

COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA

The Honourable Mr. Austin F. Cullen, Commissioner

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**Sur-reply Submissions  
of British Columbia Lottery Corporation to the Reply Submission of Her Majesty  
the Queen in Right of the Province of British Columbia (Gaming Sector)**

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## **I. Introduction**

1. BCLC submits this sur-reply for the limited purpose of responding to paragraphs 74-88 of the Province's reply with respect to the EY AML Report.<sup>1</sup>

2. Despite Mr. Boyle's extensive testimony and two reports, the Province made no submissions regarding the EY AML Report in their Closing Submissions, and instead dedicated six pages of reply argument to the report, leaving BCLC unable to provide a substantive response in its own reply submissions. BCLC is of the view that a response to the Province's Reply Submissions is appropriate in order to provide the Commissioner with an accurate understanding of the EY AML Report and Mr. Boyle's evidence in these proceedings.

## **II. Mr. Boyle's Methodology**

3. The Province's Reply Submissions state that "Mr. Boyle's *viva voce* evidence revealed fundamental flaws in his methodology".<sup>2</sup> This misapprehends Mr. Boyle's testimony for the reasons set out below.

### **(a) Mr. Boyle's Personal Experience**

4. Firstly, the Province's submission that the EY AML Report is based on Mr. Boyle's "limited personal experience working with casino operators in other jurisdictions"<sup>3</sup> underplays Mr. Boyle's significant and extensive expertise with respect to AML practices in the gaming sector across a multitude of jurisdictions. Mr. Boyle's broad experience, summarized below, also belies the Province's unattributed assertion that Mr. Boyle "acknowledged that his personal knowledge of casino operator practices suffered from significant limitations".<sup>4</sup> No citation is provided for that statement.

5. Since 2009, Mr. Boyle's work has focused primarily on AML compliance matters, and since 2015 he has been working with gaming operators and Crown corporations

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<sup>1</sup> For the purposes of these sur-reply submissions, BCLC adopts the defined terms set out in its Closing Submissions dated September 24, 2021.

<sup>2</sup> Province's Reply Submissions, para. 77.

<sup>3</sup> Province's Reply Submissions, paras. 83-85.

<sup>4</sup> Province's Reply Submissions, para. 82.

around the world.<sup>5</sup> His extensive experience includes working with at least 20 operators, including multi-site operators, in the United States, one of which operated across at 23 different state jurisdictions.<sup>6</sup> He has worked with operators in three Canadian provinces (Ontario, Alberta, and British Columbia), Macau, Singapore, the Philippines, Vietnam, Cyprus, and Sweden.<sup>7</sup>

**(b) Knowledge of Operator Practices**

6. The Province's Reply Submissions at paragraph 82 state that the EY AML Report's sections on operator practices were anecdotal and that Mr. Boyle could not identify individual operator initiatives outside the properties of which he had personal knowledge. This does not fairly summarize Mr. Boyle's evidence. Mr. Boyle stated that in addition to his personal experience, the operator practices sections of his report reflected a combination of what he knew personally and his "experience with various meetings with individuals at conferences and working group sessions from various industry events over the course of [his] professional career".<sup>8</sup>

7. Mr. Boyle testified that he learned about what was occurring in other gaming jurisdictions at international conferences he attended that dealt with AML and the gaming industry.<sup>9</sup> Mr. Boyle also received daily and monthly communications and alerts about industry practices from a variety of sources and also further supplemented his knowledge base by having subsequent conversations with industry participants, prompted by the information he received.<sup>10</sup>

8. In addition, Mr. Boyle authored a report for the American Gaming Association on AML practices, which involved a survey of over 20 operators and interviews with operational personnel in the continental United States.<sup>11</sup>

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<sup>5</sup> [B. Boyle](#), Sep. 13, p. 3, l. 12 - p. 4, l. 12.

<sup>6</sup> [B. Boyle](#), Sep. 13, p. 107, l. 12 - p. 108, l. 11.

<sup>7</sup> [B. Boyle](#), Sep. 13, p. 3, l. 12 - p. 4, l. 12, p. 26, ll. 9-20; [B. Boyle](#), Sep. 14, p. 15, ll. 21-24.

