Commission of Inquiry into Money Laundering in British Columbia

WRITTEN SUBMISSIONS OF THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

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PART 1 - INTRODUCTION

1. The B.C. Civil Liberties Association ("BCCLA") is Canada's oldest civil liberties and human rights legal organization with a mandate to promote, protect, and extend civil liberties and human rights in British Columbia and Canada.

2. When the BCCLA presented its opening submissions at the Commission of Inquiry into Money Laundering in British Columbia ("Commission"), we stated our intention to be a voice for the people of this province who cannot speak for themselves at this inquiry, and to uphold our long-standing commitment to preserving the rights and liberties of individuals.

3. The BCCLA therefore came to this Commission with a unique perspective, and we have viewed the substantial body of evidence through a discerning lens. We take this opportunity to present our perspective on what we have witnessed throughout these hearings, and what we see as the most pressing issues from a civil liberties and human rights perspective.

4. Many proposals for combatting money laundering presented to this Commission raise serious constitutional and human rights concerns. We are troubled by the rights-infringing nature of measures such as civil forfeiture and unexplained wealth orders ("UWOs"). A main focus of our closing submissions will be on the erosion of privacy rights in the name of fighting money laundering. There have been numerous calls for increased surveillance and information sharing at this Commission. However, there is no credible evidence that these initiatives will decrease money laundering. In contrast, the evidence is clear that these proposals will be expensive and will erode privacy rights. We are troubled by the inefficiencies of current approaches to combatting money laundering, with governments investing increasing resources into policing despite little evidence that this is effective. The BCCLA is also seriously concerned that the constitutional issues raised by many proposals presented to the Commission have not been adequately canvassed, as there were essentially no witnesses with expertise in Canadian constitutional law called to speak to the implications of these proposals.

5. Many of the Anti-Money Laundering ("AML") measures proposed to this Commission will come at a great financial and social cost.[1] Large amounts of money and resources are thrown at the problem while the potential efficacy of many AML measures is speculative. Professors Levi (Cardiff University) and Reuter (University of Maryland) write:

> AML is just the kind of broad policy intervention that requires evaluation to improve its design and operation, *if not to justify its existence*. … 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.[2]

6. Simply put, most of the measures proposed to this Commission for combatting money laundering have not been adequately tested. This is not a call to throw our hands up and say there is nothing to be done, but rather a call to weigh the true costs to society of implementing invasive measures with unknown benefits.

7. We also submit that addressing our failed model of drug prohibition is an obvious way to reduce money laundering that would be far more effective than the other AML measures presented to this Commission.

8. In his Interim Report, the Commissioner noted that the provincial panel advocated for a cost-benefit analysis in relation to the proposed provincial enforcement response. He wrote: "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."[3]

9. The BCCLA submits that, in analyzing the appropriate response to money laundering, there is a third step in this assessment, and that is to consider the impact of the proposed approach on the rights and liberties of individuals.

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[1] TR June 8, 2020 (Reuter), p. 26; TR June 15, 2020 (Wainwright), p. 33; Cullen Commission Interim Report, p. 62
[2] Ex. 26, p. 310 [emphasis added]
[3] Cullen Commission Interim Report, p. 64

10. Government efforts to combat money laundering must not jeopardize constitutional rights. Further, there must be checks and balances in place for all measures to ensure sufficient accountability and oversight. As we will explain in our submissions, many of the proposals presented to this Commission – from increased information sharing and policing to UWOs – lack evidence for their effectiveness and erode constitutional rights. They should not be adopted.

PART 2 – ASSET FORFEITURE AND UNEXPLAINED WEALTH ORDERS

11. The BCCLA has long expressed concerns about BC's civil forfeiture regime and vehemently opposes calls for any expansion of this regime, including the introduction of UWOs.

A. Civil Forfeiture

i. Civil Forfeiture Grants Extraordinary Power to the State and Undermines *Charter* Rights

12. BC's civil forfeiture regime grants extraordinary power to the state.[4] The *Civil Forfeiture Act*[5] allows the state to seize property even if the owner has not been convicted of a crime.[6] Further, forfeiture is possible in cases where the owner has been acquitted or there has been a stay of proceedings in a criminal case.[7]

13. Under the *CFA*, the Director of the Civil Forfeiture Office ("CFO") can apply to the court for an order forfeiting property.[8] If the Director demonstrates (on a balance of probabilities standard)[9] that property was the proceeds or an instrument of unlawful activity, the court *must* order the property forfeited, unless the forfeiture is "clearly not in the interests of justice."[10] The defendant bears the burden of establishing that relief from forfeiture should be granted, which requires demonstrating that forfeiture would be

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[4] Ex. 387 (Gallant), p. 169
[5] *Civil Forfeiture Act*, SBC 2005, c. 29 [*CFA*]
[6] *CFA*, ss. 1 (definition unlawful activity), 5
[7] TR December 18, 2020 (Tawtel), pp. 41-43, 116-17
[8] *CFA*, s. 3
[9] *CFA*, s. 16
[10] *CFA*, ss. 5-6

"manifestly harsh and inequitable."[11] This standard is a high bar and can lead to disproportionate outcomes. The *CFA* does not grant judges sufficient discretion to craft proportionate orders.[12]

14. The scope of property captured by the *CFA* is broad. The *CFA* applies to both the *proceeds* and *instruments* of unlawful activity. Allowing the state to seize the instruments of unlawful activity augments the risk of disproportionate outcomes.[13] Further, "unlawful activity" is not limited to organized crime, but rather includes all federal offences and offences under British Columbia law, and thus even captures minor provincial offences.[14] The *CFA* allows the state to seize property tied to unlawful acts that result in no harm. Many civil forfeiture regimes do not cast such a wide net. For example, New Zealand's law only allows the state to seize assets tied to significant criminal activity.[15]

15. The *CFA* makes forfeiture even easier for the state by creating many presumptions that operate in the Director's favour.[16] Dr. Skead (University of Western Australia) was critical of the use of presumptions in asset forfeiture legislation, given that the state's task is already eased by the civil standard of proof.[17]

16. The extraordinary power granted to the state through the *CFA* may be leveraged against not only criminal organizations, but also vulnerable individuals. As Dr. Gallant (University of Manitoba) writes:

> … *civil forfeiture represents a vast extension of state power, replicating the ambit of the criminal law and placing powerful new civil tools at the state's disposal.* There may be some reason to suspend concern about the incredible span of this power when the state is confronting organized crime. There may be some parity of arms between the state and organized crime.… But the alleged perpetrator of the assault is not that powerful entity. *Rather, the enormous power of the state may be pitted against the powerless, the ill, the addicted, the socially excluded or the*

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[11] *British Columbia (Director of Civil Forfeiture) v Wolff*, 2012 BCCA 473, ¶38
[12] See Ex. 387 (Gallant), pp. 180-81
[13] Ex. 387 (Gallant), p. 180
[14] *CFA*, s. 1; TR December 14, 2020 (Simser), p. 135
[15] TR May 3, 2021 (Hughes), pp. 128-29; Ex. 953 (Hughes), ¶6.2
[16] Ex. 378 (Simser), p. 12; see *CFA*, ss. 19.01-19.05
[17] TR December 17, 2020 (Skead), pp. 72, 96

marginalized.[18]

17. Indeed, the BCCLA is concerned that BC's civil forfeiture regime may disproportionately impact marginalized communities. Research demonstrates that, in the United States, "civil forfeiture unfairly plagues low-income and minority communities."[19] There is a worrying lack of data collection and research on the impact of civil forfeiture on poor and racialized communities in Canada.[20] We submit that the collection of race-based and disaggregated data about the people whose property is taken through civil forfeiture in BC should be authorized.

18. Civil forfeiture also undermines the procedural protections afforded by the *Charter*. Because civil forfeiture proceedings are civil, not criminal, the defendant does not benefit from the right to silence – the Director has normal rights of discovery.[21] Nor does the defendant benefit from the presumption of innocence.[22] The Director must simply prove his case on the balance of probabilities standard, rather than beyond a reasonable doubt.[23] As Dr. King (University of London) writes:

> … the adoption of civil forfeiture raises serious issues as to the rights of the individual, not least because a person 'charged' with involvement in criminal activity is effectively 'tried' in civil proceedings but stripped of the benefit of criminal process procedural protections such as the presumption of innocence and the higher criminal standard of proof. *The adoption of civil forfeiture as a tool of law enforcement has been described as 'a frontal assault on due process'*.[24]

19. As Dr. Sharman (University of Cambridge) notes, the absence of these procedural safeguards creates a serious risk that the property of innocent people will be seized:

> … non-conviction based measures… will not only result in more criminals losing their property, but also more innocent law-abiding people having their property wrongly

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[18] Ex. 387 (Gallant), p. 180 [emphasis added]; see also TR December 16, 2020 (King), p. 183
[19] Ex. 379 (Rulli), p. 1162; see also TR December 14, 2020 (Simser), pp. 151-52; TR May 10, 2021 (Cassella), pp. 118-19; Ex. 971 (Policing for Profit), p. 10
[20] TR December 14, 2020 (Simser), p. 152; TR December 18, 2020 (Tawtel), pp. 112-14
[21] TR December 14, 2020 (Simser), pp. 129-30; Ex. 389 (Tawtel), ¶35; see also TR December 17, 2020 (Skead), p. 95; *Charter*, ss. 7, 11(c); *British Columbia (Director of Civil Forfeiture) v Liu*, 2018 BCSC 1518, ¶¶30-33
[22] *Charter*, s. 11(d); *Ontario (Attorney General) v Chatterjee*, 2007 ONCA 406
[23] *CFA*, s. 16; see *R v Oakes*, [1986] 1 SCR 103 [*Oakes*], p. 121
[24] Ex. 375 (King), p. 154 (Appendix E) [emphasis added]

> taken by the state. Avoiding injustice is after all why there is a presumption of innocence in the first place; to the extent this is removed, there will be collateral damage.[25]

20. By circumventing *Charter* rights, civil forfeiture makes it much easier for the state to seize property.[26] Since its inception in 2006, the CFO has forfeited over $114 million.[27]

21. There is a serious risk that police will rely on civil forfeiture as a shortcut to avoid conducting a proper criminal investigation.[28] A senior member of the Public Prosecution Service of Canada believes they receive few money laundering and proceeds of crime referrals from law enforcement due to the introduction of civil forfeiture.[29] BC Prosecution Service prosecutors have seen increasing referrals to the CFO for the following reasons: "(a) that civil forfeiture lawyers perform much of the required work to build a case; (b) the civil standard of proof; (c) the ability of litigants to conduct discovery as part of the civil process; and (d) the use of summary (administrative) forfeiture proceedings."[30]

22. As Dr. German notes, "the fact that police and prosecutors in B.C. have essentially abandoned laundering and proceeds of crime charges, has meant that virtually all forfeiture cases are now being referred to the CFO."[31] This over-reliance on civil forfeiture "has the potential of promoting an attitude among some police officers that the *Charter* does not apply to cases involving seized and restrained property."[32] He cautioned that "[c]ivil forfeiture cannot be a dumping ground for 'bad' criminal cases."[33]

23. The *Charter* issues raised by the *CFA* are exacerbated by the close relationship between the CFO and police. Some CFO staff members are "seconded" to work out of

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[25] Ex. 959 (Sharman), p. 24
[26] Ex. 387 (Gallant), pp. 169, 172; TR March 30, 2021 (VPD), p. 124
[27] Ex. 389 (Tawtel), ¶60; TR December 18, 2020 (Tawtel), p. 67
[28] TR May 10, 2021 (Cassella), pp. 130-32
[29] Ex. 1015 (Overview Report), ¶22; see also TR May 6, 2021 (Sharman), p. 110
[30] Ex. 1015 (Overview Report), ¶16
[31] Ex. 833 (Dirty Money #2), p. 292
[32] Ex. 833 (Dirty Money #2), p. 292
[33] Ex. 833 (Dirty Money #2), p. 293

RCMP and VPD offices to facilitate file referrals from these agencies to the CFO.[34] The BC Supreme Court has raised concerns about this arrangement and noted that it has the potential to blur the distinction between criminal and civil proceedings.[35] The court determined that "in some circumstances, the relationship between the police and the CFO with the attendant possibility of conflict arising from the intersection of criminal law substance and procedure and civil forfeiture law substance and procedure may require not only evidentiary oversight by the Court but also engage *Charter* scrutiny."[36] The BCCLA believes CFO staff should not be seconded to law enforcement agencies.

ii. Administrative Forfeiture Allows the State to Seize Assets Without Judicial Oversight

24. BC's administrative forfeiture regime exacerbates the inequities discussed above, as it allows forfeiture to occur in the absence of judicial oversight.[37] Administrative forfeiture creates a streamlined process for the forfeiture of certain property valued at $75,000 or less.[38] To initiate administrative forfeiture, the Director must provide written notice of forfeiture to interest holders.[39] An interest holder may challenge the forfeiture by filing a notice of dispute, in which case the Director can commence judicial forfeiture proceedings.[40] If the interest holder does not file a notice of dispute within 60 days, the property is automatically forfeited.[41] An interest holder who fails to file a notice of dispute in time can later challenge the forfeiture in narrow circumstances, but must file a legal claim to do so.[42] Unlike judicial forfeiture, administrative forfeiture can occur where it is clearly not in the interests of justice.

