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DIRTY MONEY – PART 2

**Turning the Tide - An Independent Review of Money Laundering in
B.C. Real Estate, Luxury Vehicle Sales & Horse Racing**

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Peter German & Associates Inc.

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"we... weaponized the money... by focusing on the money flowing back to sources of supply, our seizures had a much greater impact on the supply chain."

- Don Semesky, former Chief of the Office of Financial Investigations, U.S. Drug Enforcement Administration and expert witness at the trial of El Chapo Guzman

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ACRONYMS & TERMS

AAFC	Agriculture and Agri-Food Canada
ABA	American Bar Association
ACAMS	Association of Certified Anti-Money Laundering Specialists
ACMLTF	Advisory Committee on Money Laundering and Terrorist Financing
ADM	Assistant Deputy Minister
AFT	Asset Forfeiture Team
AGBC	Attorney General of British Columbia
AGCO	Alcohol and Gaming Commission of Ontario
AML	Anti-money laundering
AMP	Administrative Monetary Penalty
Austrac	Australian Transaction Reports and Analysis Center
ATTF	Auto Theft Task Force
BCA	B.C. Assessment Authority
BCCA	B.C. Court of Appeal
BCHRIMC	B.C. Horse Racing Industry Management Committee
BCLC	B.C. Lottery Corporation
BCLI	B.C. Law Institute
BCPS or Prov. Crown	B.C. Prosecution Service
BCSC	B.C. Supreme Court or B.C. Securities Commission
BVI	British Virgin Islands
CAA	Canadian Automobile Association
CADA	Canadian Auto Dealers Association

CAMA	Canadian Pari-Mutuel Agency
CAMLO	Chief Anti-Money Laundering Officer
CBL	Claim of Builders lien
CBSA	Canada Border Services Agency
CDD	Client Due Diligence
CDR	Casino Disbursement Report
CFA	<i>Civil Forfeiture Act</i>
CFO	Civil Forfeiture Office
CFSEU – BC	Combined Special Enforcement Unit – B.C.
CHBABC	Canadian Home Builders' Association British Columbia
China CITIC	China CITIC Bank International
CISC	Criminal Intelligence Service Canada
CMHC	Canada Mortgage and Housing Corporation
CPI	Consumer Price Index
CPIC	Canadian Police Information Centre
CPMA	Canadian Pari-Mutuel Agency
CRA	Canada Revenue Agency
CREA	Canadian Real Estate Association
DEA	Drug Enforcement Administration (U.S.)
DPU	Designated Policing Unit
EFT	Electronic Funds Transfer
EFTR	Electronic Funds Transfer Report
eTA	Electronic Travel Authorization
EU	European Union

FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation (U.S.)
FCA	Financial Conduct Authority (U.K.)
<i>Federation case</i>	<i>Federation of Law Societies Canada v. Canada (Attorney General)</i>
FICOM	Financial Institutions Commission
FinCEN	Financial Crimes Enforcement Network (U.S.)
FinTRAC	Financial Transaction and Reports Analysis Centre of Canada
FIU	Financial Intelligence Unit
FSOC	Federal & Serious Organized Crime (RCMP)
GCA	<i>Gaming Control Act</i>
GCGC	Great Canadian Gaming Corporation
GPEB	Gaming Policy & Enforcement Branch
GDP	Gross Domestic Product
GST	Goods and Sales Tax
GTO	Geographic Targeting Order
HA	Hells Angels
Hastings	Hastings Racecourse
HKJC	Hong Kong Jockey Club
HPIbet.com	Horse Player Interactive
IBC	Insurance Bureau of Canada
ICAC	Independent Commission Against Corruption (Hong Kong)
ICBC	Insurance Corporation of British Columbia
ICE	Immigration and Customs Enforcement (U.S.)
IHIT	Integrated Homicide Investigation Team

IMPACT	Integrated Municipal Provincial Auto Crime Team
IPOC	Integrated Proceeds of Crime
IRS	Internal Revenue Service (U.S.)
JIGIT	Joint Illegal Gaming Investigation Team
KYC	Know Your Customer
LandSure	LandSure Systems Ltd.
LCTR	Large Cash Transaction Report
LOTA	<i>Land Owner Transparency Act</i>
LSBC or Law Society	Law Society of B.C.
LSBC Code	<i>LSBC Code of Professional Conduct</i>
LTSA	Land Title and Survey Authority
LTV	Loan-to-Value
MEOC	Middle Eastern Organized Crime
MIC	Mortgage Investment Corporation
MIE	Mortgage Investment Entity
MLS	Multiple Listing Service
MOU	Memorandum of Understanding
MSB	Money Service Business
MVTS	Money or Value Transfer System
NCA	National Crime Agency (U.K.)
NCDA	New Car Dealers Association
Notaries Society	Society of Notaries Public of B.C.
OC	Organized Crime
OCA	Organized Crime Agency

OECD	Organization of Economic Co-operation and Development
OPBAS	Office for Professional Body Anti-Money Laundering Supervision (U.K.)
OPP	Ontario Provincial Police
OSFI	Office of the Superintendent of Financial Institutions
PDF	Portable Document Format
PEP	Politically Exposed Person
PIDS	Personal Identifiers
PMLO	Professional Money Laundering Organization
PNE	Pacific National Exhibition
POCA	<i>Proceeds of Crime Act (UK)</i>
POCMLTFA	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i>
PPSC or Fed. Crown	Public Prosecution Service Canada
PRC	People's Republic of China
PSC	Public Safety Canada
PS&SG	Public Safety & Solicitor General (B.C.)
PST	Provincial Sales Tax
RCMP	Royal Canadian Mounted Police
REABC	Real Estate Association of B.C.
REIT	Real Estate Investment Trust
RMB	Renminbi
SAFE	State Administration of Foreign Exchanges (PRC)
SCC	Supreme Court of Canada
SPV	Special Purpose Vehicle
SRE	Superintendent of Real Estate

SRO	Single-Room Occupancy
STR	Suspicious Transaction Report
Tanyuan	Tanyuan Wood Business Co. Ltd. (PRC)
TBML	Trade-Based Money Laundering
TI	Transparency International
TOC	Transnational Organized Crime
TOR	Terms of Reference
TPR	Terrorist Property Report
TPS	Toronto Police Service
UBC	University of British Columbia
UDI	Urban Development Institute
UN	United Nations
UWO	Unidentified Wealth Order
VIN	Vehicle Identification Number
VIR	Voluntary Information Report
VPD	Vancouver Police Department
VSA	Vehicle Sales Authority
WVPD	West Vancouver Police Department
Woodbine	Woodbine Entertainment Group

INTERPRETIVE NOTES

The previous Review of money laundering in Lower Mainland casinos, which led to the *Dirty Money Report* is referred to here as either *Dirty Money* (when referring to the Report) or Phase One (when referring to the Review).

The real estate, luxury vehicle and horse racing industries have unique lexicons all to themselves. For the benefit of the uninitiated, we attempt to explain some of these unique words and terms. Although the TOR refers to Luxury Autos, we have used that term interchangeably with luxury vehicles.

Use of the term Greater Vancouver is not intended to refer to a specific municipal authority, but in a generic sense, intended to recognize that the issues discussed in this Review occurred throughout the Lower Mainland of British Columbia.

The term ‘law enforcement’ is often used in a generic sense to include police and regulators.

For clarity, we have capitalized reference to this Review, the Report, and its Findings.

EXECUTIVE SUMMARY

INTRODUCTION

All those attributes which make Greater Vancouver a very desirable region in which to live, also make it desirable to organized crime (OC). In recent years, the region has acquired an unenviable reputation for serving as a site for money laundering, drug trafficking, and capital flight. The region is home to dozens of organized crime groups, including many with transnational connections that reach most continents of the world.

We already know that money laundering was occurring in Lower Mainland casinos for the better part of a decade and was so notorious that an expert on Asian organized crime observed the phenomenon from his university in Australia and called it the 'Vancouver Model'. This term resonated in the media and was repeatedly used with reference to what was taking place in the casinos. As we shall see in this report, the same model or typology of money laundering was also occurring in other sectors of the economy and continues to this day.

It is both an embarrassment and a threat to a society that adheres to the Rule of Law, for organized crime to take advantage of all that is good in our society and subvert it for pecuniary advantage. Organized crime survives because there is a market for its product. This includes those who purchase illegal drugs, counterfeit products, and stolen property, as well as those who operate in the underground economy and subvert tax laws.

Money laundering may also occur a great distance from the predicate offences which produced the proceeds of crime. In this context, it is alarming to know that Greater Vancouver has also acted as a laundromat for foreign organized crime, including a Mexican cartel, Iranian and Mainland Chinese organized crime, all seeking a safe and effective locale in which to wash their proceeds of crime.

This Report serves as a further window into the money laundering that exists in Greater Vancouver and provides potential solutions to a vexing problem, which simply cannot be allowed to continue unchecked.

The *Dirty Money* report released by the Attorney General in June 2018 focussed on the laundering of cash in casinos. This is an example of the first stage of money laundering, referred to as placement (the wash cycle). In it, illegal proceeds of crime find a way into the mainstream financial system. In *Dirty Money - Part 2*, we provide many more examples of dirty cash moving into the mainstream financial system, but we also consider the second (layering) and third (integration) stages of money laundering, which involve the movement of dirty money, generally through wire transfers or underground bankers. These transactions or arrangements occur in nanoseconds and are intended to disguise the money trail, purchase new illegal product, or spend the profits of crime.

REAL ESTATE

In the past few years, Greater Vancouver has been at the confluence of the proceeds of criminal activity, large amounts of capital fleeing China and other countries, and a robust underground economy seeking to evade taxes. These three rivers of money coalesce in Vancouver's property market and in consumer goods.

We make no attempt, nor have we been asked to quantify these money streams, although many estimates are already in the public domain. What is clear is that the total sum is large and to ask if it has impacted housing prices in certain communities of the Lower Mainland is really a rhetorical question. Of course, it has. As we demonstrate in this Report, the infusion of money into the B.C. economy from abroad led to a frenzy of buying, which in turn raised the assessed value of homes in large swaths of Greater Vancouver.

Opaque ownership structures allow criminals to remain anonymous and provide a veil with which to conceal money laundering activity in real estate. Of the legal entities that hold \$28 billion in residential property in B.C., the vast majority are privately owned with no information on who ultimately controls them. There is no way to accurately identify nominee owners or properties held through unregistered trusts. Requiring beneficial owners to be identified for all properties (including those held through nominees) would make money laundering in B.C. a much less desirable business.

Unfinanced purchases, or 'cash buys', comprise 17% to 21% of residential transactions in B.C. They are more common among higher-risk buyers such as companies (29% to 38%), trusts (58%), nominees (20% to 28%) and offshore buyers (32% to 40%). The aggregate declared value of cash buys in the past 20 years is \$84 to \$212 billion¹ (the current assessed value of those properties is much higher, at \$230 to \$440 billion).

Private lending is a major money laundering vulnerability. It is a growing segment of the mortgage industry and is not subject to statutory AML (Anti-Money Laundering) oversight. Mortgages from unregulated lenders were a common feature in the sample of properties we analyzed which had known or suspected ties to criminal activity. They also feature disproportionately in our analysis of other finance-related money laundering indicators such as unusual loan-to-value ratios and interest rates, as well as instances where a titleholder has obtained multiple successive mortgages which are quickly repaid.

Extending the reach of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (POCMLTFA)* to include certain classes of unregulated lenders (such as Mortgage Investment Entities, or those whose lending is above a certain threshold) could deter the use of mortgages as a conduit for money laundering. The Province could explore additional regulatory measures

¹ \$84 billion is a highly conservative estimate, where no mortgage was ever registered on title. The larger \$212 billion figure includes transactions since January 1999 where no mortgage was registered within the first 30 days.

for the unregulated lending sector, such as beneficial ownership disclosures and annual financial reporting.

Identifying properties that are owned by overseas buyers (including those from high-risk jurisdictions) is practically impossible due to the potential disconnect between titleholders and beneficial owners. Only 1% of titles have an owner who lists a service address outside Canada, which appears to greatly underestimate foreign ownership. Foreign capital can be channelled through local nominees or companies, or a foreign owner can simply use a local address. There are approximately 1,800 B.C. properties owned by offshore companies (2% of the total). This may be due in part to the lack of transparency in B.C. registered companies, which are just as effective in concealing ownership as many of their offshore counterparts.

A beneficial ownership component to property registration would provide greater clarity regarding foreign ownership and, by extension, disclose whether, or not the funds used for the purchase of property originated offshore. Taking legislative steps to make B.C. companies more transparent would make them less vulnerable to money laundering and other criminal activity.

The poor quality of much of B.C.'s real estate data is a significant yet less obvious money laundering vulnerability. Much of the data collected by the Land Title and Survey Authority is in a format that cannot be machine-read, and most fields in its electronic forms are not reliant on drop-down options but rather, allow an applicant to enter any text or figures they wish. This makes it difficult to conduct the sort of analysis that could identify suspicious transactions and patterns.

The Land Title and Survey Authority (LTSA) and BCA have access to powerful databases that could be used to screen for suspicious activity and identify possible money laundering. Neither organization currently has the capacity or mandate to do so. Embedding an AML function with an analytics capability and full access to each other's dataset could improve detection, serve as a deterrent, and improve information sharing with law enforcement and industry regulators.

The media has drawn attention to the fact that some registered charges on property titles are being used by organized crime to enforce illegal loans and payback schemes. We have seen this with mortgages and, to a lesser extent, builders liens. What is even more troubling are attempts to enforce these illegal bargains in the civil courts, presumably on the assumption that justice is blind to what is occurring.

LAWYERS AND NOTARIES

In this Report, we provide a detailed overview of the role of the legal profession in Canada and B.C. with respect to financial transparency and client due diligence. We note that the burning issue is the continuing inability of the federal government to address the Supreme Court of Canada's (SCC) 2015 decision in the *Federation of Law Societies* case (*Federation case*),² which

² *Federation of Law Societies Canada v. Canada (Attorney General)*, 2015 SCC 7.

essentially exempted the legal profession from financial reporting to the Financial Transaction and Reports Analysis Centre of Canada (FinTRAC).

The SCC left it open to Parliament to develop a workaround that would provide a form of reporting which could help prevent lawyer trust accounts from becoming a sanctuary for dirty money while also dealing with concerns over solicitor-client privilege. The absence of a cure has left it to the provincial law societies to impose rules of conduct on their members that attempt to assuage the concerns of international bodies, which view Canada as an outlier, and of law enforcement, which has enumerated numerous examples in which trust accounts have been misused.

In B.C., we have some of the strongest rules in place for lawyers, and yet there is no external reporting, and there is no visibility with respect to what is in a lawyer's trust account. There are a plethora of rules concerning the reporting of deposits made to realtors and brokers, and yet closing funds can arrive in a trust account through a ubiquitous electronic transmission that says virtually nothing about the true source of funds. In terms of cash, it has frequently been noted that lawyers cannot accept in excess of \$7,500 (less still for notaries), and yet the exemptions to that rule allow for any amount of cash for the payment of fees and expenses, and for bail.

Furthermore, in B.C. lawyers can represent one party to a sale and be under no obligation to report suspicious transactions, while a B.C. notary may represent the other party to the same transaction and be under an obligation to report. In fact, in B.C., lawyers can also act as realtors. Notaries for their part embrace Canada's financial reporting regime and have improved their reporting to FinTRAC.

In the end, it is most important that it be possible to trace dirty money as it transits across the oceans, into and out of bank and trust accounts. Without this ability, law enforcement is left with a partial money trail, which many will argue is of little use.

THE LUXURY VEHICLE MARKET

Greater Vancouver has been described as the luxury car capital of North America. In some cities within the region, it is by no means rare to see Ferraris, Lamborghinis, Mercedes-Benz, and BMWs near to each other in a mall parking lot or filling up at the same gas station.

The traditional intersection between vehicles and crime involves their theft, or theft from them. Much like violent street crime, this is a visible problem which impacts individuals when they find their car is missing or has been vandalized. What we examined, however, was the involvement of organized crime with luxury vehicles. This is a world-wide phenomenon, which serves various purposes including laundering money and funding terrorism.

Vehicles, like real property, can serve as a mobile bank account in which dirty money can be invested and later sanitized. They can also service the lifestyle of criminals who seek to flaunt their riches. Many have died in their cars and we document that as well. It should come as no

surprise that gangsters tend not to drive ‘smart cars’. High-end vehicles are their preference, except for the use of ‘disposable cars’ when it comes to actually committing a crime of violence.

There has never been a detailed examination of money laundering and luxury vehicle sales in this country. We were surprised and shocked to learn how prevalent it was in certain areas of Greater Vancouver and how candid some dealers were when speaking with us.

There is no mandatory financial reporting of new or resale luxury car sales, or car leases in Canada. FinTRAC has little to no visibility in this sector. We heard stories from dealers, who described gangsters bringing bags of money into dealerships to purchase cars. The dealers then had to transport that cash to their bank, where it was accepted without hesitation. One dealer described large cash purchases occurring on a monthly basis. Police investigators from several agencies also provided examples of money laundering by gangsters through vehicle purchases and leases, as well as considerable concern with some luxury vehicle resellers.

During the course of this Review, we became aware of a multi-million dollar scheme to purchase luxury vehicles in B.C. and ship them to China, at a great profit. Much of this activity violates arrangements which vehicle manufacturers have with their dealers, but the greater concern is that it is an underground activity involving straw persons who purchase vehicles as nominees for exporters. Purchases can take place with cash, with money transmitted electronically, or through underground banking arrangements.

This scheme interfaces with the legitimate economy when a straw buyer seeks a refund of the provincial sales tax paid on the purchase, due to it being purchased for export. Through the co-operation of provincial tax authorities, we learned of the great cost involved in processing these claims and that in excess of \$50 million has been returned by the province to straw buyers, despite many having dubious documentation and explanations for why they engaged in these transactions.

There have been no large-scale police operations involving the luxury car market in B.C. The cars which have been seized, and many have, are the by-product of other criminal activity, such as drug dealing, and are almost always disposed of through civil forfeiture.

HORSE RACING

Horse racing has been the sport of queens and kings for centuries. Today in B.C. it tends to be a sport dominated by an older crowd, many of whom enjoy the ability to bet on races, either at a track or online. B.C.’s two active racetracks are propped up financially by the co-location of slot machines.

There has never been a detailed examination of the criminal aspects of this industry in B.C. We undertook a detailed review of its vulnerabilities. It was refreshing to learn that insiders expressed a willingness to work on any improvements.

Although the horse racing sector is small, we point out various opportunities for money laundering and once again, the absence of both financial reporting to FinTRAC, and of a dedicated enforcement presence. We believe that horse racing should be subject to federal financial reporting and be included in the mandates of both the independent casino regulator and the Designated Policing Unit (DPU) recommended in the *Dirty Money* report. This would be consistent with what occurs in Ontario, which is home to Canada's largest horse racing sector.

OTHER FORMS OF MONEY LAUNDERING

The absence of mandatory cash reporting to FinTRAC was a recurring theme in this Review. Canada has adopted a financial reporting model which includes some sectors of the economy and excludes others. This ignores the fact that an effective response to organized crime must be uniform across sectors.

Repeatedly we learned of businesses, exempted from financial reporting, that were susceptible to organized crime and money laundering. We saw this in the private mortgage and lending sphere, with luxury autos, with betting on horse races and the sale of horses, and a number of other less obvious business streams; including building supplies, home furnishings, and college tuition. In the United States, universal reporting has existed for many years and is not viewed as an undue burden on industry.

Many who oppose reporting point to the fact that virtually all legitimate businesses will deposit their cash in a mainstream financial institution, which is captured by reporting requirements to FinTRAC. This argument is flawed. Reporting must occur at the transactional level. The bank teller has no idea that the car dealer sold a luxury vehicle to a known gangster who arrived at the dealership with a shopping bag containing cash. All that she or he sees is the cash on the counter and a reputable dealer asking to deposit the money in a long-standing corporate account.

A rhetorical question we heard many times during this Review was from persons who supported improved reporting. They asked, quite simply, who do you know that carries \$5,000 or \$10,000 or \$100,000 in cash on their person? It is simply not common in this day, and age. Reporting should not pose an undue burden on business. The impact on the flow of dirty money and the underground economy would be immediate and stem the 'whack a mole' trend that we have described, whereby organized crime moves from one vulnerable industry to another.

Geographic Targeting Orders (GTO), such as those in use in the U.S., can supplement universal cash reporting by imposing specific identification and reporting requirements in geographic regions which are at greater risk of dirty money being inserted into real estate or other sectors of the economy.

THE LACK OF AN ENFORCEMENT RESPONSE

In response to the threat posed by organized crime and money laundering, enforcement and regulatory agencies in British Columbia are woefully unprepared. We learned that there are currently no federally funded Royal Canadian Mounted Police (RCMP) resources in B.C. dedicated to criminal money laundering investigations. This is particularly disappointing when one considers that the issue of money laundering has been front page news in B.C. for almost two years. How can this be? The answer is hardly simple and involves understanding the siloed nature of the federal response to money laundering.

The situation with provincial policing is not much better. With the exception of a unit dedicated to money laundering in casinos, which has yet to show tangible results, there are no provincial police resources dedicated to criminal enforcement of money laundering offences. In fact, both police and prosecutors have essentially checked out of the zone, out of frustration with statutes and court decisions which have made it extremely difficult to pursue financial crime investigations. They are essentially boxed in between the exigencies of disclosure and the accused's right to a trial without unreasonable delay.

Similar concerns apply to fraud and other 'white collar crime' offences. The result has been to refer victims of fraud to local police or the civil courts and for enforcement agencies to embrace civil forfeiture. The criminal provisions respecting laundering and proceeds of crime must be re-invigorated with offences that deal with unidentified wealth, lying to police officers, structured financial transactions, and by removing certain of the shackles which currently make money laundering and proceeds of crime investigations unattractive to police and prosecutors.

The effect of treating the proceeds of crime almost exclusively as a matter for the civil courts, defeats the very purpose of proceeds of crime legislation, which is to follow the money trail from or to a criminal organization and dismantle it. The civil courts are increasingly being faced with police cases that do not meet the test for a criminal prosecution or suffer from *Charter* violations.

None of the foregoing is the result of a lack of interest or dedication by police or prosecutors. Those would be relatively easy problems to solve. In fact, the issues are much deeper and require a strategic solution. It should come as no surprise that for many years, organized crime has understood the challenges faced by police and prosecutors.

THE FUTURE

One hopes that the 'Vancouver Model' can be turned on its head and become the 'Vancouver Solution'. In fact, most of what Greater Vancouver needs has already been tried here and elsewhere. The use of Special Prosecutors to guide complex financial crime files, just as they currently do with political corruption investigations, is worth considering. Also, the post-Charbonneau development of a large anti-corruption force in Quebec, has proven to be an excellent blend of preventative and investigative resources, prosecutors and police, from

multiple agencies. The Unité Permanente Anti-Corruption has laid criminal charges against 331 people and companies since 2011 and registered 114 convictions.

