

## **Cullen Commission of Inquiry into Money Laundering in British Columbia**

### **Closing Submissions of BMW Canada Inc. and BMW Financial Services, a division of BMW Canada Inc.**

#### **Introduction**

1. BMW Canada Inc. and BMW Financial Services, a division of BMW Canada Inc. (collectively, “**BMW Canada**”) sought voluntary participation in the Commission of Inquiry into Money Laundering in BC (the “**Commission**”) because, as an automotive and financial services industry leader, BMW Canada believed it could help the Commission fulfil its mandate to make fair, accurate, and helpful findings and recommendations for the benefit of the automotive industry, the automotive financial services industry, and British Columbia consumers.
2. BMW Canada has provided evidence that British Columbia, and in particular Vancouver, are significant markets for the purchase of luxury vehicles. Unfortunately, it is also a significant market for the unauthorized export of BMW and other luxury vehicles to foreign jurisdictions. This is an issue that BMW Canada has been grappling with across Canada since 2014/2015, though the issue is particularly acute in British Columbia, and has typically affected certain, specific models and trim lines of BMW vehicles (notably BMW X5 and X7 vehicles). BMW Canada is aware of, and actively works to combat, this grey market for its vehicles.
3. This submission summarizes the methods that, in BMW Canada’s experience, are utilized by unauthorized exporters and the steps BMW Canada has undertaken to combat the issue. Finally, several policy and other recommendations are outlined that we believe have the potential to assist in combatting the issue.

#### **BMW and the vehicle grey market**

4. In BMW Canada’s experience, individuals and entities engaged in attempts to unlawfully export its vehicles often use the following tactics and methods:
  - a. Straw Buyers:<sup>1</sup> In many cases, the exporter has located a nominee (sometimes called a “straw buyer”) that will attend at the dealer location to procure a vehicle on their behalf. Straw buyers hold themselves out as the intended user of the vehicle within Canada, using their own legitimate identification and credit history. Straw buyer arrangements may involve use of an “Agency Agreement” or other pseudo-legal agreement between the nominee and exporter that give the appearance of a true legal agreement to the nominee. Terms may include the details of an agency relationship, and that the exporter will pay all costs for the vehicle. Certain agreements may also state that should there be any costs or losses experienced by the straw buyer, the exporter will indemnify them for all losses. As further detailed in

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<sup>1</sup> Affidavit #1 of Norman Shields dated March 26, 2021 (the “**Shields Affidavit**”) at paras 17 – 21.

below in the section on finance fraud, it is often the case that the nominee ultimately themselves become the victim of fraud.

- b. Identity Fraud:<sup>2</sup> In some cases, the identity of a real person is manipulated and stolen. This may occur through online theft of personally identifiable information, or theft of identification documents that allow new documents to be created. Identification using the data of the “real” person, but with the photo of the fraudster is created and taken to the dealer and used to pass the fraudster off as that person.
- c. Synthetic Identity Fraud:<sup>3</sup> Alternatively, an entirely false person may be created through the manufacturing personally identifiable information. This involves the cultivation of a profile of personally identifiable information. This provides the “fake” person with all of the hallmarks of someone that is legitimate, including address, employment and credit history. Requests for credit are accompanied by employment and addresses, which are provided to credit reporting agencies by those offering credit. A profile may begin to emerge over time, and when a sufficiently mature or robust profile exists (including a respectable credit score), that false profile may pass usual credit and other checks to be approved for credit.
- d. Corporations:<sup>4</sup> In some circumstances, BMW Canada has noted the use of federal or provincially-incorporated companies that are presented as needing employee or fleet vehicles for their business operations, when in fact, the businesses do not actually operate or have employees.
- e. Completing purchase and lease transactions:<sup>5</sup> The exporter or nominee may pay for the purchase of a vehicle in full using various payment methods, or may choose to finance a purchase using credit obtained from other lenders. Alternatively, transactions are funded in whole or in part by BMW Financial Services. Certain dealerships will require that the customer provide an initial deposit, which may be paid by credit card, cash, bank draft, or personal cheque payable to dealer, at the dealer’s option. Thereafter, the customer must either provide payment in full of the remaining balance due, or sign a Conditional Sales Agreement (financing agreement) or Lease Agreement with BMW Financial Services.

