

Executive Summary

This Commission was established in the wake of significant public concern about money laundering in British Columbia. The public was rightfully disturbed by the prospect of criminals laundering their cash and parking their illicit proceeds in this province. I was given a broad mandate to inquire into and report on money laundering in British Columbia, including:

- the extent, growth, evolution, and methods of money laundering in various sectors of the economy;
- the acts or omissions of responsible regulatory agencies and individuals that contributed to money laundering in the province;
- the effectiveness of the anti-money laundering efforts by these agencies and individuals; and
- barriers to effective law enforcement.

I was also tasked with recommending measures to address the conditions that have allowed money laundering to thrive.

The Commission embarked on a process of extensive study and investigation culminating in the Commission's public hearings, where I heard testimony from 199 witnesses over 133 hearing days and received over 1,000 exhibits. In this Report, I review the evidence I received, make findings of fact, and set out key recommendations to assist the Province and others in addressing the serious money laundering problem facing British Columbia.

In this executive summary, I highlight some of the key themes that emerged during the Commission process.

Money laundering is a significant problem requiring strong and decisive action

Money laundering is a significant problem deserving of serious attention from government, law enforcement, and regulators. An enormous volume of illicit funds is laundered through the British Columbia economy every year, and that activity has a significant impact on the citizens of this province.

Money laundering has, as its origin, crime that destroys communities – such as drug trafficking, human trafficking, and fraud. These crimes victimize the most vulnerable members of society. Money laundering is also an affront to law-abiding citizens who earn their money honestly and pay their fair share of the costs of living in a community. There can be few things more destructive to a community’s sense of well-being than a governing regime that fails to resist those whose opportunities are unfairly gained at the expense of others.

While it is not possible to put a precise figure on the volume of illicit funds laundered through the BC economy each year, the available evidence shows that the figure is very large (with estimates in the billions of dollars per year in this province alone).

Sophisticated professional money launderers operating in British Columbia are laundering staggering amounts of illicit funds. Evidence uncovered by law enforcement indicates that a *single* money services business was involved in laundering upwards of \$220 million per year through a sophisticated scheme that relied on underground banking infrastructure and that took advantage of a lax regulatory environment in the gaming sector.

It is essential that government, law enforcement, and regulators take strong and decisive action to respond to the problem.

The federal anti–money laundering regime is not effective

To understand money laundering in British Columbia, it is necessary to understand the federal regime and the work done by agencies such as the Royal Canadian Mounted Police (RCMP) and Canada’s financial intelligence unit, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). The federal government plays a key role in addressing money laundering risk and activity, given that criminal law is primarily a federal matter. It is important to identify and understand gaps and weaknesses in the federal anti–money laundering regime in order to make effective recommendations to the Province as to the measures it must take to respond to money laundering.

Over the past two decades, the federal government has enacted increasingly complex legislation aimed at addressing money laundering activity. However, serious questions have been raised about the effectiveness of that regime in relation to money laundering in the province of British Columbia.

One of the primary criticisms of the federal regime is the ineffectiveness of FINTRAC, the agency responsible for receiving and analyzing information about money laundering threats and communicating this information and analysis to law enforcement. While I recognize that there is a statutory threshold that must be met before FINTRAC can disclose information to law enforcement, the number of disclosures to law enforcement is not commensurate with the volume of reports that FINTRAC receives, nor with the scale of money laundering activity in British Columbia. Law enforcement bodies in British Columbia cannot rely on FINTRAC to produce timely, useful intelligence about money laundering activity that they can put into action.

FINTRAC receives an enormous volume of reports from public- and private-sector reporting entities, but it produces only a modest number of intelligence packages that go to law enforcement. For example, in 2019–20, FINTRAC received over 31 million individual reports. In that same year, FINTRAC disclosed only 2,057 intelligence reports to law enforcement across Canada, and only 355 to law enforcement agencies in British Columbia.

The federal regime in Canada has encouraged defensive reporting, a practice under which reporting entities err on the side of making a report wherever there is some uncertainty. This has led to high-volume, low-value reporting. The high volume of reports submitted to FINTRAC is especially apparent when compared to reporting in other nations. On a per capita basis, reporting entities in Canada submit 12.5 times more reports than similar entities in the United States, and 96 times more reports than those in the United Kingdom.

Given the state of the federal regime, if the Province is to achieve success in the fight against money laundering, it must develop its own intelligence capacity in order to better identify money laundering threats. I am therefore recommending the creation of a **dedicated provincial money laundering intelligence and investigation unit** with a robust intelligence division. This unit will be responsible for developing actionable intelligence concerning money laundering activity and threats in British Columbia.

British Columbia has made progress on money laundering, but much remains to be done

The Province has taken laudable steps to understand and respond to money laundering threats in British Columbia. It has commissioned expert reports on money laundering in various sectors. It implemented a source-of-funds recommendation from Peter German, which significantly limited the volume of illicit funds entering BC casinos. It has implemented a beneficial ownership registry for real estate. It requires the collection of beneficial ownership information for companies and supports the creation of a registry.

These efforts are commendable. But much remains to be done. This Report makes a number of recommendations for reform, some of which transcend specific sectors. Two key recommendations are the creation of an AML Commissioner and the dedicated

provincial money laundering intelligence and investigation unit. My aim is to offer advice that is realistic, practical, and effective, and I hope and trust that the Province will remain committed to tackling this pernicious problem.

The Province should establish an independent AML Commissioner, who will provide strategic oversight of the provincial response to money laundering

An overarching theme that emerged through the course of this Inquiry is that money laundering is rarely afforded the priority it requires. Because it operates in the shadows, it often goes unnoticed. Because the damage it causes is not as visible as that caused by other crimes (such as violent crime), it is often afforded less priority and attention. Even when aspects of a money laundering scheme come out of the shadows and operate in plain sight – as occurred in the casino industry – a lack of will and coordination has led to an ineffective response.

Unlike many government priorities, anti-money laundering does not fit easily into one sector or ministry. For this reason, anti-money laundering has not been the dedicated responsibility of any one minister and has not received sufficient attention or priority from government. It has similarly been neglected by law enforcement, which has, when faced with competing priorities, paid little attention and dedicated few resources to the fight against money laundering.

Put simply, despite a relatively long history of mounting evidence about the extent of this problem – and despite growing public concern – government, law enforcement, and regulatory agencies have, for many years, failed to grasp the nature and extent of this growing problem. They have failed to afford it the priority and resources that are required.

It is time to change this trend – and change it permanently. The only way to reverse this unhappy state of affairs is to vest with one office the responsibility to support, oversee, and monitor the provincial response to money laundering. As such, I recommend the establishment of the AML Commissioner. The AML Commissioner will be an independent office of the Legislature that will provide strategic oversight of the provincial response to money laundering and report to the Legislature regularly.

The AML Commissioner's mandate will be to oversee and monitor the provincial response to money laundering by carrying out the following functions:

- **Keeping people informed:** producing annual reports that are publicly available, as well as special reports. The reports will describe money laundering risks, activity, and responses in British Columbia.
- **Researching:** undertaking, directing, and supporting research on money laundering issues. The AML Commissioner will develop expertise on money laundering

methods, including emerging trends and responses, informed by an understanding of the measures taken internationally.

- **Advising:** issuing policy advice and recommendations to government, law enforcement, and regulatory bodies on money laundering issues.
- **Assessing:** monitoring, reviewing, auditing, and reporting on the performance of provincial bodies that have an anti-money laundering mandate.
- **Coordinating:** leading working groups and co-operative efforts to address money laundering issues.

The creation of a new office of the Legislature with an *exclusive* focus on anti-money laundering will counteract the neglect that this topic has faced for too long. The AML Commissioner will give anti-money laundering pre-eminent attention, in a public and accountable way, so that the people of British Columbia and the government have accurate, current, and reliable information about how public agencies, law enforcement, and government are doing in coming to grips with and responding to money laundering in British Columbia.

The RCMP's lack of attention to money laundering has allowed for the unchecked growth of money laundering since at least 2012

Prior to 2012, the RCMP maintained some capacity and expertise to pursue money laundering and proceeds of crime investigations. A shift in focus in 2012 largely eliminated that capacity and expertise, leaving, for the next decade, a glaring enforcement gap. This gap left money laundering to proliferate in this province, largely unchecked.