25. The vast majority of civil forfeiture cases in BC are channeled through the

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[34] TR December 18, 2020 (Tawtel), pp. 11-13, 132; Ex. 389 (Tawtel Affidavit), ¶¶7-12; Ex. 373 (Overview Report), ¶105
[35] *Angel Acres Recreation and Festival Property Ltd. v British Columbia (Attorney General),* 2019 BCSC 1421 [*Angel Acres*], ¶158
[36] *Angel Acres*, ¶159
[37] TR December 14, 2020 (Simser), p. 116
[38] *CFA*, s. 14.02; Ex. 373 (Overview Report), ¶72
[39] *CFA*, s. 14.04
[40] *CFA*, ss. 14.07-14.08; Ex. 389 (Tawtel), ¶40
[41] *CFA*, ss. 14.01, 14.07, 14.09, 14.10
[42] *CFA*, s. 14.11

administrative forfeiture scheme.[43] Approximately 80% of those cases result in forfeiture because no notice of dispute is filed.[44] In the remaining cases, where a notice of dispute is filed and judicial forfeiture proceedings are commenced, a significant number of cases result in default judgments. The cases that do not go to default settle at a high volume.[45] This means that, in a significant number of cases in BC, civil forfeiture occurs with no judicial oversight.

26. While Mr. Tawtel (Director of the CFO) argued that administrative forfeiture "provides access to justice" for individuals who wish to challenge their claims, by keeping many claims out of court,[46] the BCCLA strongly disagrees with this assessment. There are many reasons why a property owner may not file a notice of dispute. Civil forfeiture claims are expensive to litigate.[47] Legal costs could easily exceed the value of the property forfeited. Further, personal service is not required for a notice of forfeiture. Some people, in particular those without a fixed address, may not respond to a notice of forfeiture because they have not received it.[48] In our view, administrative forfeiture should be abolished.

iii. BC's Civil Forfeiture Regime Undermines Access to Justice

27. The *CFA* undermines access to justice. In BC, most civil forfeiture cases never make it to court.[49] A high proportion of low-value cases are not defended.[50] There is also a high rate of settlement with respect to civil forfeiture claims.[51] In the vast majority of cases, the CFO realizes some level of forfeiture if a proceeding is commenced.[52] This is not surprising given that legal aid is not available to defend civil forfeiture claims in BC,[53] defendants

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[43] TR December 18, 2020 (Tawtel), p. 105
[44] TR December 18, 2020 (Tawtel), pp. 60, 64-65, 106
[45] TR December 18, 2020 (Tawtel), p. 65
[46] TR December 18, 2020 (Tawtel), pp. 59-60
[47] TR December 14, 2020 (Simser), p. 118
[48] TR December 18, 2020 (Tawtel), p. 152
[49] TR December 18, 2020 (Tawtel), pp. 65-66
[50] TR December 18, 2020 (Tawtel), p. 60
[51] TR December 14, 2020 (Simser), p. 122; TR December 18, 2020 (Tawtel), pp. 65-66
[52] TR December 18, 2020 (Tawtel), p. 66
[53] TR December 18, 2020 (Tawtel), p. 62

cannot access the value of a restrained asset to assist in defending their case,[54] and the cost of hiring a lawyer can easily exceed the value of the assets for which forfeiture is sought.[55] In contrast, Ontario, Ireland, and Australia allow defendants to access restrained assets for legal expenses[56] and Ireland makes legal aid available in civil forfeiture cases.[57] Many witnesses acknowledged that the involvement of defence counsel in civil forfeiture cases enhances fairness and access to justice.[58] We believe that legal aid should be made available in civil forfeiture cases in BC and that the *CFA* should be amended to allow defendants to use restrained assets for legal expenses.

iv. The CFO Lacks Transparency and Accountability

28. There is a serious lack of transparency and accountability with respect to the operations of the CFO. It appears that BC's civil forfeiture regime has never been reviewed by the Auditor General.[59] Further, the *CFA* does not require the CFO to produce an annual report. In contrast, civil forfeiture laws in Manitoba and Ontario both require annual reporting.[60] Both Mr. Simser (Co-Author of *Civil Asset Forfeiture in Canada*) and Ms. Murray (Executive Director of Manitoba's Criminal Property Forfeiture Unit) acknowledged the importance of annual reporting in providing transparency.[61] We believe the CFO should provide a full and accurate annual report detailing the revenues raised and compensation disbursed. Additionally, the Auditor General should review how the CFO is operating and assess whether it is achieving its objectives.

v. The Distribution of Revenue is Problematic

29. The BCCLA has serious concerns about the distribution of revenue generated

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[54] TR December 14, 2020 (Simser), p. 140; TR December 18, 2020 (Tawtel), p. 62
[55] TR December 14, 2020 (Simser), p. 121
[56] TR December 14, 2020 (Simser), p. 43; *Civil Remedies Act, 2001*, SO 2001, c. 28 [*Civil Remedies Act*], s. 5; TR December 16, 2020 (McMeel), pp. 169-70; Ex. 376 (Skead), p. 108 (Appendix E)
[57] TR December 16, 2020 (McMeel), p. 169
[58] TR December 18, 2020 (Tawtel), p. 64; TR December 16, 2020 (McMeel), p. 171; TR December 16, 2020 (King), pp. 173-74; TR December 17, 2020 (Skead), p. 89
[59] TR December 14, 2020 (Simser), p. 147; TR December 18, 2020 (Tawtel), p. 129
[60] *The Criminal Property Forfeiture Act,* CCSM c. C306, s. 19.10; *Civil Remedies Act, s.* 20.1
[61] TR December 14, 2020 (Simser), pp. 101-02, 113; TR May 5, 2021 (Murray), pp. 93-94

through civil forfeiture in BC. Under the *CFA*, this revenue can be disbursed notably for the following purposes: the administration of the *CFA*, crime prevention, and victim compensation.[62]

30. The CFO is self-funded.[63] A self-funding model can create perverse incentives for public authorities to use civil forfeiture laws to benefit their bottom lines rather than to combat serious crime, and can even promote corruption.[64] Financial considerations are explicitly identified as a factor in the CFO's file acceptance policy, which demonstrates that the self-funding model influences decision-making about which assets the CFO pursues.[65] In contrast, Manitoba's Criminal Property Forfeiture Unit is not self-funded.[66] Nor is Ireland's Criminal Assets Bureau ("CAB").[67] The CAB has been "wholly and vehemently against" any incentivization scheme since its inception.[68] The BCCLA submits that the CFO should no longer be self-funded.

31. Since the CFO's inception, roughly 50% of the funds generated through civil forfeiture have been allocated to operating costs.[69] Although victim compensation is one of the purposes of the *CFA*,[70] less than 2% of the funds generated through civil forfeiture have been returned to victims.[71] Roughly 48% of funds have been allocated to crime prevention grants, including grants for community organizations and law enforcement agencies.[72] Law enforcement agencies have received approximately $5.5 million in crime prevention grants, which can be used for special equipment and training.[73] This

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[62] Ex. 389 (Tawtel), ¶59; *CFA*, s. 27
[63] TR December 18, 2020 (Tawtel), p. 35; Ex. 389 (Tawtel), ¶26; Ex. 373 (Overview Report), ¶85
[64] Ex. 387 (Gallant), pp. 178-79; Ex. 390 (Daley); see also TR December 15, 2020 (Wood), pp. 121-22
[65] TR December 18, 2020 (Tawtel), p. 35; Ex. 389 (Tawtel), ¶24; see also Ex. 390 (Daley), pp. 16-17
[66] TR May 5, 2021 (Murray), p. 7
[67] TR December 16, 2020 (King), pp. 128-29
[68] TR December 16, 2020 (McMeel), pp. 129
[69] TR December 18, 2020 (Tawtel), p. 67
[70] *British Columbia (Director of Civil Forfeiture) v Onn*, 2009 BCCA 402, ¶14
[71] Ex. 389 (Tawtel), ¶60
[72] Ex. 389 (Tawtel), ¶60, 63
[73] Ex. 389 (Tawtel), ¶¶60-66

represents more than double the amount of money distributed to victims from the civil forfeiture account.[74] Allowing law enforcement to financially benefit from civil forfeiture may create the appearance of impropriety and diminish public confidence in the regime.[75] We believe law enforcement agencies should not be eligible for these crime prevention grants.

vi. There is a Lack of Evidence that Civil Forfeiture is Effective

32. There is a paucity of evidence that civil forfeiture deters money laundering or organized crime. While the CFO has seized over $100 million in assets since its inception, the total value of assets forfeited or the number of forfeiture orders granted does not indicate whether a civil forfeiture regime has deterred crime.[76] Several witnesses indicated that they were not aware of empirical research establishing the deterrent effect of civil forfeiture.[77] Ms. Wood (Royal United Services Institute) noted that the effectiveness of asset forfeiture is "a massively underresearched field."[78] Dr. King noted that "there is very little empirical work to support the claim that a non-conviction based approach is effective."[79] The CFO has never conducted a study assessing the effectiveness of the *CFA* in deterring organized crime and money laundering.[80]

33. In contrast, there *is* evidence that civil forfeiture is not required to protect public safety. New Mexico abolished civil forfeiture in 2015, though criminal forfeiture remains available in the state. Following this reform, New Mexico's "overall crime rate did not rise… strongly suggesting civil forfeiture is not an essential crime-fighting tool."[81]

34. Given the issues canvassed above, the BCCLA strongly opposes any expansion of

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[74] TR December 18, 2020 (Tawtel), p. 67
[75] See Ex. 957 (CBC), p. 2
[76] See Ex. 969 (Cassella Report), p. 64; TR May 10, 2021 (Cassella), p. 86; TR December 14, 2020 (Simser), pp. 103-05; Ex. 387 (Gallant), p. 178; TR May 3, 2021 (Hughes), p. 130; TR December 16, 2020 (King), pp. 135, 137-38, 185
[77] TR December 14, 2020 (Simser), pp. 145-47; TR May 3, 2021 (Hughes), p. 130; see also Ex. 374 (Overview Report), p. 951 (Appendix C)
[78] TR December 15, 2020 (Wood), p. 120
[79] TR December 16, 2020 (King), p. 138; see also Ex. 375 (King), Appendix D
[80] TR December 18, 2020 (Tawtel), pp. 129-30
[81] Ex. 971 (Policing for Profit), pp. 5, 31

BC's deeply problematic civil forfeiture regime. We believe the *CFA* should be repealed, and if not, significantly amended. At the very least, the CFO should not be granted any additional resources or powers, including investigative powers.

B. Unexplained Wealth Orders

35. The BCCLA is staunchly opposed to UWOs. UWOs have only been adopted by a small number of jurisdictions, including the UK, Ireland and Australia, and the models for UWOs vary. That said, UWO laws generally require a person to explain the source of their wealth and allow for their wealth to be confiscated if they cannot provide sufficient evidence that it was lawfully acquired.[82] UWOs are "an extraordinary remedy" [83] because they reverse the burden of proof. They undermine privacy rights, the presumption of innocence, and the right to silence.[84] UWOs have therefore attracted criticism from lawyers and academics across the globe.[85] In the BCCLA's view, UWOs are incompatible with the values that underlie the *Charter*. Further, there is no evidence that they are an effective tool for fighting money laundering. Dr. Skead cautioned that, if BC adopts UWOs, it would be "very, very difficult" to backtrack and abolish them.[86]

36. UWOs raise profound civil liberties concerns. Indeed, "[t]here is no international consensus on whether the introduction of UWOs is desirable from the standpoint of striking the right balance between crime prevention and human rights protection."[87] The Colombia Constitutional Court has "ruled against the reversed burden of proof as regards unexplained wealth in civil forfeiture cases."[88] As Mr. Cassella (former US federal prosecutor) noted in his testimony: "[t]he fact that somebody has a lot of money cannot in and of itself be evidence that it's criminally derived in our system."[89]

37. Many witnesses questioned whether UWOs could withstand constitutional scrutiny

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[82] TR June 12, 2020 (Dawkins), p. 5; Ex. 62 (Briefing Note), p. 2
[83] TR April 9, 2021 (Simser), p. 22
[84] See Ex. 959 (Sharman), pp. 24-25
[85] TR May 5, 2021 (Murray), p. 93
[86] TR December 17, 2020 (Skead), p. 90
[87] Ex. 382 (Wood and Moiseienko), p. 27
[88] Ex. 382 (Wod and Moiseienko), p. 22
[89] TR May 10, 2021 (Cassella), p. 91

in Canada.[90] In our view, UWOs undermine the right to privacy protected by s. 8 of the *Charter*. It is challenging to assess the constitutionality of UWOs in the abstract – proposed legislation for UWOs in BC has not been introduced. That said, we note that a law which allows the state to access private financial information (which attracts a reasonable expectation of privacy)[91] absent reasonable and probable grounds to believe that an offence has been committed and that the information sought would provide evidence is presumptively unreasonable.[92] And yet Manitoba's proposed UWO law would require courts to grant a "preliminary disclosure order" (a kind of UWO) in cases where there are no reasonable and probable grounds to suspect that an offence has been committed.[93] The BC government would face an uphill battle in defending the reasonableness of a UWO law because "[a] method of searching that captures an inordinate number of innocent individuals cannot be reasonable."[94] Given its scope, UWO legislation, such as that proposed in Manitoba, would likely capture many innocent people.