In a financing arrangement, the customer becomes the registered owner of the vehicle, and agrees to make regular installment payments of the balance financed. In a leasing arrangement, BMW Canada is the owner of the vehicle, and it is leased to the customer for a fixed term. Full payment being rendered at the time of sale generally involves the provision of a bank draft or wire transfer to the dealer. In a financing or lease arrangement, funds will be advanced to the dealer by BMW

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<sup>2</sup> Shields Affidavit at para 22.

<sup>3</sup> Shields Affidavit at para 23.

<sup>4</sup> Shields Affidavit at para 24.

<sup>5</sup> Shields Affidavit at paras 25 – 33.

Canada, with the customer providing any required down-payment or payment of any additional “due on sale” amounts that may be owed by credit card, cash, bank draft, or personal cheque payable to dealer, subject to the dealer’s requirements.

Prior to completing the purchase or lease of selected models of BMW vehicles, pursuant to BMW Canada policy, each customer must sign an Unauthorized Re-Sale and Non-Export Agreement (“Non-Export Agreement”; detailed further in section on Non-Export Agreement and enforcement below). This document contains a variety of covenants, including a representation that the vehicle is solely intended for the use of the customer(s) and any permitted secondary drivers, and is not intended for resale or permanent removal from Canada within the twelve months immediately following delivery to the customer. The customer relying upon BMW Canada financing is also required to sign a standardized financing or loan agreement. Once all identity and insurance verification, licensing, vehicle plating and other required steps take place, the vehicle is delivered to the customer.

Once a transaction is completed and delivery completed, a vehicle intended for export may be driven only a very short distance to avoid incurring undesired mileage. Once it leaves the dealer location, the vehicle may be transported by flatbed to another location, where it will be prepared for transport, often via shipping container. In certain cases, this involves disabling or attempting to alter the vehicle’s GPS technology and preventing BMW Canada (further to its various contractual rights) or law enforcement from tracking its exact location. Any straw buyer or fraudulent identity transaction requires that the exporter provide funds, and to conceal the true source of funds. This frequently involves the use of bank drafts, including scenarios where the exporter obtains a bank draft from their financial institution, payable to the dealer, or the exporter obtains a bank draft from their financial institution that is payable to the straw buyer, who in turn purchases a bank draft payable to the dealer. Identifying the source of funds may be challenging for a number of reasons.

- f. Finance fraud:<sup>6</sup> In many instances, the acquisition of a vehicle involves financing from BMW Financial Services Canada. Based on our review of finance applications of suspected straw buyers, and the similarities in the applications, it appears that the buyers may have been coached regarding what they should state as their career or income, and the amount of a down-payment that should be proffered in order to meet BMW Canada’s credit requirements. BMW has been advised by some of these straw buyers that the exporter has advised of a “change in plans”, and assures the straw buyer that payments will follow. Installment payments may be provided by the exporter through deposits to the straw buyer’s bank account or cash payments (in one case, described as cash payments to their mailbox each month, by someone unknown to them, until it ceased and the account went into default). Alternatively, the exporter may simply take the vehicle and vanish, leaving the straw buyer to cover any financial obligations. Inevitably, there is a point in time where the straw buyer

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<sup>6</sup> Shields Affidavit at paras 34 – 36.

can no longer afford the regular installment payments, or the leased vehicle due to return fails to materialize, and the straw buyer must then face the consequences. In addition, the straw buyer may find that their identity was used in other automotive finance transactions without their consent, or that it was sold or traded to others for use in fraudulent transactions.