None of the above is easy and all requires the political and bureaucratic will to create positive change, recognizing that there is a financial cost involved, but an even greater price to be paid if we choose to ignore what is before us.

PART 1

INTRODUCTION

CHAPTER 1-1

MANDATE AND METHODOLOGY

MANDATE

On September 29, 2018, the Attorney General of B.C. (AGBC) announced the appointment of an independent review into allegations of money laundering in the real estate, luxury auto, and horse racing sectors within B.C. The Terms of Reference (TOR) for this Review are as follows:³

[Part two of Attorney General's money laundering review](#)

The Attorney General is taking action to further investigate money laundering in British Columbia.

Peter German's first report, *Dirty Money*, was released in July 2018 and focused on money laundering in Lower Mainland casinos.

Among its 48 recommendations were:

R45 – That the Province undertake research into allegations of organized crime penetration of the real estate industry

R47 – That the Province consider researching the vulnerability of the luxury car sector and the horse racing sector to organized crime

Responding to these recommendations, German will conduct a second review to examine whether there is evidence of money laundering in the real estate, horse racing and luxury car sectors.

The independent review will examine and deliver findings about:

- Links between real estate activity and money laundering in B.C. casinos, including the scale and patterns of real estate activity with potentially fraudulent or illegal transactions by casino patrons;
- Money laundering in the real estate sector connected to criminal enterprises in B.C. or elsewhere, including analysis of the extent of the problem;

³ AGBC, “Terms of Reference”, *Dirty Money – Part 2*. Accessed at <https://news.gov.bc.ca/releases/2018FIN0072-001884>.

- The use of lawyers' trust accounts to mask sources of funds in real estate transactions;
- Money laundering in the construction industry, including abuse of builders' liens;
- Any other conduct in which there is an identifiable link between organized crime and real estate transactions in B.C.; and
- Connections between organized crime and money laundering in the horse racing and luxury car industries.

German will also report on lessons learned from case studies of large-scale international money laundering to highlight elements that could be relevant in British Columbia. He will analyze evidence of real estate bought using the proceeds of illicit activity and evaluate the Province's ability to identify and seize real estate purchased through money laundering, tax evasion or fraud.

The report will present findings to the Attorney General. The review will be conducted in parallel with the establishment of an expert panel by the Ministry of Finance that will examine gaps in the real estate system that may allow money laundering to occur.

German's final report is to be complete by March 29, 2019. It will be released to the public after it has been submitted to government.

The foregoing TOR were expanded, as follows:

The Attorney General of British Columbia requires an independent expert to review and inquire into whether there is evidence of money laundering in British Columbia real estate, including industrial or residential construction; luxury car sales; and, horse racing. If there is an unaddressed, or inadequately addressed, issue of money laundering in any of these areas, the independent expert should inquire into the nature and extent of these issues, and the history of these issues, to deliver any relevant findings, data and analysis to government.

This review will respond to recommendations 45 and 47 of the German report, "Dirty Money":

- R45 – That the Province undertake research into allegations of organized crime penetration of the real estate industry
- R47 – That the Province consider researching the vulnerability of the luxury car sector and the horse racing sector to organized crime

A parallel Ministry of Finance review assessing legislative and regulatory gaps that could contribute to systemic vulnerabilities, risks of money laundering and

administrative non-compliance in the real estate and financial services sector is underway.

Scope

The review by the independent expert will examine and, where appropriate, deliver findings related to the following:

1. Links between B.C. casino patrons demonstrating indicia of fraud or illegality, and real estate transactions

Identify any links between real estate activity and money laundering in B.C. casinos as identified in the “Dirty Money” report in order to identify the scale and patterns of real estate activity with transactions by casino patrons which demonstrate indicia of fraud or illegality.

2. Alleged issues of criminal activity and money laundering relating to real estate to determine the scale and scope of any actual problem

Advise government whether the following alleged issues can be confirmed to exist and, if so, the extent of the problem and any identifiable patterns in firms or individuals engaging in or facilitating the identified conduct:

- a. Evidence of money laundering in the B.C. real estate sector that has connections to criminal enterprises in B.C. or other countries;
- b. Use of lawyer’s trust accounts to avoid scrutiny of the source of funds in real estate transactions;
- c. Abuse of the builders’ liens system where, for the purposes of criminal activity, a builder’s lien is registered against a property as a money laundering or grey market loan enforcement mechanism, not as a result of improvements done to a property for which payment is not received;
- d. Use of the industrial or residential construction industry as a means of laundering money for the purposes of criminal activity; and,
- e. Any other conduct in which there is an identifiable link between organized crime activities and real estate transactions in British Columbia.

If the alleged problems are confirmed to exist, make findings and deliver those to government.

3. Alleged issues of money laundering and organized crime in the horse racing industry and luxury car industry, as identified in the recommendations from Dr. German’s “Dirty Money” report

Review records and contact individuals as required to identify current issues and, if necessary, make findings related to:

- a. Organized crime and money laundering activity in the horse racing industry; and,
- b. Organized crime and money laundering activity in the luxury car industry.

4. Lessons from specific case studies of large-scale international money laundering

In detail, consider already identified cases of alleged large-scale international money laundering, for example:

- a. PacNet (United States);
- b. China Critic Bank litigation against Shibiao Yan (China); and/or,
- c. Any other international cases identified by regulators, law enforcement or sources that could provide useful insights into current challenges.

Where appropriate, evaluate why proactive detection and prevention mechanisms failed and make findings or detail lessons learned that could be relevant in British Columbia.

5. The ability to identify and seize real property bought with proceeds of crime

Evaluate the ability of the Province to proactively detect and seize real property which is more likely than not purchased with the proceeds of, specifically, international or domestic white-collar crime including money laundering, tax evasion and fraud.

This shall include data and analysis related to evidence of purchases of real property using the proceeds of crime or for the purposes of criminal activity, particularly by individuals from international jurisdictions where Canada does not have extradition agreements (e.g. Iran, China).

6. Other issues

Through meetings and interviews with individuals during the review, identify and provide as much data and analysis as is practical to support findings related to any previously unidentified issues concerning organized crime and money laundering in the real estate market, and the horse racing and luxury car industries.

In addition, if any information is identified “that would, in the independent expert’s opinion, constitute an offence, that information must be provided to an appropriate law enforcement body or other appropriate entity.”

Regular progress reports to the AGBC were required and “any interim findings or information of apparent illegal conduct [were to be reported] to government or law enforcement” at the earliest possible opportunity. Formal reporting was to occur on:

- November 30, 2018 (verbal update),
- January 31, 2019 (mid-stage report), and
- March 29, 2019 (final report).

In order to complete the Review, we were authorized to:

- “meet with any individual or organization willing to meet with him, or at the request of government, that will assist in addressing the areas of review”;
- “retain additional resources or expertise to assist him/her in this review, within the terms of their contract with the ministry”; and
- “[and] expected to meet with the Expert Panel on Anti-Money Laundering in Real Estate.”

THIS REPORT

This Report is the product of the Review which flowed from the TOR above. It sets out our efforts over the course of six months and provides Findings for the AGBC’s consideration.

INDEPENDENCE

By his statements and actions, the AGBC made it clear that this Review was to be independent of both politics and the bureaucracy. The goal was to produce a report, setting out Findings that can be used as a blueprint in dealing with the serious issue under examination.

This Review was conducted at arm’s length from other parties. We arrived at all the Findings in this Report independently.

SCOPE OF THE REVIEW

This Review is by its nature forward looking, designed to inform improvements to laws, policies, and practices. It is not concerned with the conduct of specific individuals, nor is it concerned with specific incidents except where they are examples of a broader pattern of behaviour.

Similarly, this Review does not consider cases under investigation by the police or which are before the criminal courts. It makes no Findings respecting any issue of criminal, civil or disciplinary liability. Nothing in this Report should or is intended to influence the outcome of any court process or other adjudicative proceeding.

Although this Review was designed to be strategic, examining structures and processes, we welcomed any information which informed that goal and could be made public in this Report.

It is important at the outset to note what this Review and Report are about, and what they are not about. We do not apportion blame on any person. We were asked to ‘review’ and not to ‘investigate’ allegations of money laundering. This is a critical distinction. We made it

abundantly clear to interviewees that we were not investigating specific incidents, nor did we wish to obtain the details of ongoing investigations or prosecutions.

We reviewed a mass of data, policies, procedures, reports, websites and academic literature. We met or corresponded with over 200 individuals. A partial list of stakeholders contacted is found in Appendix "B".

In preparing this Report, we have attempted to be as comprehensive in our approach to the issue as possible, recognizing always the importance of remaining strategic and not becoming mired down by specific incidents or details, unless they were relevant to the broader Review.

As with *Dirty Money*, the premise of this Report is that there should be no money laundering in Greater Vancouver. This is not unlike the larger public safety goals of any community. The elimination of crime is the goal and must be the intention of public safety agencies, even if it is not necessarily attainable. There will be a balancing, but that balance occurs with respect to the finite resources of government, which must apportion scarce resources among education, health, public safety, and so many other societal needs.

METHODOLOGY

The work of this Review was undertaken over the course of six months, from September 27, 2018, until March 29, 2019.

1. Reviewers

A cross-disciplinary team was assembled, including persons with backgrounds that include policing, law, accounting and research techniques. Their qualifications were outlined earlier in this Report. We also sought assistance from other specialists as issues arose during the Review.

2. Experts Meeting

Due to the broad scope and short timeframe for the Review, a team of experts was assembled for an initial meeting. The participants included Peter German, Jafer Aftab, Michael Blanchflower, Calvin Chrustie, Alayne Fleischmann, Douglas LePard, Dale Lysak, Jerome Malysh, and Adam Ross.

3. Liaison Positions

Co-operative arrangements were developed with the Superintendent of Real Estate, and the Vancouver Police Department, who each appointed a part-time liaison officer to the Review team.

4. Data Access

Arrangements were made for data access with LandSure, BCA, and B.C. Court Services.

5. Tip Line

A tip line was developed by the Ministry of Attorney General. All tips were reviewed by the team. Those that appeared to contain helpful information were pursued through the means available to us. In some cases, this included interviews, e-mail correspondence and site visits. Many helpful tips were received and those which disclosed potential criminal wrongdoing were referred to the appropriate law enforcement authorities. In total, we received approximately 150 tips. Crime Stoppers partnered with us on the tip line and the line itself was extended beyond its original end date due to a demonstrated interest by the public.

6. Correspondence

In addition to the tip line, we received over 50 submissions through other means, including correspondence to the Ministry and direct contact with members of the team. We spoke to everyone who asked.

7. Interviews

During the Review, well over 200 individuals were interviewed, some more than once. We also reached out to numerous persons and organizations that we felt could assist. The interviews were conducted on a confidential basis between those individuals and members of the Review team. Many persons interviewed sought anonymity, which we respected. The goal was to encourage candour in discussing difficult issues. The interviewees were not asked to swear or affirm to the truth and interviews were not recorded.

The interviews varied in length from a few minutes to many hours. Most were conducted with one interview subject, although multiple persons were occasionally interviewed at the same time. All were conducted in a semi-structured manner, utilizing open-ended questions designed to elicit fulsome accounts of the interviewee's involvement.

This Review was not an investigation and was not intended to be fault-finding in nature. No coercive powers were available to the reviewers.

8. Document and Literature Review

Copious hard copy and electronic documents were reviewed. In addition, public sources were scoured for website postings, policies, procedures, academic literature and reports. This included material originating in the U.S., the U.K., Australia, and elsewhere.

A Selected Bibliography is found at the end of this Report.

FINDINGS

Canada's problem with money laundering is simply a mirror of its problem with organized crime. Virtually all organized crime is profit driven and therefore gives rise to money, generally cash, which must then be returned to the legitimate financial system in order to be used to buy

additional product or taken as profit. Some OC groups have bifurcated structures, which include supply lines that are parallel but separate from their money conduits. Others are far less sophisticated. In Greater Vancouver, we have many examples of both, and most variations in between.

Most of the solutions to the situation in which Greater Vancouver finds itself are not new and are in practice elsewhere. We can learn from the experience of others by fine tuning these solutions to our unique legal and social environment in Canada and British Columbia.

In this Report, specific Findings are made in most chapters. There are numerous overarching Findings, as well as some related to broader process issues, such as criminal law amendments, investigations, and prosecutions, all with the goal of better dealing with money laundering. Due to the constitutional division of powers in Canada, many of the solutions are within the remit of the federal government.

CHAPTER TOPICS

The chapters in this Report are grouped into Parts.

Part I is introductory. It provides an overview of the Review and this Report, leading into a more detailed discussion of the mandate, scope and methodology utilized. It then updates the discussion of Money Laundering, Transnational Organized Crime (TOC), and the Vancouver Model which were introduced in *Dirty Money*. The Model provides a very practical framework for what has occurred in recent years.

Part 2 overviews the impact of organized crime and money laundering on Real Estate in Greater Vancouver. It includes chapters on real estate, enforcing criminal debts, the construction industry, and lawyers and notaries.

Part 3 overviews the impact of organized crime and money laundering on the Luxury Vehicle sector in Greater Vancouver. It includes chapters on domestic and international laundering through vehicles, crime vehicles, luxury vehicles, the grey market of export vehicles, and independent luxury car resellers.

Part 4 overviews the impact of organized crime and money laundering on the Horse Racing sector in Greater Vancouver.

Part 5 overviews other forms of money laundering which our research indicates may be occurring within Greater Vancouver.

Part 6 overviews the efforts to enforce proceeds of crime and money laundering laws in B.C.; discussing the continuum of compliance, investigation, prosecution, and forfeiture (both criminal and civil). It also reviews issues with the current state of Canada's criminal law.

Appendices and a Selected Bibliography complete the Report.

CHAPTER 1-2

UPDATE

INTRODUCTION

On June 27, 2018, the AGBC released *Dirty Money*, a Report into allegations of money laundering in Lower Mainland casinos.

Between the release of *Dirty Money* and the completion of this Report, events occurred which are relevant to this Review. It is difficult to conduct any investigation or review when contemporaneous events are occurring which of necessity must also be considered. We have done our best, conscious that the TOR for this Review are focussed, not on casinos, but on other sectors of the economy, on facilitators, and on issues involving investigation and prosecution.

An almost continuous stream of media reports continued to target casino-related issues. Strong investigative journalism is important in a democratic society and we have seen many excellent media stories from television, radio and print journalists. National stories were featured in newsmagazine programs. The journalism also touched upon the real estate and luxury vehicle sectors.

Of particular interest are the following events which took place or entered the public domain after the release of *Dirty Money*. They are not necessarily in chronological order.

PARLIAMENT'S FIVE-YEAR REVIEW OF THE POCMLTFA

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* provides for a five-year review by Parliament of its effectiveness.⁴

Federal Consultation Paper

On February 7, 2018 the Minister of Finance released a public consultation paper with respect to the 2018 review of the *POCMLTFA*.⁵ It outlined a potpourri of potential changes to the legislation, based upon issues which have arisen or been discussed during the past five years.

⁴ Required by *POCMLTFA*, s. 72.

⁵ Dept. of Finance, *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*, Feb. 7, 2018. Accessed at <https://www.fin.gc.ca/activty/consult/amlatfr-rpcfat-eng.asp>.

House of Commons Standing Committee on Finance

The House of Commons Standing Committee on Finance was charged with conducting hearings and producing a report to assist Parliament with the foregoing review.⁶ The Committee held hearings and considered reports. The AGBC and I appeared on separate occasions before the Committee. Its findings are contained in a public document. Relevant portions are considered in this Report. The Committee spent considerable time on the issue of a federal beneficial ownership registry, which falls outside the remit of this Review and is not considered here, other than for context.⁷

Federal Response to the Standing Committee's Report

The federal government was required to respond to the Standing Committee's report within 120 days of it being tabled. The government's response, jointly authored by the Ministry of Finance and FinTRAC, provides an insight into how the federal government views the Committee's recommendations. Contemporaneous to the development of a response, options for Cabinet consideration were developed by the Ministry of Finance.

FEDERAL BUDGET 2019

On March 19, 2019, the federal Minister of Finance delivered his Spring Budget, which included programs and money intended to target money laundering. Money laundering featured in a number of parts of the budget; including creation of a multi-disciplinary Trade Fraud and Trade-Based Money Laundering (TBML) "Centre of Expertise", and enhanced funding for federal policing.

FINANCIAL ACTION TASK FORCE (FATF) TYPOLOGY REPORT

The FATF issues typology reports, intended to inform and educate member nations of new methods by which organized crime carries on its business. The FATF Typology Report for 2018 included a submission from Canada, which was believed to represent a new typology of money laundering, referred to elsewhere as the Vancouver Model. The typology is a thinly veiled overview of the E-Pirate investigation (see below and Chapter 1-4).

RCMP INVESTIGATIONS

E-Pirate - Stay of Proceedings and Civil Forfeiture Proceedings

Two major RCMP investigations into casino-related money laundering were underway during Phase One. We were careful not to interfere with those investigations. One of them, referred to as E-Pirate, which was investigated by the RCMP's federal business line, collapsed due to an

⁶ Canada, House of Commons Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, Ottawa: Nov. 2018. Accessed at <http://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf>.

⁷ *Ibid.* at p. 9.

apparent disclosure issue. Stays of proceeding were entered against those charged. The collapse of this investigation received national media attention. It also led almost immediately to civil forfeiture proceedings being commenced with respect to property seized in that investigation. Those proceedings now shed light on the E-Pirate investigation.

E-National

The second RCMP investigation, dubbed E-National, continues to be investigated by the Joint Illegal Gaming Investigation Team (JIGIT). Despite concern that it may have been affected by the collapse of E-Pirate, that does not appear to be the case as it continues as a criminal investigation. We have made no enquiries with respect to that ongoing investigation.

MONEY LAUNDERING AND THE MEDIA

The media continues to expose issues respecting money laundering and this serves a strong educational purpose as residents in Greater Vancouver are now quite familiar with the term, its connection to organized crime, drug trafficking, and opioid deaths.

Calls for a Public Inquiry

Various media outlets have called for a public inquiry and many residents of the province appear supportive. A public inquiry serves various purposes; including public awareness, fault-finding, and developing recommendations. It does not lay criminal charges although it can refer matters to government for criminal or regulatory investigation. The mandate of any public inquiry respecting money laundering and organized crime would have to find a balance between being over and under-inclusive. A decision would also have to consider whether there is a need for greater public awareness than already exists; whether current recommendations for change suffice; and the viability of criminal or regulatory investigations after a lengthy inquiry. In the end, any decision with respect to a public inquiry is a decision for government.

Quantifying Money Laundering

A recurring issue in the media has been the size and extent of money laundering in Greater Vancouver. Estimates vary widely. The empirical basis for most is unclear. The estimates often mix the laundering of cash through casinos with other forms and methods of money laundering.

We were not asked to quantify the amount of money laundering in either Phase One or Phase Two. As a result, no estimate is provided in either *Dirty Money* or in this Report. As indicated at the time of the release of *Dirty Money*, the best we could say is that the sum of money laundering within Lower Mainland casinos exceeded \$100 million. It could be much greater, although that is dependant on numerous factors. For example, within casinos there is a factor referred to as 'churn', which refers to the fact that the same money may enter the system more than once as gamblers win and gamble again with their winnings. Most importantly, it is very difficult in a casino setting to separate the money which is being laundered as part of the

underground economy (to avoid tax authorities) and money which seeks to avoid discovery by other persons or foreign states, from criminal proceeds of crime.

The figures now in common parlance are of \$1 billion or more per year of dirty money being plowed into B.C. real estate and of equally large sums being laundered through casinos. Unfortunately, without actually quantifying these amounts using a generally accepted model and having access to the necessary data, all estimates are guesses.

The first of the ‘billion dollar’ estimates resulted from a Global News story on November 26, 2018, and referenced an RCMP study into the matter.⁸ It opens by describing two Vancouver ‘mansions’ and then states:

“Both mansions appear on a list of more than \$1-billion worth of Vancouver-area property transactions in 2016 that a confidential police intelligence study has linked to Chinese organized crime.

The study of more than 1,200 luxury real estate purchases in B.C.’s Lower Mainland in 2016 found that more than 10 per cent were tied to buyers with criminal records. And 95 per cent of those transactions were believed by police intelligence to be linked to Chinese crime networks.

The study findings, obtained by Global News, are a startling look at what police believe to be the massive money laundering occurring in the Vancouver-area real estate market.”

The media outlet did not release a copy of the report. As a result, we asked for a copy from the RCMP, in order to backstop the data. After checking at both their national and provincial headquarters, the RCMP advised that they have a number of reports which contained information that resembled what was disclosed in the media. The reports which most closely aligned with the information in the news story were incomplete.

The RCMP was unwilling to release the reports as they were designated as Protected “B” (a category of government secrecy). As we neared our deadline for drafting this report, we asked to be provided with the methodology employed in both this report and a subsequent report that appears to quantify dirty money laundered through an unregistered MSB. We have attached the RCMP responses as Appendices “G” and “H”.

Essentially, the methodology employed by the RCMP with respect to real estate in Greater Vancouver (Appendix “G”) entailed cross-referencing the names of purchasers of high-end properties during two calendar years, to police indices for an indication of criminal activity. According to the RCMP, the report “does not assert that crime networks could have laundered

⁸ Sam Cooper, et al., “Fentanyl: Making A Killing - Secret police study finds crime networks could have laundered over \$1B through Vancouver homes in 2016”, *Global News*, Nov. 26, 2018.

\$1B through Vancouver homes in 2016, or that 95% of the 10% of transactions are believed to be linked to Chinese organized crime.”

Furthermore, many of the purchasers were included in police indices for reasons quite different from money laundering. It also does not focus on persons who are known members of organized crime groups, or even on persons convicted of crimes. Accordingly, this report is of little to no assistance when attempting to quantify the dirty money which flowed through real estate.

The methodology employed by the RCMP with respect to the amount of dirty money laundered in casinos relates to a draft report prepared in relation to E-Pirate, which estimated the value of transactions facilitated by an unregistered Money Service Business (MSB). Using seized documents and other information sources, the RCMP estimated a yearly value of \$1 billion, however pointed out that the report, still in draft, “is sufficiently caveated with data integrity concerns to exercise a cautioned and considered approach if using it for reference.” There is also no indication of a time span for which the yearly figure is applicable.

It was our conclusion that the RCMP, like most stakeholders, is unable to provide an accurate estimate of the dollar value of criminal proceeds that entered the housing market in the last number of years. It remains possible that the media stories relate to still other reports, however the foregoing was the RCMP response to our enquiries.

RICHMOND CITY COUNCIL

On February 11, 2019, Richmond City Council considered the issues of “Countering organized crime, money laundering, and illicit gaming” and adopted a lengthy resolution which calls upon other levels of government to assist the city in dealing with these issues. Copies of the resolution were circulated to federal and provincial officials, as well as to us. The penultimate paragraph reads:⁹

“Underpinning the above recommendation is the need for all levels of government to share information and responsibilities in combatting organized crime. While criminal intelligence must be protected, analysis and information sharing between government agencies is critical for a coordinated response. Overcoming institutional barriers and information gaps is a critical first step toward ridding Canadians of the “Vancouver Model” of organized crime and money laundering.”