38. UWOs also undermine the presumption of innocence protected by s. 11(d) of the *Charter* because they reverse the onus of proof.[95] While s. 11 rights only apply to individuals "charged with an offence," a UWO could fall within the ambit of this definition, even if it were introduced through civil forfeiture legislation. As Dr. King has noted with respect to the Irish regime, "the rights afforded to an individual under the criminal process ought not be jettisoned, in the interests of efficiency and expediency, simply by labelling a process as 'civil'."[96]

39. Admittedly, the Supreme Court of Canada ruled in *Martineau* that the civil forfeiture

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[90] Ex. 959 (Sharman), p. 24; TR May 6, 2021 (Sharman), pp. 115-17; TR April 12, 2021 (German), pp. 70-71
[91] *Schreiber v Canada (Attorney General)*, [1998] 1 SCR 841 [*Schreiber*]; *Royal Bank of* Canada *v Trang*, 2016 SCC 50 [*Trang*], ¶36; *R v Cole*, 2012 SCC 53 [*Cole*], ¶¶47-48
[92] *Hunter et al v Southam Inc.*, [1984] 2 SCR 145 [*Hunter*], p. 168
[93] See Ex. 956 (Bill 58), s. 2.3(6)
[94] *R v Chehil*, 2013 SCC 49, ¶51; *Goodwin v. British Columbia (Superintendent of Motor Vehicles),* 2015 SCC 46 [*Goodwin*], ¶67
[95] *Oakes*, pp. 121, 132
[96] Ex. 375 (King), p. 157 (Appendix E)

scheme at issue did not trigger s. 11 *Charter* rights.[97] But an UWO scheme differs from simple civil forfeiture. In particular, UWO regimes, in substance, create *in personam* proceedings rather than *in rem* proceedings, given that they are concerned with an individual's wealth writ large and not just a specific piece of property. For example, Manitoba's proposed UWO law would require a respondent to provide, *inter alia*, "the sources and amounts of the person's lawfully obtained income and assets."[98] This distinction between *in rem* and *in personam* proceedings is relevant in assessing whether s. 11 is triggered.[99]

40. Section 11 rights apply to proceedings that are criminal by nature or impose true penal consequences.[100] A UWO scheme is criminal by nature because it is "of a public nature, intended to promote public order and welfare within a public sphere of activity."[101] It is not an administrative regime "primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity."[102] UWOs are not aimed at regulating conduct within a private sphere. Rather, they are a tool for depriving individuals of allegedly unlawful wealth in order to promote public order.

41. UWO regimes also impose true penal consequences, which include "imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline within the limited sphere of activity."[103] UWO schemes can lead to confiscation of significant assets[104] and aim to redress societal wrongs by depriving individuals of

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[97] *Martineau v MNR,* 2004 SCC 81 [*Martineau*]
[98] Ex. 956 (Bill 58), s. 2.3(1)(c)
[99] See *Martineau*, ¶63
[100] *R v Wigglesworth*, [1987] 2 S.C.R. 541 [*Wigglesworth*], p. 559
[101] *Wigglesworth*, p. 560
[102] *Wigglesworth*, p. 560; *Goodwin*, ¶41
[103] *Wigglesworth*, p. 561
[104] See Ex. 382 (Wood and Moiseienko), p. 16

allegedly unlawful gains.[105] Further, UWOs are stigmatizing.[106]

42. In Ireland and Australia, serious concerns have been raised about the compatibility of UWO laws with the presumption of innocence. Dr. King took the position that Ireland's UWO regime undermines the presumption of innocence and due process.[107] Although the constitutionality of this law was upheld by Ireland's Supreme Court, the court characterized the law as "unquestionably draconian."[108] Dr. Skead has written that UWO legislation "may be said to fly in the face of Australia's fundamentally adversarial system of law and undermine the notion that a defendant is 'innocent until proven guilty'."[109] The Legal and Constitutional Affairs Legislation Committee in Australia noted that the civil standard of proof and the reverse onus "represen[t] a departure from the axiomatic principle that those accused of criminal conduct ought to be presumed innocent until proven guilty."[110] The Law Council of Australia has said that UWO provisions "remove the safeguards which have evolved at common law to protect innocent parties from the wrongful forfeiture of their property."[111]

43. Lastly, UWOs undermine the *Charter* protection against self-incrimination by compelling an individual to provide evidence that could be used against them.[112]

44. In addition to these civil liberties concerns, it is also unclear that UWOs are an effective tool for fighting money laundering. There is "a conspicuous lack of evidence for the effectiveness of UWOs", though this "has not stopped large sections of the anti-corruption policy community, especially NGOs, portraying UWOs as a 'game-changer'."[113] Dr. Sharman noted that "the potential of UWOs has been

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[105] Ex. 376 (Skead), p. 87
[106] See Ex. 382 (Wood and Moiseienko), p. 9; TR December 15, 2021 (Wood), pp. 125-27; *Martineau*, ¶¶64-66
[107] TR December 16, 2020 (King), p. 182; Ex. 375 (King), p. 154 (Appendix E)
[108] *Murphy v GM; Gilligan v CAB*, [2001] IESC 82, p. 30, per Keane CJ.; TR December 16, 2020 (King), p. 182
[109] Ex. 376 (Skead), p. 34
[110] Ex. 376 (Skead), p. 57
[111] Ex. 376 (Skead), p. 57
[112] *Charter*, ss. 7, 11(c), 13
[113] Ex. 959 (Sharman), p. 26

exaggerated."[114] Indeed, while they are "[p]ortrayed as something of a 'silver bullet' in some contexts, UWOs have so far had a decidedly mixed record."[115] Given this lack of evidence, "enthusiastic endorsements of UWOs for British Columbia and Canada represent the triumph of optimism over experience."[116] It is unclear whether organized crime had decreased as a result of Ireland's UWO regime.[117] There is also a lack of empirical research into the effectiveness of Australia's UWO regime.[118] Ms. Wood said it was "too early to make any judgment on the actual impact [of] the UK scheme."[119]

45. Finally, we note that UWOs will be expensive to implement. As Dr. Skead explained: "you're not going to be making money from this; it's going to cost you."[120]

C. RICO Legislation

46. Members of the Enforcement Panel at the Cullen Commission called for the adoption of legislation like the *Racketeer Influenced and Corrupt Organizations Act*[121] in Canada.[122] RICO includes asset forfeiture provisions[123] and "allows prosecution and civil penalties for racketeering activity performed as part of an ongoing criminal enterprise."[124] RICO has "harsh provisions."[125] For example, "[u]pon deciding to indict someone under RICO, the U.S. Attorney has the option of seeking a pre-trial restraining order or injunction to temporarily seize a defendant's assets and prevent the transfer of potentially forfeitable property, as well as require the defendant to put up a performance bond."[126] Therefore, "[i]n many cases, the threat of a RICO indictment can force defendants to plead guilty to lesser charges, in part because the seizure of assets would make it difficult to pay a

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[114] Ex. 959 (Sharman), p. 23
[115] Ex. 959 (Sharman), p. 25; see also TR May 6, 2021 (Sharman), pp. 113-15
[116] Ex. 959 (Sharman), p. 26
[117] TR December 16, 2020 (King), p. 136; Ex. 375 (King), p. 164 (Appendix E)
[118] Ex. 376 (Skead), p. 88
[119] TR December 15, 2020 (Wood), p. 122
[120] TR December 17, 2020 (Skead), p. 75
[121] *Racketeer Influenced and Corrupt Organizations Act*, 18 US Code, c. 96 [RICO]
[122] Ex. 828 (Enforcement Panel), pp. 29-30
[123] RICO, s. 1963
[124] Ex. 828 (Enforcement Panel), p. 29
[125] Ex. 828 (Enforcement Panel), p. 29
[126] Ex. 828 (Enforcement Panel), p. 29

defence attorney."[127] Mr. Simser acknowledged that RICO had been used by the private bar to target protestors and Professor Cockfield (Queen's University) acknowledged that the law had led to abuses.[128] Further, "[i]mplementing RICO would be challenging from a constitutional perspective"[129] because the law includes both criminal provisions and civil remedies.

47. In short, RICO is extremely harsh legislation and the BCCLA is strongly opposed to the adoption of a similar law in Canada due to the constitutional and human rights issues it would raise.

PART 3 – INFORMATION SHARING AND PRIVACY

48. The BCCLA is profoundly concerned about the privacy implications of many of the proposals for combatting money laundering presented to this Commission. We support lawful efforts to combat money laundering and acknowledge that privacy protections must, in appropriate circumstances, give way to law enforcement objectives.[130] That said, this Commission heard numerous proposals for mass surveillance and novel information collection and sharing initiatives that violate *Charter* rights and are inconsistent with both the text and spirit of privacy legislation. These proposals undermine the careful balance between law enforcement objectives and privacy protection struck by the *Charter* and privacy laws. They would not only jeopardize the privacy rights of individuals engaged in criminal activity but would also result in the surveillance of law-abiding Canadians.[131] Further, there is a paucity of evidence that these proposals would even be effective. We agree with Dr. Sharman's assessment:

> Canada suffers from what in many ways is the central paradox of AML policy: *the law has provided an escalating succession of powerful tools for surveillance, prosecution and asset confiscation, and yet the actual effectiveness of these laws*

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[127] Ex. 828 (Enforcement Panel), p. 29
[128] TR April 9, 2021 (Enforcement Panel), pp. 164-65
[129] Ex. 828 (Enforcement Panel), pp. 29-30
[130] See s. 8 of the *Charter*; *Hunter*, pp. 159-60; *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, s. 33.2(i); *Personal Information Protection Act*, SBC 2003, c. 63, s. 18(1)(j); *Privacy Act*, RSC 1985, c. P-21, s. 8(2)(f); *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, ss. 7 (3) (c.1) (ii), 7(3)(d)-(d.2); TR December 3, 2020 (McIsaac), pp. 110-11
[131] TR December 3, 2020 (McIsaac), pp. 110-11; TR May 6, 2021 (Sharman), pp. 165-66

> *seems to remain very low*. It is striking that more than 30 years after the introduction of international AML standards, there is little or no evidence that there is any less money laundering or predicate crime as a result.[132]

49. The BCCLA is also very troubled that the Cullen Commission did not call any experts in Canadian privacy law or constitutional law to address the legality of these proposals. The proposals included: (1) amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*[133] to change the Financial Transactions and Reports Analysis Centre of Canada's ("FINTRAC") powers to collect and disseminate information; (2) the use of algorithmic policing; and (3) the creation of AML data hubs accessible to private parties, regulatory bodies, and law enforcement. The only Canadian experts on privacy law called by this Commission were Barbara McIsaac, Q.C. (Author of *The Law of Privacy in Canada*) and Professor Cockfield, and their reports hardly refer to the *Charter*.[134] The BCCLA is the only participant in this Commission with an explicit mandate to defend privacy rights, and the burden should not fall to a single participant to address the significant constitutional issues these proposals raise. Attorney General Eby testified that he expects this Commission's recommendations to comply with the *Charter*.[135] We are concerned that the s. 8 *Charter* implications of many proposals to this Commission have not been adequately canvassed.