From 1990 to 2012, the RCMP maintained Integrated Proceeds of Crime (IPOC) units in each province. These units were responsible for the most serious money laundering and proceeds of crime investigations. They developed a high level of expertise and were critical to the federal government's strategy to combat organized crime.

In 2011, the officer-in-charge of the British Columbia IPOC unit became concerned about the large volume of \$20 bills being received by BC casinos and initiated an investigation. The investigation revealed substantial amounts of cash entering BC casinos, which the investigators believed were from criminal activity. These investigators also correctly identified the typology being used to launder this cash – a group of cash facilitators were loaning large sums of cash to high-limit gamblers, who often paid back the debt using a cross-border value and payment transfer system, which allows for cash to be advanced in one country and the debt repaid in another.

In 2012, the federal government made significant cuts to government services and disbanded the IPOC units. This left no enforcement body with primary responsibility to investigate money laundering or proceeds of crime in this province. The disbandment of the IPOC units was a pivotal moment, which allowed for the unchecked growth of

money laundering in the gaming industry and other sectors of the economy for the better part of a decade.

Without a dedicated unit, RCMP money laundering investigations were subject to the federal prioritization process and were weighed against other pressures and priorities, such as national security. This resulted in money laundering and proceeds of crime investigations being given very little attention. Important investigations in British Columbia, including the investigation into money laundering at BC casinos, were terminated.

After 2012, despite repeated requests, there was no enforcement body available to address the casino problem, and the volume of suspicious cash entering BC casinos rose to unprecedented levels.

In 2015, the BC Lottery Corporation (BCLC), in part by leveraging a personal relationship, was finally able to convince the Federal Serious and Organized Crime (FSOC) section of the RCMP to start an investigation. In that year, BCLC reported over \$183 million in suspicious transactions to FINTRAC. Shortly into its investigation, FSOC was able to make a direct link between the suspicious cash being provided to patrons at the River Rock Casino Resort and an unlicensed money services business in Richmond. The investigation uncovered evidence suggesting that upwards of \$220 million in illicit funds was being moved through this single money services business each year.

Unfortunately, this one investigation was an anomaly. There was no sustained effort to investigate money laundering activity in British Columbia. Between 2015 and 2020, there were only two other major money laundering investigations that progressed to the charge-approval stage. This level of attention by the RCMP to money laundering is not commensurate with the money laundering activity and risks in this province.

A dedicated provincial money laundering intelligence and investigation unit is needed to mount a sustained and effective response to money laundering

While I accept that there are significant challenges associated with the investigation and prosecution of money laundering offences, the primary cause of the poor law enforcement results in this province is a lack of resources. Unfilled positions and the reassignment of units to deal with other federal priorities have exacerbated the problem. The result has been that there are often few (if any) officers available to investigate money laundering activity in British Columbia.

Since the establishment of this Commission, the RCMP has taken steps to address some of the resourcing issues that led to the poor enforcement results in this province. I have some optimism that the RCMP may find a measure of success if its commitment to money laundering investigations is genuine and if the federal government prioritizes and devotes sufficient resources to money laundering issues. At the same time, I have serious concerns that the RCMP's newfound commitment to these issues may be short-

lived and that current resourcing levels will not be maintained once the work of the Commission is over and the public scrutiny on this issue has diminished. I would add that, given the magnitude and complexity of the problem, even the proposed federal resources will be insufficient to fully and effectively respond to money laundering.

I therefore recommend the creation of a **dedicated provincial money laundering intelligence and investigation unit** to lead the law enforcement response to money laundering in this province. The new unit will do so by (a) identifying, investigating, and disrupting sophisticated money laundering activity, and (b) training and supporting other investigators in the investigation of the money laundering and proceeds of crime offences.

I recommend that this new unit be located within the Combined Forces Special Enforcement Unit (CFSEU). This is important so that the provincial government has a higher degree of oversight and visibility into its operations, and it will avoid “hollowing out” the provincial police force. This structure will also give the Province greater flexibility to hire *and retain* police officers and civilian specialists who have the knowledge, skills, and motivation to investigate money laundering and proceeds of crime cases.

Too often, high levels of turnover within specialized policing units – especially those investigating financial crime – have undermined their effectiveness. My goal in recommending this unit is to build the permanent infrastructure necessary to mount a sustained and effective response to money laundering.

In order to be successful, the new unit will need access to prompt, ongoing legal advice, as well as a surveillance team that prioritizes its needs. It is also essential that the new unit be staffed with police officers and civilian specialists with expertise in a wide variety of disciplines. The unit must also maintain a team of money laundering and financial crime experts who can “demystify” money laundering and help investigators, prosecutors, and judges understand money laundering and the evidence that exposes it.

While the creation of the new unit will require a significant investment by the Province, it is my expectation that these costs will be offset by the identification and targeting of additional illicit assets for forfeiture. The experience in other jurisdictions demonstrates that a focused and effective asset forfeiture regime can have a significant impact on organized crime *and* lead to substantial financial benefits for the state.

Law enforcement bodies must make better efforts to follow the money and pursue money laundering and proceeds of crime charges

Another cause of the poor law enforcement outcomes in this province has been a failure, at all levels of policing, to consider money laundering and proceeds of crime charges in investigations into profit-oriented criminal activity. Money laundering and proceeds of crime charges are rare in this province. This is because police conducting investigations into profit-oriented criminal activity, such as drug dealing, are not investigating these offences.

Every investigation into profit-oriented criminal activity should have, as one of its aims, building a case to support money laundering and/or proceeds of crime charges. Even a basic financial investigation into the accumulation of wealth by those involved in criminal activity can have real benefits. Such investigations can disrupt organized crime networks by identifying assets for seizure and forfeiture. They can also help reveal criminal connections and hierarchies, and show how the subjects are laundering their money. Money laundering and proceeds of crime investigations can also expand the pool of potential accused and allow for charges to be brought against those who are involved in different aspects of the criminal enterprise.

I am therefore recommending that all provincial law enforcement agencies conducting investigations into profit-oriented crime (a) consider money laundering and proceeds of crime charges at the outset of the investigation, and (b) where feasible, conduct a financial investigation with a view to pursuing those charges and identifying assets for seizure and/or forfeiture. While I appreciate that the allocation of law enforcement resources to these matters will put additional strain on law enforcement agencies in the short term, I strongly believe that the consistent and rigorous implementation of this measure has the potential to substantially improve law enforcement results. It could also result in the forfeiture of substantial criminal assets, which will help offset this important investment.

Asset forfeiture must be pursued more vigorously

Asset forfeiture is widely regarded as one of the most effective ways of stifling and disrupting organized crime groups and others involved in serious criminal activity. Not only does it deprive these groups of the profits of their unlawful activity (thereby taking the profit out of crime), it also prevents those funds from being reinvested in the criminal enterprise, where they can be used to purchase drugs, weapons, vehicles, and other products necessary to support their unlawful activities. In many cases, the seizure of unlawfully obtained assets will have a greater impact on organized crime groups than the arrest and prosecution of low-level members.

Unfortunately, the number and value of unlawfully obtained assets seized through the asset forfeiture system in British Columbia is shockingly low. The BC Civil Forfeiture Office recovered approximately \$13.4 million in 2019 and \$10.7 million in 2018. The criminal asset forfeiture amounts were similarly unimpressive. These recoveries are not commensurate with the huge volume of illicit funds being laundered through the province each year.

To mount an effective response to money laundering, it is essential that investigators understand the powerful tools available within the criminal asset forfeiture regime and develop the evidence needed to pursue successful criminal forfeiture applications.

It is also essential that police and prosecutors be given training in the importance of criminal asset forfeiture and the use of the criminal asset forfeiture provisions.

With respect to civil forfeiture, it is critically important that the BC Civil Forfeiture Office expand its focus from the forfeiture of instruments of crime and low-value assets identified incidentally in law enforcement investigations to the identification and forfeiture of high-value assets owned or controlled by those involved in serious criminal activity. To support this wider focus, the Civil Forfeiture Office must expand its operational capacity by adding investigators and analysts capable of identifying and targeting unlawfully obtained assets that are not identified in the police file.