**What has BMW been doing to combat unlawful exports?**

5. BMW Canada is aware of the links between exports, money laundering and organized crime as indicated in the German Report. For this reason, it wants to combat the practice as involving BMW vehicles sales in Canada and BMW Canada's retail network. Since 2015, BMW Canada has implemented policies to curb unauthorized reselling and export of its vehicles. These policies set out a series of mandatory steps that its dealers must follow when selling, leasing, or financing certain BMW models.
6. BMW Canada has also enforced non-export obligations in a variety of civil actions, and successfully prevented the export of many others.<sup>7</sup>
7. BMW Canada's policy is that vehicle sales to unauthorized resellers or individuals who are purchasing for export are prohibited.<sup>8</sup> BMW Canada requires that its dealers complete "know your customer" protocols, obtain additional information from prospective customers and ask questions that will assist in determining if the transaction is suspicious, and also requires that any customers seeking certain targeted vehicle models enter into agreements prohibiting resale or export from Canada within certain timeframes.<sup>9</sup>
8. Should any of the following occur, or should a customer decline to meet the requirements of BMW Canada, the dealer is obliged to refuse to sell or lease a vehicle to the customer:<sup>10</sup>
  - a. Failed or inconclusive customer identification;
  - b. The customer refuses to sign the Non-Export Agreement; or
  - c. A payment is presented from a source other than the customer(s).
9. Additional criteria used to assist dealers in identifying suspicious transactions that require additional due diligence, include the following:<sup>11</sup>
  - a. Whether the customer's home address and primary place of business are within the dealers' market area.

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<sup>7</sup> Shields Affidavit, at Exhibits A – C/

<sup>8</sup> Shields Affidavit, at para 39.

<sup>9</sup> Shields Affidavit, at para 39.

<sup>10</sup> Shields Affidavit at para 42.

<sup>11</sup> Shields Affidavit at para 43.

- b. Whether the customer is attempting to purchase multiple units of certain BMW models.
  - c. Whether the customer's business is associated with reselling or exporting vehicles (dealers are encouraged to conduct online or other searches for all business customers).
  - d. Whether the customer has a history with BMW in Canada.
  - e. Any request to deliver a vehicle to a person other than the customer, or to a location other than the customer address.
10. In addition, BMW Canada conducts regular export compliance prevention audits of its dealers to ensure compliance with its policies.<sup>12</sup>
11. BMW Canada also works with various law enforcement agencies and personnel wherever possible to prevent export and to recover vehicles.<sup>13</sup>

**Non-Export Agreement and enforcement**

12. Beginning in 2015, BMW Canada established and updated enhanced procedures for certain specific models of vehicles, namely, BMW X5 (initially) and BMW X7 (in 2019) vehicles. Customers intending to purchase, lease, or finance BMW X5 and X7 vehicles sold, leased, or financed in Canada must sign a Non-Export Agreement as part of the transaction. The X5 and X7 models are luxury sport utility vehicles.<sup>14</sup>
13. Pursuant to the current version of the Non-Export Agreement, the customer represents the following, and may be held liable should their representations be found to be untrue:<sup>15</sup>
- a. The vehicle is solely for their own benefit and use and, except for permitted secondary drivers, no other party will have direct or indirect control of the vehicle.
  - b. They do not intend to sell the vehicle to another party.
  - c. They will not remove or export or attempt to remove or export the vehicle from Canada without prior written consent from BMW Canada.
  - d. They will submit a written request to BMW Canada should it want to transfer control of the vehicle to another party.
14. A breach of any of these conditions constitutes an event of default under the agreement, which gives rise to potential remedies for BMW Canada to prevent export and/or to seek

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<sup>12</sup> Shields Affidavit at para 45.

<sup>13</sup> Shields Affidavit at para 54.

<sup>14</sup> Shields Affidavit at para 46.

<sup>15</sup> Shields Affidavit at para 49.

liquidated damages from the customer. Further, under the Non-Export Agreement, BMW Canada has the right to periodically determine the location of the vehicle for the twelve months following a customer's receipt of the vehicle. It may do so by accessing the vehicle's GPS and/or other technology to confirm that the vehicle is located in Canada, as well as through automatic alerts that the vehicle has entered high risk zones associated with export activities, such as borders or ports.<sup>16</sup>

