

**OPENING STATEMENT OF THE BRITISH COLUMBIA REAL ESTATE  
ASSOCIATION (“BCREA”)  
TO THE COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN  
BRITISH COLUMBIA**

**SUMMARY:**

The Cullen Commission has asked the participants to:

- a) provide their views and positions on areas within the Commission’s mandate on which the party has been granted standing; and
- b) identify topics participants would like the Commission to investigate and address in the Inquiry.

In these comments, I will:

- a) describe the BCREA and its role; and
- b) summarize the activities of the BCREA in regard to areas within the Commission mandate, as well as the key topics BCREA would like the Commission to address. In summary, the BCREA’s position at this time is to request that the Commissioner consider and support the recommendations the BCREA has made in response to what have been referred to as the Terms of Reference Reports.

**I. INTRODUCTION**

BCREA thanks the Commission for its grant of participant standing in the Inquiry. This is an important proceeding with impacts on British Columbia.

BCREA is the professional association representing the province’s 23,000+ licenced commercial and residential realtors. BCREA works with its 11 member boards, each representing different geographic regions in the province, on professional development, advocacy, economic research, and development of standard forms. BCREA is established pursuant to the *Societies Act* and has no regulatory or legislative authority, however this does not lessen the seriousness with which it seeks to protect and preserve the professional reputation of the real estate industry and the members of BCREA who work in this critical area of the BC economy. BCREA’s primary intent in the Inquiry is to assist in identifying effective solutions that respond to the criminal activity of money laundering.

BCREA believes action must be taken to address the conditions which have enabled money laundering at the provincial, federal and international levels. BCREA acknowledges that the province has made two significant announcements since commencement of the Inquiry in proposing and scheduling legislative reforms in the real estate regulatory sphere which are presently a work in progress. BCREA submits that to

the extent that legislative process is ongoing in parallel to the Inquiry there should be efforts to reconcile the respective efforts to ensure that no efforts are wasted which may contribute to best results.

BCREA also notes that the province has moved towards transparency in real estate ownership which is consistent with recommendations BCREA and others made to the Inquiry's Terms of Reference Reports.

The regulation of realtors and the real estate industry is in a state of flux in this province. New taxes, new regulations and legislation – including the new *Land Owner Transparency Act* - and a new regulatory framework have, or will have, an impact on the way real estate transactions are carried out in this province. BCREA's hope is that as a participant in these proceedings BCREA can provide a practical lens to give the Inquiry a "boots on the ground" perspective of the current and past state of the industry, and provide insight as to what the industry may look like following proposed changes. BCREA will also have a role in facilitating and implementing materials and a knowledge base stemming from the outcome of the final recommendations made by the Commissioner in this proceeding.

BCREA will also deal with educating realtors on the outcomes of this Inquiry with respect to any recommendations which are implemented by government.

Ms. Darlene Hyde, CEO of the BCREA, will be made available as a witness over the course of the Inquiry proceedings to speak to relevant issues relating to BCREA and the real estate sector.

## **II. ACTIVITIES OF BCREA IN RELATION TO THE FOUR TERMS OF REFERENCE REPORTS**

On December 17, 2019, BCREA filed comments with the Commission on its activities in advance of the Provincial Government establishing the Cullen Commission. Those comments in effect identify topics which BCREA would like the Commission to investigate and address in the hearings.

BCREA has been active for the past three years participating in the various government-mandated initiatives regarding money laundering. The topic has been a primary focus of communication to, and education of, realtors by the BCREA.

### **A. BCREA's response to *Dirty Money: An Independent Review of Money Laundering in Lowe Mainland Casinos Conducted for the Attorney General of British Columbia, Peter M. German, Q.C., March 31, 2018***

It is important to note that realtors have been subject to Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") reporting requirements since 2000, and responsibility for such reporting has been supported by the Canadian Real Estate Association and regional real estate boards. Following the release of the Dirty Money report in June 2018, BCREA recognized the need to take actions to

raise additional awareness around the money laundering concerns. This activity included:

- working with the Real Estate Board of Greater Vancouver to develop an action plan to improve REALTOR® FINTRAC compliance and communicate about REALTORS®' anti-money laundering efforts,
- publishing articles in the member board newsletter about BCREA's actions,
- commissioning consumer research to learn about perceptions of money laundering and other matters relevant to the real estate industry,
- communicating with member boards and all British Columbia REALTORS®,
- inviting FINTRAC to make a presentation at a September 2018 conference for managing brokers and published answers to delegate questions,
- updating an online course about REALTOR® FINTRAC obligations,
- meeting with FINTRAC and CREA in Ottawa in October 2018, and
- taking the opportunity in October 2018 to inform BC MLAs about REALTORS®' reporting obligations as part of BCREA's annual provincial lobbying conference.

