

COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA

The Honourable Mr. Austin F. Cullen, Commissioner

THE ROLE OF BRAD DESMARAIS IN THE EVOLUTION OF BCLC'S ANTI-MONEY LAUNDERING STRATEGIES

A. INTRODUCTION

1. Brad Desmarais joined the British Columbia Lottery Corporation ("BCLC") as the Vice President, Corporate Security and Compliance, in February, 2013, and remained in that position until September, 2015. He brought more than three decades of police experience with him, much of it investigating money laundering ("ML") and proceeds of crime ("POC"). During his tenure with BCLC, he instituted a number of significant Anti-Money Laundering ("AML") measures within BCLC. Critically, he was the impetus for the first, and only, significant police investigation into ML in BC casinos. Although some witnesses have suggested that BCLC and Mr. Desmarais failed to act quickly and decisively to the perceived threat of ML, he says that the response was a measured, risk-based approach that relied on evidence and his extensive knowledge as a police officer of ML methods employed by organized crime, rather than hypothesis or speculation. This response ensured that legitimate gamblers could continue to play at BC casinos. Mr. Desmarais takes pride in his accomplishments during that period, but, like every other state actor involved in the regulation or management of casinos in the last two decades, he recognizes that he was a temporary steward of an evolving AML process that was underway before his involvement with BCLC, and continued with his successor, Robert Kroeker, and indeed, continues to evolve today.
2. There are several indisputable facts. First, there was significant confusion about the powers and duties of the Gaming Policy & Enforcement Branch ("GPEB"), BCLC, and law enforcement during this time period, which created considerable uncertainty and frustration. Second, there should be no doubt that although many individuals held different views about the nature and scope of ML in the casinos, and about the appropriate response, most of those people like Mr. Desmarais, had long histories of involvement as enforcers of our laws. All were well-intentioned and had no

professional or personal interest in permitting criminal activity to take place. Third, while some witnesses have expressed opinions about what they say was obvious, there can be little doubt that there was no evidence, at least prior to 2015, capable of proof on any legal standard, that any particular cash deposits were the POC of any predicate offences that might be the source of any such POC; nor was there any evidence of the persons who might be responsible for any such predicate offences.

3. The Commission's Terms of Reference require it, among other things, to make findings of fact with respect to the development of ML in the gaming sector, the acts or omissions of regulatory authorities and individuals, and the scope and effectiveness of the powers, duties, and functions of those authorities and individuals. The Commission has the unenviable task of cataloguing and evaluating the management of ML issues over a period of 15 years or more. That process requires an analysis of the evolution of the ML problem, as well as the knowledge of and responses to it by different individuals and agencies at different times. The Commission must look at the problem through a series of sequential contemporary blurred lenses, rather than the 20/20 hindsight of a 2021 neutral perspective informed by months of insightful evidence from investigators, managers, senior government officials, and experts from around the world and with the benefit of reflection. Questions such as "why didn't you do A or B after learning X or Y?" are legitimate questions to pose, but the answers must be measured against the circumstances of the time, not on the state of knowledge of the Commission today.
4. Mr. Desmarais respectfully suggests that the Commission can be of greatest assistance to the people of British Columbia by focussing on the development of broad, forward-looking recommendations based on the lessons that can be taken from the history. He respectfully suggests, to use a cliché, that the Commission does not, in its fact-finding process, lose sight of the forest for the trees by unduly focusing on the minutiae of individual pieces of documentary or oral evidence.

B. MR. DESMARAIS' BACKGROUND

5. Mr. Desmarais joined the Vancouver Police Department ("VPD") in March, 1979, and served as an investigator and manager in both the VPD and RCMP for 34 years.

Between 1993 and 2007 he worked in the RCMP Integrated Proceeds of Crime unit (“IPOC”), which included forensic accountants, Department of Justice lawyers, analysts, and support staff. He described the interdisciplinary composition of the unit as “critical” because ML investigations often involved complex tasks, such as the assessment of net worth, undercover operations, or special procedure applications to the court. He supervised numerous international POC/ML/asset forfeiture investigations that led to criminal charges against businessmen and lawyers, among others, and the seizure of tens of millions of dollars of illicit funds.

6. Mr. Desmarais’ work sometimes took him to China, where he liaised with national and local police and the Chinese equivalent of the Canadian Department of Justice. Another involved what appeared to be ML, but in fact involved the transmission of legitimate funds through an underground banking network linking Canada and Vietnam.¹ He was aware of the issue of capital flight from China. In the later period of his policing career, he was the Operations Officer at the Burnaby RCMP Detachment, the Officer in Charge of the VPD Gangs and Drugs Section, and the Officer in Charge of the VPD Major Crime Section. While at Gangs and Drugs, he supervised currency pick-up operations in Vancouver, which were part of larger drug and ML investigations in the United States. He said none of the cases he investigated or supervised, in any of his roles, involved ML in casinos.

C. AML MEASURES IN FEBRUARY, 2013

7. Upon joining BCLC, Mr. Desmarais sought to “understand the landscape”. He familiarized himself with the industry and the roles of BCLC and GPEB by reviewing the documentation and reports from recent years, and by engaging with a range of stakeholders.²

8. The February 2013 “landscape” was shaped by a large number of factors, including:

- (a) the reality that casino gambling across the globe was traditionally a cash business, and until recently was a cash only business in BC;

¹ B. Desmarais, Feb. 2, 2021, p. 91 (93 of 168)

² Ex. 522, Aff. # 1 of B. Desmarais, para. 24, p. 5; B. Desmarais, Feb. 2, 2021, p. 64-65 (66-67 of 168)

- (b) the reality that gambling was a very significant source of revenue for the province, and that BCLC's vision was for gambling to be "widely accepted as exceptional entertainment" and to optimize financial performance, because profits supported essential community facilities, including hospitals and schools. BCLC did not want to lose revenue unnecessarily but was prepared to suffer losses for the right reasons;³ Mr. Desmarais defined BCLC's role as to "responsibly generate revenue", which required balancing based on risk tolerance. He testified that BCLC "never allowed the revenue mandate to get in the way of doing the right thing";⁴
- (c) an awareness through media reports that there was a public concern that casinos were being used to launder money;
- (d) an awareness that some people at GPEB had expressed concerns since at least 2010 that there was a potential of ML in BC casinos; their theory was that patrons using large quantities of \$20 bills were at least facilitating ML, and some GPEB staff believed that the casinos should be prohibited from receiving more than \$10,000 in \$20 bills at a time.⁵ (It should be noted parenthetically that despite all of the advocacy for such an approach, no formal cash limit has been imposed by GPEB or any government to this date);
- (e) Mr. Desmarais' predecessor, Mr. Towns, was of the view then, and now, that the high stakes patrons were not criminals and were not laundering money because almost all the cash being brought in was lost, and that BCLC's primary responsibility was to observe and report suspicious transactions to FINTRAC and GPEB;⁶
- (f) Mr. Kroeker's February, 2011 report ("Kroeker Report"), which concluded that BCLC had a robust AML regime in place, noting that "BCLC and its operators, with oversight and guidance from GPEB employ standard and appropriate anti-money laundering strategies", but that "while BCLC has standard anti-money

³ Ex. 505, Aff # 1 of J. Lightbody, para. 10; Ex. 522, Aff. #1 of B. Desmarais, para. 28, p. 7 (7 of 639)

⁴ B. Desmarais, Feb. 2, 2021, p. 69- 71 (71-73 of 168)

⁵ B. Desmarais, Feb. 1, 2021, p. 59-60 (59-60 of 164)

⁶ T. Towns, Jan. 29, 2021, p. 147-150, 163-164, 174 (145-48, 165-166, 176); Ex. 517, Aff. #1 of T. Towns, e. 20, p. 264-268 (289-293 of 484), e. 22, p. 273-275 (298-300 of 484)

laundering measures in place, opportunities exist to further strengthen current efforts.” Mr. Kroeker also wrote “BCLC’s obligation is primarily a duty to report. These reporting obligations do not extend to a duty to investigate and confirm the exact provenance of cash used to buy-in.”⁷ This conclusion relied partly on standards set by FATF and FINTRAC.⁸ The Kroeker Report also contained recommendations, including one that BCLC should “better align its corporate view and staff training on what constitutes ML with that of enforcement agencies”;⁹