I also believe that the provincial government should transition the Civil Forfeiture Office from a self-funded agency to a government-funded agency, in which the revenue generated by that office flows to government. The Civil Forfeiture Office should be encouraged to pursue cases that have the greatest impact on organized crime groups, regardless of whether those cases are “commercially viable.” That is not to say that an expansion of the office will be a drain on government resources. On the contrary, if the recommendations contained in this Report are adopted, there should be a significant increase in the number (and value) of assets forfeited, and the government should properly determine the allocation of that revenue.

Unexplained wealth orders will be a valuable additional tool in the fight against money laundering

Unexplained wealth orders are a promising tool used in some jurisdictions to address the accumulation of illicit wealth by those engaged in profit-oriented criminal activity. In basic terms, they allow the state, upon meeting a certain evidentiary threshold (such as reasonable grounds to suspect that the person is or has been involved in profit-oriented criminal activity), to obtain an order compelling a person to produce information concerning the provenance of a particular asset (for example, the source of funds used to purchase a house). If the recipient of the order fails to produce the required information, a presumption will arise that the property was purchased with illicit funds. If the presumption is not rebutted, the property will be forfeited to the state.

I am persuaded that unexplained wealth orders are a valuable tool in targeting illicit wealth held by members of criminal organizations and others involved in serious profit-oriented criminal activity. By introducing an unexplained wealth order regime, the Province will be better able to determine whether assets suspected to be illicit are, in fact, proceeds of crime and to target those assets in civil forfeiture proceedings.

While unexplained wealth orders could be used in a wide variety of circumstances, they may be particularly useful in targeting the assets of individuals further up the criminal hierarchy, who are often involved in highly lucrative but less visible forms of criminal activity. If used properly, unexplained wealth orders also allow authorities to address problems such as nominee ownership, where those involved in criminal activity put unlawfully obtained assets into the hands of a family member or associate in an attempt to insulate them from forfeiture.

Another benefit of unexplained wealth orders is to discourage foreign corrupt officials and others involved in criminal activity from moving their illicit wealth to British Columbia through the purchase of real estate and other valuable assets.

One thing that has become apparent during the Commission's process is that many of those involved in profit-oriented criminal activity are rational actors who are aware of the different regulatory requirements in different jurisdictions and consider those differences in determining where to place and launder their ill-gotten gains. Faced with the prospect of having to prove the provenance of a particular asset, to avoid a forfeiture order, these offenders may choose to launder their proceeds and place their wealth in another jurisdiction.

I recognize that unexplained wealth orders are not without controversy and that some have raised concerns about the presumption of innocence and the right to silence. However, it is important to understand that the provincial *Civil Forfeiture Act* cannot be used to impose any criminal penalties. Unexplained wealth orders would only be used in *civil* proceedings for the forfeiture of *property*. The information provided in response to an unexplained wealth order cannot be used in a criminal prosecution. I would add that people who legitimately own valuable assets are well placed to show the provenance of those assets.

When used to target high-value assets in the hands of those involved in serious criminality, unexplained wealth orders will prove an effective additional tool to address money laundering.

For the better part of a decade, an unprecedented volume of illicit cash was laundered through BC casinos

Between 2008 and 2018, Lower Mainland casinos accepted hundreds of millions of dollars in cash that was the proceeds of crime. These transactions were an integral part of a money laundering typology known as the “Vancouver model” – in which wealthy casino patrons were provided vast sums of illicit cash by “cash facilitators” who were affiliated with criminal organizations. Typically, these patrons were not themselves involved in the criminal activity that generated these funds. Some held significant wealth in China but were unable to access that wealth in Canada because of Chinese currency export restrictions, so they resorted to cash facilitators to get money to gamble in BC.

These patrons would genuinely use this cash to gamble. They often lost it. But whether they won or lost, they would repay the cash advance to the criminal organization in a form other than cash, often via an electronic funds transfer in another jurisdiction. This arrangement enabled wealthy casino patrons to gamble in British Columbia without running afoul (or at least without appearing to run afoul) of Chinese currency export restrictions, while allowing criminal organizations in BC to launder their illicit cash. They did so by converting it into a different medium of exchange, transferring it to another jurisdiction, and obscuring its illicit origins.

The illicit cash used by these casino patrons played a central role in fuelling extraordinary growth in large and suspicious cash transactions in Lower Mainland casinos. Beginning in 2008, investigators with the Gaming Policy and Enforcement Branch (GPEB) – British Columbia’s gaming regulator – identified a significant increase in suspicious cash transactions in casinos. They became concerned that this was money laundering. In the years that followed, the size and frequency of these transactions increased dramatically, peaking in the mid-2010s.

In 2014 alone, British Columbia casinos accepted nearly \$1.2 billion in cash transactions of \$10,000 or more, including 1,881 individual cash buy-ins of \$100,000 or more – an average of more than five per day.

In many instances, these transactions were identified and reported as suspicious by BCLC and the private-sector companies that had been contracted by BCLC to operate casinos. In 2014, BCLC reported nearly \$200 million in suspicious transactions to FINTRAC. These suspicious transaction reports included 595 separate transactions with a value of \$100,000 or more.

In addition to the extraordinary amounts, the cash used in many of these transactions exhibited well-known characteristics of cash derived from crime. It often consisted predominantly of \$20 bills, oriented in a non-uniform fashion, bundled in “bricks” of specific values (as opposed to number of notes), bound with elastic bands, and carried in shopping bags, knapsacks, suitcases, gym bags, cardboard boxes, and all manner of other receptacles. These vast quantities of cash were frequently delivered to casino patrons at or near casinos, very late at night or early in the morning, by unmarked luxury vehicles. It should have been apparent to anyone with an awareness of the size and character of these transactions that Lower Mainland casinos were accepting vast quantities of proceeds of crime during this time period.

GPEB, BCLC, and law enforcement were aware of the burgeoning money laundering crisis but failed to intervene effectively

The growth of these large and suspicious cash transactions, beginning in 2008, did not go unnoticed. By that year, the GPEB investigation division, led by a former RCMP officer and expert in the investigation of money laundering and proceeds of crime, identified the severe money laundering risk posed by these transactions. Over the next six years, the GPEB investigation division repeatedly issued warnings about this risk – and made recommendations to address it – to their superiors within GPEB, to BCLC, to law enforcement, and to the provincial government. Similarly, warnings were given by BCLC’s own investigative staff and some within law enforcement during this time period. Besides raising concern about the size and suspicious nature of these transactions, some of these warnings specifically identified the money laundering typology that was being used.

Despite these repeated warnings, no meaningful action was taken to address this issue until 2015. BCLC resisted these calls for action and continued to allow these transactions, almost without exception. Managers within BCLC's corporate security and compliance unit repeatedly insisted that these transactions could not be connected to money laundering if patrons were genuinely putting their funds at risk and often losing them. This insistence continued despite the GPEB investigation division and one of BCLC's own investigators precisely identifying the money laundering typology to which these transactions were connected. While BCLC managers in the corporate security and compliance unit acknowledged the risk that the cash used in these transactions could be the proceeds of crime, they insisted that, in the absence of a law enforcement investigation proving this, they could not take action. Instead, they stood by and permitted BC casinos to accept vast sums of illicit cash. BCLC's approach reflected a completely unacceptable and unreasonable risk tolerance.

GPEB and law enforcement likewise took minimal action to respond to the growth in large and suspicious cash transactions prior to 2015. While GPEB's leadership during this time period was more open than BCLC's to the conclusion that these transactions could be connected to money laundering, GPEB's efforts to reduce these transactions were largely limited to working with BCLC to develop voluntary alternatives to the use of the cash. This strategy stood no realistic prospect of having a meaningful impact on large and suspicious cash transactions. It fell far short of what was called for in the circumstances.

Within law enforcement, the RCMP's IPOC unit undertook an intelligence probe focused on these transactions beginning in 2010. The officers involved in this probe came to believe that these transactions were connected to money laundering, and they developed an operational plan that held real promise in addressing the supply of illicit cash provided to casino patrons. However, the plan was never carried out. The IPOC unit was soon disbanded.