In the course of this Review, we experienced the same issue outlined by the Mayor, time and again. We comment on the issue in this Report. The over classification of documents, the unwillingness to share between agencies due to privacy concerns, and a siloed approach to

⁹ City of Richmond, “Richmond Council calls for public inquiry, immediate actions to combat money laundering”, Feb. 12, 2019. Accessed at <https://www.richmond.ca/news/events/city/councilinquirytocombatmoneylaundering2019Feb12.htm>.

work, is a very real concern if we are to find solutions to the problems which the Attorney General has outlined in the TOR for this Review.

VANCOUVER CITY COUNCIL

Vancouver City Council has also taken action to deal with money laundering, in its case by reviewing the City's cash receipt policies and instructing the VPD to provide it with recommendations on how Council can best protect citizens from money laundering. This is also an admirable initiative.

CHAPTER 1-3

MONEY LAUNDERING & ORGANIZED CRIME

NOTE TO READER

For a primer on Money Laundering and Transnational Organized Crime, reference should be made to Chapters 4 and 5 in Dirty Money. This chapter builds upon that discussion. Also, for the assistance of readers, the three generally accepted stages of money laundering are described in Appendix “A” to this Report.

FINDINGS

- Transnational organized crime benefits from the unique environment which Greater Vancouver and British Columbia present. It has leveraged gaps in the Canadian criminal justice system.
- Illicit money flows into Vancouver from China, Iran, Mexico and other countries, coalescing with the proceeds of domestic drug trafficking and other crimes.
- Large quantities of Mexican drug cartel money have transited through Vancouver, primarily from the Sinaloa cartel.
- Alliances have emerged in Greater Vancouver between Mainland Chinese, Iranian and Mexican organized crime groups, and domestic outlaw bikers and other gangs.
- British Columbia is home to underground bankers who perform unregulated banking transactions between countries, often laundering the proceeds of crime, and avoiding foreign currency import or export restrictions.

TERMS OF REFERENCE

The TOR for this Review includes the following:

- a. *Evidence of money laundering in the B.C. real estate sector that has connections to criminal enterprises in B.C. or other countries...*

MONEY LAUNDERING

First and foremost, money laundering is not a victimless crime. Laundering simply disguises the proceeds of crime, which are the product of drug trafficking and numerous other crimes that kill and injure people. Our current fentanyl crisis arises from the sale of illegal drugs. These drugs are sold by organized crime networks in order to generate a profit, which is skimmed off

the top of the proceeds. It is a nefarious business and those who are knowingly complicit in laundering are morally complicit in the underlying, or predicate crime.

The very nature of money laundering is to recirculate dirty money, in order to disguise its trail. Money entering a casino tends to do so in the first, or placement stage. That which enters the real estate market tends to do so in the second or third stages, layering or integration. If it enters in the second stage, then real estate is simply a stopover. It lies dormant until the property is sold, and the proceeds will then be used to purchase more illegal goods or taken as profit.

Thirty years ago, it was rumoured that Vancouver served as a point of departure and return for Cdn\$1-billion annually in illegal drug profits, funnelled out of the country and brought back into Canada under the guise of legitimate investments.¹⁰ This estimate likely pales by comparison to the dollar value of illegal drug sales today.

Laundering is practiced by many persons, including OC families, drug traffickers,¹¹ and those who wish to hide funds from government authorities. It becomes a necessary process in order to disgorge large sums of illegally obtained money, due to the sheer weight and bulk of cash, the risk of detection and the danger created by carrying large sums of money on one's person.¹²

Money laundering occurs in many forms and in most sectors of the economy and includes deposit-taking institutions, currency exchange houses, the securities industry, real estate, commercial trading, corporations, gold and precious gem merchants, the cash purchase of expensive items, gambling, the insurance industry, and lawyer trust accounts.

THE IMPACT OF MONEY LAUNDERING

The corrosive impact of money laundering has been noted in the research literature. In the short term, a country's economy may benefit by accepting laundered money, particularly from foreign sources. It essentially "free rides on crimes committed" elsewhere by obtaining the proceeds of those crimes.¹³ But in the long term, the proceeds of crime attract more crime and encourage criminals to create networks and locate their activities in countries in which money laundering can more readily take place.¹⁴

¹⁰ "Big Time Crime", *Equity*, Sept. 1989 at p. 16.

¹¹ In *R. v. Clymore* (1992), 74 C.C.C. (3d) 217, the BCSC accepted expert opinion evidence that "narcotics transactions are one of the most likely [enterprise crimes] to generate very large amounts of cash"; that "mixed denomination bundles [of cash] are consistent with the drug trade"; and that false identifications, false addresses and mail drops are used by drug traffickers and money launderers.

¹² *Ibid.* The BCSC accepted expert opinion evidence that cash in small denominations continues to be used by drug traffickers out of a desire "not to leave paper trails and because of negotiability."

¹³ Dr. Brigitte Unger et al., "The Amounts and the Effects of Money Laundering" - A Report for the Ministry of Finance, The Netherlands at p. 9. Accessed at [http://www.urosario.edu.co/observatorio-de-activos/imagenes/Report-for-the-Ministry-of-Finance-\(2006\).pdf](http://www.urosario.edu.co/observatorio-de-lavado-de-activos/imagenes/Report-for-the-Ministry-of-Finance-(2006).pdf).

¹⁴ *Ibid.*

As a senior executive of the Vancouver Police Department opined during the Phase One Review, money laundering offers “fruitful policing opportunities” as it offers a portal into other organized crime activities, both transnational and homegrown in character. In his view, there is a need to disrupt and dismantle the organizations that are engaged in this activity, as well as the intermediaries and facilitators.

In its 2017 report, the United States International Narcotics Control Strategy Report found that Canada was one of a group of “major money laundering countries” in the preceding year.¹⁵ The FATF conducted a comprehensive evaluation of Canada’s anti-money laundering and counter-terrorist financing measures in 2016.¹⁶ It provided a generally positive assessment, but a key finding was that “Law enforcement results are not commensurate with the [money laundering] risk and asset recovery is low.”¹⁷

FINANCIAL INTERMEDIARIES

At each stage in the process – placement, layering, and integration – financial institutions have the potential to play a key role. It is not surprising therefore that the first anti-money laundering laws targeted banks and similar financial institutions, branching further afield as money launderers realized that banks no longer offered the same form of protection that they did in the ‘good old days’.

FACILITATORS

In addition to financial institutions, it is difficult and often impossible, to launder large amounts of money without the assistance, witting or otherwise, of financial or professional intermediaries, including company formation agents, accountants and lawyers. These individuals are alternately called facilitators, gatekeepers or intermediaries.¹⁸ Theirs is a precarious, yet lucrative position, often being the recipient of money, which seeks not to be found or to be related back to its beneficial owner. An intermediary utilizes his or her skill in effecting the movement of funds at the direction of the client. The returns are almost always handsome, and the risks are often minimal.

¹⁵U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report Volume II Money Laundering and Financial Crimes*, Washington: Mar. 2017. Accessed at <https://www.state.gov/documents/organization/268024.pdf>.

¹⁶FATF, *Anti-money laundering and counter-terrorist financing measures – Canada* (Fourth Round Mutual Evaluation Report), Paris: 2016. Accessed at www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html.

¹⁷*Ibid.* at p. 3.

¹⁸The concept of gatekeepers is similar to, but different from intermediaries. Gatekeepers are those who provide access, or ‘open the gate’ to services. This includes regulators, and firms which have been delegated regulatory and compliance tasks. Intermediaries act on behalf of persons seeking to accomplish a task, such as laundering money.

ORGANIZED CRIME

Organized crime is not unique to one country, one race, one ethnicity, or even one continent. It is a world-wide phenomenon which, thanks to current technology and transportation systems, can operate internationally with relative ease. Organized crime knows no allegiance to the Rule of Law. It is amorphous and increasingly not commodity specific. Similar in many ways to legitimate enterprises, criminal organizations are self-sustaining, unaffected by the arrival or departure of individual members.

Organized crime is about making money and using money for the benefit of the organization and its members. It will develop allegiances wherever necessary to further this goal. These can be with politicians, the bureaucracy, revolutionary groups, terror networks, other OC groups, and ordinary citizens of a country who desire a quick buck. Organized crime feeds off poverty and despair. It uses people as instruments of crime, whether to procure, transport, or sell illegal substances.

Money has often been described as the “golden thread” which ties organized crime syndicates together. With the development of large drug cartels and the trans-border shipment of illegal drugs by all manner of conveyance, the financial proceeds of the drug trade increased exponentially.¹⁹ These proceeds crossed borders with relative impunity, in tangible or electronic form, and often changed appearance many times before reaching a final destination.

The money being laundered need not be cash, although cash continues to be the most prevalent mode of payment in the world of drug trafficking, as well as for numerous other criminal activities.²⁰ Organized crime is fuelled by one motive – the creation of wealth.

TRANSNATIONAL ORGANIZED CRIME

When organized crime crosses international borders it is referred to as transnational organized crime. The very fact that it is international in scope requires a degree of sophistication which may not be required by domestic OC. It also becomes infinitely more difficult for law enforcement to track. Furthermore, criminal law is country specific which means that crimes committed by TOC groups are only prosecuted if the crimes offend a nation’s domestic laws.

Transnational organized crime syndicates are flexible and will continue to form and reform, while the response by government typically operates with much less flexibility. Some forms of OC are quite complex however complexity can also lead to managerial difficulties for the syndicates and is not necessarily the preferred option. The ideal criminal enterprise is one which produces high value for low risk.

¹⁹The word ‘proceeds’ is used in preference to ‘profits’. Although they both convey a similar meaning, the former is broader in scope as it includes monies realized which are reinvested in product – gross versus net.

²⁰Stephen Schneider refers to cash as “the universally accepted mode of payment in the underground economy”. (Stephen Schneider, “The Incorporation and Operation of Criminally Controlled Companies in Canada”, *Journal of Money Laundering Control* V7 N2 (2003) at p.126).

Transnational organized crime groups are not only a criminal threat but may also be a destabilizing force in the countries where they transact business; undermining the integrity of financial systems, breeding corruption and weakening adherence to the Rule of Law. The threat level increases exponentially if the OC group or syndicate is linked to a terrorist group or is carrying out its activities at the behest of a rogue regime.

There are no international agencies dedicated to monitoring transnational organized crime. Other than Interpol, which is principally a clearing house for warrants and intelligence; and regional groups such as Europol, TOC is monitored by a potpourri of police and military intelligence agencies.

ORGANIZED CRIME, MONEY LAUNDERING & GREATER VANCOUVER

Ironically, the unique characteristics of a particular city or region which make it attractive place to live, to work and to visit, are often the same characteristics which make it an ideal location for organized crime and money laundering. Greater Vancouver is such a region. The characteristics which account for this include the following:

- a large international airport serviced by numerous Asian carriers;
- a large port which faces Asia and is primarily concerned with cross-Pacific trade;
- close proximity to the U.S., such that almost all residents live within one hour of the border;
- reciprocal, visa free access to Mexico;
- most domestic and many international banks;
- a high-tech sector, including leading edge encryption industries;
- large and well-established ethnic diasporas with strong foreign ties; and
- the early acceptance of cryptocurrency.

In addition to the characteristics of Greater Vancouver that all residents enjoy, organized crime benefits from certain unique characteristics of the region and of Canada generally. These include:

- less severe criminal sanctions than in the U.S.;
- a belief in rehabilitation and parole for crime, including serious offences;
- a strong *Charter of Rights and Freedoms*, which has eliminated most reverse onus provisions in criminal law;

- strong pre-trial disclosure of a criminal case;
- strict limits on the length of a criminal proceeding;
- very few police and prosecutorial resources devoted to white collar crime; and
- a colourful past in terms of fraud and stock swindles.

TRANSNATIONAL ORGANIZED CRIME AND GREATER VANCOUVER

Large amounts of unsourced foreign money flow through Vancouver daily. Most of it is presumably legitimate in origin. Much of it may not be. Due to Vancouver's orientation to the burgeoning markets of Asia, China figures prominently in this flow of money. But money also flows north from Mexico and Latin America, and west from Europe and the Middle East. Allied to much of the dirty money and that which seeks to avoid currency controls are OC groups.

The modus operandi of transnational organized crime is to create partnerships for different illegal enterprises and commodities. Local crime groups provide transportation and other support services. The involvement of home-grown outlaw biker gangs and South Asian gangs in the Greater Vancouver illegal drug trade has been documented for decades.

ASIAN ORGANIZED CRIME

Asian organized crime is characterized by global linkages; the fluid and ever-changing nature of its operations; its sophistication, including a high degree of coordination, planning, technical knowledge, and business acumen; the global mobility of its members; and the financial strength of organizations which can cross with ease between legal and illegal markets.²¹ The infiltration of organized crime in overseas diasporas allows these syndicates to move rapidly into new markets and exploit vulnerabilities.

Japanese, Taiwanese, and Vietnamese OC groups have appeared on the west coast of Canada at one time or other. Of greatest interest to this Review, however, is organized crime which emanates from Mainland China. Unfortunately, there is very little publicly available intelligence in Canada on Mainland Chinese OC. Much of what does exist is case specific or emanates from international sources. RCMP intelligence tends to refer to Asian OC in a generic sense, which is not helpful.²²

Mainland Chinese OC groups function like multi-national corporations, using the transport and business networks of southern China, Hong Kong and Macau to trade commodities such as methamphetamines, precursor chemicals, counterfeit goods and illegal migrants for cash and

²¹Ning-Ning Mahlmann, *Chinese Criminal Enterprises* (Washington (FBI), 2005). Accessed at <https://filmpiracy.wikispaces.com/Chinese+Criminal+Enterprises,+Ning-Ning+Mahlmann,+PhD,+FBI>.

²²This would be akin to referring to organized crime in Canada and the U.S. as 'North American OC'.

commodities. Hong Kong is to Asia what Dubai is to Europe and the Middle East. It is an offshore banking and finance centre and a global hub for shell companies.²³

The anonymity provided by these companies makes them ideal for transnational organized crime. As a result, Hong Kong has become an intersection for international OC groups from around the world. In addition, bankers, lawyers, accountants, money service bureaus and other businesses in Hong Kong facilitate much of the international transfer of goods in Asia, making it an effective conduit for large volumes of trade-based money laundering.

Vancouver's rich ties with China date back over a century. Its Chinatown has been and continues to be a fixture in the city. Chinese workers began migrating to Canada soon after Confederation. They performed much of the heavy work that allowed Canada to fulfill its constitutional obligation to British Columbia by creating a steel thread across the Prairies and through the Rocky Mountains. Other Chinese migrants dug trenches beside Canadian and Allied soldiers in the mucky, bloody European theatre during World War I.

Gambling served as entertainment in the Chinese community since its early days in Vancouver. Persons familiar with the history of gambling speak of the Mainland Chinese Triads which once had a foothold on the gaming industry particularly with respect to providing money to avid gamblers. It has been reported that the principal Triads continue to be represented in Vancouver. Seeking to align criminal activity to a specific Triad is difficult in today's environment, however.

A modern view is to look at Asian-based organized crime much as we do organized crime elsewhere. It is about alliances focussed on generating money. What is markedly different today is the change in migration patterns from a largely Cantonese speaking population from Hong Kong to direct migration from Mainland China, the influx of many other languages and dialects, and the growing plurality of Mandarin speakers. In the organized crime lexicon, the OC group most often mentioned is the Big Circle Boys whose origins are in Mainland China.

MEXICAN ORGANIZED CRIME

Large quantities of Mexican drug cartel money have transited through Vancouver, primarily from the Sinaloa cartel. Furthermore, Middle East Organized Crime (MEOC), oftentimes a euphemism for Iranian OC, is believed to have a strong foothold in Vancouver and has worked in concert with Mexican cartels and local gangs.²⁴

The reference to Mexican Organized Crime was re-enforced in 2018 by the publication of a book which described the hunt for the head of the Sinaloa Cartel, El Chapo Guzman.²⁵ The book, written by the lead Drug Enforcement Administration (DEA) investigator, Andrew Hogan,

²³"Hong Kong: China's premier secrecy jurisdiction", *Tax Justice Network*, Dec. 30, 2013. Accessed at <http://taxjustice.blogspot.ca/2013/12/hong-kong-chinas-premier-secrecy.html>.

²⁴The removal of the visa requirement for Mexican visitors to Canada has been suggested as a cause.

²⁵ Andrew Hogan and Douglas Century, *Hunting El Chapo* (New York: Harper Collins, 2018).

is widely regarded by law enforcement officials as an accurate account of the events. The cartel's operations in Vancouver are mentioned by Hogan in some detail.

On one occasion, Hogan and other agents served as couriers, picking up the product of drug sales and then depositing them in a bank, with instructions to wire the funds to Deutsche Bank in New York and from there to an account at a correspondent bank in Mexico. The undercover officers travelled around North America doing pick-ups for the cartel, including an \$800,000 pickup of Canadian dollars in Vancouver, which had to be converted to U.S. currency, before being wired.²⁶

The "deep infiltration of Canada" came as a surprise to Hogan, who wrote:²⁷

"In terms of profit Chapo was doing more cocaine business in Canada than in the United States. It was a straightforward price-point issue: retail cocaine on the streets of Los Angeles or Chicago sold for \$25,000 per kilo, while in major Canadian cities it sold for upwards of \$35,000 per kilo."

Hogan explained that the interest in Canada resulted from the "insatiable Canadian appetite for high-grade coke" and the cartel being able to "exploit weaknesses in the Canadian system: the top-heavy structure of the Royal Canadian Mounted Police" which he alleges "hampered law enforcement efforts for even the most routine drug arrest and prosecution."²⁸

The cartel moved its cocaine to the State of Washington and then used helicopters to transport it across the border. Hogan also described the inter-relationship between Mexican, Iranian and Hells Angels (HA) organized crime as follows:²⁹

"Chapo's men had connections with sophisticated Iranian organized-crime gangs in Canada who were facilitating plane purchases, attempting to smuggle ton-quantity loads using GPS-guided parachutes, while sending boxes of PGP-encrypted smartphones south to Mexico at Chapo's request. A network of outlaw bikers – primarily Hells Angels – were also moving his cocaine overland and selling it to retail dealers throughout the country."

According to Hogan, at one point El Chapo assigned his Canadian operations to a 22-year old individual, Jesus Herrera Esperanza (known as Hondo), who was headquartered in Vancouver, allegedly enrolled at a private college, and lived in a luxury loft apartment. Hogan writes that the individual "was so amped up about living the narco-junior life that he disregarded his daily

²⁶ *Ibid.* at p. 50.

²⁷ *Ibid.* at p. 110.

²⁸ *Ibid.* This is likely a reference to the approval process required to undertake projects or to utilize currency for undercover operations. Although not without merit, this is an oversimplification of larger issues facing Canadian law enforcement when dealing with financial crimes that cross borders (see Part 6).

²⁹ *Ibid.* at p. 111. The reference to encrypted phones is significant as we learned during this Review that Vancouver has established itself as a high-tech encryption centre.

functions”, resulting in millions of dollars in proceeds from cocaine and heroin sales sitting uncollected in Vancouver, Calgary, Winnipeg, Toronto and Montreal.³⁰

El Chapo became concerned about Esperanza and ordered him to provide nightly reports; itemizing sales and money collected by city. An example read, “Vancouver: \$560,000 and 95 kilos of coke. Winnipeg: \$275,000 and 48 kilos. Toronto: \$2 million and 150 kilos...”³¹ Hogan also writes that the Vancouver operative was always asking for shipments of cocaine concealed in fake bananas, which it was assumed would be shipped across Canada.³²

IRANIAN ORGANIZED CRIME

Greater Vancouver is home to a vibrant Persian / Iranian community of long-standing. Many live in North Vancouver, where there are visual similarities to Tehran’s beautiful backdrop of mountains and wealthy enclaves nestled below those mountains. Many Iranians emigrated to Canada under the immigrant investment program and brought wealth with them. Others escaped the ravages of the Iraq war. A small percentage turned to organized crime and formed strategic alliances with other OC groups.

Among the skills that Iranian OC brings to the table are the ability to move money efficiently across borders. In the world of organized crime, Dubai is to Europe and Western Asia, what Hong Kong is to Asia, although their orientation is slightly different. Dubai serves as a conduit for money, while Hong Kong serves that purpose but is also a centre for TBML.

The emergence of alliances in Vancouver between Mainland Chinese, Iranian and Mexican OC groups with outlaw bikers, and other gangs is of grave concern. Fortunately, or unfortunately, the public visibility of these alliances is low, which is why they are effective; enforcement is equally low, other than for some violent crime; and yet, the damage continues, in terms of distorting aspects of the marketplace and causing death through the traffic in illegal substances.

CURRENCY CONTROLS

It has been suggested that residents of Mainland China do not trust banks, preferring to buy goods and services in cash.³³ Some suggest that this predilection may reflect an absence of modern banking facilities in small, peasant communities, but is more likely a result of the People’s Republic of China (PRC) not issuing paper currency in sums greater than 100 Renminbi (RMB),³⁴ roughly Cdn \$20, possibly as a foil to prevent corruption and currency leaving the country. In any event, paying for goods with large amounts of cash has not been unusual in the context of Mainland China.³⁵

³⁰*Ibid.* at pp. 111-112.

³¹*Ibid.* at p. 112.

³²*Ibid.* at p. 236.

³³This is similar to the widely-held, Western belief in gold as the only truly safe investment.

³⁴The People’s Money, formerly referred to as the Yuan.

³⁵David Barboza, “Chinese Way of Doing Business: In Cash We Trust”, *New York Times*, Apr. 30, 2013.

Today, however, the PRC is as sophisticated, or more so, than Western nations in terms of its financial systems. China appears to have leaped from a cash-based society to a financial system based on electronic transfers in a matter of two decades, bypassing other forms of negotiable instruments with which Canadians are very familiar, such as cheques. The enormous growth of UnionPay, a Mainland Chinese financial payment system which now outstrips Visa and Master Card in terms of total debit and credit transactions, has allowed this leap to occur.

Nevertheless, this still leaves large sums of currency in the hands of many wealthy Mainland Chinese citizens who wish to move a portion of their wealth to countries such as Canada. The problem for them is that China, like many countries such as India and Iran, imposes controls on their domestic currency leaving the country. In the PRC, these restrictions are published by the State Administration of Foreign Exchanges (SAFE) and placed on its website.³⁶

There are good reasons why a nation may not wish to have its currency leave the country. Currency is a debt to the central bank and, when it is outside a country, it is also outside its control. In recent years, the People's Republic of China (PRC) has placed greater emphasis on enforcing its currency controls. In fact, there have been two major policy adjustments in the recent past.