- (g) BCLC were providing copies of all Suspicious Transaction Reports (“STRs”) to the RCMP but little, if any, law enforcement activity was visible;¹⁰
- (h) the total cash used in payments identified in STRs had increased in recent years. Evidence before the Commission reports that \$39.6 million in 2010-2011 had increased to \$82.4 million in 2012-2013. 64% of the 2012-2013 cash was in \$20 bills;¹¹ and
- (i) after the Kroeker Report, GPEB issued an “Action Plan to Review Anti-Money Laundering Measures at BC Casinos”.¹² This plan involved a three-phase approach. Phase 1 required the development and implementation of cash alternatives and facilitating access to funds inside the casino.¹³ Phase 2 involved operator intervention to proactively engage customers in the use of cash alternatives by patrons. BCLC responded to the Report by attempting to further develop cash alternative programmes, including cheque holds, debit machines at cash cages, Player Gaming Fund (“PGF”) accounts, and

⁷ Ex. 141, Summary Review Anti-Money Laundering Measures at BC Gaming Facilities, p. 2, 9, 10

⁸ R. Kroeker, Jan. 25, 2021, p. 86 (87 of 214)

⁹ Ex. 141, Summary Review Anti-Money Laundering Measures at BC Gaming Facilities, p.3

¹⁰ M. Chizawsky Mar. 1, 2021, p. 115-116 (116-117 of 169); B. Desmarais, Feb 2, 2021, p. 114-115 (116-117 of 168)

¹¹ Ex. 587, Aff. # 1 of L. Meilleur, e. UUU at p. 636 of 731 (GPEB1064.0003)

¹² Ex. 505, Aff. # 1 of J. Lightbody, e.1, p. 81 of 1368

¹³ B. Desmarais, Feb. 2, 2021, p. 103 – 104

convenience cheques.¹⁴ GPEB did not begin Phase 3 of that strategy until the fall of 2015.¹⁵

9. After completing his review, Mr. Desmarais concluded that BCLC's AML program should be further enhanced by a number of measures, which are detailed below.

10. Mr. Desmarais' evidence was that, in common with many other agencies, BCLC's knowledge and understanding of the ways in which casinos can be used to launder the proceeds of crime has evolved in the eight years since he was hired. As a result, BCLC's procedures have fundamentally changed from the historical practice of "observe and report" to a more proactive, multi-faceted approach aimed at actively preventing and deterring the use of the POC in casinos.¹⁶ He said that even in times of cost constraints, the CEO, Mr. Lightbody, approved all requests for additional AML funding.¹⁷

11. Several witnesses have attested to Mr. Desmarais' skill and integrity. Mr. Vander Graaf reported that he hired Mr. Desmarais.¹⁸ Mr. Meilleur said that he had a lot of respect for him.¹⁹ Mr. Lightbody said that he was very comfortable with and trusted Mr. Desmarais.²⁰

D. MR. DESMARAIS' INCREASED RESPONSIBILITIES

12. Although initially hired to fill one Vice President position, Mr. Desmarais was appointed acting Vice President, Human Resources in July, 2014, and Vice President, Casino and Community Gambling in June, 2015. He subsequently assumed responsibility for additional management portfolios and is now the Chief Operating Officer of BCLC.²¹

¹⁴ Ex. 505, Aff. # 1 J. Lightbody, para. 25, p. 5, e. 3-6, p. 92-103; Ex. 517, Aff. # 1 of T. Towns, paras. 105-131, p. 20-26; T. Towns, Feb. 12, 2021 p. 7-14).

¹⁵ Ex. 587, Aff. # 1 of L. Meilleur, para. 48, p. 10

¹⁶ Ex. 522, Aff. # 1 of B. Desmarais, paras. 4-5, p. 1-2; see also T. Kroeker, Jan. 26/21, p. 107-108

¹⁷ B. Desmarais, Feb. 2, 2021, p. 120

¹⁸ L. Vander Graaf, Nov. 13, 2020, p. 135

¹⁹ L. Meilleur, Mar. 10, 2021, p. 92

²⁰ J. Lightbody, Jan. 28, 2021, p. 6 (8 of 188)

²¹ Ex. 522, Aff. # 1 of B. Desmarais, paras. 16-22, p. 4-5

E. THE NATURE OF “THE PROBLEM” AND ASSESSMENT OF THE BEST RESPONSE

13. It was quickly apparent to Mr. Desmarais that large sums of cash were being used to gamble at BC casinos, primarily by a relatively small number of people of Chinese ancestry and/or nationality. The amounts of cash reported in STRs increased to \$118 million in 2013-14, and again to \$176.4 million in 2014-15. The amount of cash in \$20 bills was between 76 and 78% of the total.²² Mr. Desmarais was aware that some of this money was “churn”; money that is brought in one night, returned, and then brought back on another occasion.²³ Some people, including Larry Vander Graaf, Executive Director of GPEB’s Investigation Division until late 2014, and BCLC investigator Mike Hiller, had long held the view that large bundles of \$20 bills wrapped in elastic bands “smells [of] drug money”.²⁴ However, Mr. Vander Graaf conceded that GPEB could not identify, let alone prove, a predicate offence, even on the balance of probabilities, that any transaction he regarded as suspicious was, in fact, POC or ML. Despite that, he expressed the opinion that the casinos should refuse to accept large cash transactions to protect the integrity of gaming.²⁵
14. The views of the police were inconsistent. IPOC conducted an intelligence probe between 2010 and 2012. Some officers who worked on the file, such as Barry Baxter and Melanie Paddon, believed that the large amounts of cash were the profits of criminal activity.²⁶ Calvin Chrustie, the officer then in charge of the unit, said that they struggled to identify any “enforcement opportunity”.²⁷ Despite two years of investigation, no charges were contemplated and no monies were seized. Meanwhile, others in the RCMP with experience in the field, such as Insp. Hall of the Richmond Detachment, advised Great Canadian Gaming Corporation (“GCGC”) that the local RCMP were very satisfied with the regimes followed at River Rock Casino Resort (“RRCR”) and did not have a concern about ML there.²⁸

²² Ex. 587, Aff. # 1 of L. Meilleur, e. UUU, p. 633-676 (GPEB1064.0003)

²³ B. Desmarais, Feb. 2, 2021, p. 126 (128 of 168)

²⁴ L. Vander Graaf, Nov. 12, 2020, p. 56 (57 of 229)

²⁵ L. Vander Graaf, Nov 12, 2020, p. 58 (58 of 229)

²⁶ B. Baxter, Apr. 8, 2021, p. 42 (44 of 190); M. Paddon, Apr. 14, 2021, p. 19-20 (20-20 of 166)

²⁷ C. Chrustie, Mar 29, 2021, p. 119 (121 of 218)

²⁸ Ex. 490, R. Kroeker, Aff. #1, e. 13, p. 221-224 (BCLC00042.002)

15. There has been a suggestion that Mr. Desmarais failed to recognize what others say was obvious. Mr. Desmarais responds by saying that he had a more open-minded view that large cash deposits could come from legitimate sources. Before joining BCLC, he believed that “cash alone” is one, but not a determinative, factor in assessing whether funds are POC or not, an opinion he continues to hold today.²⁹ In his experience, the bundling of \$20 bills was not especially significant because he knew that banks sometimes bundled cash with elastic bands.³⁰ He had direct policing experience of a sting operation involving the proceeds of drug trafficking from a dozen different organizations; the percentage of \$20 bills was similar to the percentage in the general currency stock.³¹

16. Mr. Desmarais explained that after “reviewing the landscape”, he found the use of cash to be confusing, and that some of the concerns about ML in casinos were overblown.³² On March 14, 2013, one month after he was hired, he sent an email to Mr. Lightbody, responding to a GPEB report. After recognizing that a reduction in cash was desirable, he told Mr. Lightbody that he thought BCLC should move more cautiously because (a) it had not been conclusively proven that casinos were used for money laundering, because there had been no authoritative study of the source of funds; (b) in his experience, there were many legitimate reasons why people used even large amounts of cash; and Mr. Lightbody responded, “I completely agree with all your comments.”³³

17. Mr. Desmarais’ initial analysis was that he could not identify an ML methodology within the casinos.³⁴ He made a number of inquiries to assist him in assessing the true nature of the problem. FINTRAC reported that \$168,425,762.20 in Canadian currency and monetary instruments had been reported and \$4,665,840 in unreported Canadian currency had been seized at Lower Mainland ports of entry in 2012. He believed, from discussions with the Canadian Border Services Agency (“CBSA”) officers over the years that the amounts seized would be a fraction – maybe 5% - of

²⁹ B. Desmarais, Feb 2, 2021, p. 98 (100 of 168)

³⁰ B. Desmarais, Feb. 2, 2021, p. 27-26 (28-29 of 168)

³¹ B. Desmarais, Feb. 2, 2021, p. 27 (29 of 168), and p. 147-149 (148-150 of 168)