### **Policy Changes**

15. Despite its efforts, BMW Canada continues to face attempts by exporters to circumvent its controls and must devote significant effort and resources to continually update and enforce its export prevention policies.
16. It is not a crime under the *Criminal Code* of Canada to purchase a vehicle with the intention of exporting it. This approach is opposite that of the United States, which made the exportation of a new vehicle within twelve months of acquisition a crime under its laws, which change resulted in an immediate and very dramatic reduction in that traffic. The implementation of law changes that make it a federal and/or provincial offence to remove a vehicle from Canada within a specified period of time would assist in combatting the unlawful exporting issue.
17. BMW Canada supports the imposition of regulatory requirements prohibiting cash transactions for vehicles in amounts above \$10,000. As outlined above, cash transactions are often used by exporters to facilitate purchase or leasing of vehicles. Curbing this practice would tamp-down on the ability of exporters to conduct such transactions.
18. The ability to claim a refund for PST paid on resold vehicles creates an additional financial incentive for unauthorized exporters in British Columbia. BMW Canada supports a repeal of any right to claim a PST rebate on an exported vehicles, disallowing rebates for vehicles owned for less than one year, adding a requirement for proof that tax was paid in the importing jurisdiction prior to granting a refund, requiring evidence that there were not any restrictions on resale in the purchase contract, and/or the requirement for the applicant to prove they paid for the vehicle and the taxes. The provincial government could also consider requiring CBSA clearance before granting PST refunds for the resale of vehicles. Such changes would dramatically change the fiscal incentives for exporters and would also eliminate a cost to the public of this unlawful activity.
19. At an operational level, BMW Canada also suggests the following policy changes that would have an impact on curbing unlawful exports:
  - a. The integration of the computer systems of CBSA, local law enforcement and the RCMP, or the facilitation of electronic information sharing such that each agency is aware of the efforts and information of the other, including functionality such that any vehicles identified

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by a law enforcement agency would be communicated or flagged to CBSA on any customs declarations or manifests. Given the inter-agency cooperation and information sharing agreements currently in place, this system would simply be improving upon existing information sharing rights and methods.

- b. The advancement of certain fraud-prevention efforts, such as moving to an exclusively electronic system for shippers to submit Export Declaration Forms, and movement away from paper forms being permitted.
- c. The publication of that portion of Export Declaration Forms relating to Vehicle Identification Numbers (“VINs”), thereby allowing for law enforcement and creditors to identify the VINs of vehicle that have left Canada, for use as evidence in any charges or and civil litigation.
- d. In conjunction with greater resources being allocated to CBSA, an increase to the rate of physical inspections of containers, which allows for mis-declared cargo (including discrepancies between the actual VIN and Export Declaration Form VIN) to be identified and actioned.
- e. Use of subscriptions or technology services that would allow law enforcement to conduct a national search of lienholders for specific vehicles. National search platforms are in the marketplace and allow a user to submit a single inquiry by VIN that identifies any lienholder registered anywhere in Canada, with complete contact information.
- f. The Canadian Government shift from use of paper forms with watermarks for Canadian work or student visas to a plastic card with embedded security features.
- g. BMW Canada further supports the prohibition of the use of negotiable instruments to pay off manufacturer loans, except where an instrument has sufficient information on it to link it to a specific account at an existing reporting entity, such as at a financial institution. Many of the instruments that are currently used have no identifying information and are used as a tool to conceal the source of funds and identities of the exporters. The creation of a requirement or consensus among all Canadian financial institutions to indicate an account-holder’s complete name on any bank drafts, and greater accessibility to wire transferor identity, would assist in this regard.
- h. BMW Canada also asks the Commission to consider recommending that the provincial and federal governments dedicate additional resources to the ports, and to increase the physical presence of law enforcement and other stakeholders. BMW Canada is very appreciative of the collaborative approach and significant efforts of the CBSA and of law enforcement personnel in combatting the problem. However, it is clear that the volume of exports from Canada’s ports exceeds the abilities and capacity of current resources to

effectively deter the behavior of unauthorized exporters that, as stated in the German Report, is linked to money laundering and organized crime.

**Conclusion**

20. BMW Canada urges the Commission to remember that industry – especially the automobile retail and financial services sector – is not a regulator or a police service. It should not be expected to investigate into the possibility of predicate crimes or itself attempt to search through the chain of nominees and beneficial owners, which are often obfuscated.
21. An effective regime would ensure that any form of reporting and compliance is administratively and operationally easy to implement at the level of the immediate transaction. It would also ensure that industry can benefit from and rely on pre-established registries. For example, a new regime could include reasonable “know your customer” requirements for certain kinds of purchases but also permit industry entities to rely on corporate beneficial ownership registries established, maintained, and enforced by government. The policy suggestions referenced above provide a guideline for some steps that will assist in developing such a regime to combat the issue of unauthorized export of luxury vehicles.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

July 9, 2021



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of BMW Canada Inc.