The limit of US\$ 50,000 on the amount of cash a PRC citizen can transfer or remove from China to Hong Kong, Macau, Taiwan, or any foreign destination, remains in effect. Prior to 2017, it was not uncommon for individuals to remove larger amounts of currency by pooling the quotas for relatives, friends, and even employees. SAFE now prohibits anyone from transferring money on behalf of someone else. In addition, since the beginning of 2017, Mainland Chinese banks are required to report any cash transaction of RMB into foreign currency, if the amount equals or exceeds RMB 50,000 (US\$ 10,000).

Beginning on January 1, 2018, anyone using Mainland Chinese "bank cards" to withdraw cash outside the Mainland is subject to a limit of RMB 100,000, or the equivalent in foreign currency, per year. Exemptions require bank (or government) approval.

The intent of the new currency policies was to slow the rapid outflow of cash from Mainland China. However, many workarounds still exist, oftentimes involving Chinese companies doing business overseas. The methods used to evade currency controls are many and oftentimes imaginative. Some involve an ancient form of banking, which has been adapted to the present.

UNDERGROUND BANKING

Underground banking systems,³⁷ or informal money transfer systems, are unregistered operations which rely on political, geographic, family, or close personal relationships, in order to conduct business. Their clientele tends to be from a specific ethnic group. British Columbia is

³⁶ SAFE. Accessed at <http://www.safe.gov.cn/wps/portal/english/AboutSAFE/Major>.

³⁷ More properly, 'under the radar of government', than 'underground'.

home to underground bankers who perform unregulated banking transactions between countries, often seeking to avoid currency import or export restrictions.

Also referred to as alternate remittance (or value) systems, some of the best known are the hawala (India), hundi (Pakistan), and the chit and chop (China).³⁸ In many cases, underground bankers exist due to a mistrust among the populace for mainstream financial institutions. Still others are the product of long standing and strong social and cultural factors.³⁹

The irony of underground banking is that in some countries, underground banking is practiced quite openly. Many developing world countries, which do not have established banking systems, are heavily reliant on them. War ravaged countries are particularly dependant. In some places, international aid organizations use these bankers to pay employees and to transmit funds.⁴⁰ Nevertheless, some underground bankers also transmit the proceeds of corruption and bribery. Therein lies the problem.

When SAFE was established by the PRC in 1978, it created a modern purpose for underground banking in China. Many wealthy citizens wanted to invest in foreign markets which they considered more stable over the long term and not visible to the PRC government.

Underground bankers now rely on WeChat and other modern means by which to communicate the movement of money. The Vancouver Model described in the next chapter is a prime example of this ancient form of banking, in a very modern context.

³⁸See Leonides Buencamino and Sergei Gorbunov, *Informal Money Transfer Systems: Opportunities and Challenges for Development Finance*, DESA Discussion Paper No. 26, Nov. 2002. Accessed at <http://www.un.org/esa/esa02dp26.pdf>.

³⁹Barry A.K. Rider, "Recovering the proceeds of corruption", *Journal of Money Laundering Control* V10:1 at pp. 18-20.

⁴⁰Afghanistan lacked a modern banking system, and therefore was unable to curb money laundering through normal means. In partnership with the U.S., the Afghan government registered hawala brokers, who in turn were expected to report all transactions to the central bank and permit audits ("Restricting cash flow to Taliban difficult, U.S. says", *Plus News Pakistan*, Sept. 29, 2009).

CHAPTER 1-4

THE VANCOUVER MODEL

FINDINGS

- Money is laundered by underground bankers, from Greater Vancouver into and out of the PRC and to other locations, including Mexico and Colombia. Underground banking is an unregulated form of banking in which no money moves in hard cash or electronically, but rather through a settling of accounts between two bankers.
- In the Vancouver Model, the Canadian underground banker is servicing a drug trafficking organization by laundering its money and the Mainland Chinese underground banker is facilitating the movement of money out of the PRC, thereby avoiding currency controls and oversight.
- The Vancouver Model allows organized crime to double its share of profits by providing services at both ends of the same transaction, a typology considered new and unique by the FATF.

THE MODEL

A professor at Macquarie University in Australia has spent many years examining the development of Asian organized crime and its dispersion around the world. From a distance, Professor John Langdale could see that something quite interesting was occurring in Vancouver. As he described it, organized crime borrowed a page from the old business strategy of ‘clipping one’s ticket at both ends’. He coined a term for what he saw, the Vancouver Model. That term has resonated within the Canadian media and in public discourse. It describes how organized crime can double its share of profits by providing services at both ends of the same transaction. The ‘genius’ of the scheme is the ability to achieve two objectives and be paid for both in the same transaction.⁴¹

In the Vancouver Model, Mainland Chinese citizens seek to relocate some of their wealth from China to Canada. They either wish to avoid currency controls or the eye of government. In China, they turn over the sum to be transferred to an underground banker, who notifies a correspondent underground banker in Greater Vancouver that the funds have been obtained and that a similar amount can be provided to the Chinese citizen upon arrival in Vancouver. No money moves between the countries, in hard cash or electronically. There will be a settling of accounts between the two bankers, possibly after the Chinese banker has arranged for the purchase of drugs or other illegal product to be shipped to his Canadian colleague or that

⁴¹John Langdale, “Impact of Chinese Transnational Crime on Australia: Intelligence Perspectives”, Nov. 2017 (unpub.).

person's designate. These arrangements can become very complex and involve multiple transactions, crime groups, and countries.

The provenance of the cash provided to the Chinese citizen upon arriving in Vancouver is often unclear. It is generally in the form of stacks of \$20 bills, wrapped in a fashion that more closely resembles drug proceeds than it does cash originating at a financial institution. Some may be of legitimate origin, some is from the underground economy, and much is the proceeds of drug trafficking. The Chinese person can do as he or she wishes with the money, however oftentimes they will use the money to purchase chips at a casino, gamble, and either receive higher denomination bills or a cheque upon leaving the casino. The Canadian banker is both servicing a drug trafficking organization by laundering its money and providing the Chinese individual with Canadian cash.

Langdale's research indicates that Greater Vancouver is a hub for Mainland Chinese organized crime. A complex network of criminal alliances has coalesced with underground banks at its centre. Money is laundered from Vancouver into and out of the PRC and to other locations, including Mexico and Colombia. Illegal drug networks in North America are supplied by methamphetamines and precursor chemicals from China and cocaine from Latin America.

Professor Langdale fears that the Vancouver Model may find its way to Australia if preventative steps are not taken there. In this regard, Sydney, Australia mirrors Vancouver in many respects. Its real estate is considered among the most desirable in the world; its casinos beckon high rollers; and money transfer companies are commonplace. Like Vancouver, there is also a high local demand for illegal drugs.

The Vancouver Model is a classic operation which reflects the opportunistic way in which organized crime works. It is always looking for new markets and is mindful of what government is doing in response. Once the 'heat' becomes too much in a sector of the economy, such as casino gaming, it should come as no surprise that organized crime will move to another sector or methodology. This may be real estate, luxury goods, counterfeit products, or any number of other enterprises. The only criteria, is that the new landing spot be lucrative, because organized crime is entrepreneurial by nature. It will not go away. As a result, the Vancouver Model is a snapshot in time for the casino industry, but it may replicate in other sectors of the economy.

As noted in Chapter 1-2, an FATF report released in 2018 included a submission from Canada on a new typology of money laundering. This was, in fact, a description of the E-Pirate investigation, considered to be an ideal example of the Vancouver Model. The typology was provided by the RCMP to the federal Ministry of Finance, and from there it was sent to the FATF. The typology report is acronym heavy. It reads as follows:⁴²

⁴² FATF, *Professional Money Laundering*, July 2018. Accessed at <http://www.fatf-gafi.org/media/fatf/documents/Professional-Money-Laundering.pdf>.

Investigation of Massive Underground Banking System

"Subject X and his network of associates in British Columbia, Canada, are believed to have operated a PMLO⁴³ that offered a number of crucial services to Transnational Criminal Organisations including Mexican Cartels, Asian OCGs, and Middle Eastern OCGs. It is estimated that they laundered over CAD 1 billion per year through an underground banking network, involving legal and illegal casinos, MVTs⁴⁴ and asset procurement. One portion of the ML networks [sic] illegal activities was the use of drug money, illegal gambling money and money derived from extortion to supply cash to Chinese gamblers in Canada. Subject X allegedly helped ultra-wealthy gamblers move their money to Canada from China, which has restrictions on the outflow of fiat currency. The Chinese gamblers would transfer funds to accounts controlled by Subject X and his network in exchange for cash in Canada. However, funds were never actually transferred outside of China to Canada; rather, the value of funds was transferred through an Informal Value Transfer System. Subject X received a 3-5% commission on each transaction. Chinese gamblers were provided with a contact, either locally or prior to arriving, in Vancouver. The Chinese gamblers would phone the contact to schedule cash delivery, usually in the casino parking lot, which was then used to buy casino chips. Some gamblers would cash in their chips for a "B.C. casino cheque", which they could then deposit into a Canadian bank account. Some of these funds were used for real estate purchases. The cash given to the high-roller gamblers came from Company X, an unlicensed MVTs provider owned by Subject X. Investigators believe that gangsters or their couriers were delivering suitcases of cash to Company X, allegedly at an average rate of CAD 1.5 million a day. Surveillance identified links to 40 different organisations, including organised groups in Asia that dealt with cocaine, heroin and methamphetamine. After cash was dropped off at Company X, funds were released offshore by Subject X or his network. Most transactions were held in cash and avoided the tracking that is typical for conventional banking. Subject X charged a 5% fee for the laundering and transfer service. As the ML operation grew, the money transfer abilities of Company X became increasingly sophisticated to the point where it could wire funds to Mexico and Peru, allowing drug dealers to buy narcotics without carrying cash outside Canada in order to cover up the international money transfers with fake trade invoices from China. Investigators have found evidence of over 600 bank accounts in China that were controlled or used by Company X. Chinese police have conducted their own investigation, labelling this as a massive underground banking system."

This typology is remarkable for a number of reasons. It provides more information about the influence of TOC in Vancouver casinos than had previously been released within this country. It was also the first public confirmation of the existence of Mexican Cartels working in Greater Vancouver and re-enforced the involvement of Asian OC and MEOC.⁴⁵

⁴³ Professional Money Laundering Organization.

⁴⁴ Money or Value Transfer System.

⁴⁵ Also, see Appendix "G" for a description of the RCMP's methodology to determine the volume at this MSB.

With the foregoing introduction to Money Laundering, Organized Crime, and the Vancouver Model, we now turn our attention to the three sectors of the economy that are specified in the TOR for this Review.

PART 2

REAL ESTATE

CHAPTER 2-1

REAL ESTATE

FINDINGS

- Private mortgage entities are a growing segment of the lending market and vulnerable to being used for criminal purposes, including money laundering. They are not reporting entities to FinTRAC. There is no visibility of their beneficial owners, source of funds or lending practices. Currently 90,000, or 9% of residential mortgages, are held by 18,570 private lenders, with 80% of the lenders being corporate entities.
- It is believed that much of the overseas capital used for private mortgages transits through Canadian ‘gatekeepers’, such as lawyers, thereby skewing any data with respect to overseas investment in real estate.
- Quickly discharged mortgages can be an indication of suspicious activity. Ten per cent of private mortgages are discharged within 30 days and one year of registration. We noted 101,883 properties with quickly discharged private mortgages. One per cent of properties had between 4 and 29 mortgages quickly repaid.
- Although foreign banks are not permitted to engage in mortgage lending, unregulated lenders from outside Canada can register mortgages against B.C. property.
- Houses and condominiums owned by legal entities tend to have above-average values and almost 30% are not financed, leading to concern in terms of source of funds.
- The use of nominees, or straw buyers, in real estate transactions is commonplace and is exploited by beneficial owners, including criminals engaged in money laundering. Three per cent of B.C. titles (33,292 in 20 years) are held by persons whose occupation is listed as student, homemaker, or unemployed and approximately 25% of them had clear title. These tend to be expensive houses, with 88 houses over \$10 million that are apparently owned by nominees.
- 13,678 residential properties, with an aggregate value of \$16.12 billion, are owned by individuals or entities with service addresses outside Canada, a fifth of which are in high-risk jurisdictions for money laundering.
- A total of 25 properties with an aggregate value of \$34.5 million have owners with addresses in countries subject to trade sanctions.

- Twenty properties registered in the British Virgin Islands are owned by shell companies, with full anonymity of directors, shareholders and beneficial owners.
- Opaque service addresses, including post office boxes (71,000) and lawyer offices (2,000), are common as there is no requirement for B.C. owners to list their principal residence.
- The combination of opaque ownership structures and all-cash purchases increases the money laundering risk considerably, particularly when a nominee or offshore buyer is involved. Purchases of residences without financing account for 29% to 38% of purchases by companies, 58% of purchases by registered trusts, 20 to 28% of purchases by nominees, and 32 to 40% of purchases by offshore buyers.
- Unregistered common law trusts defeat the certainty expected of land title registration.
- The inability to identify investors in development projects makes it difficult to determine the source of funds for projects.
- Reporting of suspicious transactions to FinTRAC, by relators has been dismal at best.
- The use of Geographic Targeting Orders in the U.S. has assisted greatly with ensuring greater transparency in real estate developments and purchases.
- The absence of standardized data fields and prompts makes LTSA data difficult to use for analytical purposes. We found properties registered to “superdad”, ‘funemployed’, ‘wannabe ski bum’, ‘domestic diva’, ‘trophy wife’, and ‘launderer’.

TERMS OF REFERENCE

The TOR for this Review include the following:

- 1. *Links between B.C. casino patrons demonstrating indicia of fraud or illegality, and real estate transactions***

Identify any links between real estate activity and money laundering in B.C. casinos as identified in the “Dirty Money” report in order to identify the scale and patterns of real estate activity with transactions by casino patrons which demonstrate indicia of fraud or illegality.

- 2. *Alleged issues of criminal activity and money laundering relating to real estate to determine the scale and scope of any actual problem***

Advise government whether the following alleged issues can be confirmed to exist and, if so, the extent of the problem and any identifiable patterns in firms or individuals engaging in or facilitating the identified conduct:

- a. Evidence of money laundering in the B.C. real estate sector that has connections to criminal enterprises in B.C. or other countries;*
- b. Use of lawyer's trust accounts to avoid scrutiny of the source of funds in real estate transactions;*

THE REAL ESTATE SECTOR

Real estate is at the core of the modern economy in B.C. and drives progress in many sectors. It is a critical industry that provides jobs for many thousands of British Columbians. The casino sector, which was the subject of Phase One, pales by comparison to the enormity of the real estate sector.

It is estimated that one third of B.C.'s Gross Domestic Product (GDP) involves real estate. It has been said by a regulator that, "everything in B.C. comes back to real estate." Real estate is readily accessible and, in the Vancouver market, tends always to increase in value over time.

It has also been suggested by a regulator that you can see a "rat move through all of it", meaning that each component of the real estate industry is vulnerable to criminal actors who tend to operate in more than one discrete area of sales, mortgages, insurance, and so forth.

Dirty money entering the world of real estate can be hidden through numerous devices; including property registration, management companies, mortgages, double and triple layers of ownership, and beneficial ownership.

WHY REAL ESTATE?

As it relates to money laundering, real estate is attractive both as a destination for laundered funds and as a channel to launder the proceeds of crime. Criminals may use laundered funds to buy properties for lifestyle or investment purposes, or to further their business operations. As a channel for laundering criminal proceeds, real estate offers a number of benefits:

- **High value** – A substantial sum of money can be laundered in a single transaction. The purchase can be made in cash, or with a mortgage that is subsequently repaid with laundered funds.
- **Security** – Real estate is a comparatively safe investment in a tangible asset. It has less exposure to currency fluctuations and economic cycles than many other assets.
- **Profit potential** – Real estate often increases in value over time, and value can be added through renovations and other physical improvements. Buy-to-rent properties also carry significant potential for profits. B.C. real estate has seen

rapid appreciation over the past 15 years, making it particularly attractive to a broad array of investors.

- **Simplicity** – Relative to many money laundering schemes, real estate transactions can be straightforward and do not require specialist knowledge on the part of the purchaser.
- **Subjective value** – It can be difficult to assess the value of a particular property, especially in a rapidly evolving market or when a property is atypical. A property is often simply worth more to one person than it is to another. This difficulty in assessing value allows for manipulation.
- **Anonymity** – Property titles can be held through companies, trusts, or nominees. In B.C., there is no requirement to disclose a property's beneficial owner.
- **Light-touch regulation** – Most businesses and professionals in the real estate sector have fewer obligations under AML regulations than financial institutions. Available statistics show that rates of compliance with those regulations are much lower than in other regulated sectors of the economy.⁴⁶ Several key actors in the real estate sector are not subject to any AML regulation; including, mortgage brokers, private lenders, redevelopers, appraisers and 'for sale by owner' companies.

While many of the above benefits are inherent to real estate as an asset class, the anonymity of real estate transactions can be addressed with an effective regulatory framework and enforcement.

VULNERABILITY OF THE SECTOR

There are huge profits to be made in the purchase and sale of real property. For decades we as Canadians have been told that the average family's largest ever investment will be its home, followed a distant second by the family auto and possibly higher education for children.

Most Canadians buy a home to live in it. However, a small number of people invest in real property, by purchasing homes, apartments, and commercial premises, which they then rent or lease to offset the cost of borrowing for the purchase.

In recent years, Vancouver has faced a phenomenon that it has seen before, after Hong Kong reverted to the PRC in 1997. Real estate was seen as a safe haven in which to invest money that might otherwise have found a home in a bank savings account or in stock. The strong belief in the value of real property, held by many Mainland Chinese people, makes it an ideal form of investment. Emigration from Hong Kong opened up a new era for Vancouver and its real estate

⁴⁶FinTRAC, "Report to the Minister of Finance on Compliance and Related Activities", Sept. 30, 2017 at pp. 12-13 (unpub.); Dan Fumano, "Money laundering watchdog cites significant deficiencies at 100-plus B.C. real estate firms", *Vancouver Sun*, Nov. 18, 2016.

market. It was no longer a parochial, provincial region and real estate market, but was viewed by people from abroad as an attractive place to live and invest.⁴⁷

What differed in the more recent migration from Mainland China, was the sheer volume of buying by overseas investors. Many of these individuals intended to make Vancouver their home although, as was the case after 1997, many decided to remain in their home country and simply keep the real property in Vancouver as an investment.

A fever developed, akin to a gold rush, in which foreign buyers rushed to buy homes, willing to pay over market price for property in order to be in on the rush and avoid what many thought was inevitable – government intervention. Local speculators and prospective buyers, worried about being priced out of the market, further fuelled demand.

The purchase of thousands of homes in a short period of time created a spike in prices as local residents also saw an opportunity to cash in on what might well be a once in a lifetime opportunity to sell their family home at a sizeable profit, without tax consequences, and settle into a retirement property.

GOVERNMENT INTERVENTION

The provincial government intervened in 2016 by imposing a 15% foreign buyer tax on residential property. Almost immediately a cooling of the market could be detected. The current government later increased the foreign buyer tax to 20% and developed a 30-point plan of additional taxes and restrictions on property. Effective January 1, 2018, the federal government, concerned that purchasers were overextending their financial ability to repay mortgages, imposed a stringent mortgage stress test on prospective home buyers.

At the municipal level, the City of Vancouver implemented its Empty Homes Tax in 2017,⁴⁸ collecting 1% of the property's assessed taxable value if the property is left vacant. Currently, there is no system to confirm if the money collected by the City or the properties themselves are directly or indirectly linked to money laundering.

The impact of the foregoing policies has been quite evident within Greater Vancouver, with a substantial drop in home sales and a decline in sale prices, particularly for higher end houses. We have also seen mansions placed on rental sites, simply to avoid the vacancy tax and other municipal levies.

THE REAL ESTATE INDUSTRY

The real estate industry is really a collection of many moving parts, which operate in a symbiotic fashion to develop projects, construct houses and buildings, sell those properties, finance their sale, renovate the properties, furnish homes and buildings, and service the

⁴⁷ For an excellent discussion on Asian migration to Vancouver, see David Ley, *Millionaire Migrants* (West Sussex: Wiley-Blackwell, 2010).

⁴⁸ Vacancy Tax By-law No. 11674.

properties. A complete analysis of each component to determine their relative vulnerability to penetration by organized crime and money laundering is a task far beyond the term of this Review.

What we have attempted to do is to dissect the key parts of the industry, determine how each is performing in terms of financial integrity, and assess their vulnerabilities to money laundering. We have attempted to do this in two ways. First, we used a traditional interview and document review methodology to gather as much evidence as possible on what may be occurring within the industry. We then took macro snapshots of the industry using typologies and red flags of money laundering which evidence this conduct. The second, micro approach, involved reviewing specific transactions and the involvement of certain individuals.

It is abundantly clear at the outset that the industry is not homogeneous in terms of its vulnerability to organized crime and money laundering or to the steps which government has taken to detect illegal activity. Some aspects of the industry are ripe for abuse. Others are not. Some aspects of the industry are heavily regulated provincially and federally. Others are not. The result is that we can view the rat as it burrows through parts of the industry but lose sight of it in other parts, only to find it emerge in yet another.

Time and again in this Report we refer to the fact that the real estate market in Greater Vancouver is not as transparent as it should be. In fact, we describe it as being opaque, which is an antonym for transparent. This is not good for any number of reasons and, despite some legitimate arguments to the contrary, is what provides organized crime with a place to wash its proceeds of crime and to service capital flight from foreign jurisdictions. Although this Report does not enter upon the beneficial ownership debate, it is important to comment upon the movement to disclose beneficial ownership in corporate registries and land title records, both at the federal and provincial level. British Columbia is leading the way with its draft *Land Owner Transparency Act (LOTA)*⁴⁹

BENEFICIAL OWNERSHIP

The House of Commons Standing Committee on Finance recommended a pan-Canadian beneficial ownership registry⁵⁰ for all legal persons and entities, including trusts, accessible to “authorized reporting entities” and public authorities, but not the general public. The registry fields should include names, addresses, dates of birth and nationalities. There is no mention of a unique identifier, tax residency, full legal name, or what address should be listed.

The Committee recommended that a beneficial ownership registry should be given the power to verify information. Unspecified authorities should have the power to deal with non-compliance. The Committee noted that it was essential that the Registry not permit nominee

⁴⁹Bill 23 - 2019 introduces beneficial ownership disclosure requirements for corporations, partnerships and trusts. It is less clear whether the law will include individual nominees.

⁵⁰Defined as “those having at least 25% of total share ownership or voting rights”. It does not explicitly include indirect ownership.

shareholders, or failing that, require nominee shareholders to disclose their status. All nominees must be licensed.

It should be noted that Finance Canada's money laundering risk assessment in 2015 and the FATF's mutual evaluation report on Canada in 2016, both identified complex loan and mortgage schemes (i.e., mortgage fraud) as areas of money laundering risk. There are numerous unregulated actors in the real estate sector, including real estate investment trusts (REIT), mutual fund trusts, syndicated mortgages, individual private lenders, private equity firms, and mortgage finance companies.