³² B. Desmarais, Feb 2, 2021, p. 20 –21 (22-23 of 168)

³³ Ex. 524A; Ex. 524B

³⁴ B. Desmarais, Feb. 2, 2021, p. 65 (67 of 168)

the amounts actually imported.³⁵ He was aware that BCLC filed a large number of STRs, but was advised by FINTRAC that casinos contributed only a small fraction of STRs, most of which were generated by banks. A Statistics Canada report indicated that the Canadian legitimate cash economy generated \$41 billion a year.³⁶ Mr. Desmarais did not conclude that these sources were responsible for the vast majority of cash being gambled at the casinos; rather, he thought that it originated from a variety of sources.³⁷

18. Mr. Desmarais' open mind to the source of cash was reflected in a series of articles he wrote in the BCLC internal newsletter, *Yak*, and by some comments made in a meeting with Cheryl Wenezenki-Yolland, then the ADM at the Ministry of Finance, on January 6th, 2015. In the first *Yak* article, dated May 21, 2013, he described the elements of the crime of ML, accepted that some of the cash being received could be POC, but also expressed a need to understand that large sums of cash could be legitimately sourced, given the preference in some cultures to use cash, and the size of the legitimate domestic cash economy. The existence and role of underground banking was acknowledged in the German Report³⁸ and in Mr. German's evidence.³⁹ Mr. Desmarais was aware of restrictions imposed by the Chinese government on the export of wealth from China, and that Chinese nationals used many methods to avoid those rules. He was also aware that some BC gamblers also gambled in Macau, and that some money appeared to flow from the casinos in that jurisdiction.⁴⁰

19. Mr. Desmarais also had a sense that some people held the false belief that any cash in the hands of Chinese people "must be" dirty money, a phenomenon described in detail by Henry Yu.⁴¹ A very clear illustration of this perception is found in a GPEB "Current Intelligence Report 16-002", which describes the use of the Chinese diaspora in efforts by the Chinese state (described as a "threat nation") to perform "soft power" operations, and efforts by traditional Chinese crime groups to

³⁵ B. Desmarais, Feb. 2, 2021, p. 152 (154 of 168)

³⁶ Ex. 522, Aff. # 1 of B. Desmarais, paras. 30-33, p. 7-8; e. 8, p. 31 (57 of 639)

³⁷ B. Desmarais, Feb. 1, 2021, p. 71-72 (72-73 of 164)

³⁸ Ex. 832, para. 117

³⁹ P. German, April 13, 2021, p. 78-79

⁴⁰ Ex. 522, Aff. # 1 of B. Desmarais, e. 29, p. 139-141 (165-167 of 639)

⁴¹ H. Yu, Feb. 19, 2021, p. 121-123

use the same diaspora to launder POC.⁴² That report focussed on illegal activities in the cities of the Pearl River Delta, without any discussion of the enormous legitimate economic activity in that region, and relied on a report in the Macau Times that \$39.5 billion CAD was illegally transferred out of Guangdong Province in 2015. This extraordinarily narrow, and frankly ignorant, “intelligence”, is based on structural racism, which is now widely acknowledged to exist in law enforcement. It is, sadly, a 21st century version of anti-Chinese racism that was first described in the 19th century as the “Yellow Peril”. As Mr. Eby, and perhaps more reluctantly, Mr. Meilleur, said, it would be completely wrong to simply assume that wealth or money possessed by persons of Chinese ancestry was derived from criminal activity.⁴³

20. In the second Yak article, dated September 5, 2013, Mr. Desmarais specifically said “there are many reasons why it makes sense to move towards a cashless model, but the challenges are significant.” He was clearly looking forward to a process that might allow for a cashless model at some point in the future.⁴⁴ Subsequent articles were published on November 3 and 19, 2019, which reported the steps taken by BCLC to reduce ML risks.⁴⁵

21. Four witnesses—Mr. Desmarais, Mr. Mazure, Mr. Meilleur and Ms. Wenezenki-Yolland—have given evidence about a meeting that included Ministry of Finance and Communications staff which took place in Victoria on January 6, 2015. More importance was placed on this meeting than is warranted. Commission Counsel asked Mr. Desmarais if he told Ms. Wenezenki-Yolland that the large cash transactions in BC casinos could be attributed to underground banking. Mr. Desmarais recalled a discussion about underground banking being “maybe part of the answer” but said, “I never said it was entirely attributable to underground banking.”⁴⁶ Commission counsel then asked, “What was your purpose in attributing the large cash transactions to underground banking?” which was not his evidence. He responded by saying, “to illustrate that it was one of many potential explanations,

⁴² Ex. 587, Aff. 1 of L. Meilleur, e. AA, p. 298 of 731

⁴³ D. Eby, Apr. 26, 2021, p. 202 (205 of 251) ; L. Meilleur, Mar. 10, 2021, p. 115 (117 of 192)

⁴⁴ Ex. 522, Aff. # 1 of B. Desmarais, e. 38, p. 215 of 639; B. Desmarais, Feb. 2, 2021, p. 152-153 (154-155 of 168)

⁴⁵ Ex. 522, Aff. # 1 of B. Desmarais, paras. 62-67; e. 39 and 40, p. 191 and 194 (p. 217 and 220 of 639)

⁴⁶ B. Desmarais, Feb. 1, 2021, p. 85 (86 of 164)

probably one of many combined factors which had -- led to the amount of cash in casinos which made the whole situation even more complex".⁴⁷

22. Ms. Wenezenki-Yolland's evidence about the meeting was brief. She said that both Mr. Meilleur and Mr. Desmarais gave presentations. She did not observe any significant differences in their respective approaches and thought they had a constructive working relationship. She remembered Mr. Desmarais discussing the issue of hawala, a form of underground banking. She thought that that sounded illegal and contrary to the *Bank Act* and was not the type of business the government wanted.⁴⁸ In cross-examination, she agreed that Mr. Desmarais told her that underground banking systems were one possible explanation for some of the cash coming into casinos and that "[Mr. Desmarais] never suggested all of the cash was from that source, no. And I never relayed that that was the case either." Finally, she said that she expressed her opinion about the potential breach of the *Bank Act* to the Minister of Finance and that, to her knowledge, nothing was done with that information.⁴⁹

23. Mr. Meilleur said that he was simply an observer at the meeting because he was new to the portfolio, and did not remember the specifics of the presentation. He did recall Mr. Desmarais giving an overview of how money lending systems worked and mentioned hawala. In his affidavit, Mr. Meilleur swore that he gained an in-depth insight into the Asian money-lending culture during the presentation. In evidence he said that Mr. Desmarais had a "great background in that."⁵⁰ Commission Counsel asked, "Did you understand the thrust of it to be that the cash coming into casinos was attributable to hawala?" He responded, "I attributed it to the cash coming in casinos for certain patrons was attributable to a money laundering culture."⁵¹

⁴⁷ B. Desmarais, Feb. 1, 2021, p. 85 - 86 (86-87 of 164)

⁴⁸ C. Wenezenki-Yolland, Apr. 27, 2021, p. 37-40 (39-42 of 173)

⁴⁹ C. Wenezenki-Yolland, Apr. 27, 2021, p. 142-143 (144-145 of 173)

⁵⁰ L. Meilleur, Mar. 10, 2021, p. 94-95 (96-97 of 192)

⁵¹ L. Meilleur, Feb. 12, 2021, p. 42 (44 of 145)

24. The theory that some customers were using underground banking was confirmed by discussions with a player in September 2015, who told Mr. Desmarais that the monies he received in Vancouver were repaid with a small handling fee in China.⁵²

25. Mr. Desmarais concluded that (a) the cash being used in casinos could come from legitimate and illegitimate sources; and (b) even though the use of cash could not, as some hypothesized, be inevitably determinative of illegitimate origin, its presence created a high risk.⁵³ He testified that “job one” was “to try to determine exactly what was going on.”⁵⁴

26. Mr. Desmarais was pressed by Commission Counsel to explain why BCLC didn't simply adopt a zero-tolerance approach and ban cash over \$10,000 given the opinions of some GPEB employees and RCMP members. He testified that although a zero-tolerance approach was possible, it would have been unreasonable because it was far from clear to him, in 2013, that the monies being used in the casinos, including the \$20 bills, were criminally tainted. He said that “the notion of simply banning a certain denomination of currency based on scant suspicion was not called for at this stage”.⁵⁵ He went on to explain that, in his experience of large bulk ML investigations, \$20 bills did not “reign supreme.” He was very clear that more than suspicion was required before drastic measures should be taken.⁵⁶ He said that his objective was to build capacity to determine whether the funds were tainted and, if so, to determine whether the players were in fact, law-abiding citizens. He also explained that the cash alternatives were not widely embraced by the high value players.⁵⁷ Pressed again, he acknowledged that he could have simply directed that cash be refused. His measured response was that “we felt that would have been a blunt instrument where it's always better to convince, educate.”⁵⁸

