COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA

REPLY SUBMISSIONS OF THE COALITION OF TRANSPARENCY INTERNATIONAL CANADA, CANADIANS FOR TAX FAIRNESS and PUBLISH WHAT YOU PAY CANADA

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Overview

1. The Coalition raises four points in reply to other participants' submissions:

    a. Participants' concerns regarding a publicly available corporate beneficial ownership registry emphasize the need for the implementation of proper mechanics of the registry;

    b. Constitutional limitations do not preclude this Commission from making findings of fact based on evidence it has heard on federally regulated entities;

    c. This Commission, British Columbia and Canada should not shy away from making recommendations and crafting policies based on objective evidence of risk; and

    d. The Commission's recommendations must respond to the preponderance of the evidence that supports the conclusion that professionals are a significant money laundering threat.

The importance of properly constructing a beneficial ownership registry

2. On the topic of beneficial ownership registries, the BCCLA essentially advanced the following arguments against the proposed registry:

a. That registries are ineffective as they contain a large volume of low-quality information;

b. That registries may be ineffective because individuals can conceal the true beneficial ownership by structuring ownership below the reporting threshold;

c. That publicly accessible registries are unnecessary and may lead to identity theft, fraud, scams or solicitations; and

d. That registries are not sufficiently protective of privacy rights.

3. The Coalition respectfully submits that these arguments are overblown.

Efficacy of the proposed registry

4. The Coalition submits that the BCCLA's concerns with respect to efficacy of the registry highlight the necessity for a registry to have the proper mechanics in place. As set out in the Coalition's original submissions, robust validation and verification processes will help to ensure the efficacy of the registry. Similarly, ensuring that the registry has a sufficiently low reporting threshold (recommended to be 10%) will make it more difficult for criminals to structure their companies in a way that obfuscates the ultimate beneficial owner.

5. On the topic of efficacy of the registry, the BCCLA pointed to the evidence of Dr. Sharman. Dr. Sharman's evidence was essentially that while a publicly accessible beneficial ownership registry would provide improvements on corporate transparency in Canada, his opinion was that a more effective manner to increase corporate transparency was for corporate service providers to collect beneficial ownership information.[1] Dr. Sharman also gave the following evidence about advantages of a publicly accessible beneficial ownership registry, including:

[1] Transcript, May 7, 2021, p. 187-188.

a. assisting journalists, NGOs and whistle-blowers in reporting on and combatting money laundering;

b. assisting law enforcement in transnational criminal investigations; and

c. in reference to the UK PSC Registry, deterring the creation and illicit use of Scottish Limited Partnerships.[2]

6. Dr. Sharman's criticisms of the UK PSC Registry centered around the integrity of the information contained within that registry. The Coalition submits that these criticisms serve to underscore the importance of ensuring the information contained within the proposed registry is valid and verified. The Expert Panel on Money Laundering in BC Real Estate stated that "disclosure of beneficial ownership is the single most important measure that can be taken to combat money laundering" and that enhancing beneficial ownership disclosure is the "single most important regulatory improvement opportunity available".[3] British Columbia and Canada can apply the lessons learned from the PSC Registry.

Public accessibility is critical

7. The BCCLA submits that if a registry is implemented it ought to have restricted access to law enforcement, tax authorities and perhaps other regulated entities. The BCCLA submits that publicly accessible registries are less desirable as they could lead to theft, fraud, scams and other nefarious activities as well as discouraging incorporation in BC.

8. In reply, the Coalition points to its original submission on why public access is critical to the efficacy of the proposed registry (page 31-33 of original submission). In brief, a publicly accessible registry has the added benefits of improving the veracity of information contained within the registry; providing businesses with a useful due diligence tool; providing reporting entities under current anti-money laundering regulations with a useful know-your-client tool; and assisting in the

[2] Transcript, May 7, 2021, p. 175-177; 180-182.
[3] Maloney et al., *Combatting Money Laundering in BC Real Estate* at p. 2 and 3.

detection and investigation of money laundering offences by empowering the public, journalists and NGOs from around the world to use their local knowledge to connect falsely registered beneficial owners with the true owners and then report that information to Canadian law enforcement agencies through the registry's confidential tip line. A registry that only provides access to law enforcement does not have any of these benefits and does not benefit from the many eyes principle. The evidence before this Commission is overwhelmingly supportive of public access to the proposed registry.

9. In specific reply to the speculative comments that publicly accessible registries could lead to increased abuse or nefarious activities, the Coalition submits that these concerns are largely overblown. While, in theory, it could be said that these types of activities may increase with the implementation of a publicly accessible registry, there is no evidence before this Commission that these activities actually do increase. The UK PSC Register has been in operation since 2016 and there is no evidence of nefarious abuse of the information contained in that registry. The lack of direct evidence in this regard is not surprising considering that similar information is already available in the public domain (and has been for decades). For example, BC Online already contains publicly available information on companies including information about directors. Further, beneficial ownership information for publicly traded companies is already publicly available in British Columbia and Canada. The Coalition submits that the argument that a publicly accessible beneficial ownership registry will bring a corresponding increase in fraud, scams and other nefarious activities is unfounded.