The Canadian Real Estate Association (CREA) pleaded with the Committee to not recommend extending beneficial ownership identification and verification requirements to real estate agents due to the added compliance burden. CREA did, however, advocate bringing other real estate actors under the umbrella of the *POCMLTFA*.⁵¹

Data analysis by Transparency International (TI) UK and the Metropolitan Police found that between 2004 and 2014, criminal investigations in the U.K. identified £180 million in property purchased with the proceeds of corruption. Three quarters of those properties were owned through offshore legal entities.⁵² Closely connected to the lack of transparency in property ownership is the concept of politically exposed persons (PEP), senior government officials and politicians who have corrupted their states and transferred the proceeds of their crimes to foreign jurisdictions.

In order to curb the practice of using offshore legal entities to hide or launder the proceeds of crime through U.K. real estate, the British government drafted legislation in July 2018 that would require the beneficial owners of foreign legal entities owning property to register their interest in a public database.⁵³ The legislation bars overseas entities from acquiring or transferring title to a property without such registration. Presently, there are believed to be approximately 100,000 properties in England and Wales owned by overseas companies.⁵⁴

⁵¹Standing Committee on Finance, *supra*. Evidence. Accessed at <http://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/meeting-140/evidence#Int-10039377>.

⁵²TI UK, *Corruption on your Doorstep: How Corrupt Capital is Used to Buy Property in the UK*, Feb. 2015. Accessed at <https://www.transparency.org.uk/publications/corruption-on-your-doorstep/#.WuBo5uj482w>.

⁵³U.K., "Registration of Overseas Entities Bill: draft". Accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727915/Dr_aft_Registration_of_Overseas_Entities.pdf; and U.K., *Overview document: Draft Registration of Overseas Entities Bill*. Accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727901/2._FINAL_Overview_document_1_1_.pdf.

⁵⁴U.K. - *Impact Assessment*, July 11, 2018. Accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727827/3._ROEBO_final_stage_impact_assessment.pdf at p. 20. Trusts are not included in the planned registry. However, trusts generating UK tax consequences, such as rental income or capital gains from a property sale, must register beneficial ownership information with the tax authorities, and all trusts must maintain beneficial ownership information under the EU's 5th Anti-Money Laundering Directive.

POLITICALLY EXPOSED PERSONS

The *POCMLTFA* imposes monitoring requirements on politically exposed foreign persons and their families. The excesses of Ferdinand Marcos and the global search for the money which he and his cronies secreted abroad, can be viewed as the trigger which forced the world community to look seriously at the financial and other risks presented by kleptocrats, potentates and dictators who choose to steal from their national treasuries or participate in systemic bribery of domestic and foreign businesses. Often the export of their ill-gotten gains is accomplished through the assistance of friends, relatives, or intermediaries, such as lawyers and accountants.

As a result of work by the FATF and the United Nations (U.N.), most countries have now placed heightened due diligence requirements on foreign PEPs. In Canada, real estate businesses and professionals generally do not run checks for PEPs or perform Know Your Client (KYC) due diligence,⁵⁵ which re-enforced the Committee's finding that there are low levels of understanding within the real estate sector regarding AML obligations.

The Committee did request clarification from the federal government about what constitutes a politically exposed person, and what it means to be in "association with a PEP". It also urged a move to a risk-based model for dealing with PEPs, in order to reduce the compliance burden on reporting entities.

There is no consistency in Canada and between jurisdictions in defining PEPs and in the methods used to identify them. Industry stakeholders believe the current definition under the *POCMLTFA* is far too broad. Many reporting entities do little or no due diligence to identify PEPs, while others expend considerable resources by employing compliance teams and subscribing to commercial PEP databases. At one extreme, many reporting entities merely require PEP clients to self-identify in onboarding forms, while at the other end, some firms 'de-risk' PEPs by refusing to do business with them and their associates because of the cost of compliance.

THE FEDERAL REGULATORY ENVIRONMENT - FINANCIAL REPORTING

The *POCMLTFA* requires certain, but not all actors, within the real estate sector to report transactions to FinTRAC. Real estate brokers, sales representative and developers (when carrying out certain activities), as well as B.C. notaries are required to report. This leaves many aspects of the sector without a financial reporting requirement; including redevelopers, 'sale by owner' companies, title insurers, but most notably mortgage brokers, private lenders, and lawyers. We discuss mortgage brokers and private lenders below, while lawyers and notaries are discussed in Chapter 2-4.

⁵⁵PEPs are recognized internationally as a high-risk category of individuals for corruption and money laundering. It is an expansive term and is included in the *POCMLTFA*. KYC is a long-standing term for the basic due diligence required of financial institutions.

According to FinTRAC, the total number of Suspicious Transaction Reports (STR) submitted by the entire real estate sector in B.C. between 2014 and 2018 was 62, or an average of 12 per year, with the lowest years (2014-15) being the busiest for sales in a decade in Greater Vancouver. Considering that there are 22,000 realtors in B.C. and many thousands of residential sales per year, this figure is difficult to fathom. It breaks down as follows: 2014 (6), 2015 (4), 2016 (22), 2017 (17) and 2018 (13).

Prior to visiting with the Real Estate Association of B.C. (REABC), we noted a blog posting on its website which questioned the cost of compliance and lack of tangible results from reporting to FinTRAC.⁵⁶ Although quite possibly correct, the tone did not appear to encourage compliance. Staff at REABC were quite receptive to our comments and expressed a willingness to revisit their communication.

The lack of reporting to FinTRAC is of tremendous concern as realtors are on the frontline when dealing with clients who may wish to launder money in real estate. It is difficult to understand what causes such poor reporting; whether it is inadequate training, a fear of reporting, indifference to the process, or outright repudiation of the law. It is simply hard to believe that in the overheated market of Vancouver, while the casinos are submitting hundreds of STRs through British Columbia Lottery Corporation (BCLC), the real estate industry is seeing virtually no suspicious conduct. Presumably the answer is that in most real estate transactions, realtors do not handle money, other than deposits. That simply makes the situation worse, because lawyers, who do handle the money, are not required to report to FinTRAC.

The result is a dangerous combination of drastic underreporting by relators and no reporting by lawyers. The only reporting related to real estate that does occur on a regular basis, relates to the closing funds which are typically wired or delivered to a lawyer's trust account and for which an Electronic Funds Transfer (EFT) or Large Cash Transaction Report (LCTR) may be completed by a financial institution one step removed from the actual transaction.

A media report in 2017 indicated that FinTRAC "is seeing increased reporting of suspicious transactions involving Vancouver real estate as awareness of warning signs improves".⁵⁷ The article went on to indicate that "Reports from the real estate sector [nationally]... rose by 180 per cent in the agency's most recent fiscal year" and in a recent three-year period, 9,556 STRs "related" to the real estate sector had been filed. The clear implication in the comments by the spokesperson was that increased attention by FinTRAC to the real estate sector accounted for this increase in reporting. This large number of reports is, however, at odds with the small number of STRs submitted by the real estate sector, as detailed above.

Upon further enquiry, we learned that the most of the 9,556 reports did not come from realtors and others within the real estate sector but from other reporting entities, such as banks, handling funds for real estate transactions. Assuming that B.C. was responsible for a

⁵⁶REABC, "Money Laundering: Fact or Fiction?", Jan. 4, 2019. Accessed at <http://www.bcrea.bc.ca/about/bcrea-blog/bcrea-blog/2019/01/04/money-laundering-fact-or-fiction>.

⁵⁷James Bradshaw, "Real estate deals a growing focus for FinTRAC", *Globe and Mail*, Sept. 22, 2017.

proportionate share of these STRs, it is alarming to realize that alarm bells were being sounded by reporting entities that a massive number of suspicious transactions were occurring during the three-year period. How many of these reports found their way to B.C. law enforcement and what, if anything, was done with them remains unknown.

THE PROVINCIAL REGULATORY ENVIRONMENT - GOVERNANCE

There are five statutory agencies in B.C. which regulate key aspects of the real estate sector:

1. Financial Institutions Commission of B.C. (FICOM);⁵⁸
2. The Superintendent of Real Estate;
3. The Real Estate Council of B.C. (RECBC);
4. The Society of Notaries Public of B.C. (Notaries Society); and
5. The Law Society of B.C. (LSBC).

As our TOR did not include a review of the structure or effectiveness of the foregoing entities, we do not make any Findings on their ability to carry out the mandates which they have been given in legislation. We note, however, that the Expert Panel on Money Laundering in Real Estate is examining at least the first three entities noted above. We do consider the issue of financial reporting by lawyers and notaries in Chapter 2-4.

THE UNREGULATED SECTOR

Mortgage brokers

Mortgage brokers, registered and unregistered, including private lenders and mortgage investment corporations (MIC), are not required to report to FinTRAC. This is because they loan money rather than receive money. This fails to recognize, however, that mortgage brokers can serve as vehicles through which organized crime can launder its money. In the regulated sectors, organizations such as FICOM seek to ensure that brokers are *bona fide* and that the source of their funds is likewise legitimate. The unregulated sector, however, has no oversight in terms of who acts as a lender and no oversight in terms of their funding source or the payment back of mortgages. As a result, they can be attractive vehicles for money laundering.

A ‘shadow mortgage’ is a mortgage loan by an unregistered broker or lender. Shadow mortgages are important to our Review because they are not captured by financial reporting and also avoid the glare of provincial regulators. FICOM staff advised us that it has a less than optimum window on the scale of the unregulated mortgage industry. It appears, however, to be growing in both size and complexity.⁵⁹ In theory, unregulated individuals need to work in

⁵⁸FICOM regulates brokers, not borrowers or lenders (unless they are credit unions, insurers or trust companies). It views money laundering as one of a number of activities that can erode consumer confidence and is contrary to the public interest, which it must protect. Enforcement at FICOM is mainly reactive and complaint-driven. It takes on a limited number of proactive mortgage-related investigations (~20 each year), which appear to be spurred by media reports and market intelligence. Available penalties are not considered to be sufficiently dissuasive.

⁵⁹This may also reflect both an increasing awareness at FICOM and the growth of the unregulated market itself.

concert with regulated brokers to access lenders, except if they deal with unregulated, private lenders.

Private lenders, including MICs, are a fast-growing segment of the lending market and are not subject to the same regulations as banks and credit unions (including market conduct regulations and AML reporting). For its part, FICOM staff expressed the view that FinTRAC reporting should be extended to all mortgage lenders, by updating the *Mortgage Brokers Act*⁶⁰ of 1972 to reflect current industry practices and by more clearly defining who is a mortgage broker / registrant.

TYPОLOGIES

This Review has identified distinct typologies of money laundering in B.C. real estate. We have divided the typologies into Narrative Typologies and Data-Driven Typologies. The following is not an exhaustive list but provides a rough framework for what has been occurring in the province:

Narrative Typologies

- Capital flight;
- Speculation using funds of unknown origin;
- Laundering through informal banking networks;
- Criminal operations;
- Money laundering and Single-Room Occupancy (SRO) hotels;
- Ownership and financing of Hells Angels clubhouses;
- Laundering through mortgages;
- Rental and leasing; and
- Construction and renovation.

Data-driven Typologies

- Disguising ownership and source of funds through corporate structures and nominees;
- Manipulating property values;

⁶⁰ RSBC 1996, c. 313.

- Lending against property using criminal funds; and
- Flipping properties to disguise criminal income.

NARRATIVE TYPOLOGIES

Capital flight

Much of the foreign capital that enters the B.C. real estate market is of legitimate origin. It includes capital invested by foreign corporations and enterprising individuals who see an opportunity to profit from a rapidly appreciating market, and by others who wish to insure against political risk at home.

Nevertheless, foreign capital which has a criminal origin is likely the dominant form of money laundering in B.C. real estate. The primary motivation for this activity is to preserve and enjoy the ill-gotten wealth, which involves placing it out of reach of the authorities in the country of origin.⁶¹

Under this model, corrupt officials often move their spouses and, or children to Canada along with their wealth in order to secure residency and, ultimately citizenship. Indeed, there are provincial government programs throughout Canada that facilitate immigration through investment incentives. Spouses and children may be used to hold title to the properties acquired in B.C., making it difficult to identify the beneficial owner.

The properties acquired by these actors are typically houses and condos at the high-end of the market. These officials and their family members may use the property as a principal residence or a holiday home. In many cases, the properties sit empty.

In the case of Mainland Chinese nationals, evading state currency controls is often necessary to make real estate purchases abroad. Individuals with no criminal links use the same underground banking channels as organized crime groups and corrupt officials, bolstering their businesses and providing legitimately sourced funds to layer with dirty money. This co-mingling of funds, the proceeds of crime with money that has evaded capital controls but is otherwise clean, has contributed to what the late Richard Wozny referred to as the “large, mysterious untaxed pool of international capital” being placed in B.C.’s housing stock.⁶²

Court filings and newspapers offer multiple examples in which the proceeds of crimes committed abroad have found their way into B.C. real estate. These cases illustrate how the alleged perpetrators of several large-scale bank frauds in China absconded to B.C. and acquired

⁶¹Louise Shelley, “Money Laundering in Real Estate”, *Convergence: Illicit Networks and National Security in the Age of Globalization*, 2013 at p. 132.

⁶²Richard Wozny. “Low incomes and high house prices in Metro Vancouver”, 2017, cited in <https://vancouversun.com/news/local-news/obituary-real-estate-analyst-richard-wozny-fought-for-justice-on-housing-and-taxes>.

properties with funds, believed to be stolen, often registering the properties in the names of family members, thereby serving to obscure their involvement.⁶³

According to the PRC, in 2015 there were at least 26 fugitives in Canada who had stolen funds from state-owned institutions, several of whom were living in B.C. Though much of the media attention has focussed on targets of President Xi Jinping's anti-corruption drive, it appears that many prominent Mainland Chinese investors have used foreign-sourced capital to acquire real estate in B.C. with the PRC's approval.

Speculation using funds of unknown origin

A typology related to capital flight is speculative investment using foreign capital, often of unknown origin. The speculative activities of some high-profile Chinese investors have been reported in the press.⁶⁴ These individuals acquired tens of millions of dollars in B.C. real estate, while little is known about their political connections, sources of capital, or the means by which they moved it into Canada. Our analysis of land title records identified several homemakers, apparently from Mainland China, who acquired Vancouver-area luxury properties in the same year, often without a mortgage.

A common typology has been for individuals to solicit investments in Mainland China, transfer the money to Canada (likely using underground banking channels to circumvent currency controls), and represent the funds as his or her own, in order to secure mortgages from Canadian financial institutions. These mortgages are then used to acquire multiple properties for speculative investments or redevelopment. In some cases, this has resulted in civil suits against the principal of the scheme, alleging either a failure to repay the money borrowed, or to provide borrowers with a share of profit from the sales.

As part of this typology, some of the investment properties are registered in the names of family members, possibly for tax reasons or to insulate the assets from creditors.

⁶³Cases of note include a \$113 million fraud on Bank of China; China CITIC Bank's attempts to recover \$10 million that appears to have been invested in three Vancouver properties; the alleged embezzlement by a Bank of China manager connected to three Richmond properties; and an alleged \$500 million loan fraud committed on the Commercial Bank of China (Post Media and IPSA International, "Meet the mysterious tycoon at the centre of half-a-billion in B.C. property deals", *National Post*, July 24, 2016. Accessed at

<https://nationalpost.com/news/canada/meet-the-mysterious-tycoon-at-the-centre-of-half-a-billion-in-b-c-property-deals>). Also, see TI Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*, Dec. 2016 at p. 20; Sam Cooper, "Landmark ruling for Chinese bank can't be collected from Metro Vancouver homes", *Vancouver Sun*, Mar. 7, 2017; *Bank of China v. Xu Chao Fan*, BCSC case VLC-S-S-015937; and PostMedia News, "Meet the mysterious tycoon at the centre of half a billion in BC property deals", *National Post*, July 24, 2016.

⁶⁴"High-roller targeted in RCMP's probe of alleged 'transnational drug trafficking' ring", *Global News*, Nov. 29, 2018; and Sam Cooper, "'Whale gamblers' identified by BCLC also placed big bets on B.C. real estate", *Vancouver Sun*, Oct. 3, 2017.

We also noted properties with unusual borrowing activity, including large multi-year mortgages discharged shortly after being registered, in favour of new mortgages with less favourable terms.

Other examples of local speculators using offshore investors' money to purchase real estate have been described in newspapers and in civil court cases. A September 2016 investigative report by *Globe and Mail* journalist Kathy Tomlinson revealed how real estate investor Jun Gang 'Kenny' Gu allegedly used funds from Mainland Chinese clients to acquire Lower Mainland properties, obtaining mortgages and registering homes in their names while fraudulently taking advantage of tax breaks.⁶⁵

Laundering through informal banking networks

The involvement of underground bankers is a recurring theme in this Review. It is a common method of laundering, as described in the following example.

In mid-2017, MacEwan University in Edmonton was defrauded of \$11.8 million in an e-mail phishing scam.⁶⁶ A university procurement employee unsuspectingly transferred the money to a bank account controlled by fraudsters, who wired it to Hong Kong. At least \$1 million of the proceeds allegedly made its way back into Canada for use in a real estate transaction.⁶⁷

An individual who was set to close on a \$25 million Richmond property required financing for the deal, which a family member agreed to provide from a company he controlled in China. The relative used an informal MSB to exchange the funds from RMB to Canadian dollars. The MSB received RMB 6.7 million (\$1.2 million) from the Mainland Chinese company and transferred \$1 million to the buyer of the Richmond property, taking a \$200,000 commission.

Unknown to the buyer, the MSB was linked to the MacEwan University fraud and used some of the proceeds for the foreign exchange transaction. The \$1 million of stolen university money wound up in a Richmond property.

Criminal operations

This typology involves the acquisition of property by criminals with the intent of generating or washing illicit funds through business operations. Examples include properties used for drug production⁶⁸ or illegal gambling,⁶⁹ a retail property used as a brothel, and an SRO hotel used for drug trafficking (see below). The money from these enterprises will inevitably need to be

⁶⁵Kathy Tomlinson, "Out of the shadows", *Globe and Mail*, Sept. 10, 2016.

⁶⁶Claire Theobald, "How a fraudster got \$12m out of a Canadian university: They just asked for it", *The Star*, Oct. 9, 2018.

⁶⁷*The Board of Governors of Grant MacEwan University v. Hoi Fu Enterprises Ltd*, BCSC file 179040.

⁶⁸Fifty-two of 143 civil forfeiture cases examined during the course of this Review involved properties that were allegedly used for drug production.

⁶⁹Bob Mackin, "Notorious Richmond mansion sold", *The Breaker*, May 31, 2018.

laundered, some of which may be done through mortgage or rent payments, or through unrelated real estate transactions.

Money Laundering and Single-Room Occupancy Hotels

The prevalence of residential properties masquerading as hotels has been reported by the media as a recurring problem in Greater Vancouver. In March 2015, VPD arrested six suspects following an investigation into a drug trafficking ring. A subsequent civil forfeiture claim was brought against a Coquitlam house, a luxury automobile and the proceeds from two properties, including a single-room occupancy hotel on the Downtown East Side.⁷⁰

A B.C. numbered company purchased a 35-room SRO building in November 2013 for \$1,822,000, taking out a \$1 million mortgage from a private lender. It sold the building in July 2015, prior to the civil forfeiture claim, for \$2.15 million. Although units were being rented, the property was apparently a site for drug trafficking.

Vancouver Police noted at the time of the arrests that the principal and his associates had been selling fentanyl and other street drugs to marginalized members of the Downtown East Side, as well as shipping large quantities of narcotics to Vancouver Island and Alberta.⁷¹

Several other properties linked to the principal and his associates, were identified during this Review. This case was one of three we identified from recent years that involved the use of SROs to allegedly traffic drugs and launder proceeds of crime.

Ownership and Financing of Hells Angels Clubhouses

The Combined Forces Special Enforcement Unit – B.C. (CFSEU-BC), the province’s RCMP-led organized crime task force, has identified the Hells Angels as one of the most notorious gangs working in B.C.⁷² To the general public, the HA are seldom seen in their regalia, but when they are visible, the members are easily recognizable by the rockers on the back of their leather jackets. The HA works closely with subordinate, puppet gangs and is reputedly heavily involved in the illegal drug trade.

The following is on the CFSEU-BC website:⁷³

“While the likes of the **Red Scorpions**, the **Independent Soldiers** and the **UN** are referred to as mid-level players, police consider the **Hells Angels** a top-echelon criminal organization, seen in the same light as the **Mafia** and the **Big Circle gang**.

⁷⁰British Columbia (Director of Civil Forfeiture) v. Halstead, 2015 BCSC 1860; and Kim Bolan, “Charges laid after VPD investigation into drug ring”, *Vancouver Sun*, Feb. 5, 2016.

⁷¹ Halstead was recently acquitted of charges. Accessed at <https://www.cbc.ca/news/canada/british-columbia/i-felt-like-i-was-being-robbed-suspect-cleared-in-vancouver-drug-case-loses-porsche-homes-1.5107956>.

⁷² “Gangs Operating in BC in 2011”, CFSEU-BC. Accessed at <https://www.cfseu.bc.ca/gangs-in-b-c/>.

⁷³ *Ibid.*

The organization today has hundreds of chapters in more than 20 countries. It has a number of established clubs in the Lower Mainland and a number of puppet clubs such as the Prince George-based Renegades. However, new biker clubs linked to the **Hells Angels** have been sprouting up all over the province recently, from Campbell River to Fort St. John, as the gang seeks to maintain its status.” [emphasis in the original document]

At one time, the HA were reputed to have more clubhouses in Greater Vancouver than in any other metropolitan area in the world. Currently they are believed to have five physical clubhouses in the province; located in Vancouver, Surrey, Langley, Nanaimo and Kelowna. Two of the clubhouses are targets of ongoing civil forfeiture proceedings. Though money laundering does not feature in the civil forfeiture claims, the properties exhibit several of the indicators used in our analysis of property data.

Of the five clubhouses, two are owned through companies that are controlled by HA members, two are jointly owned by members, and one is rented from a third party. The clubhouses owned by companies appear to have been acquired without financing.

The companies have also borrowed against the properties to access loans ranging from \$30,000 to \$150,000. The private lenders who held those mortgages may have been related parties, or for some other reason loaned money to the companies on favourable terms. One of those lenders was the estate of an individual who may have been an HA associate, while the other was a company controlled by a lawyer who was subsequently disbarred for embezzling client funds.⁷⁴

[Laundering through mortgages](#)

Mortgages and other loans can be obtained using real estate as collateral and can then be repaid using proceeds of crime.⁷⁵ Often loans are borrowed from legitimate third parties. However, criminals can also loan themselves money to finance purchases in order to make the source of funds appear to be legitimate. This so-called ‘loan-back’ scheme involves a buyer borrowing his or her own illicit funds using companies or nominees to create the appearance of an arms-length transaction.⁷⁶

Loans can be obtained to finance a purchase partly or wholly funded with illicit funds, or to launder money through home equity loans (i.e., refinancing) once a property has already been acquired with the proceeds of crime.

Mortgage-related laundering can be difficult for financial institutions to detect, as money launderers often make regular payments and strive to appear as unremarkable as possible in an

⁷⁴LSBC, “Arthur Wayne Skagen - Admission: Misappropriation, breach of undertaking and breach of rules”, Apr. 2005.