### **NOTABLE CONTENT IN THE DIRTY MONEY I REPORT**

- The Dirty Money I report identified the “Vancouver model” of money laundering. That is, wealthy individuals borrow dirty cash and use it for gambling to disguise the movement of money out of China. The dirty cash is lent by an underground operator based in Canada who is reimbursed by a Chinese source.<sup>1</sup>
- The suggestion is that most laundered cash is reinvested into illegal enterprises and that a portion is invested in real estate and luxury goods.
- Real estate is vulnerable to money laundering at various stages of the money laundering process.

### **BCREA COMMENT/OPINION**

- BCREA, its 11 member real estate boards and many REALTORS® were concerned with Mr. German's findings. BCREA took additional steps shortly after Mr. German's findings were published on June 27, 2018.

### **RELEVANT RECOMMENDATION**

- R45 That the Province undertake research into allegations of organized crime penetration of the real estate industry.

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<sup>1</sup> Peter M. German, QC, PhD, Dirty Money – An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia, online: <[https://news.gov.bc.ca/files/Gaming\\_Final\\_Report.pdf](https://news.gov.bc.ca/files/Gaming_Final_Report.pdf)> at page 38 (Dirty Money).

## **BCREA OPINION**

- While Mr. German's analysis seemed to rely quite heavily on media reports, BCREA took his recommendation seriously and committed resources to focus on the concerns he raised.

### ***B. Real Estate Regulatory Structure Review (2018), Dan Perrin***

BCREA had begun to take action on real estate regulatory restructuring before the independent review conducted by Dan Perrin was announced. On April 11, 2018, BCREA met with Minister James to ask for a review.

- When the Perrin review was announced on April 18, 2018, BCREA committed additional resources to government relations, information and educational initiatives and research, as well as preparing submissions to Mr. Perrin's Review. These are described in detail in BCREA's written submissions to this Commission filed December 17, 2019:
  - sent a letter of support to Minister James,
  - communicated to all BC REALTORS®,
  - published an article in our external stakeholder newsletter,
  - published an article in our member board newsletter,
  - reached out to Mr. Perrin to learn more about his methodology and how BCREA could contribute; he ended up providing us with some questions from which we created a survey and sent it to all REALTORS®,
  - BCREA and some member boards conducted focus groups with REALTORS® and we created a discussion guide and a handout,
  - BCREA met with Mr. Perrin on May 3,
  - provided a summary of the survey results, as well as the full results to Mr. Perrin, along with our own response on May 25, 2018, and
  - on May 29, we communicated again with all REALTORS® about our submission to Mr. Perrin and a summary of the survey results.
- BCREA met with Minister James on July 12, 2018 to discuss its submission.
- BCREA provided an update to all REALTORS® on July 17, 2018.
- In August 2018, BCREA published an article in its external stakeholder newsletter explaining the need for more practitioners on the Real Estate Council of British Columbia ("RECBC").
- Met with opposition MLAs on September 12, 2018 to advocate, in part, for regulatory reform and more licensee representation on RECBC's governing council.
- After the Perrin report was released (September 27, 2018), BCREA immediately:
  - published a news release,

- wrote to Minister James urging her to carefully consider any changes and asking for further consultations,
  - summarized the report in an article for member boards and REALTORS®,
  - reached out to the Office of the Superintendent of Real Estate and RECBC, and
  - commissioned legal analysis.
- BCREA communicated to its member real estate boards and REALTORS® and consulted with Government and ultimately in June 2019, BCREA initiated a project to articulate its visions for a new regulatory structure:
    - began with a discussion with member boards on how to proceed,
    - hired a law firm to support the project, and
    - submitted recommendations to Minister James in December 2019.

Turning to the recommendations in the Real Estate Regulatory Structure Review and the BCREA responses.

## **1. RECOMMENDATION**

*OSRE and RECBC should be merged into the Financial Institutions Commission (“FICOM”) as the single regulator, with FICOM having full responsibility for public education, education of licensees, complaints and enforcement related to licensee professional conduct, enforcement related to unlicensed activity and market conduct generally, and associated administrative policy, including rule-making.<sup>2</sup>*

### **BCREA POSITION**

BCREA welcomes the move to a single regulator but has questions about the details behind implementing the move. BCREA considers it vitally important that real estate licensing functions be treated separate from real estate development functions, and that the licensing unit should include a standing committee of real estate licensees which would facilitate an internal degree of sector expertise within the regulatory body. In addition, roles and accountability need to be clearly articulated. BCREA hopes that the recommendations from this Inquiry will support this approach.

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<sup>2</sup> Dan Perrin, Real Estate Regulatory Structure Review, B.C. Ministry of Finance, online: < [https://news.gov.bc.ca/files/Real\\_Estate\\_Regulatory\\_Structure\\_Review\\_Report\\_2018.pdf](https://news.gov.bc.ca/files/Real_Estate_Regulatory_Structure_Review_Report_2018.pdf) > at page 26 (Real Estate Regulatory Structure Review).

