo deal*	Sam Cooper and Brian Hill	Global News
June 12, 2019	*Dirty money: it's a Canadian thing*	Jason Kirby	Maclean's
June 17, 2019	*Liberal MP involved in second bare trust deal with client named in 'transnational money laundering' probe*	Sam Cooper	Global News
June 21, 2019	*Money-laundering task force to crack down on cryptocurrencies*	John O'Donnell and Tom Wilson	The Globe and Mail

July 2, 2019	*British Columbia mulls 'invasive' tool to combat money laundering, despite civil liberties concerns*	Mike Hager	The Globe and Mail
July 9, 2019	*B.C. casino regulator received complaint alleging BCLC management pressured to 'allow dirty money'*	Sam Cooper	Global News
July 10, 2019	*Canadian cryptocurrency exchanges to fall under FinTRAC watch in June 2020*	Alexandra Posadzki	The Globe and Mail
July 11, 2019	*Sources say RCMP opened file on Liberal MP whose firm facilitated real estate deals in B.C.*	Sam Cooper	Global News
July 21, 2019	*Fintechs face higher risk of money laundering, watchdog warns*	Alexandra Posadzki	The Globe and Mail
July 22, 2019	*Mafia's alleged laundering of money in Ontario casinos was a surprising choice, experts say in wake of crime bust*	Vjosa Isai	The Globe and Mail
July 30, 2019	*No 'unlawful activity' with homes, woman says*	Gordon Hoekstra	The Province
August 7, 2019	*Alleged money launderers deny claim they were involved in illegal activity*	Jane Seyd	North Shore News
August 11, 2019	*Canada's anti-money laundering watchdog tripled cryptocurrency cases it has referred to law enforcement in past year*	Alexandra Posadzki	The Globe and Mail

Appendix C

Topic Areas and Responsible Lawyers

Sector	Counsel
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Gaming	Patrick McGowan Alison Latimer Kyle McCleery
Professionals	Patrick McGowan Nicholas Isaac Steven Davis
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Real Estate	Brock Martland Eileen Patel Kelsey Rose
Luxury Goods	Patrick McGowan Alison Latimer Kyle McCleery
Enforcement	Brock Martland Nicholas Isaac Steven Davis
Government Response	Patrick McGowan Brock Martland Alison Latimer Kyle McCleery
Other Jurisdictions	Patrick McGowan Alison Latimer Kyle McCleery Kelsey Rose

Appendix D

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British Columbia Government & Service Employees' Union (BCGEU)	• Jitesh Mistry

Participants	Counsel
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British Columbia Real Estate Association	• Chris Weafer • Patrick Weafer
BMW	• Carina Chiu • Morgan L. Camley
Canadian Bar Association, BC Branch	• Jo-Anne Stark • Kevin B. Westell
Canadian Gaming Association	• Paul Burns, President & CEO
Coalition: *Transparency International Canada (TI Canada)* *Canadians for Tax Fairness (C4TF)* *Publish What You Pay Canada (PWYP)*	• Kevin Comeau
Criminal Defence Advocacy Society	• Kevin B. Westell
Gateway Casinos & Entertainment Ltd.	• David Gruber • Laura L. Bevan • Meg Gaily
Great Canadian Gaming Corporation	• Mark L. Skwarok • Melanie Harmer
James Lightbody	• Robin N. McFee, QC • Jessie Meikle-Kahs • Maya Ollek
Robert Kroeker	• Christine Mainville • Marie Henein • Carly Peddle
The Law Society of British Columbia	• Ludmila B. Herbst, QC • Catherine George
The Society of Notaries Public of BC	• Ron Usher

*An updated list of participants is available at https://cullencommission.ca/participants.

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