26. It is important to note that Mr. Mazure, then the General Manager at GPEB, did not advocate for a complete ban on cash. His approach was to consider a wide range of

⁵² B. Desmarais, Feb 1, 2021, p. 153 (154 of 164)

⁵³ Ex. 522, Aff. # 1 of B. Desmarais, paras. 34-35, p. 8-9

⁵⁴ B. Desmarais, Feb 2, 2021, p. 66 (68 of 168)

⁵⁵ B. Desmarais, Feb. 1, 2021, p. 74-75 (75-76 of 164)

⁵⁶ B. Desmarais, Feb. 1, 2021, p. 77-78 (78-79 of 164)

⁵⁷ B. Desmarais, Feb. 1, 2021, p. 80 (81 of 164)

⁵⁸ B. Desmarais, Feb. 1, 2021, p. 84

solutions, including cash alternatives and regulatory intervention.⁵⁹ When BCLC later suggested that there should be a ban on cash exceeding \$25,000, that suggestion was rejected. The suggestion that all cash above a certain limit should be refused was even rejected by Dr. German.⁶⁰

27. Although BCLC had already been making SOF enquiries, GPEB did not formally request that such inquiries be made until August 2015, and did not direct BCLC to take those steps until October 2015, after Mr. Desmarais had left his original position.⁶¹

28. Mr. Desmarais concluded that the two most important AML measures for BCLC were to (a) develop a Know Your Client (“KYC”) system; and (b) confirm the sources of wealth of the high value patrons. In the first Yak article, he wrote: “whatever the case, Corporate Security and Compliance will be significantly increasing our analytical ability and spending more time getting to know our customers. We need to understand why some customers favour large cash buy-ins; once we do that, we may be able to help them seek alternatives where they can avoid carrying large sums of cash on their person. Conversely, our increased analytical capacity will help us identify individuals who we may decide we just don’t want to do business with or who are not welcome in our casinos.” In the second article, dated September 5, 2013, Mr. Desmarais wrote about the intention to move towards a cashless model as well as the resistance to it, and advised employees about the creation of the AML and Operational Analysis Unit.⁶²

F. THE AML UNIT

29. Before the end of 2013, Mr. Desmarais sought and obtained funding to create a new AML Unit within BCLC.⁶³ He felt that analysts were the key to making sense of the vast amount of data being received.⁶⁴ That unit put an emphasis on hiring people with diverse backgrounds, including Justice Institute of British Columbia (“JIBC”)

⁵⁹ Ex. 541, Aff. # 1 of J. Mazure, paras. 130-132, p. 15

⁶⁰ Ex. 832, Dirty Money Report by Peter German, March 31, 2018, R 21, p. 181 (184 of 250)

⁶¹ B. Desmarais, Feb. 2, 2021, p. 74-75 (75 – 76 of 168)

⁶² Ex. 522, Aff. # 1 of B. Desmarais, e. 37-38, p. 186 and 189 (212 and 214 of 639)

⁶³ Ex. 522, Aff. #1 of B. Desmarais, p. 6, para. 25 (6 of 639)

⁶⁴ B. Desmarais, Feb. 2, 2021, p. 76 (77 of 168)

certified analysts; providing each member of the unit with a JIBC customized investigators course; and requiring all members of the unit to become certified by the Association of Certified Anti-Money Laundering Specialists. He was aware that many former police officers with drug investigation backgrounds viewed the world through an experiential lens that equated cash with narcotics and thereby created the risk of confirmation bias.⁶⁵ Early BCLC analysis supported a conclusion that many of the high-value patrons were legitimate business people who, if they did engage in ML, did so unwittingly.⁶⁶

G. THE AML SUMMIT

30. Mr. Desmarais was actively involved in setting up an AML workshop, which was ultimately held on June 4, 2015, at BCLC offices. The objective was to “identify and explore collaborative strategies to enhance practices in BC gaming facilities with the goal of preventing ML” with a view to making recommendations to the Minister responsible.⁶⁷ Senior managers from GPEB, BCLC, FINTRAC, CBSA, CRA, CFO, and the service providers attended. The first presentation by Jonathan Manthorpe discussed Asian traditional financial processes. Mr. Desmarais and Mr. Meilleur then presented their own agency’s perspective, followed by group discussions in a session entitled “Building Solutions – Identifying options for Enhancing AML practices.”⁶⁸ Mr. Meilleur’s presentation included the following comments:

- Challenge: SCTs do not prove the existence of ML. Rather these are transactions that may be unusual and warrant reporting to GPEB and FINTRAC.
- The media have equated each STR filed as evidence of ML. This is simply an ambiguous conclusion.
- Recognizing that BCLC has put considerable effort into developing and delivering a stronger AML regime, GPEB’s direction will also be informed by an assessment of BCLC diligence.

⁶⁵ B. Desmarais, Feb. 1, 2021, p. 61-63 (62-64 of 164); B. Desmarais, Feb. 2, 2021, p. 118 (119 of 168)

⁶⁶ B. Demarais, Feb. 1, 2021, p. 60 (61 of 164)

⁶⁷ Ex. 522, Aff. # 1 of B. Desmarais, e. 18, p. 78 (104 of 639)

⁶⁸ Ex. 522, Aff. # 1 of B. Desmarais, e. 19-20, p. 84 and 88 (110 and 114 of 639)

31. Several cash alternatives (PGF's, debit at cage, casino cheques, internet transfers and hold-checks had been developed by all parties).⁶⁹

32. Mr. Meilleur introduced a report by the meeting facilitator, Kim Thorau, which began with the comment:

The government has a robust regime in place related to POC (ML) for BC gaming facilities. Concerted action has been taken over the past five years to enhance the AML policies in BC gaming facilities with a focus on reducing cash transactions.

The discussion in this report began:

There is a sound AML policy and practice framework in place in BC gaming facilities. Research and Consultations show that the regime has the features of an effective AML due diligence and compliance framework. BCLC's AML program is a compliance plus, principle-based model that is designed to be leading edge in understanding emerging issues and attempting to mitigate and address those developments through proactive practices. In a recent examination FINTRAC complimented BCLC as being "best in class" in the gaming industry in Canada.⁷⁰

Mr. Meilleur said that he used this document "to inform the ADM and his superiors of findings from that meeting."⁷¹

H. ENGAGEMENT WITH LAW ENFORCEMENT

33. BCLC was reporting every STR to FINTRAC and the RCMP before Mr. Desmarais was employed.⁷²

34. Despite that reporting, and despite IPOC's 2010-2012 intelligence probe, law enforcement was essentially absent from the casinos in any meaningful enforcement capacity between the termination of the IIGET unit in 2009, and the beginning of Mr. Desmarais' tenure as VP Corporate Security and Compliance.

35. One reason for this was the failure of GPEB to properly structure their Investigations Division, and to properly recognize and use the powers given to them by the *Gaming Control Act* ("GCA") and their appointments as Special Constables. Mr. Vander Graaf expressed the view that GPEB couldn't do more because they were not "real police

⁶⁹ Ex. 522, Aff. # 1 of B. Desmarais, e. 20, p. 88-107 (114-133 of 693)

⁷⁰ Ex. 587, Aff. # 1 of L. Meilleur, e. K, p. 9 (89 of 731)

⁷¹ Ex. 587, Aff. # 1 of L. Meilleur, para. 43; e. K, p. 80 of 731 (GPEB759.0001)

⁷² B. Desmarais, Feb. 2, 2021, p. 115 (116 of 168)

officers” under ss. 34(1) or 18 of the *Police Act* “with real police cars and guns.”⁷³ Vander Graaf described a “terrible frustration” about not being able to do anything on the investigative side when they considered the use of large sums of cash to be money laundering, which needed “immediate action.” In his affidavit, Mr. Vander Graaf swore that there was never any intention that the “GPEB Investigation Division would investigate money laundering” and that it had no capacity to do so. He said that they could not investigate predicate offences, and that some of the patrons were connected to organized crime and were known to be violent.⁷⁴ Their manual required them to “[manage] a rigorous investigation program which includes investigating all complaints and allegations of wrongdoing related to gaming and assisting law enforcement agencies in all criminal investigations in or near gaming.”⁷⁵