## 2. **RECOMMENDATION**

*The Ministry of Finance should control real estate public policy development, in collaboration with the regulator.<sup>3</sup>*

### **BCREA POSITION**

BCREA supports this recommendation, especially if it includes collaboration with the industry and changes are based on evidence. BCREA hopes this Inquiry will support the recommendation.

## 3. **RECOMMENDATION**

*Government consider whether there should be oversight for regulators in BC and if so, what form that oversight should take.<sup>4</sup>*

### **BCREA POSITION**

BCREA supports the concept of oversight to ensure continuous improvement, as long as roles are clear, separate and accountable.

## 4. **RECOMMENDATION**

*A policy review of real estate regulatory requirements be undertaken, including:*

- a) A review of existing regulatory requirements in RESA, the regulations and the rules to ensure that the public policy requirements are contained in RESA and the regulations, and that the rules are limited to administrative policy provisions that need the force of law to be effective and are consistent with the public policy framework;*
- b) A review of the best way to move beyond the regulation of those currently required to be licensed to more fully regulate market conduct in the public interest to prevent market manipulation and abuse, including but not limited to considering whether each of the different groups currently exempt from licensure should be regulated and if so, how; and*
- c) A review of outstanding IAG recommendations that would require a public policy response to determine the best way to proceed. That would include a review of changes already that need to be revisited consequentially to any*

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<sup>3</sup> Real Estate Regulatory Structure Review at page 26.

<sup>4</sup> Real Estate Regulatory Structure Review at page 29.

*changes made to the regulatory structure and other regulatory requirements under a. or b.*<sup>5</sup>

### **BCREA POSITION**

The documents referred to in this recommendation have evolved into a somewhat confusing collection that often mixes high-level public policy with operational detail. BCREA believes this is the time to streamline, which believe will result in a more understandable, accessible regulatory system.

BCREA also strongly believes that licensees and industry should be involved in this review.

**C. *Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in BC Real Estate, Luxury Vehicle Sales & Horse Racing, Peter M. German, Q.C., March 31, 2019***

and

**D. *Combatting Money Laundering in BC Real Estate, Maureen Maloney, Tsur Somerville and Brigitte Unger, March 31, 2019***

When the second independent review by Peter German and the Expert Panel were announced on September 27, 2018, BCREA undertook extensive communication with its members and government as well as with the authors of the reports. These extensive efforts are summarized in BCREA's December 17, 2019, filing with this Commission.

- BCREA sent recommendations to Mr. German and the Expert Panel on March 3, 2019.
- In March 2019, BCREA repeated consumer research that had been conducted in September 2018 to monitor consumer perceptions of money laundering in real estate, among other issues.
- In March 2019, BCREA also published an article in our external stakeholder newsletter about our anti-money laundering efforts and the two government reviews.
- BCREA also formed a multi-stakeholder real estate working group in February 2019 with the BC Notaries Association, Appraisal Institute of Canada – BC Association, Canadian Mortgage Brokers Association – British Columbia and Real Estate Board of Greater Vancouver. On April 15, 2019, the working group published a statement with five recommendations for industry and government: accept only verified funds, mandatory anti-money laundering education, smart

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<sup>5</sup> Real Estate Regulatory Structure Review at pages 30-31.

regulation, ongoing engagement and timely and transparent reporting. Several working group members met with Minister Eby on March 28, 2019.

- BCREA held its annual provincial lobbying conference in April 2019, which included a facilitated presentation on anti-money laundering.
- After the government released the findings of Peter German and the Expert Panel on May 9, 2019, BCREA stepped up its communications efforts with government, its members, and within the community. These activities are also detailed in our December 17, 2019 filing with the Commission:
  - summarized the findings for member boards,
  - published a news release on May 13, 2019,
  - wrote to Minister Eby on May 14, 2019,
  - participated in a Business in Vancouver discussion panel on money laundering on May 14, 2019,
  - provided an update to all REALTORS® on May 17, 2019,
  - submitted an opinion editorial, which was published by the Vancouver Sun on May 24, 2019,
  - published articles in our member board newsletter,
  - published an article about the Expert Panel and Peter German reports in our external stakeholder newsletter, and
  - wrote to Minister James on May 25, 2019.
- In addition, BCREA:
  - participated in a panel presentation at the June 11, 2019 Anti-Corruption Law Program event,
  - met with Deputy Minister of Finance Lori Wanamaker on August 13, 2019,
  - met with Dan Perrin on September 12, 2019 to learn more about his view on money laundering regulation,
  - participated in a money laundering panel as part of the Union of BC Municipalities Convention on September 23, 2019,
  - attended the Canadian Anti-Money Laundering Institute conference, September 23-25, 2019, and
  - participated on the panel for the Anti-Corruption Law Program session on November 7, 2019.
- Throughout 2019, BCREA continued with its initiative to provide resources for REALTORS®; these activities include/included:
  - conducting a series of focus groups with real estate brokerage FINTRAC compliance officers and managing brokers to learn about their compliance challenges and needs,