10. The BCCLA also makes the argument that a publicly accessible registry will discourage companies from incorporating in British Columbia. The Coalition's response is twofold. First, the Coalition submits that this argument flies in the face of the overwhelmingly positive evidence from the United Kingdom on the corporate utility of the PSC Registry.[4] Second, the Coalition submits that weeding out of those corporations that would abuse the anonymity currently afforded to British

[4] Exhibit 398; see page 29 of the Coalition's original submissions, dated July 20, 2021.

Columbia corporations is a *feature* of the registry, not a shortcoming. Discouraging criminals, tax evaders and corrupt politicians from parking their unlawfully obtained assets in British Columbia is a good thing. Further, any persons with legitimate concerns about having their information publicly accessible may apply to the Supreme Court for an exemption.

Privacy concerns and the proposed registry

11. The BCCLA has also urged this Commission and the Province to consider privacy rights in developing a proposed registry. With respect to privacy concerns raised by the BCCLA, the Coalition submits that a properly constructed beneficial ownership registry conforms with Canadian privacy law.

12. The Coalition agrees with the BCCLA's submission that there should be an opt-out provision for vulnerable persons to avoid disclosing information on a beneficial ownership registry. As set out in their main submission, the Coalition's position is that information collected on a corporate beneficial ownership registry would not offend s. 8 *Charter* protections, and even if they did, they would be justified.

13. In a general sense, at paragraph 49 of their submissions, the BCCLA has submitted that they are concerned that no experts were called to provide expert evidence on the application of the *Charter* to certain anti-money laundering proposals. The Coalition submits that assessing *Charter* validity of proposed legislation or regulations is a legal question and well within the scope of this Commission. While Courts have held that *Charter* litigation must be brought with a sufficient factual foundation, the Coalition points to the extensive evidence before this Commission and submits that there is sufficient evidence to make policy recommendations and contemplate Charter implications.

14. Ultimately, the Coalition agrees that certain mechanisms can be imposed to ensure that, insofar as there could be minor privacy infringements associated with the proposed registry, they are lawful.

Jurisdictional limits of this Commission

15. The Coalition submits that while this Commission's Terms of Reference must be interpreted in accordance with constitutional limitations, the authorities do not preclude factual findings based on federally regulated entities or federal regulators.

16. The guiding authority with respect to these types of limits is *Keable.* In *Keable,* the Supreme Court of Canada held that "no provincial authority may intrude into [the RCMP's] management" and that it was improper for the purpose of the inquiry to extend into the RCMP's regulations and practices.[5]

17. As set out in the Terms of Reference for this Commission, the purpose of this Commission is to report on, and make recommendations on, money laundering activities and responses in British Columbia. The purpose of this inquiry is properly within the provincial jurisdiction. That said, the Terms of Reference also necessitate grappling with issues relating to money laundering and enforcement across jurisdictions, borders and sectors. An assessment of money laundering threats and responses within British Columbia necessitates a view to British Columbia's placement within Canada's anti-money laundering regime.

18. As set out in their closing submissions, the Coalition does not seek recommendations with respect to the management, regulations or practices of the RCMP or any other federally regulated entity. The Coalition points to what it says amounts to disturbing evidence of the failings of federally regulated entities and regulators to adequately respond to money laundering threats and asks this Commission to recommend a federal inquiry. The Coalition respectfully submits that it would be a disservice to this Commission to ignore the evidence of the federal entities.

19. The Coalition's request for a recommendation for a national inquiry is appropriate and strikes a balance between, on the one hand, the jurisdictional limits that this

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[5] *Quebec and Keable v. Canada,* [1979] 1 S.C.R. 218 at 242-244.

Commission operates within, and on the other hand, the evidence heard regarding the failings of federally regulated entities and regulators.

AML policy must not ignore evidence of risk

20. The BCCLA has devoted a large part of their submission to the damage attributable to the anti-Asian and anti-Chinese sentiment that has made its way into the money-laundering discourse in British Columbia. At page 42 of their submissions, 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.

21. The Coalition agrees that racist and discriminatory ideologies have no place in informing recommendations and findings of fact on policy responses to money laundering threats. However, the Coalition submits that it would be a step too far for this Commission to make recommendations, or for the Province to implement policies, that ignored evidence about money laundering activities from certain high-risk jurisdictions or organized crime groups that themselves are largely based on ethnicity, language groups or countries of origin.

22. This Commission has heard evidence that Canada takes a risk-based approach to implementing anti-money laundering efforts. The Coalition submits that country of origin, citizenship and language group can play a role in determining risk and how best to respond. It is not racist to develop policies and enforcement efforts based on these types of risk considerations.