Following the conclusion of the IPOC intelligence probe, it would be more than three years before there was further meaningful law enforcement engagement with the rapidly growing large and suspicious cash transactions in BC casinos. In early 2015, at the urging of BCLC, the RCMP's FSOC unit commenced surveillance of people connected to these transactions. In several days of surveillance conducted over several months, the FSOC unit confirmed a direct link between criminal organizations and cash transactions at the River Rock Casino Resort. The police believed that those providing the cash used in these transactions were linked to transnational organized crime.

BCLC finally began to respond to these concerns around the time that it learned of FSOC's conclusions regarding the connection between suspicious casino transactions and organized crime. The actions taken by BCLC included incrementally placing select patrons identified in the FSOC investigation, and those engaged in the largest and most suspicious transactions, on conditions that prohibited them from buying in with unsourced cash. However, despite the confirmation it had received from law enforcement that BC casinos were accepting proceeds of crime, and despite the

persistent urging of both GPEB and the minister responsible for gaming to take further action, BCLC continued, in many instances, to permit patrons to buy-in at casinos with hundreds of thousands of dollars in cash that bore obvious indicators of being illicit.

GPEB also began to take additional action in response to suspicious cash transactions after learning of the initial results of the FSOC investigation and following the compilation, by two GPEB investigators, of a spreadsheet detailing suspicious transactions in July 2015. That spreadsheet showed more than \$20 million dollars of suspicious cash in transactions of \$50,000 or more in one month, over \$14 million of which was in \$20 bills. The spreadsheet impressed upon GPEB's leadership the urgency of the problem posed by suspicious cash transactions in Lower Mainland casinos. It inspired GPEB to seek the intervention of the minister responsible for gaming. These efforts led to the creation of a law enforcement unit dedicated to the province's gaming industry. This filled a long-standing enforcement gap. The responsible minister also issued a letter to BCLC that included a direction to take additional action to identify the source of funds used in cash transactions prior to cash acceptance. Like those of BCLC, however, these actions ultimately proved inadequate to stop the regular acceptance of substantial quantities of suspicious cash by BC casinos, and GPEB failed to take adequate further steps to seek the further intervention of the minister.

While the rate at which suspicious cash was being accepted by BC casinos slowed beginning in 2015, it remained at an unacceptably high level for several years afterwards. Even after both BCLC and GPEB received confirmation from law enforcement that BC casinos were accepting illicit cash, casinos continued to accept tens of millions of dollars of suspicious cash annually. Even though some progress was made following 2015, the efforts made during this time period fell well short of what was required. They were not commensurate with the scale of the money laundering crisis that had developed in the industry in the years leading up to 2015.

Elected officials were aware of suspicious funds entering the provincial revenue stream through the gaming industry, but there is no evidence of corruption

Money laundering in the province's casinos persisted over the tenures of multiple ministers responsible for gaming. Each of these ministers was privy, on some level, to information showing that the gaming industry was at elevated risk of money laundering. By 2010, then-minister responsible for gaming Rich Coleman was aware of the concerns of the GPEB investigation division and law enforcement that the province's casinos were being used to launder the proceeds of crime. At the same time, Mr. Coleman also received information from BCLC stating that the province's gaming industry had a strong and effective anti-money laundering regime. Mr. Coleman responded to these mixed messages by arranging for an independent review of anti-money laundering measures in the gaming industry, but he did not take action to stem the flow of the suspicious cash transactions that he had been warned about.

A similar dynamic characterized the years that followed when the ministers responsible for gaming, including Shirley Bond, Mr. Coleman (returning to the position), and Michael de Jong, received conflicting information about money laundering in the gaming industry. Each minister, to varying degrees, received some indication that the gaming industry was at an elevated risk of money laundering. In some instances, this included specific warnings that casinos were likely accepting substantial quantities of illicit cash. Each minister also received assurances from BCLC and, in some instances, GPEB, that BC's gaming industry had a robust, industry-leading anti-money laundering regime.

Each of these ministers took some action to respond to the risk of money laundering in the gaming industry. Mr. Coleman initiated an independent review of the industry's anti-money laundering regime. Ms. Bond directed the immediate implementation of nine of 10 recommendations emanating from that review. Mr. de Jong spearheaded the creation of a new, gaming-focused law enforcement unit and directed BCLC to enhance its efforts to evaluate the source of funds used in cash buy-ins before those funds were accepted. None of these actions, however, was sufficient to resolve the extensive money laundering present in the industry through much of the 2010s. Money laundering in the gaming industry accelerated through the tenures of Mr. Coleman and Ms. Bond, and the first half of Mr. de Jong's. While the rate of suspicious transactions in casinos began to decline in the second half of Mr. de Jong's tenure, it remained unacceptably high until the end of his tenure. While I am unable to find fault with the response of Ms. Bond, given her short tenure as minister responsible for gaming and the information she received while in this role, more could have been done by Mr. Coleman and Mr. De Jong, who served in that role for extended periods during the evolution of this crisis.

Former Premier Christy Clark appropriately delegated oversight of the gaming industry to a succession of experienced ministers. In 2015, however, the premier learned that casinos conducted and managed by a Crown corporation and regulated by government were reporting transactions involving enormous quantities of cash as suspicious. Despite receiving this information, Ms. Clark failed to determine whether these funds were being accepted by the casinos (and in turn contributing to the revenue of the Province) and failed to ensure such funds were not accepted.

Despite the failure of these elected officials to take steps sufficient to resolve the extensive money laundering occurring in the industry for which they were responsible, there is no basis to conclude that any engaged in any form of corruption related to the gaming industry or the Commission's mandate more generally. While some could have done more, there is no evidence that any of the failures was motivated by corruption. There is no evidence that any of these individuals knowingly encouraged, facilitated, or permitted money laundering to occur in order to obtain personal benefit or advantage, be it financial, political, or otherwise. To the extent that some have hypothesized that money laundering in casinos was facilitated by corrupt politicians or officials, they are engaging in conjecture that is not rooted in evidence.

The implementation of Peter German's recommendation has significantly curtailed the prevalence of illicit cash in BC casinos

The rate at which suspicious cash was accepted in BC casinos was not reduced to acceptable levels until 2018, during the tenure of Mr. de Jong's successor, David Eby. Like his predecessors, Mr. Eby was initially confronted with contradictory information about the prevalence of money laundering in the gaming industry. Early in his tenure as gaming minister, while GPEB was raising the alarm, BCLC was hailing the strengths of its anti-money laundering program. In response, Mr. Eby engaged Dr. Peter German to conduct an independent review of money laundering in the industry.

Soon after commencing his review, Dr. German presented Mr. Eby with an interim recommendation. The recommendation led to a requirement that casino patrons present proof that funds used in cash transactions of \$10,000 or more were from legitimate sources. In 2018, the year in which this measure was implemented, the value of suspicious transactions reported to FINTRAC by BCLC declined by nearly 90 percent.

This success was not the result of a solution invented by Dr. German. Measures similar to that implemented in 2018, and others likely to have had a similar effect, had been proposed repeatedly since suspicious transactions began to grow in 2008. What was lacking prior to 2018 was not the identification of an appropriate policy response, but rather the will – on the part of both government and industry – to take the kind of decisive action necessary to effectively respond to this problem.

Today, BC's gaming industry is greatly changed from that which permitted extensive money laundering in British Columbia casinos between 2008 and 2018. The source-of-funds requirements implemented following Dr. German's interim recommendation are an important part of this change. Other changes since the implementation of these requirements also support the view that the industry is in a better place. After many years of resisting vital anti-money laundering measures, BCLC now seems to have embraced its responsibility to safeguard the industry from money laundering and proceeds of crime. GPEB – which the Province is in the process of replacing with a new, independent regulator – has been granted important new powers. It has redefined its role in combatting money laundering. There is also a law enforcement unit, the Joint Illegal Gaming Investigation Team (JIGIT), that was initiated during Mr. de Jong's tenure and is now fully engaged with the industry. Whereas GPEB and BCLC seemed to work at cross-purposes for many years, it now seems that these two organizations, along with JIGIT, are working co-operatively and collaboratively.

While the industry is much improved, there must be continued vigilance and further improvement. It is essential that the new, independent gaming regulator be granted clear, independent authority over the industry. This includes the authority to issue directions to BCLC without the approval of the responsible minister or any other external authority. Further, in the interest of ensuring that the industry builds on the advancements made to date, the threshold for requiring proof of the source of funds, implemented following Dr. German's recommendation, should be lowered to \$3,000.