- hiring MNP to provide support,
  - articulating the following projects to launch in 2020: communications materials, an online compilation of resources, workshops and a community of practice for FINTRAC compliance officers and managing brokers,
  - publishing several newsletter articles with FINTRAC compliance resources, and
  - including a FINTRAC session in our October 17, 2019 Managing Brokers' Conference.
- BCREA, along with other members of our real estate sector anti-money laundering working group, met with Minister Eby on December 5, 2019.

***E. Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in BC Real Estate, Luxury Vehicle Sales & Horse Racing, Peter M. German, Q.C., March 31, 2019***

Turning to the notable content from the second Peter German Report and BCREA responses.

**1. NOTABLE CONTENT**

*Unfinanced purchases, or 'cash buys', comprise 17% to 21% of residential transactions in B.C. They are more common among higher-risk buyers such as companies (29% to 38%), trusts (58%), nominees (20% to 28%) and offshore buyers (32% to 40%). The aggregate declared value of cash buys in the past 20 years is \$84 to \$212 billion<sup>6</sup> (the current assessed value of those properties is much higher, at \$230 to \$440 billion).<sup>7</sup>*

*A rhetorical question we heard many times during this Review was from persons who supported improved reporting. They asked, quite simply, who do you know that carries \$5,000 or \$10,000 or \$100,000 in cash on their person? It is simply not common in this day and age. Reporting should not pose an undue burden on business. The impact on the flow of dirty money and the underground economy would be immediate and stem the 'whack a mole' trend that we have described, whereby organized crime moves from one vulnerable industry to another.<sup>8</sup>*

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<sup>6</sup> \$84 billion is a highly conservative estimate, where no mortgage was ever registered on title. The larger \$212 billion figure includes transactions since January 1999 where no mortgage was registered within the first 30 days.

<sup>7</sup> Peter M. German, QC, PhD, Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing, online: <[https://news.gov.bc.ca/files/Dirty\\_Money\\_Report\\_Part\\_2.pdf](https://news.gov.bc.ca/files/Dirty_Money_Report_Part_2.pdf)> at page 13 (Dirty Money Part 2).

<sup>8</sup> Dirty Money Part 2 at page 17.

## **REAL ESTATE SECTOR WORKING GROUP RECOMMENDATION**

Accept only verified funds – For sectors of real estate that are not already required to do so, the Working Group recommended that they accept funds only in forms that are verifiable through Canadian financial institutions.

### **BCREA ANALYSIS/POSITION**

BCREA recommends as best practice for REALTORS® that brokerages should avoid accepting cash deposits for real estate transactions aside from exceptional circumstances. It is important to note that acceptance of cash deposits within BC real estate has never been common practice unless there were extenuating circumstances, and even then, deposit amounts are typically quite modest.

## **2. NOTABLE CONTENT**

*Reporting of suspicious transactions to FinTRAC, by realtors has been dismal at best.<sup>9</sup>*

*The lack of reporting to FinTRAC is of tremendous concern as realtors are on the frontline when dealing with clients who may wish to launder money in real estate. It is difficult to understand what causes such poor reporting; whether it is inadequate training, a fear of reporting, indifference to the process, or outright repudiation of the law.<sup>10</sup>*

## **REAL ESTATE SECTOR WORKING GROUP RECOMMENDATION**

Mandatory anti-money laundering education – The Working Group recommended the introduction of mandatory anti-money laundering education for all real estate professionals subject to the reporting requirements administered by the FINTRAC to ensure that those professionals are trained in recognizing and reporting suspicious transactions. FINTRAC should work with sector organizations, regulators and the provincial government to improve existing resources so that they better reflect real-world situations and improve compliance.

Ongoing engagement – The Working Group recommended governments and regulatory agencies, including FINTRAC, better utilize on-the-ground experience of real estate professionals to develop compliance resources and test policy ideas. This will result in well-crafted, practical regulation and foster a culture of compliance to protect consumers and the economy.

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<sup>9</sup> Dirty Money Part 2 at page 52.

<sup>10</sup> Dirty Money Part 2 at page 59.

Timely and transparent reporting – The Working Group recommended that FINTRAC implement a framework to identify and report trends on a regular basis and in language that is consistent and understandable to professionals, the public and media. This reporting system should also include consistency in examinations with immediate feedback designed to help industry professionals improve their compliance systems.