36. The Special Constable appointments make it clear that the authorities and powers conferred “are restricted to the performance of duties in respect of the law enforcement mandate of the Compliance Division, Gaming Policy and Enforcement Branch” and empower appointees to enforce the *Criminal Code* “to the extent necessary”.⁷⁶ Mr. Vander Graaf opined that only a “full blown” police agency could properly run a ML investigation, but said that nonetheless, that did not absolve GPEB from carrying out its role, and that they “didn’t do it.”⁷⁷ He said that GPEB failed in its legal and moral obligations to deter and eliminate money laundering.⁷⁸ When GPEB reported their concerns to the RCMP, they were told that the RCMP did not have the resources to investigate. Mr. Vander Graaf did not attempt to contact a different agency.⁷⁹

37. Len Meilleur, Mr. Vander Graaf’s successor, swore that it was made clear to him that “GPEB had no authority to investigate offences of money laundering or related criminal code matters”.⁸⁰ He knew, on August 7, 2014, before he was appointed as Executive Director, Compliance, that GPEB’s investigators were Special Constables,

⁷³ L. Vander Graaf, Nov. 13, 2020, p. 33 (35 of 184)

⁷⁴ Ex. 181, Aff. # 1 of L. Vander Graaf, paras. 27-28, p. 5-6; e. D, p. 34 (58 of 378)

⁷⁵ L. Vander Graaf, Nov. 13, 2020, p. 22 (24 of 184)

⁷⁶ Ex. 709, p. 3 (GPEB2625.0003)

⁷⁷ L. Vander Graaf, Nov. 12, 2020, p. 113 (114 of 229)

⁷⁸ L. Vander Graaf, Nov. 12, 2020, p. 222 (223 of 229)

⁷⁹ L. Vander Graaf, Nov 12, 2020, p. 173 (174 of 229)

⁸⁰ Ex .587, Aff. # 1 of L. Meilleur, para. 31, p. 7

and BCLC's were not, and, consequently, had no enforcement powers under the *Act*.⁸¹ He also had a strangely limited view of his Special Constables' powers, including that they had no authority to interview patrons about the source of their funds. He said that the Special Constable powers were limited to minor matters such as cheat at play or theft and did not extend to *Criminal Code* matters.⁸²

38. Mr. Meilleur said that he relied on a legal opinion prepared by a solicitor in the Legal Services Branch ("LSB"), dated September 29, 2015.⁸³ That opinion, in turn, relied extensively on an October, 2000 opinion respecting the powers of employees of the former Gaming Audit Investigation Office, who did not have peace officer status.⁸⁴ The LSB solicitor was asked to prepare the opinion Mr. Meilleur relied upon in less than a day. It appears that the solicitor was not provided with a copy of a Special Constable appointment. Pressed, Mr. Meilleur would not concede that GPEB should investigate transactions reported on s. 86 reports sent to them from the perspective of maintaining the integrity of gaming, even if they could not pursue a *Criminal Code* investigation.⁸⁵ It was his opinion that there was no nexus between ML in the casinos and the mandate of GPEB.⁸⁶ In 2016, BCLC and GPEB jointly retained Dr. German to provide a further opinion. Dr. German recognized the significance of the appointment under s. 9 of the *Police Act* and noted that it would be counterproductive to provide Special Constables with the authority to investigate but require them to terminate an investigation as soon as it became criminal in nature. He opined that Special Constables generally had all the powers of a peace officer and constable at common law, subject to the circumscription found in their appointment, namely that their *Criminal Code* powers were limited to cases in which there was a nexus between a gaming offence and a *Criminal Code* offence.⁸⁷

39. Clearly aware of the risk that at least some of the large cash deposits were POC, and aware that BCLC had neither the mandate nor capacity to investigate potential

⁸¹ Ex. 587, Aff. # 1 of L. Meilleur, e. G, p. 54 of 731

⁸² Ex.587, Aff. # 1 of L. Meilleur, paras. 69-73, p. 13-14; L. Meilleur, Mar.10, 2021, p. 5-7 (7-9 of 192); 49-50 (51-52 of 192)

⁸³ Ex. 586 (*n.b. not available on the Commission website*)

⁸⁴ Aff. #3 of L. Meilleur, e. B (*n.b. not available on the Commission website*)

⁸⁵ L. Meilleur, Mar. 10, 2021, p. 49-52, (51-52 of 192)

⁸⁶ L. Meilleur, Mar. 10, 2021, p. 107 (109 of 192); L. Meilleur, Feb. 12, 2021, p. 35-37 (37-39 of 145)

⁸⁷ Exhibit 832, paras. 310 -320, p. 79-81 (81 - 84 of 250)

money laundering offences or identify which casino clients were associated with criminal activity (as opposed to those who were legitimately wealthy), Mr. Desmarais reached out to law enforcement in a number of significant ways.

40. First, he approached the RCMP to negotiate an Information Sharing Agreement (“ISA”), which was executed in March 2014. Mr. Desmarais described the ISA as “critical” to BCLC’s AML programme.⁸⁸ He said that the ISA was necessary because (a) “too many third parties were talking about myths and rumours” when BCLC wanted to rely on credible information; and (b) GPEB refused to share police information with them.⁸⁹ The objective, from BCLC’s perspective, was to obtain information that would assist in identifying undesirable patrons who should be removed or banned from gaming facilities. The ISA (a) allowed BCLC to request PRIME information about a specific individual’s propensity for violence, history of possession of POC, and known gang/organized crime affiliation; (b) allowed the RCMP to proactively advise BCLC of information relevant to their mandate; and (c) allowed the RCMP to request information from BCLC that might assist in one of their criminal investigations.⁹⁰

41. In April, 2014, Mr. Desmarais sent a letter to the Officers in Charge of every RCMP detachment that had a gaming facility within their jurisdiction. Those letters advised the Detachment Commanders of the objectives and terms of the ISA. They asked the local police to assist in identifying members of organized crime groups and persons suspected of gambling with the proceeds of crime in casinos, with a view to proactively banning them.⁹¹

42. Also in April 2014, BCLC became aware of the continuing increase in the amount of cash entering casinos and the presence of cash facilitators, particularly at RRCR. Mr. Desmarais was concerned the cash facilitators could be either utilising underground banking or POC. He believed that the risk of criminality was high and that a police investigation was warranted. In June 2014, Mr. Desmarais initiated meetings with the Richmond RCMP and the Combined Forces Special Enforcement Unit (“CFSEU”),

⁸⁸ Ex. 522, Aff. # 1 of B. Desmarais, para. 26, p. 6; e. 6, p. 16 (42 of 639)

⁸⁹ B. Desmarais, Feb. 1, 2021, p. 81-82 (82-83 of 164)

⁹⁰ Ex. 522, Aff. # 1 of B. Desmarais, e. 6, p. 16-26 (42-52 of 639); B. Desmarais, Feb. 1, 2021, p. 63-65 (64-66 of 164)

⁹¹ Ex. 522, Aff. # 1 of B. Desmarais, e. 43, p. 204 (230 of 639)

asking them to commence criminal investigations into persons identified as suspicious cash facilitators. He met with a number of senior members of CFSEU at RRRCR. BCLC provided target sheets for the top ten cash facilitators in the hope that the police would focus their investigation on these individuals, and that CFSEU might agree to act as first responders in the event of a ML incident at a casino. Mr. Jin had been identified as the highest risk target by BCLC staff.⁹² Mr. Kroeker testified that the CFSEU members in attendance were “extremely engaged and enthusiastic”. He was left with the impression that the meeting would trigger a potential investigation.⁹³ Mr. Meilleur agreed that Mr. Desmarais was doing a very good job of trying to get the police involved.⁹⁴

43. There is no evidence to suggest that CFSEU started any investigations after the early 2014 meetings. In frustration, Mr. Desmarais made an informal approach in early February 2015 to Superintendent Chrustie, then of the RCMP Federal Serious and Organized Crime unit (“FSOC”).⁹⁵ Mr. Chrustie said that Mr. Desmarais told him that he had attempted to get support and engagement from CFSEU and was frustrated with the lack of response from them about the concerns he expressed regarding a particular individual (Mr. Jin) who was “involved in the illicit movement of money in and around casinos.” He said that Mr. Desmarais “clearly articulated, in the strongest, most confident sense that this was actionable intelligence” that would lead to an enforcement disruption opportunity within three or four days. Mr. Chrustie did not anticipate being able to provide resources for a full investigation but said that he could make an effort to disrupt the problem. A formal meeting was held with FSOC investigators on February 12, 2015. Mr. Chrustie said that within two weeks, his investigators had identified massive movements of money that linked up with other information about transnational organized crime groups.⁹⁶ Mr. Desmarais said that BCLC had to push to keep the investigation going. BCLC staff provided a presentation to the RCMP on the importance of the investigation.⁹⁷ Mr. Chrustie