A. Proposals Regarding FINTRAC

50. The BCCLA is opposed to any increased data collection by FINTRAC, including amendments to the *PCMLTFA* that would add further reporting entities to FINTRAC. We are strongly opposed to granting FINTRAC real time access to all financial transactions in Canada, as some witnesses recommended.[136] FINTRAC already collects massive amounts of data. Indeed, "Canada is currently driving one of the most extensive AML/ATF data collection regimes in the world, encouraging massive volumes of reporting of Canadian transactions to FINTRAC. FINTRAC receive[s] almost 10 million more reports

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[132] Ex. 959 (Sharman), p. 7 [emphasis added]
[133] *Proceeds of Crime (Money Laundering) and Terrorist Financing Act,* SC 2000, c. 17 [*PCMLTFA*]
[134] Ex. 319 (McIsaac); Ex. 828 (Enforcement Panel)
[135] TR April 26, 2021 (Eby), pp. 208-09
[136] TR January 14, 2021 (Maxwell), pp. 146, 158-59; Ex. 828 (Enforcement Panel), p. 10

per year than their U.S. counterpart."[137] For context, FINCEN (the US counterpart to FINTRAC), is considered by privacy advocates such as the American Civil Liberties Union to be a mass surveillance program.[138] In 2019/2020, FINTRAC received over 31 million reports.[139] This represented a 558% increase in reports since 2010/2011.[140] Given this volume of reporting, "[t]he vast majority of the reported information to FINTRAC will likely relate to the innocent behaviour of Canadians."[141] It is unclear how FINTRAC can process this volume of reports. Only a small fraction of these reports results in actionable intelligence – FINTRAC disclosed 2,057 reports in 2019-2020, and not all of these reports would have been used for investigations by law enforcement.[142] Given the wide discrepancy between the number of reports received by FINTRAC and the number disclosed to law enforcement, the *PCMLTFA* regime is "hugely disproportionate."[143]

51. Further, there is no evidence that FINTRAC's massive data collection regime is effectively combatting money laundering. Indeed, "[t]he available evidence suggests that the current Canadian AML/ATF regime is deficient; unable to demonstrate an effective impact relative to the likely scale of economic crime in Canada, very costly to implement; and resulting in a very high data collection footprint on Canadian society."[144] Audits by the Office of the Privacy Commissioner of Canada (OPCC) have revealed consistent failures by FINTRAC to adequately protect personal information.[145] According to Ms. McIsaac, this poor track record is "a factor that ought to be considered very seriously" in determining whether more information should be collected by FINTRAC.[146] In these

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[137] Ex. 411 (Maxwell), p. 12
[138] TR May 11, 2021 (Brooker), p. 91
[139] Ex. 828 (Enforcement Panel), p. 15
[140] Ex. 828 (Enforcement Panel), p. 15
[141] Ex. 411 (Maxwell), p. 112
[142] Ex. 828 (Enforcement Panel), p. 15, Appendix 3, pp. 2-3; TR April 9, 2021 (Enforcement Panel), pp. 139-40, 144; see also Ex. 321 (OPCC Audit – 2017), p. 3
[143] TR January 14, 2021 (Maxwell), p. 74
[144] Ex. 411 (Maxwell), p. 12
[145] Ex. 320 (OPCC Audit - 2013); Ex. 321 (OPCC Audit – 2017); TR December 3, 2020 (McIsaac), pp. 119-21
[146] TR December 3, 2020 (McIsaac), p. 121

circumstances, the BCCLA submits that it would be absurd to permit FINTRAC to collect *more* data.

52. The BCCLA is also opposed to increased information sharing between FINTRAC and law enforcement, including allowing for two-way information sharing or granting law enforcement direct access to FINTRAC databases.[147] These proposals undermine FINTRAC's independence, which is protected by s. 40(a) of the *PCMLTFA*. It is the BCCLA's position that these proposals would also violate s. 8 of the *Charter*. Even Canada has acknowledged that FINTRAC's independence from law enforcement is a key safeguard of the *PCMLTFA*'s constitutionality.[148]

53. Even as it is currently drafted, the *PCMLTFA* is constitutionally controversial because it allows law enforcement to access private financial information (which attracts a reasonable expectation of privacy)[149] absent prior judicial authorization based on reasonable and probable grounds.[150] Warrantless searches by law enforcement are presumptively unreasonable.[151] Legislation like the *PCMLTFA* authorizing such searches will only comply with s. 8 where the state can demonstrate that the law is reasonable.[152]

54. A regime that provides law enforcement with unfettered access to FINTRAC databases would clearly violate s. 8 as it would grant law enforcement an "unreviewable, discretionary power of search and seizure."[153] FINTRAC's role as an intermediary which can disclose financial information to law enforcement only where there are "reasonable grounds to suspect" that the information would be of assistance in investigating or prosecuting an offence[154] somewhat reduces the constitutional vulnerability of the scheme.[155] Proposals to allow two-way information sharing with FINTRAC would

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147 See ex: Ex. 411 (Maxwell), pp. 75, 112; Ex. 828 (Enforcement Panel), p. 22
148 See Ex. 414 (Government Response), pp. 4, 6
149 See *Schreiber*, ¶22; *Trang*, ¶36; *Cole*, ¶¶47-48
150 *Hunter*, p. 168
151 *Hunter*, p. 161
152 *R v Collins*, [1987] 1 SCR 265, p. 278
153 *Goodwin*, ¶70
154 *PCMLTFA*, s. 55(3)
155 See *Hunter*, pp. 160-63

undermine these safeguards and allow law enforcement to engage in suspicion-less searches without prior authorization or oversight. Many witnesses at the Commission underscored that other jurisdictions allow law enforcement to have comparatively more access to data held by their financial intelligence units ("FIUs").[156] But of course, different countries have different constitutional protections.[157] The fact that other jurisdictions have allowed law enforcement greater access to data held by FIUs does not mean that such an approach would be *Charter*-compliant in Canada.

55. The BCCLA is very troubled by evidence this Commission heard indicating that FINTRAC's independence from law enforcement has already been jeopardized. Many witnesses referred to the use of "voluntary information records" ("VIRs") by law enforcement to request information from FINTRAC.[158] In his first report, Dr. German noted: "On a national level, FinTRAC's dissemination of intelligence is roughly 70% reactive, or in response to Voluntary Information Reports (VIR) submitted by police, and 30% proactive, in which it disseminates leads on new cases."[159] This is extremely troubling because the *PCMLTFA* does not authorize law enforcement to request information from FINTRAC. The legislative basis for VIRs is s. 54(1)(a) of the *PCMLTFA*, which only authorizes FINTRAC to "receive… information voluntarily provided to the Centre about suspicions of money laundering or of the financing of terrorist activities." This provision does not authorize law enforcement to *request* information from FINTRAC. As the OPCC explained in its 2017 audit of FINTRAC:

> The PCMLTFA states that FINTRAC shall receive information provided to the Centre by law enforcement agencies or government institutions or agencies. There is no reporting threshold associated with these VIRs. *However, VIRs are routinely used to ask for information.* Exhibit C shows an example of how a VIR is used in this regard.
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> Exhibit C
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> A VIR sent by a police force asked FINTRAC *for information on members of an Indigenous protest group opposing pipeline development*. The VIR noted that none of the individuals listed in the report was suspected to be a member of an organized

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[156] See Ex. 411 (Maxwell), p. 112; Ex. 828 (Enforcement Panel), p. 22; Ex. 832 (Dirty Money #1), ¶333; TR April 13, 2021 (German), p. 79
[157] See TR April 13, 2021 (German), p. 79
[158] See Ex. 411 (Maxwell), p. 19; Ex. 828 (Enforcement Panel), p. 15
[159] Ex. 832 (Dirty Money #1), ¶331

> crime or terrorist group. Despite this, the VIR requested information on each individual's fundraising activities and charitable contributions.[160]

56. The BCCLA is also very troubled by the evidence this Commission heard about Project Athena, a public-private partnership that undermined FINTRAC's independence and resulted in unconstitutional searches. Project Athena was a public-private partnership between law enforcement, FINTRAC, and reporting entities aimed at combatting money laundering in casinos.[161] In the context of Project Athena, law enforcement would approach a bank with a list of gamblers who had used bank drafts from that institution and would ask the bank to confirm whether these individuals held accounts at that bank.[162]

57. Witnesses from TD provided evidence that they were then expected to investigate clients flagged by law enforcement and file a suspicious transaction report ("STR") with FINTRAC if warranted. Michael Bowman (Global Chief Anti-Money Laundering Officer of TD) agreed that "the purpose of Project Athena in providing this information to TD and to the other financial institutions participating was that TD would use the information… to initiate or feed into its own AML investigations and, if appropriate, file STRs, possibly resulting in actionable intelligence for the RCMP."[163] Some individuals at TD were concerned that Project Athena was effectively requiring them to act as an extension of law enforcement.[164]

58. In contrast to the evidence given by TD witnesses, Sgt. Robinson and Ms. Paddon (Combined Forces Special Enforcement Unit BC) testified that the participation of banks in this project was voluntary and they had discretion as to whether they wished to investigate a flagged client and file an STR.[165] When confronted with the testimony of the

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[160] Ex. 321 (OPCC Audit – 2017), p. 14 [emphasis added; long forms of abbreviations omitted]
[161] Ex. 846 (Investigation Planning and Report), p. 1
[162] TR April 14, 2021 (Robinson), pp. 44-45; Ex. 460 (Paddon Email – Aug 2018); Ex. 463 (Paddon Email – March 2019); Ex. 472 (Paddon Email – Sept 2018); Ex. 840 (Project Athena PPT), p. 8
[163] TR January 20, 2021 (Bowman), p. 102, see also pp. 126, 154
[164] TR January 20, 2021 (Bowman), pp. 149-50
[165] TR April 14, 2021 (Robinson, Paddon), pp. 53-55

TD witnesses on cross-examination, Sgt. Robinson replied: "I can speak to my actions and my direction, and that is it was voluntary and I did not direct financial institutions to conduct investigations."[166]

59. Whether or not law enforcement *directed* the banks to conduct these investigations, the evidence indicates that some financial institutions may have been acting as agents of the police in the context of Project Athena. To determine whether a private party has become an agent of the police, and thus whether a search the party conducts attracts s. 8 *Charter* scrutiny,[167] the question is whether the private entity would have conducted the search in the form and manner in which it did "but for the intervention of the police."[168] The evidence indicates that the police brought specific clients to the attention of the banks with some expectation that the banks would investigate these clients – or at least the suggestion that they should do so. These searches were clearly initiated due to police intervention.[169] It is not clear that the banks would have had any reason to believe these clients were suspicious had the police not flagged them. This raises serious s. 8 *Charter* concerns.

60. Further, even if the investigations conducted by the banks were lawful, there were other serious constitutional issues with Project Athena. This project was designed to circumvent the *Charter* requirement to obtain a production order before accessing private financial information and to undermine FINTRAC's independence.[170] Minutes from the October 24th, 2018 Project Athena meeting attribute the following comments to law enforcement: "Want to know basic information in order to confirm whether the records/accounts exist… Means the banks will have to look at the account and file an STR if it is warranted… FINTRAC initiative, avoiding a PO…"[171] Sgt. Robinson, who attended this meaning, confirmed that he understood "PO" to be a reference to a

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[166] TR April 14, 2021 (Robinson), p. 155; see also Ms. Paddon's testimony on p. 155
[167] *R v Buhay*, 2003 SCC 30 [*Buhay*], ¶25
[168] *Buhay*, ¶29; see also *R v Broyles*, [1991] 3 SCR 595, p. 608; *R v M (MR),* [1998] 3 SCR 393 [*M (MR)*], ¶29
[169] See *M (MR),* ¶29
[170] See Ex. 840 (Project Athena PPT), p. 10; see also TR April 14, 2021 (Robinson), p. 56
[171] Ex. 476 (Meeting Minutes), p. 2

production order.[172] Reporting entities were expected to flag STRs filed in the context of Project Athena with #ProjectAthena,[173] making it even easier for law enforcement to obtain the information it wanted from banks without first obtaining a production order.

61. The BCCLA is very concerned that the unconstitutional searches that occurred in the context of Project Athena will be repeated in future public-private partnerships and that there will be no accountability for this unlawful conduct, as this information sharing occurs behind closed doors. Public-private partnerships are only permissible when the information sharing complies with privacy legislation and the *Charter.* We are opposed to tactical information sharing in public-private partnerships due to the constitutional risks it presents. The Counter Illicit Finance Alliance of BC ("CIFA-BC"), the permanent public-private partnership into which Project Athena has evolved,[174] should not allow for tactical information sharing.

B. AML Data Hubs

62. The Commission was presented with numerous proposals for the creation of AML clearinghouses that would aggregate data from many sources and allow many bodies (including law enforcement) to access this data. These proposals included the Real Estate Intelligence Hub proposed by Deloitte and Quantexa,[175] an expanded mandate for the Data Branch of the Finance Real Estate and Data Analytics Unit,[176] the Fusion Centre proposed by the Enforcement Panel,[177] the AML Data Framework proposed by Work Stream 1 of the BC-Canada Working Group on Real Estate,[178] and the BC Fusion Centre.[179] The BCCLA is concerned that these proposals would lead to the mass surveillance of financial and property transactions. Further, some of these proposals would co-opt private parties into providing the state (including law enforcement) with

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[172] TR April 14, 2021 (Robinson), pp. 156-57
[173] TR April 14, 2021 (Robinson), pp. 160-61
[174] TR April 14, 2021 (Robinson), pp. 97-98
[175] Ex. 667 (Quantexa Presentation)
[176] Ex. 687 (FREDA Strategy Document)
[177] Ex. 828 (Enforcement Panel), p. 5
[178] Ex. 703 (Work Stream 1 Study), p. 11
[179] Ex. 61 (BC Fusion Centre); TR June 12, 2020 (Harris), pp. 1-3

access to private information. The BCCLA is strongly opposed to these proposals, which raise serious concerns with respect to both s. 8 of the *Charter* and privacy legislation.