### **BCREA ANALYSIS/POSITION**

BCREA is working with the Canadian Real Estate Association, FINTRAC, and member boards to improve REALTOR® compliance. BCREA has also recommended these best practices for REALTORS®:

- educating brokerages so they can accurately and effectively report suspicious transactions, according to anti-money laundering legislation,
- brokerages engage outside, independent professionals to conduct their two-year reviews, and
- compliance officers participate in AML knowledge sessions, such as the Association of Certified Anti-Money Laundering Specialists. Since BCREA submitted our response to Mr. German, BCREA has created its own initiative to create a community of practice for REALTORS®.

And BCREA believes:

- FINTRAC should implement policies to ensure consistency in its examinations, including immediate, specific suggestions for how a real estate brokerage can improve its compliance system,
- FINTRAC should reach out to sector organizations to create resources—including guidelines to identify suspicious transactions—that reflect real-world situations,
- FINTRAC should implement public reporting practices that accurately represent the results of their examinations, and
- the Real Estate Council of British Columbia should develop required anti-money laundering licensing and relicensing education for REALTORS®. RECBC introduced mandatory anti-money laundering training for real estate licensees on January 9, 2020.

BCREA asks that the Inquiry support those recommendations in its Report.

### **3. NOTABLE CONTENT**

*Private lending is a major money laundering vulnerability. It is a growing segment of the mortgage industry and is not subject to statutory AML (Anti-Money Laundering) oversight. Mortgages from unregulated lenders were a common feature in the sample of properties we analyzed which had known or suspected ties to criminal activity. They also feature disproportionately in our analysis of other finance-related money laundering indicators such as unusual loan-to-value ratios and interest rates, as well as instances where a titleholder has obtained multiple successive mortgages which are quickly repaid.<sup>11</sup>*

*In this Report, we provide a detailed overview of the role of the legal profession in Canada and B.C. with respect to financial transparency and client due diligence. We note that the burning issue is the continuing inability of the federal government to address the Supreme Court of Canada's (SCC) 2015 decision in the Federation of Law Societies case (Federation case), which essentially exempted the legal profession from financial reporting to the Financial Transaction and Reports Analysis Centre of Canada (FinTRAC).<sup>12</sup>*

*Furthermore, in B.C. lawyers can represent one party to a sale and be under no obligation to report suspicious transactions, while a B.C. notary may represent the other party to the same transaction and be under an obligation to report. In fact, in B.C., lawyers can also act as realtors. Notaries for their part embrace Canada's financial reporting regime and have improved their reporting to FinTRAC.<sup>13</sup>*

*Mortgage brokers, registered and unregistered, including private lenders and mortgage investment corporations, are not required to report to FINTRAC.<sup>14</sup>*

#### **BCREA ANALYSIS/POSITION**

To the greatest extent possible while recognizing the constraints noted by the Supreme Court of Canada in the Federation case, BCREA recommends the federal government require FINTRAC compliance by lawyers, law firms and non-financial institution lenders, such as alternative and private lenders, for private real estate transactions.

BCREA supports the Inquiry including this in its recommendations.

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<sup>11</sup> Dirty Money Part 2 at page 13.

<sup>12</sup> Dirty Money Part 2 at pages 14-15.

<sup>13</sup> Dirty Money Part 2 at page 14.

<sup>14</sup> Dirty Money Part 2 at page 60.

#### **4. NOTABLE CONTENT**

*The Land Title and Survey Authority (LTSA) and BCA have access to powerful databases that could be used to screen for suspicious activity and identify possible money laundering. Neither organization currently has the capacity or mandate to do so. Embedding an AML function with an analytics capability and full access to each other's dataset could improve detection, serve as a deterrent, and improve information sharing with law enforcement and industry regulators.<sup>15</sup>*

*The absence of standardized data fields and prompts makes LTSA data difficult to use for analytical purposes. We found properties registered to "superdad", 'funemployed', 'wannabe ski bum', 'domestic diva', 'trophy wife', and 'launderer'.<sup>16</sup>*

*There is no consistency in Canada between jurisdictions in defining PEPs [potentially exposed persons].<sup>17</sup>*

#### **REAL ESTATE SECTOR WORKING GROUP RECOMMENDATION**

Smart regulation – BCREA recommends that the federal government amend the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to allow FINTRAC intelligence to be made available to additional regulatory authorities, including the BC Securities Commission and the FICOM. Optimally, the federal and provincial governments, as well as their respective agencies, should coordinate their actions, share information, such as the provincial assignment registry, and create a comprehensive, efficient enforcement regime.

#### **BCREA ANALYSIS/POSITION**

BCREA have made the following recommendations which BCREA asks the Inquiry to support:

- The federal and provincial governments, and their respective agencies, should coordinate their actions and policies to create a comprehensive, efficient enforcement regime.
- The BC Government should clarify the role of provincial real estate regulators in the area of anti-money laundering requirements.