⁹² Ex. 522, Aff. # 1 of B. Desmarais, paras. 70-71, p. 15; e. 44-45, p. 266 (291 of 639) and p. 267 (293 of 639); B. Desmarais, Feb. 1, 2021, p. 86-91 (87-92 of 164)

⁹³ R. Kroeker, Jan. 25, 2021, p. 101 (102 of 214)

⁹⁴ L. Meilleur, Mar. 10, 2021, p. 21 (23 of 192)

⁹⁵ Ex. 522, Aff. # 1 of B. Desmarais, para. 76, p. 16; e. 54, p. 295 (321 of 639)

⁹⁶ C. Chrustie, Mar. 29, 2021, p. 62-67, 87 and 160-161 (63-69, 89, and 161-62 of 218)

⁹⁷ Ex. 522, Aff. # 1 of B. Desmarais, paras. 77-79, p. 16-17

testified that: “I leveraged Mr. Desmarais’ historical expertise and his ability to articulate the threats of financial-related activities of transnational organized crime groups” to assist in ensuring that what became Project E-Pirate was competitive in resource allocation priority.⁹⁸

44. On July 15, 2015, BCLC was told by FSOC that they had evidence that casino patrons may be using POC to gamble in casinos. This was, Mr. Lightbody said, “a pivotal moment”.⁹⁹ No names, other than Mr. Jin’s, were provided. On July 22, 2015, FSOC advised that “potentially some of the funds at the cash house were linked to transnational organized crime and terrorist financing.”¹⁰⁰ Mr. Desmarais was obviously unhappy about this but relieved that the ISA was finally providing tangible evidence on which BCLC could rely. In September, 2015, BCLC imposed cash conditions on patrons linked to Jin.¹⁰¹

45. E-Pirate was a major RCMP investigation that identified Mr. Jin’s involvement in ML in a significant number of casino transactions involving millions of dollars of cash. Charges were laid and stayed against Silver International and its principals, but were never laid against Mr. Jin. It is no exaggeration to say that E-Pirate would never have launched had Mr. Desmarais not pushed then-Supt. Chrustie and assisted him in ensuring that the necessary resources were provided. Mr. Meilleur recognized this, testifying that BCLC did a very good job, through Mr. Desmarais, of engaging with the police.¹⁰²

46. Despite the increased level of cooperation, there were times when law enforcement did not share information that would have assisted in identifying disreputable patrons. The clearest example of that was when neither GPEB nor the RCMP shared the names of the nine persons arrested at the conclusion of E-Pirate with BCLC. Mr. Desmarais knew that he did not want those people in the casinos but was unable to take any steps to ban them.¹⁰³

⁹⁸ C. Chrustie, Mar. 29, 2021, p. 195 (197 of 218)

⁹⁹ J. Lightbody, Jan. 28, 2021, p. 26 (28 of 188)

¹⁰⁰ Ex. 522, Aff. # 1 of B. Desmarais, p. 313 (339 of 639)

¹⁰¹ Ex. 149, Aff. # 2 of D. Tottenham, e.8, p. 51

¹⁰² L. Meilleur, Mar. 10, 2021, p. 21 (23 of 192)

¹⁰³ B. Desmarais, Feb. 2, 2021, p. 55 (55-56 of 168)

I. “KNOW YOUR CLIENT”, PATRON INTERVIEWS, CASH CONDITIONS, AND PATRON BANNING

47. In June 2014, at Mr. Desmarais' direction, BCLC created and implemented the Extreme Risk Patron Program, which established a protocol for banning persons with organized crime or criminal histories involving violence or possession of the proceeds of crime. CFSEU would provide annual reports of persons on their Provincial Tactical Enforcement Priority. BCLC would proactively ban persons on that list if they had entered a casino in the previous two years. As of January, 2021, 547 persons were subject to five year bans as a result of this program.¹⁰⁴

48. In November 2014, a patron attended at River Rock with \$500,000 originating from Mr. Jin. Mr. Desmarais met with him. When asked about the source of the cash, the patron simply advised that he would make a phone call and someone would bring it. Mr. Desmarais told the patron that the casino could not accept his cash anymore, and he was subsequently banned after trying to use cash again. In December 2014, similar reports were being made about another patron. Casino staff were asked to inquire about the source of funds.¹⁰⁵

49. BCLC learned that many high-value patrons were legitimate. Others were not, and once identified as suspicious, were either placed on cash conditions or banned entirely.¹⁰⁶ Mr. Desmarais said that one player was put on cash conditions in 2014 and four in the first eight months of 2014.

50. The initial approach to interviewing patrons was not as successful as hoped. By April 2015, BCLC had developed a formal policy which required an interview of persons “possibly ... identified as a AML associated risk.” The policy required the investigator to determine the source of funds, employment status and any other pertinent information.¹⁰⁷

51. In July or August 2015, BCLC developed an operational plan to interview 13 patrons who had been linked with Mr. Jin and those who were the subject of 20 or more STRs

¹⁰⁴ Ex. 522, Aff. # 1 of B. Desmarais, paras. 72-74, p. 15-16; B. Desmarais, Feb. 1, 2021, p. 90-93 (91-94)

¹⁰⁵ Ex. 522, Aff. # 1 of B. Desmarais, e. 12, p. 48 (75 of 639) and e. 13, p. 50 (76 of 639)

¹⁰⁶ Ex. 522, Aff. # 1 of B. Desmarais, e. 12, 13 and 15, p. 48, 50, and 61 (74, 76, and 91 of 639)

¹⁰⁷ Ex. 522, Aff. # 1 of B. Desmarais, para. 41, p. 10; e. 14, p. 55 (81 of 639)

between June 1 and July 23, 2015. The plan required the investigators to ascertain the source of funds. If the funds were borrowed, the interviewer was to try to identify the lender and terms of repayment.¹⁰⁸

52. On August 14, 2015, John Mazure, then General Manager of GPEB, wrote to BCLC, asking them, among other things, to develop customer due diligence and KYC requirements, which were to focus on identifying the source of wealth and source of funds as integral components of client risk assessment. Mr. Desmarais believed that this was the first time that GPEB had formally requested that BCLC make source of funds inquiries, which BCLC took as confirmation that it was already on the right track.¹⁰⁹ On October 1, 2015, Minister Michael de Jong followed up with a letter directing BCLC to take the same steps.¹¹⁰

53. On September 11, 2015, BCLC placed a number of conditions on identified patrons, including the 13 associated with Mr. Jin, which prohibited them from buying in with unsourced cash or chips.¹¹¹ Mr. Desmarais said that this was a more nuanced approach than simply banning patrons.¹¹² On September 25, 2015, Mr. Desmarais personally met with a patron who had been banned from using cash.¹¹³ When Michael Graydon, then a manager at Parq Casino, complained about the impact of the imposition of conditions on revenue, Mr. Desmarais responded by acknowledging the negative effects of the conditions. He advised Mr. Graydon that they were not imposed lightly and that BCLC took an evidence-based, principled approach to player restrictions and bannings. He thought that the measures imposed were “the right course of action at the moment.”¹¹⁴ Shortly thereafter, GCGC started issuing material notices of loss of revenue, noting that revenue was down 35% from the week before.¹¹⁵

J. CASH ALTERNATIVES

¹⁰⁸ Ex. 522, Aff. # 1 of B. Desmarais, para. 47, p. 11; e. 22, p. 115 (141 of 639) and e. 23, p. 120 (146 of 639)

¹⁰⁹ Ex. 522, Aff. # 1 of B. Desmarais, para. 48, p. 11; e. 24, p. 124; B. Desmarais, Feb. 2, 2021, p. 107-8 (109-10 of 168)

¹¹⁰ Ex. 522, Aff. # 1 of B. Desmarais, para. 54, p. 12; e. 30, p. 138 (162 of 639)

¹¹¹ Ex. 522, Aff. # 1 of B. Desmarais, para. 54, p. 12; e. 30, p. 138 (162 of 639)

¹¹² B. Desmarais, Feb 1, 2021, p. 91 (92 of 164)

¹¹³ Ex. 522, Aff. # 1 of B. Desmarais, para. 53, p.12; e. 29, p. 139 (165 of 639)

¹¹⁴ Ex. 522, Aff. # 1 of B. Desmarais, e. 26, p. 131 (157 of 639)

¹¹⁵ B. Desmarais, Feb 1, 2021, p. 145-146 (146-147 of 164)

54. BCLC had introduced cash alternatives before Mr. Desmarais arrived. During his watch, enhanced convenience cheques, international ETF's and PGF overdrafts were introduced or planned. However, there was a delay in getting approval from GPEB.¹¹⁶ This issue is canvassed in more detail in the submissions of BCLC.