63. These proposals involve leveraging big data to combat money laundering. For example, the Real Estate Intelligence Hub could include data from various government agencies as well as external data, such as information about financial transactions and open-source intelligence ("OSINT").[180] The Fusion Centre proposed by the Enforcement Panel could include OSINT as well as information from real estate, luxury vehicles, gaming, financial services, securities, and tax regulators.[181] The AML Data Framework could use data from Statistics Canada, FINTRAC, the CRA, the Bank of Canada, the RCMP, the Canada Mortgage and Housing Corporation, British Columbia public institutions, and could eventually include private data sources as well.[182]

64. Leveraging big data to tackle money laundering presents serious and unique privacy risks. Big data can create a penetrating and comprehensive gaze into the lives of citizens. It "can potentially reveal a detailed picture about individuals that they may not expect to exist, let alone expect to be in the possession of the government."[183]

65. The risks of data aggregation are heightened when data analytics and algorithmic technology are used.[184] The Commission was presented with several proposals to harness algorithmic and data analytic technologies to process increasingly large swaths of data, including data collected by the proposed AML hubs.[185] For instance, Dr. Leuprecht (Queen's University) theorized that algorithms could potentially incorporate billions of data points to not only trace transactions, but also generate "networks of people

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[180] TR March 2, 2021 (Deloitte/Quantexa Panel), pp. 95-97; Ex. 667 (Quantexa Presentation), pp. 4, 8
[181] Ex. 828 (Enforcement Panel), p. 21
[182] Ex. 703 (Work Stream 1 Study), pp. 6, 8-13, 57-85; see also TR June 12, 2020 (Harris), pp. 2-3; Ex. 61 (Fusion Centre), p. 6 (with respect to data held by the BC Fusion Centre); Ex. 687 (FREDA Strategy Document), pp. 9-10 (with respect to the data collected by the Data Branch)
[183] Ex. 668 (To Surveil and Predict), p. 76
[184] See Ex. 668 (To Surveil and Predict), pp. 33-35
[185] See ex: TR March 2, 2021 (Deloitte/Quantexa Panel), pp. 105-06; Ex. 828 (Enforcement Panel), pp. 9-11

who are related to one another, how often they talk to one another, [and] the amount of money that flows among them."[186] These capabilities are no longer reserved for science fiction:[187] examples like Quantexa illustrate that commercial working models already exist to visualize networks at previously inconceivable scales.[188] The BCCLA has many concerns about the use of algorithmic technology to combat money laundering and is particularly concerned about the ways in which such technology can impact privacy and equality rights protected by the *Charter*.[189] Algorithmic technologies can perpetuate discriminatory feedback loops and confirmation bias.[190] It is critical that the *Charter* implications of these algorithmic proposals be adequately considered, particularly because existing privacy legislation is silent on algorithmic technologies and the proposed *Digital Charter Implementation Act* fails to offer robust safeguards with respect to "automated decision systems" beyond simple transparency requirements.[191]

66. The BCCLA also notes that the inclusion of OSINT in these AML hubs presents privacy risks, even though such data is publicly accessible. OSINT includes publicly available social media and other online content,[192] such as newspaper articles and academic publications. The Supreme Court has recognized that "[t]he mere fact that someone leaves the privacy of their home and enters a public space does not mean that the person abandons all of his or her privacy rights, despite the fact that as a practical matter, such a person may not be able to control who observes him or her in public."[193] From a constitutional perspective:

> Individuals retain a unique expectation of privacy from law enforcement agencies. This expectation means that individuals retain a right to the protection of their privacy from law enforcement *even if information has already been disclosed or made public*

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[186] TR April 9, 2021 (Leuprecht), p. 61
[187] TR April 9, 2021 (Cockfield), p. 64
[188] See Ex. 667 (Quantexa Presentation), p. 4; TR March 2, 2021 (Dent), pp. 12-15
[189] See Ex. 668 (To Surveil and Predict), pp. 73-94, 101-23
[190] Ex. 668 (To Surveil and Predict), pp. 105-06
[191] Bill C-11, *An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts*, 2nd Sess, 43rd Parl, 2020 [*Digital Charter Implementation Act*], cl. 2, 62(2)(c), 63(3)
[192] Ex. 668 (To Surveil and Predict), p. 48
[193] *R v Spencer*, 2014 SCC 43 [*Spencer*], ¶44

> *for other purposes to non-law enforcement actors*. While individuals do inevitably lose some degree of control over their personal information when it is shared with others, they may reasonably expect that the information will not be divulged further to (or collected by) law enforcement.[194]

67. The BCCLA is very concerned by suggestions that law enforcement should have unfettered access to the information held in these AML hubs for tactical purposes.[195] In providing evidence about the Real Estate Intelligence Hub, Mr. Dent (Deloitte) noted: "law enforcement may have the greatest amount of access to this data depending on what the parameters are set up or how the system is designed from an intelligence hub perspective,"[196] though he later specified that "that would be a decision for the owners or designers"[197] of the hub. The Data Branch is exploring the possibility of providing information to law enforcement in the future.[198] The PowerPoint about BC's Fusion Centre refers to "collaboration with police."[199]

68. Many witnesses indicated that they had not considered the *Charter* implications of their proposed AML data hub models.[200] As discussed above, warrantless searches – that is, searches without prior judicial authorization based on reasonable and probable grounds – are *prima facie* unconstitutional.[201] We are concerned about suggestions that law enforcement should have access to the vast troves of data stored within these AML hubs without the presence of any of these constitutional safeguards. Section 8 of the *Charter* does not authorize such fishing expeditions.[202]

69. Allowing state entities other than law enforcement to access these AML hubs may also raise constitutional concerns.[203] Section 8 of the *Charter* applies not only to criminal

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[194] Ex. 668 (To Surveil and Predict), pp. 75-76 [emphasis added]
[195] See TR March 2, 2021 (Bell), pp. 53-54
[196] TR March 2, 2021 (Dent), p. 57
[197] TR March 2, 2021 (Dent), p. 93
[198] Ex. 687 (FREDA Strategy Document), pp. 1, 8-9
[199] Ex. 61 (Fusion Centre), p. 18
[200] See TR March 2, 2021 (Deloitte/Quantexa Panel), pp. 93-94; TR March 11, 2021 (McCarrell), p. 189
[201] *Hunter*, p. 161
[202] See *Hunter*, p. 167
[203] See Ex. 413 (FFIS)

investigations but also to administrative inquiries.[204] That said, searches in criminal investigations must comply with higher standards than searches in the regulatory context.[205] We submit that the *Charter* implications of providing law enforcement and regulatory bodies access to these AML hubs must be fully considered.

70. The constitutional problems identified above with respect to AML hubs cannot be remedied by using privacy enhancing technologies.[206] Privacy enhancing technologies "enable data owners or data stewards to provide analysts (or processors) with an opportunity to undertake limited computations and to provide guarantees that the analyst will not have access to raw data."[207] However, preventing the investigating party from accessing the "raw data" while performing analysis does not mitigate constitutional concerns where the insights gleaned from this analysis will be used for tactical purposes by law enforcement. In assessing whether a privacy interest attracts s. 8 protection, courts look "at not only the nature of the precise information sought, but also at the nature of the information it reveals."[208] Thus, the Supreme Court has held that a dog sniff of a bag can constitute a search within the meaning of s. 8 because, "[b]y use of the dog, the policeman could 'see' through the concealing fabric of the backpack."[209] Similarly, privacy enhancing technologies do not prevent law enforcement from "seeing through" the encrypted data for the purposes of identifying targets of investigation.

71. Finally, these AML hub proposals are inconsistent with the principles that underlie Canadian privacy legislation. The fair information principles dictate that the use and disclosure of personal information must generally be limited to the purposes for which the

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[204] See *R v Jarvis*, 2002 SCC 73 [*Jarvis*]; *Thomson Newspapers Ltd v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425

[205] See ex: *Jarvis*, ¶72; *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7, ¶37

[206] Ex. 703 (Work Stream 1 Study), pp. 156-58; Ex. 413 (FFIS)

[207] Ex. 413 (FFIS), p. 11

[208] *Spencer*, ¶26; see also *R v Plant*, [1993] 3 SCR 281, p. 293; *R v Tessling*, 2004 SCC 67, ¶¶35-36

[209] *R v AM,* 2008 SCC 19, ¶67

information was collected.[210] The proposed AML hubs violate this principle when they allow data collected for many different purposes to be shared with many different bodies. The fair information principles also require consent to be obtained to collect, use, and disclose personal information, except where inappropriate.[211] Indeed, under Canada privacy legislation, sharing personal information without informed consent is the exception, not the rule.[212] The proposed AML data hubs do not respect this principle of obtaining consent. When an individual consents to disclosing their data to the land title registry, for example, they are not consenting to the aggregation of this data with other data sources to create a detailed and intimate picture of them. And they certainly are not consenting to providing this picture to law enforcement.

C. Facial Recognition

72. Commission counsel refers to the use of facial recognition as a tool for combatting money laundering in the outline of issues they provided to participants. The BCCLA recommends caution in considering recommendations for using facial recognition. We have called for a moratorium on the use of facial recognition by law enforcement and intelligence agencies. Facial recognition poses a "fundamental threat … to the right to privacy and other human rights and freedoms, particularly those of historically marginalized groups disproportionately impacted by police surveillance."[213] Facial recognition "erod[es] anonymity in daily life"[214] because it allows law enforcement to "track and de-anonymize individuals who are moving freely in public and online spaces without the affected individuals being aware that their image has been collected, processed, or identified."[215] Further, "facial recognition technology is unreliable, particularly in the case of racialized individuals and women, who are more likely to be misidentified by the technology."[216]

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[210] Ex. 319 (McIsaac), p. 8
[211] Ex. 319 (McIsaac), p. 8
[212] TR December 3, 2020 (McIsaac), p. 110
[213] Ex. 668 (To Surveil and Predict), p. 93
[214] Ex. 668 (To Surveil and Predict), p. 91
[215] Ex. 668 (To Surveil and Predict), pp. 90-91
[216] Ex. 668 (To Surveil and Predict), p. 91

D. Safe Harbour Provisions

73. The BCCLA submits that privacy legislation and the *PCMLTFA* should not be amended to include safe harbour provisions that would shield parties from liability when sharing information for the purposes of combatting money laundering.[217] Such provisions are unnecessary as privacy legislation already allows for information sharing for the purposes of combatting money laundering in appropriate cases. As Ms. McIsaac opined:

> While there may be an assumption among some that privacy laws in Canada act to deter the disclosure of personal information related to combatting money laundering, it is my view that, properly understood, they do not prohibit such activity. These laws have specific provisions outlining how such disclosures can be done lawfully while respecting individuals' personal privacy, thus providing a guide and assurance for would-be information sharers and users alike.[218]

74. Ms. McIsaac noted that, while privacy legislation *permits* information sharing to combat laundering, it does not generally require it.[219] She explained that safe harbour provisions may therefore "act to provide both public bodies and private organizations with more confidence that they will be protected from liability or censure by a regulator if they act in good faith when they share information, including personal information, for the purposes of combatting money laundering."[220] However, she specified that there was no empirical evidence in her report to support the assumption that potential information sharers are currently likely to err on the side of non-disclosure.[221] She also specified that her report does not recommend the adoption of safe harbour provisions, but merely notes that such recommendations have been made by others.[222] Further, even if privacy legislation does not generally require information sharing for the purposes of fighting money laundering, other legislation, notably the *PCMLTFA*, compels such information

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[217] See Ex. 319 (McIsaac), pp. 7, 109-12; Ex. 411 (Maxwell), p. 119; Ex. 828 (Enforcement Panel), p. 23
[218] Ex. 319 (McIsaac), p. 6
[219] Ex. 319 (McIsaac), p. 6
[220] Ex. 319 (McIsaac), p. 7
[221] TR December 3, 2020 (McIsaac), pp. 112-13
[222] TR December 3, 2020 (McIsaac), p. 115

sharing.[223] The OPCC has consistently found that entities report excessive information to FINTRAC,[224] which further demonstrates that safe harbour provisions are not needed.