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<sup>15</sup> Dirty Money Part 2 at page 14.

<sup>16</sup> Dirty Money Part 2 at page 52.

<sup>17</sup> Dirty Money Part 2 at page 58.

## **5. NOTABLE CONTENT**

*Identifying properties that are owned by overseas buyers (including those from high-risk jurisdictions) is practically impossible due to the potential disconnect between titleholders and beneficial owners. Only 1% of titles have an owner who lists a service address outside Canada, which appears to greatly underestimate foreign ownership. Foreign capital can be channelled through local nominees or companies, or a foreign owner can simply use a local address. There are approximately 1,800 B.C. properties owned by offshore companies (2% of the total). This may be due in part to the lack of transparency in B.C. registered companies, which are just as effective in concealing ownership as many of their offshore counterparts.<sup>18</sup>*

*A beneficial ownership component to property registration would provide greater clarity regarding foreign ownership and, by extension, disclose whether, or not the funds used for the purchase of property originated offshore. Taking legislative steps to make B.C. companies more transparent would make them less vulnerable to money laundering and other criminal activity.<sup>19</sup>*

*The Canadian Real Estate Association (“CREA”) pleaded with the Committee to not recommend extending beneficial ownership identification and verification requirements to real estate agents due to the added compliance burden. CREA did, however, advocate bringing other real estate actors under the umbrella of the POCMLTFA.<sup>20</sup>*

### **BCREA ANALYSIS/POSITION**

BCREA first expressed support for the draft *Land Owner Transparency Act* in 2018 and continues to support the provincial government’s initiatives in this regard.

Turning to the next Terms of Reference Report.

## ***F. Combatting Money Laundering in BC Real Estate, Maureen Maloney, Tsur Somerville and Brigitte Unger, March 31, 2019***

### **1. NOTABLE CONTENT**

Chapter 4: Estimated effect of money laundering on BC real estate.

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<sup>18</sup> Dirty Money Part 2 at page 14.

<sup>19</sup> Dirty Money Part 2 at page 14.

<sup>20</sup> Dirty Money Part 2 at page 57.

## **BCREA ANALYSIS/POSITION**

BCREA appreciated the amount of work the Expert Panel did to estimate the impact of money laundering. However, BCREA was alarmed that the government and the media didn't heed the qualifiers in the report: that the impact is "impossible to measure, hard to estimate"<sup>21</sup> and that there is a "large margin of error due to lack of measured data and international data inconsistency"<sup>22</sup>.

BCREA firmly believes that continued efforts to reliably understand the impact of money laundering on the entire economy are needed. BCREA supports the efforts of this Inquiry to better qualify the speculative estimates on the financial impact of money laundering.

### **2. NOTABLE CONTENT**

*The BC government should implement the Land Owner Transparency registry as quickly and effectively as possible.*<sup>23</sup>

## **BCREA ANALYSIS/POSITION**

As noted, BCREA expressed support for the draft *Land Owner Transparency Act* in 2018.

### **3. NOTABLE CONTENT**

*The BC government should develop a discussion paper with draft legislation for consultation about the implementation of a full corporate beneficial ownership registry covering all legal persons that is consistent with best practices and that integrates with the Land Owner Transparency Act.*<sup>24</sup>

## **REAL ESTATE SECTOR WORKING GROUP RECOMMENDATION**

BCREA encourages Ongoing engagement with the real estate industry – BCREA recommends governments and regulatory agencies, including FINTRAC, better utilize the on-the-ground experience of real estate professionals to develop compliance resources and test policy ideas. This

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<sup>21</sup> Maren Maloney, Tsur Somerville, Brigitte Unger, *Combating Money Laundering in BC Real Estate*, online: < <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/combating-money-laundering-report.pdf> > at page 44 (Combating Money Laundering).

<sup>22</sup> *Combating Money Laundering* at page 46.

<sup>23</sup> *Combating Money Laundering* at page 75.

<sup>24</sup> *Combating Money Laundering* at page 76.

will result in better-crafted, practical regulation and foster a culture of acceptance and compliance to protect consumers and the economy.

#### **BCREA ANALYSIS/POSITION**

BCREA appreciates that the recommendation is for a discussion paper as it is best to get practical input. The government published its consultation paper on January 17, 2020 and BCREA is collecting input for its response.

#### **4. NOTABLE CONTENT**

*The BC government should implement the recommendations of the Real Estate Regulatory Structure Review report (2018).<sup>25</sup>*

#### **BCREA ANALYSIS/POSITION**

BCREA supports restructuring of the real estate regulatory framework and emphasizes the need for industry input in developing and governing the framework.