K. DELIMITING CONVENIENCE CHEQUES AND CHIP SWAP

55. BCLC attempted to introduce two other AML measures—delimiting convenience cheques and undertaking a chip swap—at RRCR. The first of these did not come to fruition, and the second was delayed.

56. In September, 2013, Mr. Desmarais proposed removing the \$8,000 limit on casinos issuing convenience cheques as refunds for unspent deposits. Mr. Desmarais was of the view that this created an audit trail that could be used in criminal investigations. Mr. Desmarais said that this measure alone could reduce the amount of cash coming into casinos by as much as 37-38% by reducing the amount of “churn.” Mr. Scott, then the ADM, responded, saying that GPEB was eager to advance this measure, but needed more information. A second approach was made in February, 2018, and was not approved. This measure has not been introduced today.¹¹⁷

57. In the fall of 2014, BCLC investigators began to notice that a large number of chips were leaving RRCR without being played. By April 2015, staff realized that there was \$12 million worth of chips outstanding. There was a suspicion that they might be being used in an underground casino or as criminal currency, but there was no evidence of either of those possibilities. Despite the absence of evidence, Mr. Desmarais was very concerned that the use of chips as stored value instruments struck “at the heart of [BCLC’s] corporate social responsibilities” as well as being a ML-enabling issue. Mr. Desmarais expressed a concern that the police might find millions of dollars of chips in a cash consolidation house connected to organized crime.¹¹⁸

¹¹⁶ B. Desmarais, Feb 2, 2021, p. 105-106 (107-108 of 168)

¹¹⁷ Ex. 522, Aff. # 1 of B. Desmarais, para. 95-96, p. 21

¹¹⁸ Ex. 522, Aff. # 1 of B. Desmarais, e. 76, p. 514-518 (540-544 of 639); R. Kroeker, Jan. 25, 2021, p. 110 (111 of 214)

58. In order to address this, a chip swap plan was developed. Players were given notice that old chips would be useless. The proposed swap was cancelled by GPEB, at the request of the police, the night before it was expected to be implemented. BCLC was concerned that the delay compromised its effort to identify the holders of large sums of chips.¹¹⁹

L. ENGAGEMENT WITH AND RELATIONSHIP WITH GPEB

59. It is readily apparent that relations between the BCLC and GPEB investigation groups could have been better at times. There is evidence that Mr. Desmarais only met with his counterpart, Mr. Vander Graaf, once during the 20 or so months that they concurrently held their respective positions.¹²⁰ However, Mr. Desmarais made it clear that the relationship was harmonious at the executive level and that there were no differences of opinion about the ultimate objective: preserving the integrity of gaming in BC. Differences did arise about the speed and means of reaching that objective. He said that the relationship was more collegial and productive now than it had been.¹²¹ Mr. Mazure confirmed that Mr. Desmarais reached out to him shortly after his appointment as General Manager of GPEB in September, 2013, and was proactive in attempting to maintain good relationships with GPEB.¹²² Mr. Meilleur said, "I first met Brad when I was the Executive Director of the Registration. We had a great relationship. I want to believe we still have a great relationship. I have a lot of respect for him."¹²³

60. Mr. Desmarais was of the view that conflicts primarily arose because of differences of interpretation or understanding of roles under the *GCA* and because there was no effective dispute resolution program in place. This gave rise to inefficiencies and duplication of work and presented numerous operational challenges which created reputational risk for both organizations.¹²⁴ He felt that GPEB could at times be

¹¹⁹ Ex. 522, Aff. # 1 of B. Desmarais, paras. 97-106, p. 21-23 (21-23 of 639), e. 76, p. 520 (546 of 639)

¹²⁰ L. Vander Graaf, Nov. 13, 2020, p. 137 (139 of 184)

¹²¹ Ex. 522, Aff. # 1 of B. Desmarais, para. 82, p. 17-18; B. Desmarais, Feb. 2, 2021, p.72 (74 of 168)

¹²² J. Mazure, Feb. 11, 2021, p. 156 (158 of 241)

¹²³ L. Meilleur, Mar. 10, 2021, p. 92 (94 of 192)

¹²⁴ B. Desmarais, Feb. 2, 2021, p. 31-32 (33-34 of 168)

territorial, and could ignore BCLC advice, or intercede in their relationship with the police.¹²⁵

61. The Commission has heard evidence of some examples of a lack of cooperation between the agencies.

62. On May 14, 2014, Mr. Desmarais sent a letter to John Mazure, suggesting that BCLC and GPEB jointly retain senior lawyer, and former Attorney-General, Geoff Plant, Q.C., to provide advice on the respective duties and powers of BCLC and GPEB. Mr. Mazure said he could not recall if he responded to the request but agreed that it would have been better if clarity of roles had been resolved earlier.¹²⁶ Mr. Desmarais testified that Mr. Mazure responded informally to Mr. Lightbody saying that he would not participate in such a review.¹²⁷

63. There is no doubt that the differences between BCLC and GPEB sometimes spilled over into a bureaucratic turf war. Perhaps the clearest example of that was Mr. Meilleur's intervention which resulted in the brief suspension of the ISA with the RCMP. In his affidavit, Mr. Meilleur said that he believed that the ISA did not accurately represent the roles of BCLC and GPEB. He began making inquiries with a former BCLC staff member to determine whether a privacy impact assessment had been completed, given that police information was being shared with a Crown agency. The whole point of the ISA was to ensure that BCLC had the information they needed to assess the suitability of patrons, a key part of the AML initiative. Mr. Meilleur said he was concerned that BCLC might interfere with E-Pirate by banning a subject under investigation. Mr. Meilleur then approached an RCMP contact—Superintendent Colassaco, who was not a member of the command triangle in E-Pirate—and “expressed his concerns.”¹²⁸ He did so without consulting BCLC. Mr. Kroeker responded calmly, pointing out that the ISA had been developed by “highly skilled legal staff within the RCMP and BCLC working in collaboration”. As Mr. Kroeker said, this unfortunate circumstance could have been avoided by making a

¹²⁵ B. Desmarais, Feb. 2, 2021, p. 131 (133 of 168)

¹²⁶ J. Mazure, Feb. 11, 2021, p. 159-163 (161-165 of 241)

¹²⁷ Ex. 522, Aff. # 1 of B. Desmarais, para. 90, p. 19-20 (19-20 of 639)

¹²⁸ Ex. 587, Aff. # 1 of L. Meilleur, para. 113, p. 21 (21 of 731)

simple inquiry.¹²⁹ Mr. Meilleur correctly acknowledged that his failure to consult with BCLC was an error.¹³⁰

64. Another impediment was GPEB's refusal to share their analyses with BCLC. Mr. Meilleur agreed that collaborative intelligence-gathering and analysis was beneficial and that information sharing was important "where appropriate."¹³¹ Mr. Meilleur acknowledged that GPEB did not share its intelligence or analysis reports with BCLC.¹³² He swore that he was "of the view that BCLC needed to know exactly where these clients obtained the cash, which bank, ask for bank books, and attempt to obtain source of funds on every suspicious transaction".¹³³ This comment perfectly illustrates the genesis of the problem between GPEB and BCLC. GPEB had regulatory authority and investigative powers associated with its members' special constable status. GPEB was receiving every STR, containing all of the information it needed to investigate any particular transaction. Despite that, GPEB expected BCLC to make the inquiries they had the power to make, but tied one hand behind their back by withholding information from them.