75. Any hesitancy to engage in legal information sharing for the purposes of combatting money laundering can be remedied through education and clear direction from regulators. Safe harbour provisions would undermine the right to recourse which underlies Canadian privacy legislation.[225] Such provisions would grant complete immunity to parties who share information for the purposes of combatting money laundering provided they did so in good faith.[226] If safe harbour provisions are adopted, they must be "very carefully worded and tightly constrained… so that you are not undermining privacy rights any more than is deemed to be absolutely necessary."[227]

E. Beneficial Ownership

76. Advocating for beneficial ownership transparency has become a conventional position in the fight against money laundering. With the introduction of the *Land Owner Transparency Act*[228] and the completion of provincial government consultations on a corporate beneficial ownership registry, the movement towards beneficial ownership transparency is well on its way in British Columbia.

77. The Maloney Report asserts that the disclosure of beneficial ownership is "the single most effective measure that a government can take to combat money laundering."[229] However, there is a serious lack of evidence that this is the case. Dr. Sharman, in his report to the Commission, wrote:

> Yet despite the current popularity of beneficial ownership registries there is a striking lack of evidence that they do actually help in deterring, detecting or combatting money laundering and related financial crime. The UK government has been the main champion of this policy on the international stage, but it is hard to see either

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[223] TR December 3, 2020 (McIsaac), p. 113
[224] TR December 3, 2020 (McIsaac), pp. 113-15; Ex. 320 (OPCC Audit - 2013), ¶39; Ex. 321 (OPCC Audit – 2017), ¶48
[225] Ex. 319 (McIsaac), p. 9
[226] Ex. 319 (McIsaac), p. 110
[227] TR December 3, 2020 (McIsaac), p. 118; see also Ex. 319 (McIsaac), p. 110
[228] *Land Owner Transparency Act,* SBC 2019, c. 23 [*LOTA*]
[229] Ex. 330 (Maloney), p. 75

> any general decline in financial crime, or even any particular case that has succeeded because of this new level of transparency.[230]

78. Dr. Sharman also raises the concern that registries contain a large volume of low quality, unverified information.[231] He makes the point that a registry with a high volume of low quality data is not advantageous and may in fact stop you from seeing things.[232] Furthermore, verifying such information would be a resource-intensive and expensive undertaking.[233]

79. Further, those who wish to conceal ownership may simply structure ownership to fall below the threshold of the particular registry. In discussing *LOTA*, Ms. Harris (BC Ministry of the Attorney General) agreed that it is a concern that those seeking to obscure ownership of property will adopt ownership structures with enough people involved to obscure their ownership.[234] On the topic of obscuring ownership, Professor Levi stated: "one of the problems that beneficial ownership registration has is how much effort everybody is going to put into the process of identify the chain of people. At what point do you stop? It's not as easy as many people think to identify the real beneficial owner."[235]

80. In addition to questions of effectiveness, the BCCLA is critical of expanding the government's ability to collect and retain sensitive information in a manner that is not sufficiently protective of privacy rights. The BCCLA therefore submits that beneficial ownership registries should be operated under the principle of data minimization. Only the personal information necessary to achieve specified goals or purposes should be collected, and the use and disclosure of that information must be appropriately restricted.

81. The government should also conduct a privacy analysis for each category of information that would be collected for a registry. Citizenship and country of origin have

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230 Ex. 959 (Sharman), p. 10
231 Ex. 959 (Sharman), p. 10
232 TR May 6, 2021 (Sharman), p. 66; Ex. 959 (Sharman), p. 10
233 TR May 6, 2021 (Sharman), pp. 66, 184-86
234 TR June 11, 2020 (Harris), p. 60
235 TR June 8, 2020 (Levi), p. 30

been identified as two categories of information that could potentially be deserving of privacy protection.[236]

82. In 2020, the BC Ministry of Finance held a public consultation on establishing a government-maintained corporate beneficial ownership registry.[237] While most of the submissions expressed overall support for a government beneficial ownership registry, the support for giving the *public* access to this registry was low.[238] In addition to pointing out the ineffectiveness of public access for verifying data, stakeholders stressed that public access could be used for identity theft or fraud, and would discourage incorporation in BC.[239]

83. Joseph Primeau, the primary ministry contact for the corporate beneficial ownership consultation, acknowledged that publicly accessible data could be used for "nefarious purposes such as identity theft or scams or even solicitations."[240] The BC Canada Working Group on Real Estate also acknowledged that a public register could introduce risks of identity theft, fraud, and harassment.[241]

84. Dr. Sharman testified that he did not think a publicly accessible registry was the best way to improve ownership standards, positing that a better approach involves licensed and regulated intermediaries and corporate service providers who have a duty to verify the beneficial owners for the shell companies they create.[242]

85. While *LOTA* already provides for a searchable public database for interests in land, the BCCLA is against providing public access to beneficial ownership registries. A registry that is only available to law enforcement, tax authorities, and perhaps certain other regulatory actors strikes a more appropriate balance between transparency and privacy rights. The BCCLA further submits that having a system in which third parties are encouraged to report on information they believe to be inaccurate is deeply problematic.

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236 TR November 30, 2020 (Johnson), p. 162
237 TR December 1, 2020 (Primeau), p. 90; Ex. 308 (Beneficial Ownership Consultation)
238 Ex. 308 (Beneficial Ownership Consultation), p. 3
239 Ex. 308 (Beneficial Ownership Consultation), p. 3; TR December 1, 2020 (Primeau)
240 TR December 1, 2020 (Primeau), p. 105
241 Ex. 703 (Work Stream 1 Study), p. 11
242 TR May 6, 2021 (Sharman), p. 64

A system in which people are encouraged to report information and act as *de facto* agents of the state could easily be abused and used for improper purposes.

86. The BCCLA also takes the position that individuals must have the ability to apply for exemptions to have their personal information omitted from beneficial ownership registries, whether for corporations or land ownership, for reasons of privacy and security. The government must recognize that there are lawful, privacy-related and other justifiable reasons that people may not want their personal information in a government registry, including the exposure to risks of harassment, intimidation, fraud, or identity theft.

87. Those who are vulnerable to these threats must have the ability to apply to have their personal information omitted from a public registry. Mr. Bullough (Journalist and Author) agreed that "there are categories of individuals who need to have their identities protected for their own security. That should be something that should be available to everyone, irrespective of their ability to afford it."[243] Dr. German agreed that, in creating a beneficial ownership registry, "you would probably want a provision that an application could be made to the court to have certain information blocked from public access for good reason, for safety reasons, for example."[244]

88. The BCCLA urges the government to take privacy rights into account in considering the development of a corporate beneficial ownership registry, including the implications for vulnerable people of having their sensitive personal information made available to the public.

F. Robust Privacy Protections Can Assist in the Fight Against Money Laundering

89. Lastly, the BCCLA submits that British Columbia does not need to choose between protecting privacy and fighting money laundering. This is a false choice. Robust privacy protections can assist in the fight against money laundering.[245] Sir Robert Wainwright (former Executive Director of Europol) noted that the data privacy regime at Europol was extremely robust and assisted the agency in combatting financial crime:

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[243] TR June 2, 2020 (Bullough), p. 30
[244] TR April 13, 2021 (German), p. 82
[245] TR June 15, 2020 (Wainwright), pp. 49-51

> … data privacy legislation forced the police in that case to… limit the data that we could collect. We weren't allowed to collect data for which we had no purpose to process and share. We weren't allowed to store data for longer than we actually needed it. So, the result of that, of course, was that our databases became cleaner. We had much less junk. We no longer had data that we never needed anyway. And also, our analysts, the minds of our analysts became much more precise, so we became sharper and leaner in our digital operations. And that in itself, of course, gave tremendous operational benefits. And that operational benefit was the result… of implementing privacy legislation.[246]

PART 4 – VIRTUAL ASSETS

90. Many individuals have raised concerns that criminals will capitalize on virtual assets to conceal money laundering.[247] The "negative pallor" cast by the Quadriga CX and Einstein Exchange scandals has contributed to a stigma attached to the cryptocurrency industry and its underlying technology – blockchain.[248] It has resulted in the exclusion of crypto-based companies from essential financial services of Canadian financial institutions.[249] It has also been used to justify invasive surveillance and analysis of blockchain activity by law enforcement agencies and third-party service providers such as Chainalysis.

91. This stigma is unwarranted. Unlawful activity accounts for only 1.1% of all cryptocurrency transactions, and that share has since decreased.[250] The BCCLA submits that any regulatory response must recognize that almost all cryptocurrency activity is legitimate.

92. The unique technical features of cryptocurrency must also be considered in developing an appropriate regulatory approach. Cryptocurrency transactions are recorded on a blockchain, a decentralized database that makes the transactions visible, immutable, and traceable.[251] The entire blockchain is typically stored on all the computers participating on the blockchain network, and cryptographic hashes in each block can

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[246] TR June 15, 2020 (Wainwright), pp. 49-50
[247] TR November 23, 2020 (Vickery), p. 72
[248] TR November 23, 2020 (Gilkes, Vickery), pp. 25, 90
[249] See TR November 23, 2020 (Gilkes, Vickery), pp. 88, 150
[250] TR November 24, 2020 (Spiro), pp. 124-25; Ex. 257 (Chainalysis), p. 5
[251] TR November 24, 2020 (Spiro), pp. 62-63; TR November 23, 2020 (Gilkes), pp. 27-28

demonstrate the integrity of the data.[252] This visibility and permanence grant an "unprecedented" ability for anyone, including law enforcement and third-party service providers, to trace transactions throughout the historical blockchain record.[253]

93. Witnesses on all three virtual assets panels testified that these features make it easier for law enforcement to track illicit activity, and harder for money launderers to conceal the source of their funds.[254] Chainalysis witnesses testified that their current visibility into the blockchain is sufficient for its purposes and did not need to be improved.[255] While RCMP witnesses described challenges in several high-profile cryptocurrency investigations, the ultimate success of those operations shows that existing investigatory powers are sufficient to meet law enforcement objectives.[256]

94. The amount of personal information law enforcement can gain from the blockchain when investigating a specific transaction or address rivals the amount of information that could only be obtained through a production order if it was requested from a traditional financial institution.[257] Blockchain addresses are pseudonymous, but when pseudonymous financial information is combined with OSINT, law enforcement can gain deep insight into an individual's sensitive personal information.[258] Such information may include their political opinions, religious beliefs, sexual orientation, employment, health, interests, and friends and family. Industry experts cautioned that excessive information sharing between private and public entities raises significant privacy concerns.[259]

95. The BCCLA submits that law enforcement should not be permitted to circumvent *Charter* privacy protections by obtaining information about Canadians via third party

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[252] TR November 23, 2020 (Gilkes), pp. 28, 33; TR November 24, 2020 (Spiro), p. 63
[253] See TR November 23, 2020 (Gilkes), p. 36; TR November 24, 2020 (Spiro), p. 6
[254] TR November 23, 2020 (Gilkes, Vickery, Krahenbil), p. 165. See also TR November 24, 2020 (Spiro), p. 90 and TR November 25, 2020 (Dixon, Warrack), pp. 24-25 for discussions on how blockchain visibility has assisted investigative efforts.
[255] TR November 24, 2020 (Spiro), p. 90
[256] TR November 23, 2020 (Gilkes, Vickery), pp. 110-12, 117-18
[257] TR November 23, 2020 (Gilkes), pp. 36-37
[258] TR November 23, 2020 (Gilkes, Vickery, Krahenbil), pp. 35, 164; TR November 24, 2020 (Spiro), pp. 133-34
[259] TR November 25, 2020 (Cieslik), p. 161

software or services if they would not otherwise be able to obtain that information without court oversight.[260] Providing law enforcement with unsupervised access to the unprecedented financial surveillance possible through services like Chainalysis is a disproportionate response to the perceived threat of cryptocurrencies.

96. The BCCLA also notes that virtual assets could help increase financial accessibility and inclusion. The Commission heard evidence that some Canadian financial institutions categorically deny service to legitimate participants in the cannabis, cryptocurrency, pornography, or sex work industries, which they describe as a "sin group". These individuals and businesses were routinely refused bank accounts or credit cards, despite their businesses being entirely legal. In response to these challenges, some sex workers are turning to cryptocurrency as an alternative to traditional payment systems.[261]

97. The BCCLA endorses a light touch approach to virtual asset regulation, as recommended by the Standing Senate Committee on Banking, Trade, and Commerce.[262] Such an approach could incorporate financial controls and audits for Virtual Asset Service Providers ("VASPs").[263] It could also prioritize the Financial Action Task Force's risk-management framework by regulating cryptocurrency operators and users, including Bitcoin ATMs, rather than banning entire classes of VASPs outright.[264]

98. The BCCLA rejects a heavy-handed approach that risks violating *Charter* privacy rights with expanded surveillance powers while stifling innovation and the development of cryptocurrency and other applications of blockchain technology.