#### **5. NOTABLE CONTENT**

*The BC Minister of Finance should take the steps necessary to place the onus for compliance with the Real Estate Services Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act directly on individual real estate licensees.<sup>26</sup>*

#### **BCREA ANALYSIS/POSITION**

This is coming as part of the Office of the Superintendent of Real Estate's fall 2019 consultation based on this discussion paper: "Reframing the Role of Managing Brokers in BC" (<https://bit.ly/2oRvS0q>). In November and December 2019 and into January 2020, BCREA worked with member boards to consult with REALTORS®. BCREA submitted its response, signed by all 11 member boards, on January 20, 2020.

#### **6. NOTABLE CONTENT**

*The BC Minister of Finance should take the steps necessary to:*

- *require that real estate developers be licensed under a regulatory regime designed specifically for that segment of the real estate industry within the Real Estate Services Act;*

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<sup>25</sup> Combatting Money Laundering at page 77.

<sup>26</sup> Combatting Money Laundering at page 78.



- *eliminate the exemption for salespeople who are employees of developers;*<sup>27</sup>

### **BCREA ANALYSIS/POSITION**

BCREA is on record supporting elimination of the exemption from the *Real Estate Services Act* (“RESA”) for developers’ salespeople. Licensing for developers further complicates the real estate regulatory framework.

## **7. NOTABLE CONTENT**

*The BC government should consider introducing Unexplained Wealth Orders in BC.*<sup>28</sup>

### **BCREA ANALYSIS/POSITION**

BCREA urged caution with this recommendation, to ensure appropriate checks and balances are in place.

## **8. NOTABLE CONTENT**

*The BC Minister of Finance should recommend to her federal counterpart that the Proceeds of Crime (Money Laundering) and Terrorist Financing Act be amended to add mortgage lenders and mortgage intermediaries to the list of reporting entities, in addition to the entities recommended by the Standing Committee on Finance.*<sup>29</sup>

*The BC Minister of Finance should suggest that her federal counterpart consider incorporating legal professionals in the anti-money laundering framework by requiring them to report suspicious transactions to the appropriate law society under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.*<sup>30</sup>

### **BCREA ANALYSIS/POSITION**

As noted in response to the Dirty Money Part 2 report above, to the greatest extent possible while recognizing the legal constraints noted by the Supreme Court of Canada in the Federation case, BCREA recommends the federal government require FINTRAC compliance by lawyers, law firms and non-financial institution lenders, such as alternative and private lenders, for private real estate transactions.

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<sup>27</sup> Combatting Money Laundering at page 79.

<sup>28</sup> Combatting Money Laundering in BC Real Estate, page 81.

<sup>29</sup> Combatting Money Laundering in BC Real Estate, pages 83-84.

<sup>30</sup> Combatting Money Laundering at page 84.

## **9. NOTABLE CONTENT**

*The BC Minister of Finance should 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, as is required for several other types of reporting entities, and that the disclosure threshold for a beneficial ownership interest held by an individual be reduced from 25 percent to 10 percent.<sup>31</sup>*

### **BCREA ANALYSIS/POSITION**

The Canadian Real Estate Association is on record as not supporting a requirement for REALTORS® to conduct due diligence on beneficial ownership in their submission and presentation to the Federal Standing Committee on Finance on March 27, 2018. [<https://bit.ly/2OtYpml>]

## **10. NOTABLE CONTENT**

*The BC Minister of Finance should recommend to her federal counterpart that the Proceeds of Crime (Money Laundering) and Terrorist Financing Act be amended to authorize FINTRAC to provide information to specified provincial regulators and anti-money laundering investigative agencies.<sup>32</sup>*

*The BC Minister of Finance should recommend 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 additional FINTRAC information can be sought be expanded.<sup>33</sup>*

### **BCREA ANALYSIS/POSITION**

BCREA recommends that the federal and provincial governments, and their respective agencies, coordinate their actions and policies to create a comprehensive, efficient enforcement regime. The adoption of the concept of Smart Regulation is supported by the BCREA.

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<sup>31</sup> Combatting Money Laundering at page 85.

<sup>32</sup> Combatting Money Laundering at page 85.

<sup>33</sup> Combatting Money Laundering at page 86.

## **11. NOTABLE CONTENT**

*The BC Minister of Finance should recommend to her federal counterpart that FINTRAC enhance:*

- *the level of feedback provided to reporting entities about the quality of their reporting and the typology of money laundering constructions that may be suspicious, and*
- *the reporting of intelligence and statistics to better inform the public about the nature and extent of money laundering and the effectiveness of the full range of efforts to combat it.<sup>34</sup>*

*The BC government should require BC regulators of reporting entities to enforce compliance with Proceeds of Crime (Money Laundering) and Terrorist Financing Act requirements and provide training and education to assist them in doing so, in cooperation with FINTRAC.<sup>35</sup>*

*The BC Minister of Finance should recommend to her federal counterpart that FINTRAC develop education, training, and reporting processes, methods, and requirements that reflect the realities of the different industries that are obligated to report.<sup>36</sup>*