23. Foreign countries pose different risks from a money laundering perspective; some jurisdictions pose a greater risk than others. To be clear, the Coalition does not contend that *all* foreign investment from high risk foreign jurisdictions amounts to money laundering. No reasonable person would think that. Rather, the Coalition submits that country of origin is a factor that must be assessed in determining risk of money laundering and how to craft adequate policies that will meaningfully respond to that risk. Ignoring that factor for fear of being labelled racist is undesirable and threatens the efficacy of anti-money laundering policy. The Province and this Commission must endeavour to make policy recommendations in line with known risks and risk factors; those factors must include consideration of country of origin and nationality.

24. In a similar vein, the Coalition submits that it is well documented that organized crime often groups together based on race, language and ethnic background; it would be detrimental to Canada's general enforcement regime to ignore these facts. For example, The Mafia is known to be primarily comprised of persons with Italian backgrounds. Russian Organized Crime is typically comprised of persons with Russian ancestry. Further examples include that Persian, Southeast Asian and East Asian organized crime groups, among others, are known to be operating within Vancouver and the Lower Mainland. The UN Gang is so named because they are one of the rare organized crime groups that do not purport to limit their membership based on race, ethnicity or language group making them outliers in the organized crime world where affiliations appear to be primarily based on race or country of residence. This Commission, the Province and Canada should not fear crafting specific enforcement and anti-money laundering recommendations and policies based on these well-known facts about how organized crime operates.

25. Insofar as there is a lack of direct evidence on what jurisdictions are contributing the most illicit funds to Canada, in their original submission the Coalition sought a recommendation that the Province engage in further research into the source of foreign illicit funds in British Columbia. The Coalition submits that the BCCLA's

submissions on the anti-Asian narrative emphasizes the need for more research on this area to inform policy decisions.

Professionals represent a significant risk to facilitating money laundering

26. While the Coalition notes that participants appearing on behalf of professionals (i.e. CDAS, CBABC, CPABC, CPAC) appear to at least acknowledge some risk of professionals acting as enablers for money laundering, the Coalition emphasizes that the role of the professional in money laundering operations must not be downplayed. The evidence before this Commission supports the notion that professionals (i.e. bankers, accountants and lawyers) pose a significant risk of facilitating (either willingly or unwillingly) money laundering activities and are in fact known to be facilitating money laundering.[6] The Coalition submits that recommendations emanating from this Commission must be alive to this evidence.

27. The Law Society of British Columbia has put forward the position that it is unnecessary to add an express anti-money laundering mandate to the Law Society because they already consider anti-money laundering to be part of their mandate. In reply, the Coalition submits that it is insufficient for the Law Society to privately embark on anti-money laundering compliance efforts while leaving the public in the dark on how they detect and audit lawyers and law firms on compliance.

28. The evidence is that lawyers are a threat and can be duped or coerced into assisting money launderers, if not willingly facilitate the offence. In light of this evidence, taken together with the Supreme Court of Canada's decision in *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, the Coalition submits that there must be increased transparency on how Canadian law societies detect and audit for anti-money laundering compliance within the legal

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[6] See for example: Transcript: May 25, 2020 (Schneider), p. 14, p. 77, p. 82; May 26, 2020 (Schneider), p. 2-3; June 1, 2020 (Bullough), p 61-62, p. 74-76; June 15, 2020 (Wainright), p. 27, p. 29-30; November 16, 2020 (Ngo et al); November 17, 2020 (Wilson and Benson); November 20, 2020 (Levi); January 11, 2021 (McGuire); April 9, 2021 (Clement et al.) p. 34; April 12, 2021 (German), p. 38-40; April 15, 2021 (Farahbakhchian et al.), p. 82-85; April 16, 2021 (Payne), p. 95-98, 120-121, 131-133; May 6, 2021 (Sharman), p. 26-29, 42-43, 73-77, 104-106; May 10, 2021 (Cassella), p. 39, 85-86; May 12, 2021 (Hamilton), p. 50-51; May 13, 2021 (Rense), p. 22, 32-33, 121-122. See also, Exhibits 219, 244, 394, among others.

profession. Further transparency on the Law Society's audit methods can and should be done in a manner that does not infringe solicitor-client privilege.

29. The Coalition points to the principle that it is "of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done".[7] Given this principle, this Commission should not be satisfied that the Law Society need not implement a specific anti-money laundering mandate. While solicitor-client privilege precludes FINTRAC, law enforcement or general public oversight of the lawyer-client relationship, the methods utilized by law societies to ensure lawyers are compliant with their anti-money laundering obligations can be, and in the Coalition's submission should be, subject to public scrutiny. The compliance and audit methods, along with a clear anti-money laundering mandate, ought to be express, forthright and available to the public.

Conclusion

30. The Coalition submits that this Commission is well-placed to make bold recommendations to improve the Province's anti-money laundering regime. The Coalition applauds the efforts of British Columbia in implementing this inquiry and would again encourage British Columbia to adopt the recommendations emanating from this Commission.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: July 30, 2021

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[7] *Brouillard v. The Queen*, 1985 CanLII 56 (SCC) at para. 13 citing Lord Hewart in *Rex v. Sussex Justices*, [1924] 1 KB 256 at p. 259.