<sup>8</sup> [B. Boyle](#), Sep. 13, p. 32, l. 25 - p. 33, l. 11.

<sup>9</sup> [B. Boyle](#), Sep. 13, p. 106, l. 20 - p. 107, l. 11.

<sup>10</sup> [B. Boyle](#), Sep. 13, p. 90, l. 9 - p. 91, l. 21.

<sup>11</sup> [B. Boyle](#), Sep. 13, p. 31, l. 6 - p. 32, l. 5, p. 89, l. 18 - p. 90, l. 6; EY AML Report, [Ex. 1038](#), Report Ex. 30.

9. In a similar vein, paragraph 83 of the Province's Reply Submissions state that Mr. Boyle admitted that "to the extent there are operators he has not worked with personally, those operators' practices did not inform the opinions in the AML Practices Report". The evidence cited in support of this allegation contradicts the above statement, as Mr. Boyle confirmed that he did rely on information obtained beyond his direct working relationships, *including* interviews relating to the 2016 American Gaming Association report:<sup>12</sup>

Q Certainly. To the extent they were operators who you haven't canvassed, for example through your 2016 work with the American Gaming Association or haven't worked with personally those operators' practices did not inform your answers to this report in this report?

A Correct.

10. Once again, it is clear in Mr. Boyle's response that his findings in respect of operator practices extend beyond operators he has worked with personally.

**(c) Regulations and Industry Body Guidance**

11. The Province's Reply Submissions assert that "for the most part" the AML Practices report compares BCLC's detailed and confidential operator practices with high-level and publicly available regulations and industry body guidance in other jurisdictions.<sup>13</sup> This is not a fair characterization, as it again inappropriately discounts Mr. Boyle's extensive personal experience and knowledge base for the same reasons set out above.

12. The Province also states that Mr. Boyle did not rely on any guidance issued by the Canadian Gaming Association ("CGA"). However, the Province's Reply Submissions do not mention that Mr. Boyle testified that he was familiar with the CGA, looked into information available from them for the purposes of the EY AML Report, and found there was nothing relevant to his answers.<sup>14</sup>

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<sup>12</sup> [B. Boyle](#), Sep. 13, p. 32, ll. 18-24.

<sup>13</sup> Province's Reply Submissions, para. 78.

<sup>14</sup> [B. Boyle](#), Sep. 13, p. 26, l. 21 - p. 27, l. 5, p. 30, l. 24 - p. 31, l. 5.

13. The same response applies to the Province's statement that Mr. Boyle's review should be considered incomplete because he did not consider requirements mandated by provincial legislation or regulation or directed by provincial regulators.<sup>15</sup> However, Mr. Boyle testified that he relied on his experience working within various provincial frameworks to inform what those provinces would require.<sup>16</sup>

14. The Province's criticisms seem to imply that there are relevant provincial regulations/directives or CGA guidelines that Mr. Boyle failed to consider. However, the Province's Reply Submissions do not refer to any CGA guidelines or provincial regulations/directives that would contradict Mr. Boyle's analysis or conclusions. None of the witnesses called by the Commission who testified during the Other Jurisdictions segment of the hearings offer evidence contradictory to Mr. Boyle's reports in this regard. And indeed, Mr. Boyle's evidence regarding the absence of a prohibition of buy-ins based solely on a set threshold was corroborated by Dr. German, who looked the practices in various jurisdictions, including Ontario,<sup>17</sup> and testified that "it appeared that a cash cap was not the norm in casino systems in other places".<sup>18</sup> This contradicts the portion of Mr. Malysh's report quoted by the Province in its Reply Submissions, which states that casinos in Ontario generally will not allow buy-ins of more than \$10,000-15,000 in cash.<sup>19</sup>

**(d) AML Practices in Ontario**

15. The Province's Reply Submissions incorrectly state that Mr. Boyle did not include AML practices in Ontario in his report.

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<sup>15</sup> Province's Reply Submissions, para. 80.

<sup>16</sup> [B. Boyle](#), Sep. 13, p. 28, l. 15 - p. 29, l. 17.

<sup>17</sup> [P. German](#), Apr. 13, p. 25, ll. 3-24 ("So in Ontario I would have looked at the situation in Ontario, spoke to AGCO, spoke to OLG, and, you know, about the entire environment there, spent a few days with them").