*The BC government should specifically add anti-money laundering to the mandates of relevant BC regulators, including the Real Estate Council of BC, the Office of the Superintendent of Real Estate, FICOM, the BC Securities Commission, the Society of Notaries Public of BC, the Law Society of BC and the Chartered Professional Accountants of BC.<sup>37</sup>*

*The BC government should implement the principle of a data-sharing framework that provides each anti-money laundering agency with access to public-domain data, including land data, together with data that can be shared from other agencies, including federal agencies and agencies from other provinces as appropriate, and proprietary confidential data in a way that facilitates analysis and investigation.<sup>38</sup>*

*The BC government should conduct a comprehensive review of data sharing and confidentiality related to anti-money laundering activities to ensure that the best use*

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<sup>34</sup> Combatting Money Laundering at page 86.

<sup>35</sup> Combatting Money Laundering at page 87.

<sup>36</sup> Combatting Money Laundering at page 87.

<sup>37</sup> Combatting Money Laundering at page 90.

<sup>38</sup> Combatting Money Laundering at page 91.

*is made of government data in combatting money laundering and market manipulation while respecting privacy and confidentiality principles.<sup>39</sup>*

*The BC government should ensure that all those in the mortgage lending business should be required under provincial legislation to conduct and maintain know-your-customer records and records of the source of mortgage payment funds from borrowers, until such requirements are placed on mortgage lending businesses by the federal government.<sup>40</sup>*

*The BC Ministry of Finance should create institutional coordination mechanisms among the financial investigation unit and the various federal and provincial regulators and other agencies involved in the regulatory/anti-money laundering system.<sup>41</sup>*

*Coordination mechanisms should adopt the principle that investigations be referred to the agency best able to apply its own proprietary information and investigative powers to the case, including tax authorities and the Law Society of BC.<sup>42</sup>*

### **REAL ESTATE SECTOR WORKING GROUP RECOMMENDATION**

Mandatory anti-money laundering education – BCREA recommends the introduction of mandatory anti-money laundering education for all real estate professionals subject to the reporting requirements administered by the FINTRAC to ensure that those professionals are trained in recognizing and reporting suspicious transactions. FINTRAC should work with sector organizations, regulators and the provincial government to improve existing resources so that they better reflect real-world situations and improve compliance.

Timely and transparent reporting – BCREA recommends that FINTRAC implement a framework to identify and report trends on a regular basis and in language that is consistent and understandable to professionals, the public and media. This reporting system should also include consistency in examinations with immediate feedback designed to help industry professionals improve their compliance systems.

### **BCREA ANALYSIS/POSITION**

As a best practice for REALTORS®, BCREA recommends educating brokerages so they can accurately and effectively report suspicious transactions, according to AML legislation.

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<sup>39</sup> Combatting Money Laundering at page 91.

<sup>40</sup> Combatting Money Laundering at page 92.

<sup>41</sup> Combatting Money Laundering at page 94.

<sup>42</sup> Combatting Money Laundering at page 95.

BCREA again recommended that FINTRAC implement best practices on examinations, outreach and public reporting practices noted above in these submissions in regard to the Dirty Money Part 2 recommendations.

As a best practice for REALTORS®, BCREA recommends that compliance officers participate in AML knowledge sessions, such as the Association of Certified Anti-Money Laundering Specialists.

BCREA recommends that the BC Government clarify the role of provincial real estate regulators in the area of anti-money laundering requirements. BCREA was pleased to see the Real Estate Council of British Columbia introduce required anti-money laundering training for real estate licensees in January 2020.

BCREA recommends that the federal and provincial governments, and their respective agencies, coordinate their actions and policies to create a comprehensive, efficient enforcement regime and avoid duplication of reporting compliance for realtors.

## **12. NOTABLE CONTENT**

*The BC Minister of Finance should make every effort to convince her provincial colleagues of the importance of making combatting money laundering a provincial priority and using provincial finance and real estate-related regulatory changes in coordination with federal and other provincial agencies to combat money laundering, consistent with the Panel's recommendations.<sup>43</sup>*

### **BCREA ANALYSIS/POSITION**

BCREA does not have an existing position specifically on this point, but this makes sense and aligns with the BCREA's support of anti-money laundering efforts in the province, including BCREA's participation in this proceeding.

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<sup>43</sup> Combatting Money Laundering at page 95.

**G. Conclusion**

On behalf of our client the British Columbia Real Estate Association, we thank you for the opportunity to make these opening comments and look forward to working cooperatively with all the parties in the Inquiry process.

Counsel to the British Columbia Real Estate Association

Dated this 24<sup>th</sup> day of February, 2020.



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Christopher P. Weafer

***Patrick J. Weafer***

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Patrick J. Weafer