The industry must also move rapidly toward 100 percent account-based, known play in the province's casinos.

The BC real estate sector is highly vulnerable to money laundering

The BC real estate sector is highly vulnerable to money laundering. These vulnerabilities are exacerbated by the persistent adherence of some real estate professionals to outdated attitudes and myths about what money laundering is and how it occurs in their industry. While money laundering in the real estate sector does not conjure up dramatic images of hockey bags full of cash being emptied onto the desks of realtors, that does not mean money laundering is not occurring.

The BC real estate market has traditionally been strong. This makes it attractive to criminal actors who want the investment of their criminal proceeds to be relatively immune from negative market forces. Illicit funds that have already made their way into the financial system can be invested in real estate, providing the criminal with a safe place to store their wealth and a façade of legitimacy when the property is eventually sold. Buying and selling a series of properties can further obscure the criminal origins of the funds.

Money laundering in the real estate sector often involves the use of loans, mortgages, and, in some cases, lawyers' trust accounts and the legal system. It can also involve cash. For example, a criminal might take out a mortgage for the purchase of property and repay the mortgage with proceeds of crime. If the cash deposited for each payment is under \$10,000, it will not trigger the requirement for a large cash transaction report to FINTRAC. Over time, criminals may acquire multiple properties or higher-value real estate through the use of this typology. The properties can then be sold (often at a significant profit in the Vancouver real estate market) with the criminal property owner receiving "clean" funds from the purchaser to complete the money laundering process.

Illicit funds can also be laundered in a manner that exploits the real estate industry by loaning those funds to individuals who do not qualify for a traditional mortgage or who need cash for another purpose (such as gambling). Such loans can be secured through a lien registered on title by falsifying loan documents to suggest the loan was for the purchase or renovation of real property. When the loan is repaid, the criminal receives "clean" funds. If the loan is not repaid, the criminal can, often with the assistance of a lawyer, use the court system and seek a forced sale of the property, again receiving repayment from a credible source.

While most real estate professionals operate with integrity, evidence I heard demonstrates how money laundering risks can be exacerbated by those who seek to bend the rules or ignore or downplay their professional obligations. It is essential that the British Columbia Financial Services Authority (BCFSA), which regulates real estate professionals, be given a clear and enduring anti-money laundering mandate and that it be given sufficient resources to address allegations of misconduct in a timely way.

Realtors have a poor record of anti–money laundering reporting and compliance

Real estate licensees (realtors) have a poor record of anti–money laundering reporting and compliance. Many continue to display an inadequate understanding of, and hold misplaced beliefs about, how money laundering occurs in the real estate industry. These misplaced beliefs have led to complacency and a reluctance to comply with their anti–money laundering obligations.

FINTRAC reporting by real estate licensees is virtually non-existent and is nowhere near commensurate with the level of money laundering risk in the sector. For example, in 2015–16, real estate licensees in British Columbia submitted a *total* of seven suspicious transaction reports to FINTRAC. These numbers increased to a high of 37 in 2019–20 before decreasing to 15 in 2020–21.

One of the principal reasons for the poor record of anti–money laundering reporting and compliance among realtors is the persistent but mistaken belief that money laundering in real estate means buying houses with bags of cash. FINTRAC has recently started providing information to dispel that myth. Another cause of the poor record of anti–money laundering reporting and compliance is confusion among realtors about how to comply with their federal anti–money laundering obligations. Most real estate agents and brokers have no background in compliance or anti–money laundering measures, and there is significant frustration in the industry about the lack of guidance. There is a need for clear, simple guidance from FINTRAC about when transactions must be reported.

Changes must be made to ensure that realtors better understand their anti–money laundering responsibilities and report suspicious transactions as required. It is also important that realtors overcome their misgivings about filing suspicious transaction reports. Realtors have no obligation to maintain the confidentiality of potential criminal activity. They are the point of access for most people to the real estate market, and they have a legal and professional obligation to maintain the integrity of that market by making appropriate inquiries and reporting transactions to FINTRAC where they are suspicious.

Effective regulation of the mortgage lending industry is essential

Regulation of the BC mortgage lending industry is deficient in many ways. Mortgage brokers are not reporting entities under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* even though they are often privy to transactions or attempted transactions that pose significant money laundering risks. I view the absence of a reporting requirement for mortgage brokers as a significant gap in the federal anti–money laundering regime and recommend that the provincial Minister of Finance urge her federal counterpart to amend the *PCMLTFA* and associated regulations to include mortgage brokers as reporting entities.

At the provincial level, it is essential that the Province continue its efforts to modernize the regulatory regime that applies to mortgage brokers. It should do so by replacing the *Mortgage Brokers Act* with new legislation that clarifies the definition of “mortgage broker,” gives the new regulator rule-making authority, and provides for significant penalties – including the power to make a disgorgement order – in order to better deter unlawful activity.

I also consider it important that the provincial government introduce separate legislation aimed at regulating private mortgage lenders to help ensure that private lending is not used or exploited in furtherance of money laundering schemes.

In order to prevent the abuse of the court system to enforce loans made with illicit funds, I believe the Province should implement a mandatory source-of-funds declaration to be filed with the court in every claim for the recovery of a debt, such that no action in debt or petition in foreclosure can be filed (except by an exempted person or entity) in the absence of such a declaration. The court should have discretion to refuse to grant the order(s) sought by the claimant in a debt action or foreclosure petition if it is not satisfied that the declaration is truthful and that the funds advanced by the lender were legitimate.

Money laundering is not the cause of housing unaffordability

The public discussion about, and interest in, money laundering has been fuelled, in part, by rising real estate prices and the belief, by some, that high prices are the result of money laundering in BC real estate. Public attention has also been captured by the issue of foreign ownership in the BC real estate market. While the impact of money laundering and anti-money laundering measures on real estate prices is something that would benefit from further study, I am unable to conclude that money laundering is a significant cause of housing unaffordability in the residential real estate market.

I wish to be clear that I do not urge the provincial government to take up the recommendations contained in this Report on the basis that they will resolve British Columbia’s housing affordability challenges. There are strong reasons to think that fundamental factors such as supply and demand, population increase, and interest rates are far more important drivers of price. Money laundering should be addressed, to be sure, but steps taken to counteract money laundering should not be viewed as a solution for housing unaffordability.

Banks and credit unions dedicate great energy and resources to combatting money laundering, but serious risks persist

Banks and credit unions are gatekeepers to the financial system. They are prime targets for criminals who try to introduce their ill-gotten gains into the legitimate economy. Passing funds through a financial institution provides a façade of legitimacy, facilitates the transfer of funds (including abroad and to legal entities such as corporations or trusts), and in general makes it easier for criminals to use

their ill-gotten gains. Most criminals seeking to launder funds will attempt to use a financial institution at some point in their process.

Canadian banks face inherent risks of being targeted by money launderers. As of 2015, banks held over 60 percent of the financial sector's assets, by far the majority of which were held by the six largest domestic banks. Provincial credit unions and *caisses populaires* also handle vast sums of money – \$320 billion in assets as of 2014. Financial institutions frequently handle significant transaction volumes and offer services to a large client base, including high-risk clients and businesses. Services most at risk of being targeted for money laundering include deposit services, wealth management, investment banking, and correspondent banking.

Banks and credit unions have a variety of obligations under the *PCMLTFA*, including compliance programs, client identification and verification, record-keeping, and reporting. They invest a great deal into their anti-money laundering compliance programs and have good knowledge of the risks. However, as money laundering is a frequently moving target, they must not become complacent. It is crucial that banks and credit unions maintain their focus on anti-money laundering, stay aware of emerging threats, and adapt quickly to address new threats.

While information sharing is important in many sectors, it is especially so for financial institutions. As gatekeepers to the financial sector, these institutions are well placed to observe suspicious activity, report it to FINTRAC, and collaborate with law enforcement and government. Public-private partnerships between public bodies and financial institutions have not been used as frequently in Canada as in other countries. So long as they have clear parameters that respect constitutional and privacy principles, these partnerships should be pursued more often. The Province should introduce a “safe harbour provision,” which would allow provincial financial institutions to share information about potential money laundering with one another without giving rise to liability. The Province should encourage the federal government to do the same for banks.