99. A heavy-handed regulatory approach could undermine its intended effects. It could force VASPs underground, further limiting regulators' and law enforcement's visibility into illicit blockchain transactions.[265] It could also lead illicit actors to relocate to jurisdictions

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[260] See *Hunter*, p. 160
[261] TR November 25, 2020 (Cieslik), pp. 151-52; Ex. 268 (Central 1)
[262] Ex. 254 (Digital Currency), p. 13
[263] TR November 25, 2020 (Dixon), pp. 73-74, 81-82
[264] See TR November 25, 2020 (Cieslik, Dixon, Mueller, Warrack), p. 155; Ex. 248 (FATF), Appendix E, ¶¶18, 25
[265] TR November 25, 2020 (Dixon, Warrack), p. 136

where cryptocurrency regulations are not as strict, where they may continue to transact with Canadian markets while evading Canadian investigative efforts.[266]

100. A heavy-handed approach may also have negative consequences for innovation in nascent applications of blockchain technology. Overregulation could undermine freedom of expression and association by stifling innovative applications of blockchain technology: from non-fungible tokens, which power crypto-art and games such as CryptoKitties, to digital voting, collective decision-making platforms, and decentralized autonomous organizations.[267]

101. While a heavy-handed approach could exacerbate the concerns that drove financial institutions to de-risk by refusing to serve entire classes of customers, financial inclusion and AML objectives do not have to be irreconcilable. The BCCLA submits that financial institutions should be encouraged to accept higher risk customers if those customers meet AML standards proportionate to their risk. This strategy was supported by the virtual assets industry panel,[268] and may promote the legitimate adoption of cryptocurrencies, ensure adequate regulatory oversight, and ultimately lead to a more equitable, inclusive financial system.

PART 5 – CONFLATING FOREIGN MONEY WITH DIRTY MONEY

102. Anti-Asian and anti-Chinese sentiment has played a significant role in public discourse about money laundering in BC, and there is a tendency to conflate foreign money with dirty money, in the real estate industry and beyond. The first expert to give evidence at the Commission, Dr. Schneider (St Mary's University), provided the Commission with a literature review of money laundering in BC.[269] There was a strong focus in the literature review on "Chinese" money laundering, and Dr. Schneider admitted the publicity around this issue could give rise to racist, anti-Chinese, anti-Asian sentiment.[270]

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[266] TR November 25, 2020 (Cieslik, Dixon), p. 137
[267] TR November 25, 2020 (Cieslik, Dixon, Mueller), pp. 142, 146-48. See also Ex. 254 (Digital Currency), pp. 26-27
[268] TR November 25, 2020 (Cieslik, Dixon, Mueller, Warrack), pp. 115-18
[269] Ex. 6 (Review of Literature)
[270] TR May 27, 2020 (Schneider), p. 63

103. In his first Dirty Money report, Dr. German emphasized the role of Chinese organized crime above other types of organized crime, while in the same paragraph admitting that there is little intelligence on the subject. He wrote:

> Japanese, Taiwanese and Vietnamese organized crime has appeared on the west coast of Canada at one time or another, along with Latin American and home grown Canadian organized crime. *Of greatest interest to this Review, however, is organized crime which emanates from Mainland China.* Unfortunately, there is little publicly available intelligence in Canada on Chinese organized crime. Much of what does exist is case specific or emanates from international sources.[271]

104. Despite this lack of publicly available intelligence, Dr. German's report consistently places an emphasis on the role of money laundering connected to China and Asian organized crime.[272]

105. Anti-Asian sentiment is prevalent in public discourse about money laundering in BC and has real impacts on Asian communities. It has led to the scapegoating of "foreign buyers" and has affected the focus of policing in casinos. In a troubling admission, one former police officer testified that he believed Asian organized crime was responsible for the loan sharking taking place in casinos in part because a lot of the high-end gamblers were Asian.[273] The BCCLA thinks it is important to call attention to this type of discriminatory thinking.

106. Some witnesses testified that the cause of unaffordable housing in BC is Chinese money laundering.[274] This perception has been widely adopted in the public discourse, but the evidence tells a very different story. The Chief Economist for the BC Real Estate Association, Mr. Ogmundson, spoke to the dangers of conflating foreign investment with money laundering. He stated that money coming into Canada legally, through foreign investment or through immigration, is often painted with the same brush as money that is produced through illegal means. He testified that this comes out in some "pretty ugly

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[271] Ex. 832 (Dirty Money #1), ¶96 [emphasis added]
[272] Ex. 832 (Dirty Money #1); TR May 28, 2020 (Lord), pp. 84, 86; TR May 29, 2020 (Lord), pp. 4, 24; TR June 1, 2020 (Bullough), p. 45; TR January 25, 2021 (Kroeker), p. 144; TR April 9, 2021 (Cockfield), pp. 170-71
[273] TR April 8, 2021 (Baxter), p. 168
[274] TR February 18, 2021 (Ley, Gordon, Somerville), pp. 98, 116, 135-38

rhetoric" and that "[w]e are constantly treating or scapegoating foreign investment really and blaming it for challenging affordability that really is arising from failures in other parts of policy."[275] Mr. Ogmundson was not aware of any research showing that foreign buyers were more likely to engage in flipping and speculation than Canadian buyers.[276]

107. Mr. Ogmundson gave evidence that, when we look at foreign ownership through data available through the speculation and vacancy tax, and especially foreign ownership where units are left vacant, foreign ownership represents less than 0.2 percent of the housing stock.[277] The media tells us that unaffordable housing in BC is caused by numerous houses being bought and left empty by foreign buyers, but Mr. Ogmundson agreed that the data tells a different story.[278]

108. Dr. ab Iowerth (Deputy Chief Economist for the Canadian Mortgage and Housing Corporation) authored a report explaining that, while foreign investment does not play a large role in explaining the rise of housing prices, there is certainly a *perception* that foreign investment plays this role. Compared to other factors such as population growth, income growth, and mortgage rates, it is difficult to make the case that foreign investment is driving housing prices.[279]

109. Professor Yu, an expert on immigration and the relationship between Asian populations and European settlers in settler communities, spoke to the Commission about how public discourse relating to foreign investment, immigration, and housing prices can create patterns of racist thinking. He provided critical insight into how anti-Asian racism, white supremacy, and Canada's immigration laws have shaped our conversations about "dirty money". Professor Yu pointed out the irony of BC's obsession with Chinese money laundering, given that the province is located on stolen Indigenous land.[280] He further

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[275] TR February 17, 2021 (Ogmundson), pp. 181-82
[276] TR February 17, 2021 (Ogmundson), p. 181
[277] TR February 17, 2021 (Ogmundson), p. 184
[278] TR February 17, 2021 (Ogmundson), p. 185
[279] TR February 18, 2021 (ab Iowerth), pp. 44-45; see also Ex. 602 (Overview Report), Appendix E, pp. 4-6, 57
[280] TR February 18, 2021 (ab Iowerth, Ley), pp. 32, 99-100

provided evidence on how Asian people were historically excluded from BC's real estate market and the real-life impacts of anti-Asian racism in public discourse about money laundering.[281] As Professor Yu explained, one of the consequences of frequent news stories about Chinese money laundering "is that we begin to see a set of people as a problem." [282] He went on to state, about popular perceptions about race:

> It allows people to then pass laws, to pass discriminatory legislation to think of as what is normal and to therefore act upon it in terms of policy. And that from a historian's point of view, from a scholarly point of view is something that I can speak to which is when you start to see the normalized dehumanization of a set of people that they are not the same as us, that the deserve to be treated differently because they are different and somehow not quite as deserving of the same approach, the same respect, the same legal protections, then you're on a slippery slope.[283]

110. Attorney General Eby testified about his role in a controversial study on foreign ownership. The study concluded that 66% of detached homes in Vancouver's west side purchased in a six-month period were bought by Mainland China buyers. However, the study did not look at the citizenship or residency status of the buyers, but rather at whether they had non-anglicized Chinese names. In an article published in 2015, Minister Eby stated that the study "bears out the anecdotal feelings that people have about Mainland China buyers." [284] He is further quoted as stating:

> China is an authoritarian state that has lots of issues with corruption. Is the money coming into Vancouver the kind we want to be encouraging? And are we doing everything we can to make sure we leverage this investment to benefit British Columbians as much as possible? Or is this just benefiting the super-car dealerships on Burrard Street?[285]

111. During questioning by the BCCLA, Minister Eby apologized for his participation in this study and its impact on the Chinese community.[286] He also agreed that broad statements he had made in the past about Chinese investment in Vancouver had helped perpetuate a harmful narrative that implies that foreign money is dirty money.[287]

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[281] TR February 19, 2021 (Yu), pp. 117-29
[282] TR February 19, 2021 (Yu), p. 123
[283] TR February 19, 2021 (Yu), p. 125
[284] Ex. 915 (Vancouver real estate a buyers' market); TR April 26, 2021 (Eby), pp. 184-85
[285] Ex. 915 (Vancouver real estate a buyers' market); TR April 26, 2021 (Eby), p. 186
[286] TR April 26, 2021 (Eby), pp. 183-84, 189
[287] TR April 26, 2021 (Eby), pp. 181-89

112. When our own government officials demonstrate this kind of bias, we are at risk of seeing a set of people as a problem and enacting discriminatory legislation, just as Professor Yu warned.

113. The BCCLA is concerned about the disproportionate focus on Asian people in public rhetoric about money laundering in BC and the harm this can do to Asian communities. While we understand the need to battle corruption, there is an undue focus on China, and the term "Chinese money laundering", used by many witnesses at this commission,[288] is deeply problematic. We must be careful to avoid language that conflates Chinese people with the Chinese government.

114. The BCCLA urges the Commissioner to adopt an ethno-agnostic lens in making findings and recommendations about money laundering in BC. The country of origin of laundered funds should not be identified except where it is relevant. Where possible, it is preferable to refer to the specific individuals, actors, or criminal organizations involved in laundering the proceeds of crime. If a specific government must be identified for the role it has played in money laundering, the best practice is to specifically identify the government rather than referring to the country to avoid creating a perception that all individuals who live in that country or who immigrated from that country are culpable.

PART 6 – POLICING AND THE ROLE OF DRUG PROHIBITION

A. Policing Money Laundering

115. Among Dr. German's recommendations to combat money laundering were that the Joint Illegal Gaming Investigation Team ("JIGIT") be provided with continued support and that a Designated Policing Unit ("DPU") be created to specialize in criminal and regulatory investigations arising from the legal gaming industry, with an emphasis on Lower Mainland casinos.[289] It is the BCCLA's position that the evidence does not support the use of specialized police units as an effective or efficient means of combatting money

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[288] TR May 28, 2020 (Lord), pp. 84, 86; TR May 29, 2020 (Lord), pp. 4, 24; TR June 1, 2020 (Bullough), p. 45; TR January 25, 2021 (Kroeker), p. 144; TR April 9, 2021 (Cockfield), pp. 170-71

[289] Ex. 832 (Dirty Money #1), pp. 14,16

laundering.

116. In 2001, BC created the first specialized police unit to investigate illegal gaming, the Integrated Illegal Gaming Enforcement Team ("IIGET"). IIGET had numerous problems from its inception, with ill-defined roles, resourcing, and staffing issues.[290] The RCMP officer who acted as Officer in Charge ("OIC") of IIGET from 2005 to 2007 was not even aware of IIGET's own mandate, stating that he did not believe they were mandated to deal with activity in legal gaming venues such as casinos.[291] It was very clearly within the mandate of IIGET to address illegal activity such as money laundering and loan sharking taking place in legal gaming venues.[292] Despite this fact, the former OIC stated that his team was not welcome in casinos, that the Gaming Policy and Enforcement Branch ("GPEB") clearly did not want them in casinos, and that they were told to "play nice with GPEB."[293] The former OIC further testified that they had conducted no money laundering investigations with GPEB.[294] The relationship between the RCMP members and GPEB members of IIGET became so strained that the RCMP moved across the hall from the GPEB investigators.[295]

117. One example of an investigation undertaken by IIGET during its operation involved IIGET officers conducting an undercover investigation of an unlicensed bingo game on Galiano Island that ultimately led to the issuance of a $289 ticket to a local resident.[296] Larry Vander Graaf, former GPEB Director of Investigations, testified about this incident, stating: "in hindsight, I can look at this and say maybe they shouldn't have issued the ticket, but they did."[297] IIGET was ultimately disbanded in 2009.[298]

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290 Ex. 162 (Overview of Report on IIGET), p. 5
291 TR November 5, 2020 (Pinnock), p. 78
292 Ex. 150 (IIGET Memo), Ex. 151 (IIGET Plan), Ex. 152 (RCMP Strategic Projection), Ex. 153 (IIGET Minutes), Ex. 154 (IIGET and GPEB Minutes), Ex. 155 (RCMP Backgrounder)
293 TR November 5, 2020 (Pinnock), pp. 105-06
294 TR November 5, 2020 (Pinnock), pp. 81-82
295 TR November 5, 2020 (Pinnock), p. 77
296 TR November 13, 2020 (Vander Graaf), p. 145, Ex. 181 (Vander Graaf Affidavit), pp. 311-12
297 TR November 13, 2020 (Vander Graaf), p. 148
298 Ex. 803 (LePard Report), p. 9