⁷⁵FATF, *Concealment of beneficial ownership*, July 2018 at pp. 64-65.

⁷⁶AUSTRAC, *Money Laundering through Real Estate*, 2015 at p. 7.

effort to avoid scrutiny. They may also use intermediaries such as mortgage brokers or lawyers to arrange financing, rather than dealing with financial institutions directly.

The use of mortgages in money laundering involving real estate is often seen in conjunction with nominees or opaque structures (legal entities and arrangements) to hold title and/or obtain the mortgage. It also features in private lending or loan-back schemes in which the mortgage itself consists of criminal proceeds.⁷⁷

Though all-cash purchases of real estate are widely understood to be an indicator of money laundering, most acquisitions with dirty money involve the use of mortgages. A 2004 study of RCMP files found that in 83 cases within Canada, 78% involved a mortgage that was repaid with proceeds of crime.⁷⁸ Indeed, the use of mortgages may be driven in some cases by a desire to stay ‘below the radar’ of AML professionals looking for unusually high amounts of personal financing. By taking out a mortgage on a property, a criminal lowers his or her equity stake, and in turn reduces the risk of personal financial loss if the government seizes the asset.

Rental and leasing

Buy-to-rent properties are attractive for money laundering, as proceeds of crime can easily be disguised as legitimate rental income.⁷⁹ Rent can be paid in cash and deposited with financial institutions without any reporting to FinTRAC, as long as the deposits are under \$10,000. Rent payments can be artificially inflated and can then be reported to the Canada Revenue Agency (CRA) and taxed as legitimate income.

In cases where rental properties are used to launder money, legitimate rental income may be integrated with proceeds of crime, making detection and seizure more difficult. Rent-based schemes are often further obscured through the use of corporate entities that serve as management companies, which collect rents and administer properties.⁸⁰

A recently discovered rent-based scheme involved former Vancouver real estate agent Omid Mashinchi, who is now serving a two-year sentence for money laundering in a U.S. prison. He used a company to lease properties from third parties and sublet them to criminal associates.⁸¹

Construction and renovation

There are many opportunities to use dirty cash for construction and renovation, including purchasing supplies and paying labourers and tradespeople. By laundering money through property improvements, criminals can add value and make legitimate income through a

⁷⁷Stephen Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, Nathanson Centre for the Study of Organized Crime and Corruption, Mar. 2004 at pp. 34-35.

⁷⁸*Ibid.*

⁷⁹FATF, *Concealment of Beneficial Ownership*, *supra* at pp. 64-65.

⁸⁰FATF, *Money Laundering & Terrorist Financing through the Real Estate Sector*, June 2007 at pp. 15-16.

⁸¹Kim Bolan, “Former Realtor Linked to B.C. Gangs Facing Money Laundering Charges in U.S.”, *Vancouver Sun*, June 3, 2018.

subsequent sale. Similar to other cash-intensive sectors, money launderers can also use construction or trade businesses to integrate dirty money with legitimate income.

During this review we were alerted to the practice of contractors paying for building supplies in cash – in some cases more than \$40,000 in a single transaction. Though the activity may be suspicious, the suppliers are under no obligation to report or inquire about the source of funds.

DATA-DRIVEN TYPOLOGIES

In the following sections of the report, we discuss the remaining four typologies of money laundering in real estate by using 14 indicators that we have analysed using transactional data.

The typologies include:

- Disguising ownership and source of funds through corporate structures and nominees;
- Manipulating property values;
- Lending against property using criminal funds; and
- Flipping properties to disguise criminal income.

Data Analysis Methodology

We relied on publicly available data from the LTSA and BCA, the independent provincial government bodies mandated with administering property records. We also obtained data from the Multiple Listing Service (MLS) that includes information, such as listing and sale prices, for market-listed properties.

These datasets included:

- Data for all active residential titles registered in B.C. since January 1, 1999. Basic information on active and cancelled mortgages for each property (dates of registration and cancellation, name of lender) was included for each title. There were 1,289,451 unique titles included in this set.
- Data from a sample of 140,479 mortgage registration forms that had been retained by the LTSA since 2011. The LTSA does not typically retain ‘form data’ (i.e., information submitted through LTSA forms) in machine-readable format for more than 12 months. However, for reasons unknown to us they did have data for a small sample of mortgages going back to 2011. This dataset was partial and

not representative of all property use categories (single-family detached, condominium, etc.) or years.⁸²

- A custom dataset prepared by the LTSA that included all titles in a 12-month period (from March 2018 to March 2019) that had been transferred two or more times. This dataset was used to identify properties with unusual flipping activity, apparently not purchased as family homes.⁸³
- A dataset from BCA that included assessed values and conveyance information for 2018 and 2019. The conveyance data captures any sales of a property from January 2018 to March 2019 and is derived from the declared value on title.
- MLS listing and sale data for B.C. dating back to January 1, 1999.

The data contained in these sets was joined up into a series of SQL database tables using a combination of the following identifying markers:

- Parcel identifiers (PIPs) for joining BCA data with MLS and LTSA data.
- Title Numbers and Land Title Districts for joining tables within LTSA datasets related to title owner and title tombstone information.
- Title Numbers, Land Title Districts, Charge Numbers, and Charge Document District Codes for joining tables within LTSA datasets related to title charges and Form B data.

Cross-referencing these three datasets, we were able to conduct analysis on a range of money laundering indicators that were identified from existing literature, including:

- Academic papers from money laundering experts, such as Brigitte Unger and Joras Ferwerda's, in their 2011 study, "Money Laundering in the Real Estate Sector: Suspicious Properties";⁸⁴ Margaret Beare and Stephen Schneider's *Money Laundering in Canada: Chasing Dirty and Dangerous Dollars*,⁸⁵ and Louise Shelley's *Money Laundering in Real Estate*.⁸⁶
- White papers and advisory notices from regulators and law enforcement, including FinTRAC,⁸⁷ the Financial Crimes Enforcement Network (FinCEN), the

⁸²The dataset included mortgages from the following years: 2011 (5,178), 2012 (2,448), 2013 (6), 2014 (8), 2015 (10), 2016 (32,534), 2017 (50,930), 2018 (43,166), 2019 (4,750). The remaining 1,449 forms did not have a charge date.

⁸³This dataset did not include transfers of leases on leasehold strata plans.

⁸⁴Northampton, U.K.: Edward Elgar Pub. 2011.

⁸⁵Toronto: Univ. of Toronto Press, 2007.

⁸⁶Louise Shelley, "Money Laundering in Real Estate", *supra* at p. 132.

⁸⁷FinTRAC, *Money Laundering and Terrorist Financing Indicators – Real Estate*, Jan. 2019.

Australian Transaction Reports and Analysis Centre (AUSTRAC), and various law enforcement financial intelligence units.⁸⁸

- Real estate-focussed publications from the FATF⁸⁹ and the Organization for Economic Co-operation and Development (OECD).⁹⁰

From this body of existing literature, we identified 14 indicators that could be analysed using the LTSA, BCA and MLS datasets. We analysed each of the indicators. We then tested their validity against a sample of properties, compiled from civil forfeiture cases and information obtained during this Review, which were allegedly involved in money laundering or other criminal activity.

LIMITATIONS

This study was designed to assess money laundering risk and vulnerabilities in B.C. real estate. We did not set out to find evidence of money laundering related to specific properties or individuals. The indicators used in the study are only guideposts. Even if numerous indicators are present in a property, there may well be legitimate explanations for each of them.

Limits to money laundering indicators

As discussed above, the indicators used in this study were developed and adapted from existing literature. British Columbia, and the Lower Mainland in particular, possesses a real estate market in which many of the conventional money laundering indicators do not apply.

Speculative investment activity, an influx of foreign capital and rapid appreciation muddy the waters and exacerbate difficulties in identifying suspicious transactions. In recent years, with average home prices jumping as much as 30% year-on-year and assessed values being well below market, applying ‘purchases above market’ as an indicator does little to identify potential money laundering activity. We have tried to adapt indicators to the B.C. context wherever possible, however some activity deemed unusual in other markets has simply become the norm here.

This study was also limited to money laundering indicators that could be analysed through the data sources we had at our disposal. A substantial number of indicators could not be examined using the sources available to us. For instance, many of the indicators concerning financing of a purchase - such as multiple bank deposits under the \$10,000 reporting threshold, or money transferred from overseas accounts - are only visible to those with access to banking records. Other indicators would only be visible to individuals participating in a particular transaction,

⁸⁸For example, New Zealand Police Financial Intelligence Unit, *Quarterly Typology Report: Third Quarter 2014/2015*, Aug. 2015.

⁸⁹FATF, *Money Laundering & Terrorist Financing through the Real Estate Sector*, *supra*; FATF, *RBA Guidance for Real Estate Agents*, June 2008; and FATF, *Concealment of Beneficial Ownership*, *supra*.

⁹⁰OECD, *Report on Tax Fraud and Money Laundering Vulnerabilities Involving the Real Estate Sector*, 2006.

such as a real estate agent, notary, or lawyer (which is precisely why the *POCMLTFA* was drafted with the intention of including these professionals in the reporting scheme).

Data access and quality issues

All the data sources used in this research are publicly available. However, much of the data used for this project is located behind the paywalls of online databases maintained by different provincial government bodies. Because we relied on these third parties to compile the data, we had to be selective regarding what information we requested. Some key data, such as historic ownership information, was not available to us, which limited the depth of our analysis.

Much time and energy was devoted to obtaining custom datasets from the LTSA and BCA, and we are grateful for their cooperation and the efforts made to accommodate our requests. Although both organizations have made major strides in improving data quality and accessibility, there is much left to do. Most fields in LTSA forms are in free-form text, which leads to spelling mistakes and inconsistencies in data entry. An example was 2,182 unique entries in the country field for titleholders' service addresses, despite the number of countries in the world being a tenth of that number. Another example was finding 21 variations for the name of the financial institution, Scotiabank. Moving to standardized data fields and including prompts to validate entries, would go a long way to improving the quality of data.

Much of the data on LTSA forms, such as those used to register mortgages and other charges, is only retained in machine-readable format for a limited time period (usually 12 months), after which time it is only available in Portable Document Format (PDF). Other information can be submitted as 'schedules' to the LTSA forms, in which case it is only ever retained in PDF. The mortgage dataset we used for our analysis represented a fraction of total mortgages and was not evenly distributed across years or use categories. Within the dataset, about half of the mortgages were missing crucial fields such as principal or interest rate.

Residential focus

Our research focussed on residential real estate, which captures most of B.C. real estate but leaves out important segments of the market. Commercial real estate has been described as 'deep cover' for money laundering.⁹¹ The methods used in the commercial sector do not lend themselves to macro analysis using the data sources that we were able to access. Commercial investors and developers often have multiple limited partners who can remain anonymous to anyone without access to the developer's books. In the course of this Review we were alerted to a number of developers with unknown or suspect minority investors but were unable to pursue the matter due to a lack of compulsory disclosure.

Moreover, many of the established money laundering indicators for residential property do not apply to commercial property. For instance, while owning a residential property through a corporate entity is relatively unusual, it is the norm to hold commercial property through

⁹¹ Katherine Clarke and E.B. Solomont, "NYC's dirty money files", *The Real Deal*, Oct. 3, 2016.

special purpose vehicles (SPVs) – corporate entities created for a specific asset or development project.

With the foregoing caveats in mind, we can now examine the indicators and the data.

INDICATORS

Summary

We parcelled the 14 indicators of money laundering in real estate that could be assessed by analysing publicly available real estate data, into four categories:

- **ownership** indicators, which focus on opaque ownership structures and overseas buyers;
- **financing** indicators, which focus on unusual characteristics in mortgages and borrowing activity;
- **value-based indicators** of manipulation; and
- **transaction-based indicators** of potentially suspicious transaction activity.

Some indicators are stronger than others, or are more relevant in the B.C. context, and some could not be assessed to our satisfaction with the data available to us. We have, however, included summaries of all the indicators that we tested.

Indicators of money laundering in real estate

(included in our analysis)

Indicator
Ownership
Property is owned by a legal entity or arrangement
Property is owned by a nominee
Property is owned by an overseas buyer
Property is owned by a buyer from a high-risk jurisdiction
Titleholder uses an opaque address
Financing
Purchase does not involve external financing
Mortgage is with an unregulated lender
Mortgage is discharged quickly
Multiple mortgages are registered and discharged
Mortgage has an unusual loan-to-value (LTV) ratio
Mortgage has an unusual interest rate
Valuations
Property is overvalued or undervalued
Transactions
Property has been flipped multiple times
Buyer has acquired multiple properties in a brief period

OWNERSHIP INDICATORS

Concealment of beneficial ownership has been described by some experts as “the most important single factor facilitating money laundering in real estate”.⁹² A person’s ultimate ownership of a property can be hidden through legal entities, trust arrangements, or straw persons used to hold title (nominees). Our ownership indicators focus on these opaque structures and other means through which an owner can create hurdles for law enforcement

⁹²Terrorism, Transnational Crime and Corruption Center at the Schar School of Policy and Government of George Mason University, “Money Laundering in Real Estate”, Conference report, Mar. 25, 2018 at p. 1.

and regulators to detect and pursue money laundering; such as purchasing property in another jurisdiction or routing a transaction through a law firm.⁹³

To analyse the five ownership indicators, we reviewed current land title and BCA assessment data for residential properties acquired in the past 20 years.⁹⁴ The dataset included 1.29 million residential titles in a range of property categories including condominiums, detached and semi-detached homes, seasonal properties, agricultural properties with dwellings or residential potential, vacant land zoned for residential use, and multi-family buildings where the entire development is owned under one title.

COMPANIES, PARTNERSHIPS AND TRUSTS

Background

Companies, partnerships, and trusts can purchase property and secure financing without disclosing the identity of their owners. These entities and arrangements can be registered domestically or offshore. Property titles held through a company, partnership, or trust can provide anonymity for criminal owners and provide access to loans that would not otherwise be available to the beneficial owners.

While financial institutions and lawyers in Canada are required to make ‘reasonable efforts’ to identify the beneficial owners of their clients, it is not a prerequisite to doing business. In cases where corporations or other legal entities purchase real estate without external financing, or borrow from private lenders, they can bypass much of the AML scrutiny of regulated financial institutions.

Cash purchases of real estate by companies has drawn particular attention from U.S. regulators due to their vulnerability to money laundering. In the U.S., FinCEN rolled out a pilot project in 2016, targeting non-financed luxury real estate purchases by companies, in certain cities. The Geographic Targeting Order program compels title insurers⁹⁵ to collect and disclose beneficial ownership information to the government. This initiative has significantly curbed the use of shell companies making all-cash purchases in the U.S.⁹⁶

The use of legal entities and arrangements to hold properties vastly complicates investigations by law enforcement and asset recovery efforts in cases of money laundering.⁹⁷

⁹³FATF, *Concealment of Beneficial Ownership*, *supra* at p. 65.

⁹⁴The data used for these indicators dates back to Jan. 1, 1999. We decided not to go further back due to issues with data quality and the limited utility of that data in assessing the scale and scope of high-risk activity in today’s market.

⁹⁵In the U.S., most real estate is transferred through the use of title insurers, rather than lawyers or notaries.

⁹⁶FinCEN, *Advisory to financial institutions and real estate firms and professionals*, Aug. 22, 2017.

⁹⁷Written evidence submitted by the Serious Fraud Office to the UK Parliament’s Treasury Committee’ Economic Crime Inquiry, May 8, 2018 at para. 18; and letter from the National Fraternal Order of Police to the U.S. Senate Committee on Banking, Housing and Urban Affairs, July 20, 2018.

Data analysis

In order to quantify ownership of residential property by legal entities (corporations, partnerships, foundations, etc.) and legal arrangements (trusts), we filtered the names of owners by the name entered on title. Individuals generally have a first name and last name (two distinct fields), whereas legal entities are written in a single name field. We then used keyword searches for various legal suffixes (e.g. Ltd., Corp., Inc., LP) to assess the accuracy of our search. There is also a field on title where legal entities can provide an incorporation number, so we filtered for those as well.

Registered trusts were identified by searching the field on title documents where it indicates if a property is held ‘in trust’. Trust companies, a type of federally regulated entity that can act as a trustee to hold property, were treated as legal entities rather than trusts.

In addition to assessing overall ownership by legal entities and arrangements, we focussed on transactions with other risk factors, such as unfinanced purchases, borrowing from unregulated lenders, and acquisitions by companies and trusts based offshore.

Legal entities

This is not the first study to assess corporate ownership of residential property in B.C. In February 2019, Canada Mortgage and Housing Corporation (CMHC) published a report that found that 6% of residential properties in B.C. were owned by corporations, sole proprietorships and partnerships (5.6% by corporations and 0.4% by the latter two).⁹⁸ Of the corporate-owned properties, 31% were condominium apartments, 26% was vacant land, 15% were single-detached houses, nearly 11% were multiple residential units and 17% were a mix of other classes of residential property.

According to the CMHC study, much of the corporate-owned residential property can be attributed to construction, development, and rental/leasing businesses. Those sectors made up 45% of all residential properties owned by companies in B.C. in 2018.⁹⁹ Other industries accounted for 37%, led by finance and insurance. The rest could not be classified because they had not specified an industry classification.

Legal arrangements (trusts)

Most trusts in Canada are private legal arrangements with no public record of their existence. Our analysis was only able to capture trusts that are registered on title, which likely comprise only a small minority of the total number of trust agreements governing the ownership of B.C. properties.¹⁰⁰ Ironically, the registered trusts included in this indicator are the only type of trust for which information on beneficiaries and trustees is publicly available, so the properties

⁹⁸CMHC, *Residential property in British Columbia, Ontario and Nova Scotia: Overview of non-individual ownership*, Feb. 2019.

⁹⁹Ibid.

¹⁰⁰TI Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*, supra.

captured by this indicator are more transparent than the others that are governed by unregistered trust agreements.¹⁰¹

FINDINGS - LEGAL ENTITIES

Our research indicates that there are 92,280 residential properties in B.C. that are owned through corporate entities. This amounts to a little over 7% of the properties in our dataset.¹⁰² These properties fall into the following categories:

Corporate ownership by property category

Property type ¹⁰³	Number of properties	2019 assessed value (\$)	% of total (\$)
Detached/semi-detached	43,505 (21,639 vacant)	\$51,546,718,359	6%
Condominium	27,517	\$23,504,667,067	8%
Multifamily	14,031 (1,530 vacant)	\$72,714,836,618	67%
Agricultural	7,046 (2,436 vacant)	\$2,803,867,285	28%
Other	181	\$10,051,004	46%
Total	92,280 (43,505 vacant)	\$150.45 billion	12%

Properties held through corporate entities tend to have above-average values. Condominiums and single-family detached homes owned by legal entities are valued, on average, at 31% more than those owned by individuals.

At least 29% of the properties with a company on title were acquired without a mortgage.¹⁰⁴ That amounts to \$8.92 billion in declared value (i.e., at the time of purchase) and \$28.24 billion

¹⁰¹ In order for a trust to be registered on title, a copy of the trust document is submitted to the LTSA, which makes it available for viewing.

¹⁰² Our dataset included certain categories of agricultural property that allow for residential dwellings, as well as rental buildings with multiple residential units, which may account for part of the discrepancy between our figures and the CMHC figures cited above. Our dataset also covered titles registered in the past 20 years rather than all active residential titles, which is another apparent difference from the CMHC study.

¹⁰³ Multi-family properties include buildings with four or more units. The agricultural properties included in our research are on Agricultural Land Reserves and other properties with homes or residential potential.

¹⁰⁴ This figure only includes properties that are owned by a legal entity and have never had a mortgage registered on title. The percentage of unfinanced purchases by companies jumps to 38% when we set a limit of 30 days for a mortgage to be registered after a transaction (which implies the loans were not used to finance the initial purchase).

according to 2019 assessed value.¹⁰⁵ The money laundering vulnerabilities associated with unfinanced (all-cash) purchases are summarized below.

Corporate titleholders are also much more likely than individuals to borrow from unregulated lenders. Approximately 14% of mortgages taken out by corporate owners are with unregulated lenders. That is considerably higher than the rate of unregulated borrowing by individuals, which stands at less than 7%.

At least 92% of the corporations that own property in B.C. are registered in the province. The others include entities based in other Canadian provinces (~6%) and foreign jurisdictions (~2%), as well as entities that could not be located with the information provided.

Findings - Legal arrangements (trusts)

We identified 3,379 properties that are currently owned through registered trusts, with an aggregate assessed value of \$6.28 billion. As noted above, our analysis only captured trusts that are registered on title, which we believe to be a minority of the extant trusts impacting real estate ownership in the province.

Well over half of those properties (58%) were purchased without a mortgage. The aggregate declared value of those all-cash purchases is \$1.53 billion, while the properties' 2019 assessed value is \$3.35 billion.

Approximately 57% of the properties held through registered trusts are single-family homes, 36% are condominiums, and the remaining 7% comprise multi-family buildings and agricultural properties.

NOMINEES

Background

To avoid detection, criminals can acquire and hold property through a nominee, or 'straw person'. Proceeds of crime are provided to the nominee for the purchase, and the nominee becomes the legal titleholder. There may be an express trust agreement giving the criminal, beneficial ownership rights over the property, or it may be implied without any formal arrangement. Criminals may also use nominees to access financial services, such as obtaining mortgages or depositing/transferring funds.

¹⁰⁵If we include properties where a mortgage was registered after 30 days but not at the time of purchase, the aggregate declared value for corporate-owned properties is \$12.35 billion and the 2019 assessed value is \$42.37 billion.

Nominees typically do not have criminal records, and are often family members, friends or close associates. In some cases, nominees may be paid to serve as ‘straw buyers’ for mortgage applications or to hold title.¹⁰⁶

The use of nominees provides anonymity, enables access to financial services, and complicates asset forfeiture efforts if the authorities suspect that property was purchased with proceeds of crime.¹⁰⁷ Former police financial crime investigators interviewed for this Review acknowledged that the use of nominees is pervasive in money laundering and financial crime cases, which can likely be attributed to it being the most efficient way for criminals to remain at arms-length from a property or transaction. Using a nominee is legal, it does not involve setting up a company or other legal structure, and there are currently no laws or regulations that require nominees to self-identify that they are transacting on another’s behalf.

Nominees and the E-Pirate money laundering probe

The use of nominees was seen by the RCMP in its 2015 E-Pirate investigation into an (at the time) unregistered Richmond-based MSB, Silver International Investment Ltd. The RCMP identified Silver International as an underground bank that was laundering upwards of \$220 million each year for several dozen criminal groups. An RCMP inspector reportedly expressed his frustration with the use of nominees in an August 2017 presentation on the case, noting:¹⁰⁸

“We are finding now, not only one layer of nominees, but two, three and four. And some of those nominees live in China. And they are either related to you, or they don’t even know they are owners. So for many of the properties, we just had to walk away.”