BCFSA, which regulates provincial financial institutions, has taken some positive steps to integrate anti-money laundering into its regulatory framework. However, it appears that BCFSA is awaiting an explicit anti-money laundering mandate before taking further steps. The Province should provide BCFSA with a clear and enduring anti-money laundering mandate, and ensure that it has sufficient resources to fulfill this mandate.

Money services businesses present a significant money laundering risk; they should be regulated by the Province

Money services businesses (MSBs) are non-bank entities that provide transfer and exchange services, such as transmitting or exchanging funds and issuing or redeeming money orders. Virtual asset service providers and informal value transfer systems are both considered to be MSBs and are addressed separately below.

While there are many legitimate uses of MSBs, there are well-known money laundering risks associated with them. They are frequently used by professional money launderers, often in conjunction with other money laundering techniques. Many operate outside the traditional financial system and are difficult for law enforcement to identify and locate.

Although MSBs are subject to the *PCMLTFA*, that regime has deficiencies. Not all MSBs register with FINTRAC (as they are required to do every two years). This leaves FINTRAC and law enforcement in the dark about their activities. In addition, FINTRAC takes the approach that it can refuse registration *only* if an applicant has a criminal conviction for a specified offence. Being under criminal investigation or facing an outstanding charge is not enough. The result is anomalous: an applicant could be subject to a major and active money laundering investigation by law enforcement, but still get registered by FINTRAC. Indeed, that is what happened with one MSB in this province.

FINTRAC conducts relatively few compliance examinations of MSBs. When it does, few occur in the first years of an MSB's existence. Early examinations of MSBs would serve as a deterrent to those using MSBs for criminal purposes and would address situations where an MSB operates for two years and then re-registers with a new name, sidestepping the FINTRAC examination.

Given these risks and deficiencies in the MSB sector, the Province should regulate MSBs. BCFSA is well placed to take on this role. This will be a significant expansion to BCFSA's mandate, and the Province should ensure it has enough staff and resources to carry out this task. The regulatory regime should provide BCFSA with the ability to assess the suitability of applicants in a more meaningful way, not just asking if they have a conviction. There should be regular compliance examinations, especially during the first two years of an MSB's existence.

In establishing a regulatory framework for MSBs, British Columbia should draw from the experience in Quebec – the only province that regulates MSBs. While Quebec has encountered difficulties in the first years of regulating MSBs, its regime holds promise. The lessons learned in Quebec will be informative for our province.

A corporate beneficial ownership registry is essential to address money laundering risks in the corporate sector

Corporate and other legal arrangements play an important and legitimate role in the Canadian economy. There are, however, well-known money laundering risks associated with these arrangements. The risks stem principally from the anonymity that corporate and other legal arrangements can provide. Criminals can obscure their identity by hiding behind a company, or perhaps using a few different companies, to distance themselves from certain transactions and funds. Law enforcement efforts are often frustrated when corporate arrangements make it impossible to determine beneficial ownership. This is particularly so where offenders use complex, multilayered ownership and control structures to shield their identity.

Beneficial ownership transparency is a promising tool to address the risks associated with companies and other such arrangements. The question is no longer *whether* the Province should implement a beneficial ownership registry, but *how* it should be done. The federal government has recently made a strong commitment to establish a national beneficial ownership transparency registry. It has committed to doing so by the end of 2023. Given that commitment, the Province should devote its energy and expertise to working with its federal, provincial, and territorial partners to ensure that an effective, publicly accessible, pan-Canadian corporate registry is created and implemented on schedule.

It is critical that the registry be publicly accessible. Privacy concerns should be addressed by using tiered access (with more information available to government and law enforcement than what the public gets) and limited exemptions (allowing a person not to be listed publicly where, for example, personal safety concerns arise). The registry will also need a strong compliance and enforcement regime to ensure the accuracy and comprehensiveness of the information it contains.

Lawyers are exposed to significant money laundering risks, but are subject to extensive regulation by the Law Society of British Columbia

Lawyers do much of their work confidentially, and their zone of confidentiality is strongly protected. This is a sound principle, and it has been given constitutional protection. But the confidential nature of lawyers' work, coupled with the enormous variety and inherent nature of the transactions they are involved in, gives rise to an obvious risk of lawyers being used, knowingly or unwittingly, to facilitate money laundering.

Given the nature of sophisticated money laundering schemes – which use corporations, shell companies, real estate, and more – the involvement of a lawyer at some point is almost inevitable. While the extent of lawyer involvement in money laundering is unclear (given an absence of data), the risk is an obvious one.

Criminals can exploit features of the lawyer-client relationship. Solicitor-client privilege ensures that clients can be confident their communications will remain secret. Meanwhile, a lawyer's duty of commitment to the client means that the state cannot impose obligations on lawyers that interfere with their loyalty to the client's cause.

Solicitor-client privilege and the duty of commitment have received constitutional protection in Canada – for good reason. They encourage clients to speak freely with their lawyers, which in turn allows clients to receive informed advice and access the justice system. However, while legitimate clients benefit from these duties, criminals can abuse them.

Lawyers' trust accounts pose significant risks from a money laundering perspective. Recent case law from the Supreme Court of Canada suggests that transactions involving

a trust account are presumed to be privileged. As such, trust account records are generally out of reach for law enforcement. Passing funds through a trust account also cloaks transactions with an appearance of legitimacy, causing law enforcement, financial institutions, and others to ask fewer questions when a lawyer is involved.

Another key area of money laundering risk is the purchase and sale of real estate. Lawyers are routinely involved in real estate transactions, preparing title and mortgage documents, registering transfer of title, and receiving and disbursing funds through their trust accounts. Likewise, lawyers often assist with private lending schemes that can be used to launder money.

The same is true for incorporations, the creation of trusts and partnerships, and the facilitation of financial transactions. Legal entities and complex transactions can be used to conceal the true ownership of funds, and lawyers are instrumental in bringing them about.

While the foregoing risks are significant, the Law Society has mitigated many of them through robust regulation. Even though lawyers do not fall under the federal *PCMLTFA* regime, they do face extensive regulation for money laundering by the Law Society. This regulation goes a long way to addressing the exclusion of lawyers from the *PCMLTFA* regime, although there is room for improvement.

The Law Society regulates all aspects of lawyers' practice, and it has strong powers to investigate misconduct. It can overcome legal privilege, compel answers and documents, and use search and seizure-type powers. When misconduct is found, the Law Society can impose sanctions ranging from reprimands or fines to suspension and disbarment.

The Law Society has implemented a number of rules focused specifically on anti-money laundering. An important one is the **cash transactions rule**, which prohibits lawyers from accepting over \$7,500 in cash in any one client matter (with some exceptions). That rule is actually more stringent than large cash transaction reporting under the *PCMLTFA*, which requires those subject to the Act to *report* cash transactions of \$10,000 or more, but not necessarily *refuse* them. While some exceptions permit lawyers to accept over \$7,500 in cash, lawyers must make any refunds in cash, which goes some way to addressing the money laundering risk associated with accepting large amounts of cash.

The Law Society has also imposed a variety of **client identification and verification rules**, which, in many ways, parallel (or exceed) *PCMLTFA* measures.

Critically important to the Law Society's anti-money laundering regulation are its **trust accounting rules**. Lawyers must keep a variety of records, reconcile their trust accounts every month, make annual reports, and undergo regular audits. This oversight is crucial given that others, particularly law enforcement, cannot compel lawyers to produce privileged information or documents. The trust accounting rules and audit process significantly mitigate the money laundering risks associated with

trust accounts. However, given the potential for privilege to attach to trust account transactions, the Law Society should further limit what can enter a trust account in the first place, in order to ensure that trust accounts are used only when truly necessary.

In addition to these anti-money laundering rules, lawyers must comply with general ethical obligations. These include a prohibition on assisting crime, fraud, or dishonesty, and a requirement to withdraw if a client persists in instructing a lawyer to act contrary to professional ethics. These broad rules enable the Law Society to quickly respond to evolving risks; they are an important part of its anti-money laundering regulation.

A reporting regime for lawyers poses significant constitutional challenges and should not be pursued

Unlike many professionals, lawyers are not subject to the *PCMLTFA*. The federal government attempted to include them in the regime in 2001; however, the Supreme Court of Canada determined in 2015 that it had not done so in a constitutionally compliant way. The Court concluded that the regime (a) authorized searches of lawyers' offices that inherently risked violating solicitor-client privilege, and (b) was inconsistent with lawyers' duty of commitment to their clients' causes.