118. In 2015, the BC government advised the RCMP of its interest in establishing a coordinated approach to illegal gaming. The result was the creation of JIGIT, a collaboration between the Combined Forces Special Enforcement Unit BC ("CFSEU-BC"), whose mandate is to combat organized crime, and GPEB, implemented in 2016.[299] JIGIT's mandate is to target and disrupt organized crime and gang involvement in illegal gaming, conduct criminal investigations of illegal gaming activities, and prevent criminal attempts to legalize the proceeds of crime through gaming activities.[300]

119. JIGIT's CFSEU-BC cost is funded by a 30% federal contribution and a 70% provincial contribution, the latter of which is funded indirectly by a contribution from the British Columbia Lottery Corporation ("BCLC").[301] Jim Lightbody testified that, in 2015, he was told that BCLC would pay $3 million towards the formation and operation of JIGIT. In an email to Ross Alderson and Kevin Sweeney, Mr. Lightbody wrote, regarding JIGIT: "We have been asking for more work effort in investigation and disruption of illegal gaming by law enforcement. We now have that. The responsibility and onus is now on the Joint Illegal Gaming Enforcement Team to execute on their mandate. And since we are paying for it, we will hold them accountable. Let's put them to work for us and the gaming industry as they are meant to."[302] When asked by the BCCLA whether, to the extent that BCLC was contributing money to JIGIT, it wanted to be able to direct what initiatives that money tackled, Mr. Lightbody responded: "Yes. We wanted to make sure that – if this $3 million was going to be provided by the province through BCLC that it be directed in the area of enforcement around gaming."[303]

120. Under re-examination by counsel for Canada, Mr. Lightbody clarified that he would not want BCLC to direct JIGIT's work and that BCLC would never interfere with police independence.[304] However, the fact remains that BCLC provides funding to JIGIT and

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299 Ex. 803 (LePard Report), p. 9
300 Ex. 803 (LePard Report), p. 10
301 Ex. 803 (LePard Report), p. 12
302 TR January 29, 2021 (Lightbody), pp. 93-94; Ex. 505 (Lightbody Affidavit), Exhibit 36
303 TR January 29, 2021 (Lightbody), pp. 92-94
304 TR January 29, 2021 (Lightbody), p. 130

has a clear interest in what JIGIT does. The BCCLA sees this as a conflict and takes the position that BCLC should not be funding JIGIT, whether directly or indirectly.

121. In 2020, policing and criminal justice consultant Doug LePard was retained by the Director of Police Services to conduct an operational review of JIGIT.[305] While Mr. LePard's report ultimately recommended the continued funding of JIGIT, the report made findings of several issues, including large vacancy rates and senior positions unfilled, debate within JIGIT as to the value of pursuing illegal gaming houses, high turnover rates, and lack of strategic direction.[306] Furthermore, JIGIT's impact is admittedly difficult to measure. Mr. LePard writes "It is challenging to quantify the degree to which JIGIT's work has impacted on money laundering activity in casinos."[307] There is simply no previously validated evaluative standard for which to assess the total impacts of JIGIT's work to-date.[308]

122. In his review, Mr. LePard undertook an analysis to measure the return on investment of JIGIT. Using the amount of cash seized by JIGIT, he estimated that the seizures resulted in a total of $4,271,459 future criminal activity disrupted. Based on the almost $18 million invested in JIGIT in the study period, it cost $4.19 for every dollar of potential criminal activity disrupted.[309] While ultimately finding that JIGIT yielded a negative quantifiable cost-benefit ratio,[310] Mr. LePard argues that "[i]n addition to making criminal activities less profitable, these CFO referrals also represent direct compensation and added benefits to individuals and communities across the province."[311]

123. The BCCLA submits that the value of assets confiscated through civil forfeiture should not be used in any manner to assess the impact of JIGIT. As discussed above, this is hardly a good measure of crime deterrence and the BCCLA strongly disputes that

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[305] TR April 7, 2021 - Session 1 (LePard), p. 6
[306] Ex. 803 (LePard Report), p. 19-20
[307] Ex. 803 (LePard Report), p. 14
[308] Ex. 803 (LePard Report), p. 132
[309] Ex. 803 (LePard Report), p. 16
[310] Ex. 803 (LePard Report), pp. 137, 139
[311] Ex. 803 (LePard Report), p. 136

CFO referrals result in added benefits to individuals and communities.

124. Dr. Reuter testified that, in his view, the measure of AML is the extent to which it contributes to a reduction in predicate offences.[312] He stated: "AML is useful, not because it could reduce money laundering, but it could reduce the activities that generate money laundering, money to be laundered." The BCCLA submits that measuring the reduction in predicate offences is a far more logical and meaningful way to assess AML efforts.

125. In addition to JIGIT, the province gave evidence that it is exploring the creation of a Financial Intelligence and Investigation Unit ("FIIU") to combat money laundering, with an estimated cost of $15-20 million a year.[313] A proposal for the unit was drafted by the Police Services Branch.[314]

126. The proposal rejects the notion of a DPU for gaming, citing the significant cost of the DPU and concluding that it is not financially feasible to create a new, sector-specific DPU for every vulnerable or emerging sector facing money laundering challenges.[315] Instead, the proposed FIIU "will be the principal entity tasked with multi-stakeholder intelligence coordination in the field of preventing and countering money laundering in BC as it relates to casinos, illegal gambling, real estate, luxury goods and emerging sectors."[316]

127. The proposal further notes: "While the coordination of intelligence, enforcement, and prosecutions are critical to an effective police response, as detailed further below, a police response to money laundering will only succeed when partnered with a strong regulatory response."[317]

128. Deputy Solicitor General Mark Sieben testified that the proposed unit:

> … continues to strike the deputy ministers committee as potentially a very sort of police sort of heavy. That's not necessarily a bad thing. That might just be what is required. However, work also continues with the other aspects of the money

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[312] TR June 5, 2020 (Reuter), p. 62
[313] TR June 11, 2020 (Sieben), p. 85; Ex. 60 (AML FIIU Draft Proposal), p. 16
[314] TR June 11, 2020 (Harris), pp. 81-82, Ex. 60 (AML FIIU Draft Proposal)
[315] Ex. 60 (AML FIIU Draft Proposal), p. 4
[316] Ex. 60 (AML FIIU Draft Proposal), p. 9
[317] Ex. 60 (AML FIIU Draft Proposal), p. 4

> laundering strategy within the broader sector. There are many regulators. All of them are eager to up their game, to improve their response to money laundering.[318]

129. Mr. Sieben went on to say:

> So while continued work goes on relating to integration and support amongst the regulators, we have not brought this model forward for government's consideration.[319]

130. The BCCLA agrees that much work needs to be done and consideration given to regulatory responses before the government considers investing $15-20 million in a new policing unit.

131. The BCCLA submits that specialized police units have failed to make an impact. With respect to the gaming industry, IIGET was a failed initiative and the existence of JIGIT has not stopped bricks of cash with the obvious appearance of drug money from being accepted in casinos.[320] More police are not needed to stop bricks of cash from entering casinos. One person at the casino is enough to refuse that money. The government should consider less invasive regulatory measures before considering the creation of yet another police unit to tackle money laundering.

B. The Role of Drug Prohibition

132. As noted by the Commissioner in his Interim Report, "[m]oney laundering is a crime that occurs in the aftermath of other, more directly destructive offences" such as drug and human trafficking.[321] The illicit drug markets specifically are a significant portion of the criminal activities of organized crime groups in Canada.[322]

133. Dr. Schneider argued the rather obvious point that it is *demand* which drives these crimes, not the ability to launder proceeds of crime: "If you have demand for drugs, you'll have supply. If you have demand for gambling, there'll be a supply… Money laundering

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[318] TR June 11, 2020 (Sieben), p. 85
[319] TR June 11, 2020 (Sieben), p. 86
[320] TR October 26, 2020 (Beeksma), pp. 45-47; TR October 27, 2020 (Lee), pp. 22-23; TR October 28, 2020 (Friesen), pp. 87-88; TR November 2, 2020 (Ackles), pp. 174-75; Ex. 144 (Ackles Affidavit), ¶19; TR November 3, 2020 (Barber) p. 6
[321] Cullen Commission Interim Report, p. 68
[322] TR June 10, 2020 (Gilchrist), p. 34

has no impact on demand whatsoever, so I always argue that it really doesn't influence supply because it doesn't influence demand."[323]

134. The BCCLA submits that addressing one of the root causes of money laundering, the demand for illicit drugs, is an obvious way to reduce money laundering that would be far more effective than any of the other AML measures this Commission has been asked to consider.

135. In his report, Dr. Sharman writes:

> … the only guaranteed way to reduce laundering is to legalise formerly criminal behaviour. Given Canada's de-criminalization of marijuana, it has perhaps reduced money laundering more than any other country on earth over the last few years. Other countries have experienced similar successes in legalizing prostitution and gambling. It is surprising that analyses of money laundering overlook this fairly obvious point.[324]

136. Dr. Wood, an international authority on illicit drug policy, takes the same view. He writes: "addressing the profits of prohibition by regulating the drug market is the only viable way to address the fundamental cause of organized crime and money laundering in BC."[325]

137. An expert study concluded that fentanyl and fentanyl-adulterated substances have taken over 90% of the opioid market in BC – the hardest hit province in the opioid crisis.[326] The authors note that estimating volumes of money laundering first requires estimating the size of potential revenue sources, such as opioid trafficking.[327] The study found retail expenditure on fentanyl in BC to be in the range of $200-$300 million per year.[328]

138. Dr. Wood submits that, from an evidence-based public policy perspective, fentanyl adulteration in the illicit drug supply is a predictable unintended consequence of drug

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[323] TR May 26, 2020 (Schneider), pp. 34-35
[324] Ex. 959 (Sharman), p. 12
[325] Ex. 836 (BCCSU Report), p. 3 [emphasis in original]
[326] BC reports the highest number of fatal overdoes from opioid use in Canada's 10 provinces. Ex. 335 (Expert Report Fentanyl Market), p. 7
[327] Ex. 335 (Expert Report Fentanyl Market), p. 10
[328] Ex. 335 (Expert Report Fentanyl Market), p. 47

prohibition. The same forces that pushed the market away from relatively bulky opium towards heroin, a more concentrated opioid that was easier to transport clandestinely, have continued to push the opioid market to increasingly potent synthetic opioids, including fentanyl.[329] Dr. Wood further submits that, prior to the emergence of fentanyl in the illicit drug market, BC has had longstanding drug-related organized crime concerns. However, less public attention has been paid to acknowledging the source of organized crime profits and money laundering: the illegal drug trade that results from drug prohibition.[330]

139. Drug prohibition has resulted in serious social harms, including the proliferation of organized crime, illegal markets, violence, crime, disease, corruption, and death. Furthermore, the opioid crisis, mental health and addiction issues, and homelessness have all added significant pressure on policing.[331] Police Complaint Commissioner Clayton Pecknold stated that, during his tenure, an emerging challenge to policing needs has been the response to the opioid crisis and, linked to that, the response to organized crime.[332]

140. It is against this background that Dr. Wood and others like him are working to find alternatives to this broken system. He submitted a report from the BC Centre for Substance Use ("BCCSU") describing a market intervention involving the strict regulation of the illicit opioid market with immediate potential to reduce the public health consequences of a poisoned drug supply while also eliminating a key source of revenue for organized crime groups.[333]

141. The BCCLA submits that, if the government is serious about tackling money laundering, it should consider the BCCSU's proposal. A regulated market will take significant profit out of organized crime, reducing the money that needs to be laundered while creating opportunities for enforcement resources to be redeployed towards

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[329] Ex. 836 (BCCSU Report), p. 1
[330] Ex. 836 (BCCSU Report), p. 1
[331] TR April 6, 2021 (Pecknold), p. 23; see also p. 32
[332] TR April 6, 2021 (Pecknold), p. 35
[333] Ex. 836 (BCCSU Report)

improving and maintaining community heath and safety.

142. With this Inquiry, the Commissioner has a platform to call upon the government to address what is likely the most significant root cause of money laundering: our failed model of drug prohibition. Organizations such as the BCCSU, with a mandate to develop and help implement evidence-based approaches to substance use and addiction, should not be ignored in the fight against money laundering.

PART 7 – CONCLUSION

143. The BCCLA is grateful to this Commission for granting it participant status in these important proceedings. We have endeavoured to participate as fully and constructively as possible. We sincerely hope that these submissions assist the Commissioner as he undertakes the important task of making findings and recommendations with respect to money laundering in BC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: July 8, 2021

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