<sup>18</sup> [P. German](#), Apr. 12, p. 61, l. 15 - p. 63, l. 17. See also, [Ex. 832](#), PDF, p. 147, para. 605 ("My enquiries in Ontario, Nevada and with international gaming experts indicate that limits on cash buy-ins do not exist in most gaming venues").

<sup>19</sup> Province's Reply Submissions, para. 81.

16. The EY AML Report defines gaming jurisdictions to include “Canada (excluding British Columbia)”.<sup>20</sup> Clearly, Ontario practices were considered as part of Mr. Boyle’s review, and indeed they must have been: Mr. Boyle testified that he had direct operational experience in Ontario, and such experience would inform his analysis of operator practices.<sup>21</sup>

17. Further, the Province cites the Malysh Report’s findings to challenge Mr. Ennis’ evidence on a lack of cash conditions policy in Ontario.<sup>22</sup> BCLC repeats and relies on its submissions at paragraph 73 of its Reply Submissions in this regard: the commentary in the Malysh Report is hearsay and should not be relied upon for the truth of its contents. Mr. Malysh did not testify; in contrast, Mr. Boyle submitted to two days of testimony and his evidence should be preferred.

### **III. Mr. Boyle’s Engagement by BCLC**

18. The Province makes a series of submissions at paragraphs 74-75 of its Reply Submissions regarding the circumstances of Mr. Boyle’s retention and distribution of the EY AML Report which appear to imply or suggest inappropriate conduct.

#### **(a) Mr. Boyle’s Retention in February 2021**

19. First, with respect to the statement that BCLC retained Mr. Boyle in February 2021 without notice to or consultation with the Commission,<sup>23</sup> the Commission’s Rules expressly contemplate a process that permits participants to propose witnesses to be called during the evidentiary hearings.<sup>24</sup> Ultimately, Commission counsel have the discretion to decline to call a witness proposed by a participant.<sup>25</sup> In addition, the Province’s Reply Submissions omit the fact that Mr. Boyle met with Commission Counsel ahead of his testimony.<sup>26</sup>

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<sup>20</sup> EY AML Report, [Ex. 1038](#), Report Ex. 30, PDF p. 4, fn 2, PDF p. 43; [B. Boyle](#), Sep. 13, p. 92, l. 13 - p. 93, l. 14.

<sup>21</sup> [B. Boyle](#), Sep. 13, p. 25, l. 24 - p. 26, l. 20, p. 32, l. 25 - p. 33, l. 11.

<sup>22</sup> Province’s Reply Submissions, para. 81.

<sup>23</sup> Province’s Reply Submissions, para. 74 (“Without notice to, or consultation with, the Commission, in February 2021, BCLC retained Robert Boyle of Ernst & Young to prepare the AML Practices Report ...”).

<sup>24</sup> [Commission’s Rules of Practice and Procedure](#), s. 46.

<sup>25</sup> [Commission’s Rules of Practice and Procedure](#), ss. 43, 47.

<sup>26</sup> [B. Boyle](#), Sep. 13, p. 86, ll. 19-22.

**(b) EY's Prior Engagements and Invoices to BCLC**

20. Second, the Province's Reply Submissions regarding BCLC's prior engagement of EY and the amounts of EY's invoices<sup>27</sup> appear to suggest that Mr. Boyle was not objective or independent in his evidence. The Province had the opportunity to put those propositions directly to Mr. Boyle, or to otherwise allow him to respond to any suggestion that EY's prior engagement by BCLC or the amounts of its invoices somehow affected the findings contained in the EY AML Report. They did not do so.

21. In response to the substance of the Province's Reply Submissions, they refer to invoices exceeding \$1,200,000.<sup>28</sup> To put that in proper context, Mr. Boyle's evidence was that the three cheque reviews accounted for approximately \$811,000, with the balance arising from two FINTRAC assessments conducted in 2015 and 2017.<sup>29</sup> The FINTRAC assessments are mandated by FINTRAC regulations; it can therefore hardly be said that those expenditures were inappropriate.

22. With respect to the cheque reviews, it was Minister Eby who acknowledged that BCLC, in commissioning these reports, was carrying out appropriate due diligence.<sup>30</sup>

Q And so by doing this report they were doing the due diligence that you thought was appropriate for them to carry out?