M. RESULTS OF MEASURES TAKEN

65. The results of the AML procedures instituted during Mr. Desmarais' tenure can be measured empirically. Large cash deposits began to decrease in late 2014 and continue to drop today, although the actual amount of cash received by casinos has increased, with much smaller amounts dominating. The total amount of cash reported on STRs fell to \$119 million in 2015-2016 and again to \$66.3 million in 2016-17.¹³⁴ Between September 2016 and September 2017, 93.5% of large cash transactions entering casinos were between \$10,000 and 20,000, with an average of

¹²⁹ Ex. 587, Aff. #1 of L. Meilleur, e. RR, p. 465 of 731

¹³⁰ Ex. 587, Aff. # 1 of L. Meilleur, e. RR, p. 465-469; J. Mazure, Mar. 10, 2021, p. 110-112

¹³¹ J. Mazure, Mar. 10, 2021, p. 99 (101 of 192)

¹³² Ex. 587, Aff. #1 of L. Meilleur, e. S, p. 157 of 731; e. T, p. 186 of 731; e. u, p. 189 of 731; and e. JJ, p. 400 of 731

¹³³ Ex. 587, para. 145, p. 26 (6 of 731)

¹³⁴ Ex. 587, e. UUU, p. 633-676

\$11,634.00.¹³⁵ To use Mr. Desmarais' phrase, the actual amounts of cash in suspicious transactions "fell off the cliff" between mid-2015 and mid-2017.¹³⁶

66. Mr. Kroeker testified that he undertook a review of BCLC practice when he replaced Mr. Desmarais. He opined that BCLC was still meeting industry AML standards. However, brand new information was coming from the police, which indicated more work was required, especially concerning the source of the funds.¹³⁷ Mr. Lightbody testified that relying on internal and external evidence from FATF, FINTRAC, and Ernst and Young, he was satisfied that BCLC were, in late 2015, meeting or beating contemporaneous industry standards.¹³⁸

N. THE GERMAN REPORT

67. There are many assertions of fact and opinions expressed in the German Report. Mr. Desmarais expressed disappointment with the report because it failed to conduct any qualitative or quantitative analysis of BCLC's work. The only interaction he had with Dr. German was a 1.25-hour joint meeting with him and Mr. Malysh, and Messrs. Lightbody and Kroeker, regarding general issues; and a second meeting involving the SAS computer program. Mr. German's report shocked him, because so many of the criticisms could have been addressed by asking very simple questions that had answers readily at hand.

68. Mr. Desmarais had these final comments about the German Report:

Q You've made some comments in your affidavit and you were asked a little bit about it in your evidence about Mr. German's report and what you disagreed with it about or what your disagreements with it were. And I'm just going to ask you a couple of questions about that. Mr. German described at chapter 16 the efforts by all involved as a failed strategy. Did you agree with that?

A No. I really disagree with that. I think the strategy is sound. The thing about a strategy is that it's something that you test, you work, you work with; what works you keep, what doesn't work you don't keep and you iterate. The strategy didn't fail. The strategy is not finished. So I thought that was incredibly unfair and incredibly unfair to the person that wrote it. Also a question about timing. The report was written in March -- on March 31st, 2018. Had transactions continued until 2018?

¹³⁵ Ex. 522, Aff. # 1 of B. Desmarais, para. 55, p. 12-13 (12-13 of 639), e. 31, p. 154-160 (180-186 of 639), 79, p. 537-546 (563-572 of 639)

¹³⁶ Ex. 482, Aff. # 1 of C. Cuglietta, B. Desmarais, Feb. 2, 2021, p. 157-158 (159-160 of 168)

¹³⁷ R. Kroeker, Jan. 26, 2021, p. 107-109 (109-111 of 217)

¹³⁸ J. Lightbody, Jan 29, 2021, p. 99 (101 of 210)

A No. In fact by the end -- by 2017, by mid-2017 the Suspicious Transaction Reports and Large Cash Transaction Reports had declined precipitously. And I would have been hopeful that those in authority being briefed, whether it's by Mr. German or senior levels of government, would have been aware of that, that yes, there is a real challenge in 2014; we kind of got a handle of it in 2014, so large cash transactions started to decline, suspicious transactions were still an issue. We dealt with those collectively with the service providers and others. And from mid-2015 to mid-2017 they dropped dramatically and were trending downwards.¹³⁹

O. CONCLUSION

69. The following exchange occurred between Commission Counsel and Mr. Desmarais at the end of his direct exam:

Q Do you agree that the approach that BCLC is describing here today is more closely aligned with what the GPEB investigation unit was asking for back in 2010?

A No, I do not.

Q Why not?

A Because the approach that GPEB was asking in 2010 was simply a -- if I recall correctly, was simply a ban on a certain amount of cash based on a certain amount of denominations without any customer due diligence, without any analysis on what the unintended consequences of that might be. This was an evolution. It took time. And, you know, as I say in my affidavit, GPEB -- I also want to make absolutely certain that Mr. Commissioner, you're aware when we've been referring to GPEB and some of the conflicts, we're largely referring to GPEB investigations, not GPEB as a whole. But at the end of the day we all wanted the same thing. We all wanted to ensure that the gambling was done in a safe manner with the highest levels of integrity. How we got there and how GPEB suggested we get there starting in 2010 was just different. We took more time. We got to know our players better. We were able to move our players from a cash-based risky approach to where we are now. In fact really in 2017 where suspicious transactions had fallen off a cliff and revenue had maintained, we had -- we feel we were able to mitigate the cash coming out or the cash going into the facilities that was challenging for us but at the same time maintaining our revenue mandate. And as we sit here, we've got a good balance. And this may not be the time to talk about it, but we're not done yet. I'm hoping that at some point we're going to be able to start looking through the front windshield instead of the rear windshield and talk about how we can continue this journey.

Q Do you -- in hindsight after all that due diligence and efforts you've described by BCLC in the intervening years, do you now assess GPEB assessment made in 2011 that, win or lose, the patrons using these large quantities of \$20 bills at least could be facilitating the transfer of or laundering of proceeds of crime because the patron had to pay back the money somewhere else?

A No, because that may have occurred and probably did occur in some proportion of circumstances, but we still don't clearly understand it. We still don't clearly understand the movement of cash [indiscernible] in 2014. What is clear is that we weren't going to be able to unravel it to anybody's satisfaction. Certainly to our satisfaction. So at the end of the day, as we learned more, put more mitigating factors in place, our tolerance for risk

¹³⁹ B. Desmarais, Feb. 2, 2021, p. 156, l. 6-p. 157, l. 17 (158-159 of 168)

went down and in the end -- at the same time educating our players so they began using cash alternatives, which were with GPEB's support, although we had some challenges with getting things approved. At the end of the day we're in a transitory phase now, I guess would be the way to describe it. So I wouldn't accept that \$20 bills as set out by GPEB in 2011, had we done that that we would be in this place today. We wouldn't.¹⁴⁰

70. This assessment is supported by the report on AML practices by Mr. Boyle of Ernst and Young and his testimony,¹⁴¹ providing the Commission with a point of comparison regarding AML practices in land-based casinos across time (from 2014 to 2020) and jurisdictions.¹⁴² Mr. Boyle did not identify any regulations, industry body guidance, or casino operator practices that: (1) prohibit a buy-in based solely on a set threshold amount; (2) prohibit cash buy-ins with small denomination bills (including \$20 bills) over a certain dollar threshold absent other indicators of suspicious activity; or (3) bar patrons from play-based on a particular number of STRs.¹⁴³ Other than in BC, Mr. Boyle could not identify practices in other jurisdictions: (1) prohibiting cash buy-ins based solely on suspicious behaviour observed by staff; (2) requiring SOF receipts based solely on a specific threshold amount (a practice "unique to British Columbia"); (3) de-risking MSBs; (4) placing certain patrons on sourced cash/chip conditions; or (5) conducting formal interviews of patrons as to their SOF.¹⁴⁴

P. THE WAY FORWARD

71. The Commission has heard from a large number of witnesses from investigators, managers, and academics about the best way forward.

72. Mr. Desmarais' view was that a multi-disciplinary approach was required and that the challenges faced in ML investigations were not well addressed by traditional police agencies. He was of the opinion that Canada had a strong legal foundation but "we just need to build the framework to actually breathe life into it".¹⁴⁵ He stated that no enforcement agency in Canada, including the RCMP, were properly

¹⁴⁰ B. Desmarais, Feb. 1, 2021, p. 154, l. 13-p. 157, l. 6 (155-158 of 164)

¹⁴¹ Ex. 1038, EY AML Report

¹⁴² Ex. 1038, EY AML Report, p. 1, footnote 2

¹⁴³ Ex. 1038, EY AML Report, p. 9, 11, 13, paras. 5.11, 5.20, 5.35. See also, B. Boyle, Sep. 13, p. 93, l. 12 - p. 96, l. 15

¹⁴⁴ Ex. 1038, EY AML Report. p. 20, 24, 26, 27, paras. 5.58, 5.72, 5.84, 5.92, 5.116. See also, B. Boyle, Sep. 13, p. 72, l. 13 - p. 73, l. 4 (re: formal interviews of patrons), p. 96, l. 16 - p. 100, l. 9 (re: SOF receipting requirements and sourced cash/chip conditions).

¹⁴⁵ B. Desmarais, Feb. 2, 2021, p. 138 (140 of 168)

equipped to conduct ML investigations.¹⁴⁶ He also expressed the opinion that the agency should be led by a person with a wide variety of skills, much like the former IPOC.

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¹⁴⁶ B. Desmarais, Feb. 2, 2021, p. 138-139 (140-141 of 168)