Since the Supreme Court's decision, the federal government has not enacted new legislation to bring lawyers into the *PCMLTFA* regime. Critics contend that the failure to do so means there is a gap in Canada's anti-money laundering regime, and that lawyers in this country are not regulated for anti-money laundering purposes.

These critiques are too simplistic. It is true that the exclusion of lawyers from the *PCMLTFA* regime means that FINTRAC does not receive reports from lawyers; it therefore lacks the same lens into lawyers' (and their clients') activities as it has for other professions. There are also unique challenges for law enforcement when investigating cases involving lawyers because of solicitor-client privilege and the lack of reporting by lawyers. However, it is inaccurate to say that lawyers in British Columbia are not regulated for anti-money laundering purposes. Lawyers are subject to extensive anti-money laundering regulation by the Law Society, and that regulation has gone a long way to addressing many of the money laundering risks in this sector.

This Report is not the proper forum to determine if it is possible to create a constitutionally compliant reporting regime for lawyers. However, attempting to do so would be very challenging due to issues with solicitor-client privilege and the duty of commitment. Given these difficulties, the Province should not attempt to design a constitutionally compliant reporting regime at the provincial level.

However, this is not to say that lawyers cannot be regulated for anti-money laundering purposes. They should be, and they are. The regulation simply takes a different form than other sectors, in order to accommodate the constitutional rules that

apply to lawyers. Instead of a reporting regime for lawyers, a better approach to anti-money laundering efforts in the legal sector should focus on:

- continuing to revisit and expand anti-money laundering regulation by the Law Society, including limiting the circumstances in which a client's funds can enter a trust account;
- strengthening and making better use of information-sharing arrangements between the Law Society and other stakeholders;
- increasing the Law Society's use of its ability to refer matters to law enforcement where there is evidence of a potential offence;
- encouraging law enforcement to make better use of existing mechanisms by which it can access the information it needs from lawyers during investigations; and
- increasing public awareness about these measures to counter any perception that transactions conducted through a lawyer in furtherance of an unlawful aim are immune from detection.

It is also essential that law enforcement bodies and regulators bring concerns about the involvement (or potential involvement) of lawyers in money laundering activity to the attention of the Law Society for investigation.

The Chartered Professional Accountants of British Columbia must regulate its members for anti-money laundering purposes

Accountants are gatekeepers to the financial system because of the knowledge and skill they have and use to structure their clients' finances in a tax-efficient manner. Their status as gatekeepers, coupled with the nature of their work, gives rise to the risk criminals will employ them – knowingly or unwittingly – in money laundering.

While there is an unfortunate lack of data on the extent of accountants' involvement in money laundering, the risks are nonetheless clear and significant. The key areas of risk are financial and tax advice; private-sector bookkeeping; company and trust formation; buying or selling property; and performing financial transactions. A money launderer may make use of an accountant's services in one or a number of these areas. The more sophisticated money laundering operations get, the greater the chance that bad actors will seek out an accountant for advice and to help manage large amounts of capital and avoid scrutiny by authorities.

There are three key ways that regulation in the accounting sector in British Columbia is inadequate in relation to money laundering risks.

First, a large proportion of accountants are not regulated at all. Only chartered professional accountants (CPAs), about one-third of the accounting profession, are regulated. Similarly, while CPAs are subject to the *PCMLTFA*, unregulated accountants

are not. As a result, the majority of individuals working as accountants in this province are not subject to any oversight. While it seems likely that many of the same money laundering risks would apply to unregulated accountants as CPAs (given the overlap in services provided), there is much we do not know about the unregulated accounting sector in British Columbia. The Province should study the nature and scope of work performed by unregulated accountants, in order to know where they work, what clientele they service, what services they provide, whether the services pose a significant risk of facilitating money laundering, and, if so, what oversight is warranted.

Second, while the Chartered Professional Accountants of British Columbia (CPABC) provides extensive regulation of CPAs for accounting purposes, it maintains that its mandate does not, and should not, extend to anti-money laundering regulation. CPABC takes the position that all such responsibility rests, and should continue to rest, with FINTRAC. This position should be rejected. It is inconsistent with CPABC's statutory mandate, which includes regulating *all* matters relating to the practice of accounting, including competency, fitness, and professional conduct. It is also inconsistent with CPABC's rules. Those rules require CPAs to act in the public interest, avoid conduct that would discredit the profession, not associate themselves with activity that they know or should know is unlawful, and report illegal and dishonest conduct to CPABC.

Third, the *PCMLTFA* captures only limited activities undertaken by CPAs, applying only when they:

- receive or pay funds or virtual currency;
- purchase or sell securities, real property or immovables, or business assets or entities; or
- transfer funds, virtual currency, or securities by any means.

This list excludes a number of activities that CPAs (and unregulated accountants) engage in and that pose money laundering risks. It notably excludes providing *advice* with respect to those activities, which appears to be a far more common service provided by accountants, and one where they are well placed to observe suspicious activity. When accountants assist and advise clients, they gain an in-depth understanding of the client's finances; they are well situated to spot suspicious activity.

It appears that CPAs' compliance with the *PCMLTFA* is low, with only one suspicious transaction report being filed between 2011 and 2015. While other reasons could contribute to lower reporting, it is highly unlikely that only one CPA identified a suspicious transaction between 2011 and 2015. Despite this almost complete absence of reporting, FINTRAC conducts few compliance examinations of CPAs. The examinations it has done have revealed deficiencies in CPAs' compliance; however, no CPA or firm has ever received an administrative monetary fine.

These points, combined with CPABC's position that its mandate does not extend to anti-money laundering, have resulted in a lack of meaningful anti-money laundering regulation in the accounting sector. CPABC should begin regulating its members for anti-money laundering purposes promptly. The fact that FINTRAC administers the *PCMLTFA* does not mean that it is the sole "anti-money laundering regulator," nor does it mean that CPABC should not also regulate for that purpose. To the contrary, there is a pressing need for anti-money laundering regulation by the regulator closest to accountants and most aware of their activities: CPABC.

To address risks in the luxury goods sector, the Province should implement a reporting regime in which all cash transactions over \$10,000 must be reported to a central authority

The category of "luxury goods" extends beyond expensive cars, jewellery, and yachts. Many goods that we do not usually think of as "luxuries" give rise to the same money laundering risks. For anti-money laundering purposes, this category should include any good that has a high value, a capacity to retain value, transferability, and portability.

Luxury goods are inherently vulnerable to money laundering. Criminals can use large amounts of cash to buy such goods. Then, they can be moved more easily and less suspiciously than bulk cash. Many of the goods criminals target retain or increase in value over time, and they can ultimately be sold. The inherent risks are heightened in British Columbia because luxury goods markets are generally composed of many small retailers who have little to no regulation.

The significant risk of money laundering in the luxury goods sector calls for forceful regulatory oversight and response. But to date, little has been done. Many markets have no regulation, and those with regulation often have done nothing to address money laundering risks. Luxury goods markets are also somewhat of a black box; there is little information about what is actually going on.

Any effort to combat money laundering in this sector needs to deal with this lack of visibility. I recommend that the Province implement a record-keeping and reporting regime, in which all cash transactions over \$10,000 (with narrow exceptions) must be reported to a central authority. The AML Commissioner should have access to this data. This will be a strong starting point and will enable the Province, with advice from the AML Commissioner, to develop sound policy and regulation for the luxury goods sector.

The main purpose of the reporting regime will be to guide anti-money laundering policy development. It will shed light on what is occurring in the luxury goods sector. It will provide valuable insight into markets and geographic locations, to know where enhanced anti-money laundering measures should be targeted. It should also deter large cash transactions from occurring at all, particularly by those seeking to avoid scrutiny.

The Province must be able to act on the information quickly to address emerging money laundering risks. To that end, I am recommending that the Province establish a mechanism by which a government minister, in consultation with the AML Commissioner, can quickly implement measures to address new and evolving risks in luxury goods markets.