A Yes, that was my expectation is if they got an allegation, they would look into it. I was surprised by using a third-party business firm to do it, but I definitely would expect them to do that, yes.

Q And in fact by doing it they're making sure that there's a problem in this type of typology that the -- if there is one and it's existing, that they addressed it?

A That absolutely be my expectation as minister is if they identified a typology of money laundering or there was a credible allegation of a typology of money laundering that they would look into it and either discredit it or that they would find there was some basis for it and they would address it.

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<sup>27</sup> Province's Reply Submissions, para. 75.

<sup>28</sup> Province's Reply Submissions, para. 75.

<sup>29</sup> Province's Reply Submissions, para. 75; [B. Boyle](#), Sep. 13, p. 82, l. 11 - p. 84, l. 9.

<sup>30</sup> [D. Eby](#), Apr. 26, p. 106, l. 10 - p. 107, l. 7.

Q And in this case they essentially discredited it, didn't they?

A That's what the E&Y report found. That's correct.

23. Further, Mr. Boyle's evidence was that Minister Eby acknowledged during the meeting in which EY's work was presented to him that it was good that EY planned to continue their investigative work.<sup>31</sup>

24. There is no evidence to suggest that the amounts EY invoiced BCLC for the AML Practices Report and the Known Play Report were inappropriate in the circumstances. BCLC submits that, if anything, the costs reflect the thoroughness and care taken to produce those reports..

**(c) EY's Prior Engagements and Invoices to BCLC**

25. Finally, Province's submission that it was not privy to draft versions of the EY AML Report does not acknowledge the fact that Mr. Boyle disclosed to the Commission (who in turn disclosed to participants) draft reports and communications with counsel, some of which were in fact made exhibits at trial.<sup>32</sup>

26. Furthermore, the Province's observation that advance drafts were shared with current and former BCLC officers (Messrs. Kroeker, Lightbody, and Desmarais) under a common interest privilege, ignores Mr. Boyle's testimony that he did not speak to those individuals or their counsel.<sup>33</sup> While it is not clear what the Province intends to make of this evidence regarding draft versions of the report, BCLC submits that there was nothing inappropriate about BCLC sharing drafts of the reports with Messrs. Kroeker, Lightbody, and Desmarais. There is no evidence to suggest or support a finding that BCLC or these individuals influenced Mr. Boyle's findings in any way.

27. To conclude, BCLC submits that Mr. Boyle's credibility, objectivity, and independence are beyond reproach, and that none of the statements made by the Province with respect to the circumstances of Mr. Boyle's retention by BCLC and

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<sup>31</sup> [B. Boyle](#), Sep. 13, p. 136, l. 11 - p. 137, l. 8.

<sup>32</sup> [B. Boyle](#), Sep. 13, p. 10, ll. 4-12.

<sup>33</sup> [B. Boyle](#), Sep. 13, p. 10, ll. 4-12; [B. Boyle](#), Sep. 14, p. 18, l. 23 - p. 19, l. 4.

provision of the EY reports should affect the weight given to those reports or his testimony.

#### IV. Conclusion

28. The Province's Reply Submissions in respect of the EY AML Report have sought to highlight what the Province alleges are flaws in Mr. Boyle's evidence and the EY AML Report. BCLC acknowledges that Mr. Boyle's evidence does not cover all operators in all jurisdictions around the world; nevertheless, it is a useful reference point for the Commissioner, particularly in light of Mr. Boyle's extensive experience and expertise, as well as the fact that the Province has not offered any evidence of regulations, industry guidance, or operator practices (other than the Malysh report, which is hearsay), that would contradict Mr. Boyle's findings.

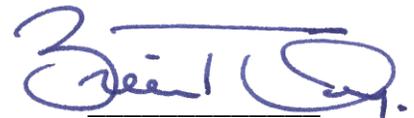
RESPECTFULLY SUBMITTED THIS 14<sup>th</sup> day of October 2021.



William B. Smart, Q.C.



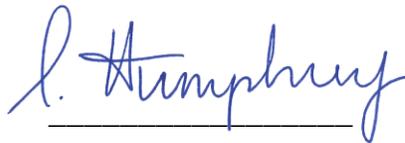
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