A 2015 civil forfeiture case against the property of convicted drug trafficker Frederick Dwayne Wilson and two associates showcases the role of nominees in combination with several other typologies characteristic of money laundering.¹⁰⁹

At the time of his arrest, Wilson and his spouse were living in a home in Surrey that had allegedly been acquired with the proceeds of his drug trafficking activities. The civil forfeiture claim details how Wilson paid for the property and lived there despite his brother-in-law serving as a nominee on title.

According to court filings, Wilson and his wife were the *de facto* buyers of the property. They reportedly completed a home inspection and signed a contract with the sellers before

¹⁰⁶FinCEN, *Suspected money laundering in the residential real estate industry*, Apr. 2008 at p. 7.

¹⁰⁷U.K., *Economic Crime Inquiry Submission*, May 8, 2018. Accessed at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/economic-crime/written/82429.html> at para. 18.

¹⁰⁸Sam Cooper, “How B.C. casinos are used to launder millions in drug cash”, *Vancouver Sun*, Jan. 15, 2018.

¹⁰⁹*British Columbia (Director of Civil Forfeiture) v. The Owners and all Others Interested in the Property, in Particular Phoukhong Phommaviset also known as Pou Khong Phommaviset, Frederick Dwayne Wilson-Koonpackdee also known Frederic Dwayne Wilson and Latsaphone Koonpackdee*, BCSC file S-154920.

substituting Wilson's brother-in-law as the purchaser at the last minute. The \$768,000 home was acquired in December 2011.

To finance the purchase, Wilson made a number of structured cash payments to his brother-in-law and his mortgage broker, who used those funds to make the \$169,000 down payment for the transaction. The mortgage broker claimed to have been an unwitting participant in the alleged laundering activity, though admitted that his conduct was not "appropriate business practice for a mortgage broker".¹¹⁰ He does not appear to have been sanctioned for his role in the transaction.

Wilson's brother-in-law took out a \$616,000 mortgage with an unregulated lender and two years later obtained a second mortgage against the property with a BC-registered numbered company. Though the loans were in the name of Wilson's brother-in-law, Wilson and his wife allegedly covered the mortgage payments by depositing cash into his bank account.

The property was sold in 2017, reportedly after a settlement with the Director of Civil Forfeiture in which the province received most of the proceeds from the sale. Ultimately, the court was not asked to determine whether Wilson's brother-in-law was the owner of the property or a nominee.

Data analysis

It is not possible to identify nominee owners with publicly available real estate data. B.C. land titles include self-declared occupational information for titleholders. In some cases, students and homemakers have been used as proxies or nominees. The assumption is that, in many cases, the students and homemakers do not have independent sources of income but receive funds from the property's beneficial owner.

In the absence of more accurate proxies for nominee we have used the 'occupation field' for our analysis of title records to identify possible nominees. The occupations we included in our analysis were 'student', 'homemaker', and 'unemployed'.¹¹¹ We note that our analysis of nominees has almost certainly captured false positives (e.g. a student who previously worked, or inherited funds and is also the beneficial owner) and, more significantly, we could not identify the many nominees who have other occupations listed on title.

We did not include properties where a nominee proxy was identified on title as a co-owner with another individual whose occupation is anything but a variation on 'student,' homemaker' or 'unemployed'. For instance, a property jointly held by a 'businesswoman' and 'stay-at-home dad' would not be included in the analysis.

¹¹⁰Kim Bolan, "B.C. seeks forfeiture of house; Government alleged drug trafficker bought property to launder cash", *Vancouver Sun*, July 4, 2016.

¹¹¹We conducted 'fuzzy' searches that include different spellings and permutations of these keywords. (for example, the search for 'homemaker' included 'housewife,' 'house wife,' 'home-maker,' etc.).

We also opted to exclude properties that had a mortgage registered in favour of an individual with the same surname as the nominee titleholder. Those titles are held predominantly by students, which suggests that family members provided funds for the deposit and registered their interest in the form of a mortgage rather than holding title directly. From a money laundering perspective, beneficial owners use nominees to remain anonymous and at arms length, neither of which is achieved by registering a mortgage in their own name.

Findings

We identified 33,292 residential properties acquired in the last 20 years in B.C. whose sole owner on title is a student, homemaker or unemployed. That accounts for 3% of all titles. While the overall numbers of titleholders with those occupations has increased substantially in the past 20 years (from 578 in 1999 to a peak of 4,020 in 2016), as a percentage it has generally tracked overall market activity.

Press reports in recent years have drawn attention to \$30 million mansions acquired by students, and our analysis identified 88 homes over the \$10 million mark that are owned by apparent nominees. Those purchases may be outliers, but we found that students and homemakers do tend to buy expensive properties; the median value for single-family detached homes is \$820,000, while those held by nominees have a median value of \$1.42 million.

Purchases by nominees slightly outpaced overall market activity from 2009 until 2016, when new titles registered to students, homemakers and unemployed individuals began to drop off. The decoupling of nominee buyers from overall purchasers began shortly before the foreign buyer's tax was introduced and the gap has widened as the government's recent market-cooling policy initiatives have been rolled out.

The decline in purchases by nominees may also reflect a recent tightening of lending rules. We examined purchases by nominees in 2018-2019 and found that only 49% of the properties had mortgages. These findings reflect a change from a 2014-2015 study by Andy Yan, which found that 94% of West Side Vancouver properties owned by students or homemakers were mortgaged.¹¹² Analysing all purchases by nominees over the course of the full 20-year dataset, we found that 20-28% of transactions were unfinanced.

Of the mortgages used to finance purchases by nominees since January 2018, 3.5% were provided by apparent family members,¹¹³ 9.5% were from unregulated lenders and 87% were from regulated financial institutions.

¹¹² Andy Yan, *Ownership patterns of single-family homes sales on the west side neighbourhoods of the City of Vancouver: a case study*, Nov. 2015.

¹¹³ If the surnames of the titleholder and the lender were the same, we assumed it was a family transaction.

B.C. appears to be somewhat unique in including occupational information in land title data, and it is unclear to us what purpose it currently serves. As of March 2019, there are 122,799 distinct occupations listed by active titleholders in B.C. The most common are: retired (249,919), blank (133,339), homemaker (98,835), businessman (80,166), businesswoman (47,346), teacher (46,501), self-employed (33,779), manager (33,403), accountant (23,717), and registered nurse (23,658).

Many of the unique entries can be attributed to spelling mistakes, while others have used it to bring some levity to the otherwise dry title registration process. Notable occupations of B.C. titleholders include ‘superdad,’ ‘funemployed,’ ‘wannabe ski bum,’ ‘domestic diva’ and ‘trophy wife’.

We have assumed that the four B.C. titleholders who list ‘launderer’ as their occupation are referring to clothing.

OVERSEAS BUYERS

Background

Overseas buyers are considered to be higher risk from a money laundering standpoint for two main reasons: those looking to hide and/or enjoy the proceeds of crime or corruption often place it out of reach of their home government, and it can be difficult for financial institutions and others with AML obligations to conduct due diligence on foreign buyers’ source of wealth. Of course, not all foreign buyers carry the same level of money laundering risk. The indicator in the following section specifically addresses buyers from jurisdictions known for their opacity, corruption or criminal enterprises.

Data analysis

Identifying overseas buyers is a difficult task that cannot be completed to a satisfactory standard based on title information alone. Foreign nationals can use a Canadian-registered company or a nominee with permanent residency or citizenship to hold title (as some may have done in an effort to sidestep the foreign buyer’s tax).¹¹⁴ Others will list the address of the B.C. property they have purchased, or will route correspondence through a local law firm, making it all but impossible to identify them as overseas buyers using publicly available data.

Statistics Canada sought to quantify foreign ownership of residential property in Vancouver in a December 2017 study, finding that non-residents owned 4.8% of residential properties in the Lower Mainland.¹¹⁵ Foreign ownership was highest in condominiums (7.9%), more than double

¹¹⁴ An additional Property Transfer Tax of 15% was rolled out in July 2016, impacting Metro Vancouver. The tax is intended to include foreign-controlled corporations, even if they are registered in Canada. However, in the absence of beneficial ownership disclosure for any privately held Canadian company, that aspect of the tax scheme cannot be enforced.

¹¹⁵ Statistics Canada, *Non-resident ownership of residential properties in Toronto and Vancouver: Initial information from the Canadian Housing Statistics Program*, Dec. 19, 2017.

the rate of foreign ownership of detached houses (3.2%). However, certain areas and property classes – newly built condos in Richmond or the University of British Columbia (UBC) Endowment Lands, for instance – have much higher rates of foreign ownership.¹¹⁶ However, the Statistics Canada study appears to have been limited by the same factors as our own research, namely that it could not include local nominees or Canadian-registered companies used to hold property for non-residents.¹¹⁷

Using the data available, we sought to assess foreign ownership by analysing address information provided by owners on title. We reviewed titles for which the ‘country’ field in the titleholder’s service address was not Canada (i.e., another country, an entry that was not a country, or a blank field¹¹⁸).

Findings

Land title data shows that there are 13,678 residential properties in the province that are owned by individuals or entities whose service address is based in one of 113 countries outside of Canada. More than a fifth of those properties have owners in high-risk jurisdictions from a money laundering, tax evasion, or sanctions perspective (see following section).

The 13,678 foreign-owned properties have an aggregate value of \$16.12 billion, according to the most recent BCA data. More than half of these properties are condominiums. The table below provides a breakdown of properties owned by overseas titleholders by class of property.

¹¹⁶ Kerry Gold, “‘Growth Coalition’ kept foreign money flowing into BC real estate, professor says”, *Globe & Mail*, June 8, 2018; and Jesse Ferreras and Ted Chernecki, “More than 1 in 10 homes are owned by non-residents in one part of Metro Vancouver: data”, *Global News*, June 27, 2018.

¹¹⁷ Cohen, James and Peter Dent, “How much real estate do foreigners really own? StatsCan got it wrong”, *Globe and Mail*, Jan. 5, 2018; and Dan Fumano, “Foreign ownership data released so far just the ‘tip of the iceberg’: StatsCan director”, *Vancouver Sun*, Dec. 27, 2017.

¹¹⁸ In the case of blank entries or entries that were not a country – of which there were over 230,000 – we reviewed the other address fields in an effort to locate the relevant country. We were able to do so in all but a few instances.

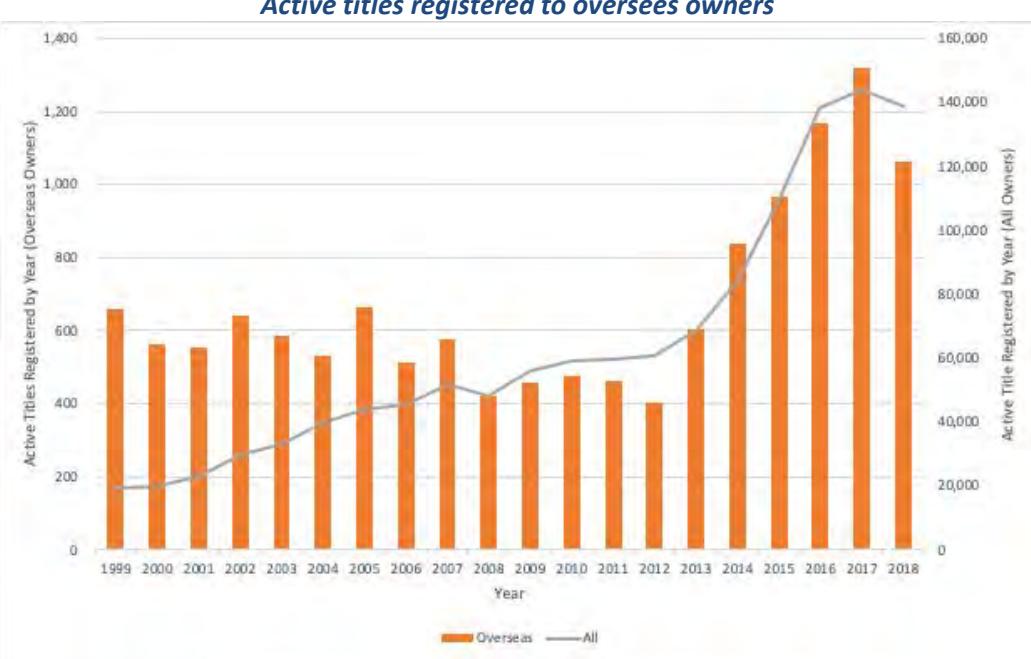
Overseas owners by property type

Property type	# properties	2019 assessed value (\$)
Condominium	8,593	\$8,946,741,565
Single-family detached	2,089	\$3,249,992,100
Other detached/semi-detached	2,683	\$2,797,409,456
Multi-family (four-plex and above)	122	\$1,052,654,900
Agricultural	191	\$72,439,910
Total	13,678	\$16,119,237,931

Overseas buyers are more likely to acquire property without taking out a mortgage, according to our analysis. Between 32% and 40% of the properties in our sample were acquired through all-cash purchases, which is double the rate for the market overall.¹¹⁹ As discussed below, all-cash purchases are a significant money laundering risk factor.

The data shows a significant rise in purchases by owners with foreign addresses between 2012 and 2017 (see chart below). That increase tracks overall market activity in B.C. There does not appear, however, to have been a relative spike in title registrations to overseas owners during that period, when compared to the market as a whole.

¹¹⁹ As discussed, we used two methodologies to identify all-cash purchases. The lower end of the estimate was calculated from titles that had not had any mortgages registered against them, while the higher figure reflected titles where no mortgage was registered in the first 30 days.



We note that the numbers above only reflect active titles, so it may be disproportionately weighted toward recent purchases since properties acquired in earlier years are more likely to have since been sold. The LTSA data also captures all new title registrations and not just sales, so entries such as a change of address or the addition/removal of a joint titleholder would be reflected as a new transaction, potentially over-representing the figures for recent years.

BUYERS FROM HIGH-RISK JURISDICTIONS

Background

This indicator derives from the simple assumption that individuals from countries with systemic corruption, lawlessness, or opaque financial sectors are more likely to have acquired money from criminal activity.

There is no universally agreed standard on what constitutes a high-risk country from a money laundering standpoint. There are official lists of states subject to international trade sanctions,¹²⁰ unofficial lists of countries deemed to be a high corruption risk,¹²¹ and other blacklists published by an array of government and private agencies concerned with issues

¹²⁰ For example, the US Department of the Treasury, Office of Foreign Assets Control, *Sanctions Programs and Country Information*. Accessed at <https://www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx>.

¹²¹ TI, *Corruption Perceptions Index 2018*. Accessed at <https://www.transparency.org/cpi2018>.

ranging from narcotics trafficking¹²² to tax enforcement.¹²³ The FATF publishes a list of ‘high-risk and other monitored jurisdictions’, which currently lists only Iran and North Korea as ‘high-risk’ but includes another 11 countries that are being monitored.¹²⁴ The national ‘financial intelligence units’ (FIU) have their own unique lists of high-risk jurisdictions, which are generally not published.

In the absence of a standardized list of high-risk jurisdictions, we have used several of these sources to compile our own list.

Though it is not included on any trade sanctions or prominent money laundering blacklists, in the context of this Review we would be remiss not to include the PRC and its autonomous regions as high-risk. The PRC government has tacitly acknowledged the pervasiveness of public sector corruption through its ‘Tigers and Flies’ anti-graft campaign, which has extended its reach to B.C.,¹²⁵ and much of the money entering Canada by evading currency controls does so through underground banking networks with no AML controls.

Data analysis

In order to identify buyers from high-risk jurisdictions, we scraped address information listed on property titles using the same methodology as the ‘overseas buyer’ indicator described above. We cross-referenced that data with a list of high-risk jurisdictions.

This analysis is subject to the same limitations as the ‘overseas buyer’ indicator, namely that buyers from high-risk jurisdictions can use local nominees or entities to hold title or can route correspondence through a local law firm or other intermediary. They may also simply use the address of the B.C. property which they have purchased as their service address. Indeed, one could assume that a buyer from a high-risk jurisdiction would be incentivized to make it appear that they are based locally (or somewhere else that would not generate unwanted attention).

It is therefore reasonable to assume that the owners from high-risk jurisdictions that we have identified represent only a fraction of the actual total.

Our list of high-risk jurisdictions was compiled using the following sources:

- Government of Canada sanctions list;¹²⁶

¹²² U.S. Department of State, *2018 International Narcotics Strategy Report*. Accessed at <https://www.state.gov/j/inl/rls/nrcpt/2018/>.

¹²³ EU, “Non-cooperative tax jurisdictions and high-risk third countries”, 2018, Mar. 26, 2019. Accessed at <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>.

¹²⁴ FATF, *High-risk and other monitored jurisdictions*. Accessed at [http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc(fatf_releasedate)).

¹²⁵ James Areddy, “One of China’s most-wanted tries to make a final deal”, *Wall Street Journal*, March 16, 2015; and Yvette Brend, “5 from B.C. on China’s ‘most wanted’ list of 22 alleged criminals”, *CBC News*, April 29, 2017.

¹²⁶ Canada, *Current sanctions imposed by Canada*. Accessed at https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/current-actuelles.aspx?lang=eng.

- FATF high-risk and other monitored jurisdictions,¹²⁷
- European Union (EU) non-cooperative jurisdictions and high-risk third countries; and
- TI's 2018 Corruption Perceptions Index (CPI) (countries with a score of <50)¹²⁸

There are 172 jurisdictions on our high-risk list, which includes many minor offshore financial centres included on the EU's tax haven list. We identified B.C. property owners from 87 of those jurisdictions.

Findings

There are 3,127 residential properties in B.C. whose owners provide a service address in one of 87 high-risk jurisdictions. The most common by a substantial margin are Hong Kong (1,345) and China (774). The owners of another 473 properties provide addresses in opaque offshore financial centres and tax havens.¹²⁹

The top high-risk jurisdictions are set out below:

Jurisdiction	Properties (#)	2019 assessed value (\$)
Hong Kong	1,345	\$2,014,643,587
China	774	\$936,216,748
Mexico	75	\$131,850,700
British Virgin Islands	22	\$131,688,800
United Arab Emirates	102	\$108,852,400
Switzerland	110	\$95,405,361
Taiwan	85	\$88,444,348
Cayman Islands	54	\$81,720,611
Bermuda	98	\$76,697,554
Malaysia	52	\$71,995,800

¹²⁷ FATF, *High-risk and other monitored jurisdictions*, *supra*.

¹²⁸ TI, *Corruption Perceptions Index*, *supra*.

¹²⁹ Switzerland (110), the United Arab Emirates (102), Bermuda (98), the Cayman Islands (54), the British Virgin Islands (22), the British West Indies (13), Brunei (9), the Bahamas (8), the Channel Islands (6), Luxembourg (5), Panama (5), Cyprus (4), Trinidad & Tobago (4), Barbados (3), Belize (3), Fiji (3), French Polynesia (3), Malta (3), Monaco (3), Dominican Republic (2), Isle of Man (2), St Vincent & the Grenadines (2), Andorra (1), the Cook Islands (1), Curaçao (1), Gibraltar (1), Guam (1), Mauritius (1), Netherlands Antilles (1), New Caledonia (1), Seychelles (1), St Lucia (1), and Turks & Caicos (1).

In all, more than \$4.22 billion in residential property is registered to individuals and entities based in high-risk jurisdictions.

Breaking down that total by property type, we see that the majority are condominiums, followed by single-family detached homes. A small number of agricultural properties and multi-family apartment buildings are owned by titleholders in high-risk jurisdictions.

High-risk jurisdiction owners by property type

Property type	# properties	2019 assessed value (\$)
Condominium	2,160	\$2,311,157,800
Single-family detached	508	\$1,205,214,600
Other detached/semi-detached	423	\$620,091,600
Multi-family (fourplex and above)	16	\$78,791,800
Agricultural (with residential dwelling)	20	\$5,891,071
Total	3,127	\$4,221,146,871

A total of 25 properties with an aggregate value of \$34.5 million have owners who are listed at addresses in countries currently subject to trade sanctions.

Our analysis identified 22 residential properties whose registered owners provide service addresses in the British Virgin Islands (BVI). The properties, with a mean value of \$4.9 million, include a Vancouver penthouse, nine Lower Mainland mansions, four Whistler chalets, and six holiday homes on the Gulf Islands, Sunshine Coast and in the Okanagan.

All but two of the homes are owned by shell companies registered to post office boxes, law firms, or incorporation agents in Road Town, the BVI's offshore financial centre. The companies' directors, shareholders and beneficial owners are fully anonymous to anyone but those directly involved in their administration.

The information available on most of those companies is negligible, though one has been connected to an alleged international money laundering scheme. That company is the owner of a \$3.5 million property on one of the Gulf Islands, which was acquired with funds allegedly embezzled from a \$90 million loan fraud at an Indian bank.¹³⁰ A director of the company was charged in April 2018 after a multi-year investigation, though he appears to have been a nominee for one of the architects of the scheme. The B.C. property appears to have remained out of reach of Indian authorities.

¹³⁰ "Indian police probe suspected \$90 million loan fraud at IDBI", *Reuters*, Apr. 26, 2018; "Sivisankaran, service and retired top officials of IDBI Bank booked by CBI in INR600-cr loan fraud", *Hindu Business Line*, Apr. 26, 2018; and BATELCO press release, Feb. 24, 2016.

The island transaction showcases several money laundering indicators: it is owned through a legal entity which is registered in a high-risk jurisdiction using a post office box address, and the multimillion-dollar purchase was made without any external financing.

Over the course of this Review we identified several hundred other properties whose titleholders are registered in high-risk offshore jurisdictions, many of which exhibit similar characteristics to the one summarized above.

OPAQUE CONTACT ADDRESS

Background

There is no requirement for titleholders in B.C. to list their principal residence as a service address. Owners wishing to preserve their privacy or remain anonymous may use service addresses that make it difficult to locate them. Opaque contact addresses include post office boxes and law offices. The latter suggests that the owner has engaged the services of a lawyer and is therefore shielded by solicitor-client privilege.

This indicator has been adapted from the 2011 *Suspicious Properties* study completed by Brigitte Unger and Joras Ferwerda, which examined real estate markets in two Dutch cities. In that study, any contact address that did not match the address on title was treated as an indicator.¹³¹ We felt this indicator was less relevant in the context of the B.C. market due to the number of people with holiday homes and investment properties (approximately 5% of owners in B.C. have more than one property). Instead of including all titles where the contact address does not match the property, we focussed on addresses that make it difficult to identify the individuals: post office boxes and law offices.

Data analysis

To identify titleholders registered to post office boxes we used keyword searches in the address field on title. We filtered out addresses where ‘box’ was included in the street name and categorized the results by province and country.

Titleholders that route correspondence through a law firm were more challenging to identify. In the end, we were able to match corresponding addresses on title to law firms based in B.C. Due to inconsistencies in address formatting we used fuzzy searches for this part of the analysis.

Findings

Law firm addresses

There are approximately 2,000 titles where the owner has provided a service address of a B.C. lawyer or law firms. Approximately a quarter of these titles are registered to 15 firms. One firm

¹³¹ Brigitte Unger and Joras Ferwerda, “Money Laundering in the Real Estate Sector: Suspicious Properties”, *supra*.

had 109 titles registered to its address alone, though most of those titles appear to be held on behalf of the Province.