Trade-based money laundering, informal value transfer, and bulk cash smuggling are money laundering typologies that demand attention from law enforcement and regulators

Much money laundering activity occurs in the context of legitimate business sectors and takes advantage of gaps in regulatory oversight or understanding. However, money laundering also takes place in the informal or “underground” economy, outside the regulated financial system. As such, the activity is far less likely to be caught by countermeasures put in place by countries that have adopted the Financial Action Task Force model, which is premised on a concept of industry actors reporting suspicious activity within their industries, but that will not capture activity that does not involve reporting entities. Informal value transfer systems and bulk cash smuggling are two such activities, and trade-based money laundering, while not entirely “underground,” is closely linked.

Trade-based money laundering

Trade-based money laundering is arguably one of the largest and most pervasive money laundering typologies in the world. It refers to the process of disguising illicit funds and moving value between jurisdictions through international trade transactions. Complicit sellers and buyers in different jurisdictions use a variety of techniques to misrepresent the price, value, quantity, or quality of imports or exports.

A 2020 assessment by the Canada Border Services Agency suggests that *at a minimum*, hundreds of millions of dollars are laundered through trade to and through Canada each year, including a significant percentage of activity carried out by professional money launderers. British Columbia is particularly vulnerable because of its international shipping ports; large volume of international trade; and stable, accessible financial system.

Trade-based money laundering can hide in plain sight. Given the sheer volume of international trade, customs officials are unable to check every transaction and shipment to verify the accuracy of what is documented or reported. Those engaged in trade-based money laundering take advantage of the imbalance between the large volume of trade and the relatively limited level of oversight. Trade-based money laundering can also be combined with other money laundering tools – such as the use of shell companies, offshore accounts, nominees, legal trusts, third-party payment methods, and cryptocurrencies – which add complexity to investigations that are already challenging.

Faced with such complexities, investigative agencies have often done little to address trade-based money laundering. This is highly problematic, considering the volume of illicit funds that can be laundered in this way. While the RCMP, which has primary responsibility for the investigation of trade-based money laundering, has recently increased the number of investigators examining money laundering issues, it appears there have been no successful trade-based money laundering investigations or prosecutions in recent years.

A number of steps could be taken at the federal level to address trade-based money laundering, which the Province should encourage. A **trade transparency unit** is one of the most promising options. Such a unit would collect customs and trade data and share it with other countries, in order to identify anomalies that could demonstrate over- and under-invoicing. **Advanced data analytics** can be used to identify anomalies in Canadian trade data and to detect and measure the flow of illicit funds without needing to examine every shipment of goods into and out of the country. Improved **information sharing** is also crucial to investigations of trade-based money laundering.

Informal value transfer systems

Informal value transfer systems allow people to move *value* from one location to another without transferring *funds* through the regulated financial system. When a client needs to transfer funds, the money is paid into a “cash pool” in the first location and paid out of the cash pool in the second jurisdiction where the recipient needs the money. Over time, the operator of the informal value transfer system may need to reconcile the cash pools to keep them in balance. However, there is no transfer of funds on an individual basis. In this way, individuals are not actually sending *funds* across borders.

While informal value transfer systems have many legitimate uses, they also pose significant money laundering risks. They are “off the books,” often lacking official records, and not formally part of the financial system. Some operators may be unwittingly involved in money laundering schemes; others are complicit. Criminal groups – particularly professional money launderers – frequently control and make use of informal value transfer systems for money laundering.

Informal value transfer systems have undoubtedly been used to launder significant sums of money in British Columbia. Organized crime groups have used a technique dubbed the “Vancouver model” to launder significant sums of money through the British Columbia economy. The model makes extensive use of informal value transfer systems to move value between the Lower Mainland and countries such as China, Mexico, and Colombia.

Although FINTRAC considers informal value transfer systems to be money services businesses, and therefore subject to the *PCMLTFA*, it is challenging to identify operators that do not comply with that regime. The very limited regulation and supervision of

informal value transfer systems allows them to be used for money laundering without detection or intervention.

Identifying criminally run informal value transfer networks is primarily a task for law enforcement. It will be crucial for the dedicated provincial money laundering intelligence and investigation unit to seek to identify and develop intelligence on these networks.

Bulk cash smuggling

Bulk cash smuggling refers to the practice of moving large quantities of cash across international borders contrary to currency reporting requirements. Despite the rise of non-cash payment methods, cash continues to be the raw material of most criminal activity. Cash is attractive to criminals because it is relatively untraceable, readily exchangeable, and anonymous. The prevalence of illicit cash remains a significant problem in Canada.

Given that much criminal activity continues to generate cash and that it is increasingly difficult to conduct all of one's transactions in cash (due to anti-money laundering measures such as cash transaction reporting rules), criminals need to find ways to move large quantities of cash back into the legitimate economy. A common way of doing so is to move the cash to another country and thereby "break the audit trail" – in other words, make it more difficult for authorities to link the cash to the original criminal activity. Moving cash to another country is also attractive where the second jurisdiction has less stringent anti-money laundering regulation, such that it is easier to introduce the cash into the legitimate financial system without attracting scrutiny.

Given its inherently international dimension, bulk cash smuggling falls to be addressed primarily at the federal level. However, the AML Commissioner will be well placed to engage in ongoing monitoring and research into bulk cash smuggling, and to make recommendations to the Province. Similarly, the dedicated provincial money laundering intelligence and investigation unit must be alive to ways in which the movement of cash is a component of money laundering operations.

Cryptocurrency is an emerging money laundering vulnerability; it should be addressed through provincial regulation

Cryptocurrency is a new and rapidly evolving technology that is already being exploited for money laundering and other forms of criminality. Because of its newness, many – including government, regulators, and law enforcement – lack the expertise to investigate crime that makes use of it. These features make cryptocurrency vulnerable to exploitation by money launderers.

The regulation of cryptocurrency is very new – the *PCMLTFA* has only captured it since 2020. That is a good first step. But given the significant risks in this sector, the Province should also regulate virtual asset service providers. The Province will need

to determine who is best suited to do this, whether it be BCFSA, the BC Securities Commission, or another body. It is crucial for government, regulators, and law enforcement to develop in-house expertise on cryptocurrency.

Reasons for optimism

This Inquiry explored the myriad ways in which the greedy and the devious seek to make their crime-stained money appear legitimate. After such an endeavour, it might be forgivable to abandon optimism about stopping such enterprises and question whether anything can be done to suppress the relentless surges of dirty money that pollute the social and economic environment of the community. However, it is important to maintain the will to combat this social ill.

The adaptability of money launderers poses a challenge to law enforcement. The enormous variability and ever-changing nature of money laundering activity make it different from the majority of crime. Many of my recommendations address the need for a corresponding adaptability in how responsible government, regulatory, and law enforcement actors respond to this challenge.

A key feature of the proposed response is the AML Commissioner, who will be devoted to understanding the economic and social environment, exploring how and where it is at risk of contamination from money laundering, and advising on how best to defend the integrity of our society and economy. In addition, the creation of a dedicated provincial money laundering intelligence and investigation unit will permit a sustained and effective response to money laundering.

Money laundering, as with any entrenched and complex problem, requires a strong political will to oppose and deter it. From what I have seen, heard, and read during this Inquiry, the provincial government has, in recent years, demonstrated a strong will, and it is working on strategies to convert its will into action.

There is thus room for optimism that, at least in British Columbia, what *can* be done *will* be done to come to grips with the money laundering threat. But because of Canada's constitutional makeup, there is only so much one province can do to address a problem that has national and international dimensions. Because this Inquiry is provincially constituted, it is similarly constrained in the reach and impact of its findings and recommendations. The Province cannot tackle money laundering alone; it needs the support of the federal government.

This Inquiry has shone a light on the integral connection between organized crime and money laundering, and I recommend concrete responses. The organized criminal activity that plagues British Columbia is, no doubt, also present in other provinces. Solutions that prove effective in British Columbia can serve as an example to the rest of Canada. A heightened international focus on money laundering appears to have served as a galvanizing agent for the federal government to step up its anti-money laundering

commitment and efforts. If this commitment is sustained, it holds promise that an improved federal response will be mounted.

It is increasingly clear that taking firm and willful steps to prevent money laundering and the criminality it represents is critically important. The growing recognition of the need to fight such a corrosive form of criminality, and the commitment to do so, gives rise to optimism that British Columbia can lead by example.