Approximately 70% of the law firm addresses are associated to corporate owners, which indicates that the corporations likely use the law firms as their registered and records office. Most of the companies with multiple titles registered to law firms are developers and other operational businesses. However, there are also hundreds of individuals and numbered companies for which the only address on title is that of a law firm.

PO Box addresses

We identified approximately 71,000 properties whose registered owners use a PO Box as a service address. Unsurprisingly, many of those are based in rural areas and small communities in B.C. that are not covered by household mail delivery. However, there were 1,167 titleholders whose service address is a PO Box in Vancouver, and 149 service addresses lead to offshore PO Boxes, including 59 in Dubai and 36 in Abu Dhabi, United Arab Emirates; 27 in Hamilton, Bermuda; 15 in George Town, Cayman Islands; and 11 in Road Town, B.V.I. There were 6,585 residential titles owned by corporate entities that use a post office for a service address.

FINANCING INDICATORS

While opaque ownership structures provide cover and facilitate money laundering, the laundering itself occurs through financial transactions. Real estate transactions present opportunities for buyers to channel large sums of dirty cash through a deposit or a fully unfinanced purchase. Debt instruments such as mortgages offer another avenue to launder money on both the lending and borrowing side.

Many of the established finance-related red flags can only be detected by those with access to bank records or who are directly involved in a transaction. However, there are several indicators that can be analysed to a degree through land title and mortgage data. They are:

- purchases that are made without external financing ('cash buys');
- mortgages taken out with unregulated lenders;
- mortgages that are quickly repaid;
- multiple mortgages that are registered and quickly discharged;
- mortgages with unusual LTV ratios; and
- mortgages with unusual interest rates.

Limitations

The data quality issues impacting our research have been noted elsewhere. We were provided with a comprehensive list of active property titles - but several of the financing indicators require information that is only available on mortgage registration forms or the mortgage documents themselves. The LTSA retains the data from these forms for a limited time, after which the information is only available in PDF format. It is also common for applicants to attach a schedule to the form, which contains crucial information about the terms of the mortgage.

With those limitations, we were able to analyse a sample of approximately 126,000 mortgages registered since 2011. The sample of mortgages was not proportionally distributed across years or categories of residential real estate. For unknown reasons it included a disproportionately small number of strata properties, and only a handful of mortgages from 2013 to 2015.

UNFINANCED PURCHASES

Background

Gone are the days when a criminal could purchase a house with a suitcase full of cash without drawing unwanted attention. Canada's AML regime requires reporting of cash transactions of \$10,000 or more, and Law Society rules prohibit lawyers from accepting more than \$7,500 in cash. Yet that relates only to hard currency; large payments can still go unreported when made by wire, bank drafts, cheques, or money orders.

Unfinanced purchases, commonly referred to as 'cash buys' (although physical cash does not necessarily change hands), constitute a money laundering vulnerability because of the opportunity to wash large sums of dirty money in a single transaction. Cash buys are also a way to minimize interaction with financial institutions, which have more stringent AML requirements than other businesses and professions.

Data analysis

We analysed this indicator using the full dataset of active titles registered since January 1999. By filtering out titles with an active or cancelled mortgage we were able to identify properties that have never been mortgaged. We also filtered the dataset for titles that had no mortgage registered in the first 30 days following a transaction, which allowed us to identify properties that were likely cash buys, but which may have been used as collateral for subsequent borrowing. Our findings have been presented in ranges that reflect these two methodologies.

Findings

Approximately 17 to 21% of total residential titles registered since January 1999 were acquired without a mortgage.

Owners falling into the higher-risk segments identified above are significantly more likely to buy property without external financing. Cash buys account for 29 to 38% of purchases by

companies, 58% of purchases by registered trusts, 20 to 28% of purchases by nominees, and 32 to 40% of purchases by offshore buyers.

The combination of opaque ownership structures and all-cash purchases increases the money laundering risk considerably, as the owners of the properties can remain anonymous while avoiding the scrutiny of regulated lenders on source of funds and beneficial ownership. Cash buys by nominees and offshore buyers should also raise questions about source of funds.

UNREGULATED MORTGAGE LENDERS

Background

Canada has a tiered AML regime that places the greatest onus for detecting money laundering on regulated financial entities such as banks, credit unions, trust and loan companies, and life insurers. They are tasked with gathering intelligence and alerting the authorities to potential money laundering activity. While most mortgage lending is done by these regulated institutions, private lending accounts for a significant and growing share of the market.

There is a broad spectrum of private lenders, ranging from individuals and special purpose vehicles set up for syndicated loans, to Mortgage Investment Entities (MIE)¹³² and monoline lenders with national reach.¹³³ One of the few things that the members of this diverse group have in common is their exemption from statutory AML regulations. While some of the larger players have compliance processes that rival some regulated institutions, ultimately, they are out of FinTRAC's reach. The agency does not have a mandate to conduct compliance reviews of these lenders or to sanction them.

This regulatory gap in the private lending space presents significant opportunities for money launderers on both the borrowing and lending sides.

Under the current regulatory regime, no independent checks are done on the shareholders and beneficial owners of MIEs, or on their sources of financing. Criminals can invest dirty money in MIEs without spurring uncomfortable questions or STRs to FinTRAC regarding the source of funds. Dirty money invested through MIEs can be routed through lawyer trust accounts, further obfuscating their source.

On the borrowing side, criminals can access clean funds by obtaining mortgages, which can be quietly repaid using dirty money.¹³⁴ In the absence of a statutory AML mandate, many private

¹³² MIEs, which include MICs and pooled investment funds, are real estate investment vehicles that provide capital for private mortgages. MIEs are not subject to FinTRAC reporting or AML regulations. Under federal law, they are not required to verify source of income or deposit funds, nor are they required to screen investors and their source of funds. See (<http://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2-eng.asp?s=2>). In B.C., MIEs are subject to a form of regulatory oversight by FICOM and the B.C. Securities Commission, which each have a mandate to protect consumers and ensure proper market conduct.

¹³³ Monoline lenders are those whose only business is mortgage lending.

¹³⁴ Typical mortgage payments fall below the \$10,000 LCTR threshold, allowing dirty cash to be deposited in financial institutions and used to make mortgage payments without raising suspicion.

lenders do little or no due diligence on borrowers or their source of funds. They are primarily concerned with the quality of the asset the loan is secured against. As one veteran investor in a private mortgage entity bluntly put it, “My only underwriting criteria is ‘Am I comfortable owning the property?’”

Data analysis

In order to identify mortgages registered by unregulated lenders, we cross-referenced LTSA title data with a list of regulated lenders. We defined them as those entities with statutory AML obligations; including banks, credit unions, trust and loan companies, and life insurance companies. ‘Unregulated lenders’ encompass any mortgage lender that is not covered by the *POCMLTFA* and its regulations.

In compiling the list of regulated lenders, we used lists published by the Office of the Superintendent of Financial Institutions (OSFI)¹³⁵ and the Canadian Credit Union Association¹³⁶

The land title data used for this indicator included all active and cancelled charges registered since January 1999 on each of the 1.3 million active titles created since then. The dataset included 1.01 million active mortgages and 1.84 million cancelled mortgages.

Because our dataset did not include cancelled titles, historic lending activity linked to past titles could not be captured in our analysis. The aggregate amount of unregulated lending during that period is likely much higher than we have been able to outline here.

Our analysis was also limited to the number of mortgages, not their value. We did have a sample of around 72,000 mortgages registered between 2011 and 2018 that disclosed their principal amounts, but because we could not ascertain whether the sample was representative of the market as a whole, we were not comfortable using it to estimate the aggregate value of unregulated mortgages. There is no apparent way to reliably quantify the aggregate value of private lending in B.C. in recent years without manually reviewing mortgage registration forms on an individual basis, which given the vast number of mortgages would be a monumental task.

Findings

Approximately 91% of the total mortgages registered against B.C. residential property since January 1999 were from regulated lenders with statutory AML obligations. The remaining 9% were registered in favour of unregulated private lenders (the percentages are the same for active and cancelled charges).

Of the approximately 90,000 active, unregulated mortgages, 80% are held by corporate entities and 20% are registered in favour of individuals. We filtered the individuals by surname and

¹³⁵ At the time of our research there were 218 OSFI-regulated financial institutions with *POCMLTFA* obligations, including 35 domestic banks, 21 foreign banks, 32 foreign bank branches, 44 trust companies, 18 loan companies, and 68 life insurance companies.

¹³⁶ At the time of our research there were 243 credit unions in Canada.

found that 37% of them matched the surname of the borrower, suggesting those mortgages are intrafamily loans. A portion of the other individually-held mortgages could also be between family members with different surnames, but we had no way to ascertain that fact.

We identified 18,570 unique lenders with active mortgages in the unregulated category, 92% of which are individuals. There are 1,426 corporate entities with active mortgages, though that is likely a modest overestimate due to the potential for different spellings and typographical errors in LTSA forms.

Analysing the data by type of borrower, we found that corporate buyers are disproportionately represented among those taking out mortgages with unregulated lenders. Unregulated lending accounts for 7% of total mortgages taken out by individuals overall, but 14% of corporate borrowers. This may reflect the reluctance of some regulated institutions to grant mortgages for residential properties held by corporate entities. Unregulated lending to other higher risk categories of owner – trusts, nominees and overseas buyers – is similar to the overall market, at around 7-8%.

Our analysis of indicators linked to LTV ratios, quickly discharged mortgages, and multiple successive mortgages registered against a property demonstrate that unregulated lenders feature prominently in all of them. This may not be surprising, as many private lenders carve out their niche in high-risk loans to distressed borrowers.

[Suspicious private mortgages on Lower Mainland properties](#)

Over the course of this Review we became aware of a Lower Mainland luxury car reseller who is known to police. Its principal is the owner of three homes in Greater Vancouver with an aggregate value of \$8.6 million.

These homes were purchased in the past several years, with bank mortgages. After the properties were acquired, a series of mortgages were registered in favour of three numbered companies and a newly incorporated MIC whose ownership is not a matter of public record.

While no evidence of money laundering was identified, the mortgage activity is unusual in a number of respects. The interest rates on the loans vary considerably, from under 3% to 18% per annum, and some of the lowest rates are on second and third mortgages with the same lender. One of the properties has four active mortgages, each with a lower rate of interest than the previous one.

One of the private lenders is a numbered company whose sole listed shareholder and director is the owner of an out of province business. That individual used the numbered company to issue a \$3.7 million mortgage for the purchase of a \$4 million Vancouver penthouse, at what appears to be far below market rate for private lenders.

MORTGAGES FROM OVERSEAS LENDERS

Background

Mortgages from offshore sources are included as a risk factor due to difficulties in ascertaining the origin of funds, as well as varying standards of AML due diligence applied by financial institutions that are not subject to the *POCMLTFA*. Certainly, AML measures vary greatly between Canadian lenders, and certain classes of lender have no obligation whatsoever to ascertain sources of funds or identify beneficial owners. Adding a cross-jurisdictional dimension makes it that much harder to detect and investigate suspected money laundering activity. We therefore included ‘offshore lender’ as a separate indicator.

There are 53 foreign banks registered with OSFI (including foreign banks and foreign bank branches with full-service or lending approval), which must comply with *POCMLTFA* obligations for financial entities. Other foreign banks are not permitted to carry out mortgage lending activities in Canada. However, unregulated lenders from outside Canada can still register mortgages against B.C. property.

Data analysis

To identify overseas lenders, we reviewed the address fields on mortgage forms submitted to the LTSA. If the country listed in the lender’s address was a country other than Canada, we assumed it was a foreign lender. Forms with blank or unidentifiable entries in the country field were reviewed individually and categorized based on available address information. Foreign banks regulated by OSFI were categorized as domestic lenders.

As with most of the other financing indicators, our analysis was limited to the sample of mortgage registration data from 2011-2019.

Findings

Of 116,372 mortgages in our sample, only a handful of overseas lenders were identified: two from the U.S. and the Cayman Islands, and one each from the Bahamas, Hong Kong, India and Taiwan. Of the 24 mortgages held by those eight lenders, 17 are with the same Hong Kong entity and are linked to the 2018 purchase of Furry Creek golf course along the Sea-to-Sky corridor. Of the eight, four are by individuals and four are from privately owned companies.

The negligible number of overseas lenders in our 2018 mortgage sample contrasts with anecdotal information gathered during this Review, which suggests that vast amounts of foreign capital is invested in B.C. real estate (including through mortgages). The most likely explanation for the discrepancy is that overseas capital used for private mortgages transits through Canadian gatekeepers whose addresses are provided on registration forms.¹³⁷

¹³⁷ It is also possible that the sample of approximately 116,000 mortgages was not representative of the two million mortgages booked since January 1999.

QUICKLY DISCHARGED MORTGAGES

Background

To a money launderer, mortgages are a way to access large sums of legitimately sourced money that can be repaid with criminal proceeds. There tends to be more scrutiny of deposit funds used to acquire a property than of the money used to make mortgage payments, which can be structured through deposits below \$10,000.

Most homeowners take many years to repay a mortgage. It is unusual for a mortgage to be repaid within months or even within the first few years (except for bridging loans). A mortgage that is taken out and quickly repaid suggests that the borrower has access to significant capital and/or cash flow and may be an indication that they withheld funds from their purchase by choice.

Borrowers repaying mortgages far ahead of schedule may also be penalized for early repayment, and it is common for borrowers to pay administration fees when taking out mortgages with unregulated lenders. Money launderers are unlikely to be concerned about those costs, while legitimate borrowers may be more reluctant to settle a mortgage early in its term.

Short-term mortgages can be considered higher risk from a money laundering standpoint because they are repaid quickly (even if payments are made to schedule) and are most often taken out with unregulated lenders.

Property deals involving alleged drug trafficker

A ongoing civil forfeiture claim outlines how mortgages were allegedly used to launder drug money.¹³⁸ According to police, during a 3.5-month period in 2015, an individual deposited \$5.3 million in cash in an unregistered MSB and made withdrawals totalling \$2.3 million.¹³⁹

According to the civil forfeiture claim, the individual allegedly used forged documents to obtain a mortgage for a \$335,000 condo purchase. He sold the property a year later at a \$20,000 profit and settled the mortgage. He also secured a \$1.35 million line of credit against his parents' home, drawing \$381,500 to use for the purchase of another condo. The line of credit was paid off within six months using \$210,000 cash and the seemingly legitimate proceeds of a previous condominium sale.

¹³⁸ British Columbia (Director of Civil Forfeiture) v. The Owners and all Others Interested in the West 42nd Property, East 5th Property, and/or the Money, in Particular, Xiong Guang Chen, Jue Ming Chen, and Stephen Hai Peng Chen also known as Hai Peng Chen also known as Hoy Pang Chan (BCSC file VIC-S-S-190038).

¹³⁹ Gordon Hoekstra, "B.C. civil forfeiture case alleges drug money laundered in real estate", *Vancouver Sun*, Jan. 17, 2019.

Data analysis

We used two datasets to analyse this indicator: title data with active and cancelled charges dating back to January 1999, and data from mortgage forms where the length of term is included.

Ideally, we would have measured ‘quick’ repayment relative to the term of each specific mortgage. In the absence of that data, we sought to establish the range of common mortgage terms and set a threshold for all mortgages. Research suggests that most residential mortgages in Canada are fixed for a term of five years, with a sizeable minority fixed for 2 to 4 years.¹⁴⁰ This aligns with the 5-year median and 4.4-year mean in our sample of mortgage registration documents. While one-year mortgages are not uncommon (they account for 5% of our mortgage dataset), they enable the borrower to repay a large sum within a short timeframe so are at higher risk of being used for money laundering.

Using one year as the maximum for ‘quick’ repayment, we applied that filter to the dataset of all cancelled mortgages registered in the last 20 years. We note that there is no way to discern from title data whether a mortgage has been repaid, refinanced or discharged for other reasons. We filtered out mortgages that were registered and cancelled within 30 days, attributing these to issues other than early repayment. Our analysis likely still includes some false positives.

Findings

We found that 5% of mortgages registered since January 1999 were discharged between 30 days and one year of registration. That amounts to 101,894 mortgages over the past 20 years. As described in the following section, 91,576 (90%) of those were isolated occurrences in which a single mortgage was repaid quickly but other charges on the property (if there were any) were discharged within the bounds of what we considered to be normal.

Borrowers tend to repay private mortgages more quickly than ones with regulated institutions. Approximately 10% of unregulated mortgages are discharged within the first year, compared to 5% of mortgages with regulated lenders.

SERIES OF MORTGAGES

Background

This indicator is related to the mortgage indicator described above. If a property owner uses a mortgage to launder money through repayment, he or she may repeat the process multiple times. A series of quickly discharged mortgages suggests a pattern and is therefore a stronger indicator of money laundering than a standalone mortgage that is repaid shortly after it is issued.

¹⁴⁰ RateHub mortgage term popularity chart. Accessed at <https://www.ratehub.ca/mortgage-term>.

Data analysis

Using the same criteria to define a quickly discharged mortgage, we filtered active titles to identify any that had multiple mortgages that had been repaid between 30 days and one year.

Findings

It is relatively common for a borrower to have one, perhaps even two quickly discharged mortgages registered against a property. Of the 101,883 properties we identified with a quickly repaid mortgage, 90% had one, 8% had two, and 1% had three.

However, a small group of titleholders are linked to much more unusual borrowing activity: 1% of properties have had between four and 29 mortgages registered and quickly repaid in succession.¹⁴¹

UNUSUAL LOAN-TO-VALUE RATIOS

Background

The loan-to-value ratio is a risk measurement used by lenders that compares the principal of a mortgage to the appraised value of the property to which it is secured. Put simply, the higher the LTV ratio, the riskier the loan.

Many Canadians place a 20% down payment on their homes in order to avoid paying for mortgage loan insurance. Buyers willing to pay the premiums for mandatory insurance can make a down payment of as little as 5% and still qualify for a mortgage from a regulated institution (whose maximum LTV is 95%). These rules do not apply to private lenders, though many of them will not lend above 85% LTV.¹⁴²

In a money laundering context, criminals without sufficient legitimate sources of income for a 5 to 20% deposit can leverage a high LTV mortgage to acquire property before repaying the loan with dirty money.

Conversely, a low LTV ratio suggests that a mortgage may not have been taken out to help with the purchase of a property but has been used to access financing for other purposes. This segment of the lending space is dominated by unregulated lenders, and the high rates of interest suggest that the borrowers are often distressed. The use of mortgages to secure criminal loans is discussed further below.

¹⁴¹ The breakdown of these 494 properties by number of mortgages is as follows: 4 (314), 5 (102), 6 (39), 7 (17), 8 (9), 9 (1), 10 (1), 11 (3), 12 (3), 13 (2), 15 (1), 19 (1), 29 (1).

¹⁴² RateHub private mortgage loans. Accessed at <https://www.ratethub.ca>.

Data analysis

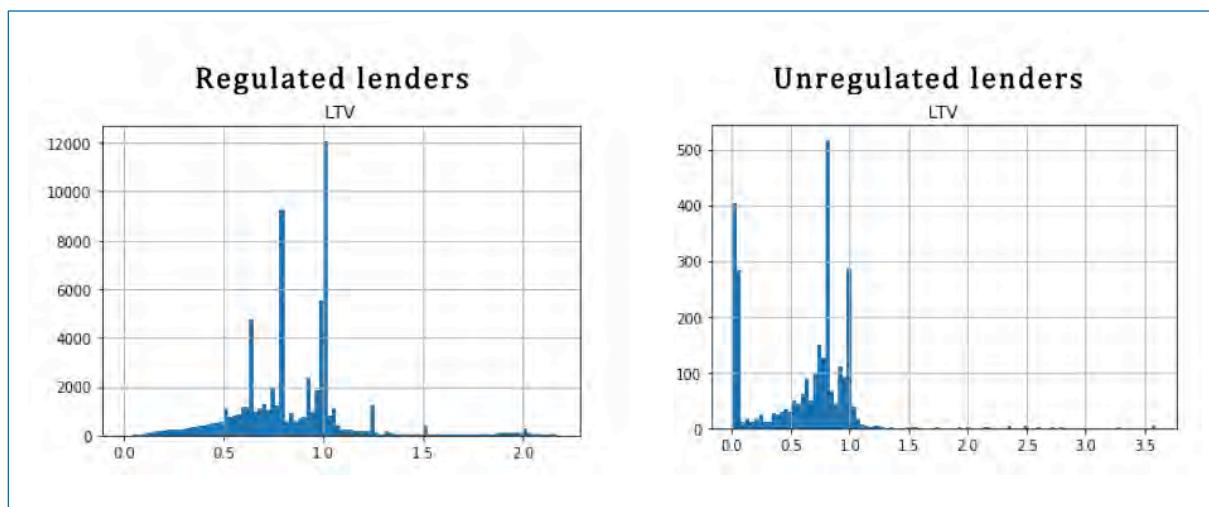
We were only able to determine LTV ratios for a sample of 71,962 mortgages registered between 2011 and 2018 that had the principal amount disclosed directly on the form. Dividing the principal amount by the declared value on title gave us the LTV ratio for each of those properties.¹⁴³

Due to the complex and varied nature of financing for development and other atypical properties, for several of the following indicators we limited our analysis to condominiums, semi-detached and detached homes. We did not include vacant land, multi-family developments, and agricultural properties, as they are more likely to use other forms of financing (e.g. construction loans) or obtain mortgages that are much higher than the existing value of the property (e.g. re-advanceable collateral mortgages).

Findings

This indicator is somewhat muddled in the context of the B.C. market, where skyrocketing real estate prices in recent years fuelled speculative investments by both borrowers and lenders, and 95 to 100% LTV mortgages were far from unusual.

Regulated and unregulated lenders have different industry standards for lending, with LTV ratios typically being higher among mortgages from regulated lenders (see charts below).¹⁴⁴ As the unregulated lending chart suggests, homeowners in need of smaller loans often turn to private lenders rather than regulated institutions.



¹⁴³ Our calculations for LTV ratios may be less accurate for mortgages that were registered some time after purchase, as property values would likely have changed.

¹⁴⁴ Most of the 100% LTV mortgages identified in these charts are likely home equity lines of credit and would reflect total approved borrowing rather than actual borrowing by the titleholder.

Approximately 15% of the mortgages within our sample had an LTV ratio above 100% and could be considered higher risk from a money laundering (or mortgage fraud) perspective. About 27% of the unregulated mortgages had an LTV below 30%. We consider low LTV mortgages with unregulated lenders to be higher risk due to the possibility that they are criminal loans secured against a borrower's home.

UNUSUAL INTEREST RATES

Background

In February 2018, an investigative report by *Globe and Mail* journalist Kathy Tomlinson revealed how alleged members of an organized crime network used mortgages and builders liens (see below) to secure high-interest cash loans made with criminal proceeds.¹⁴⁵ The interest rates on the \$47 million in loans identified by Tomlinson ranged from 39.6% to 120% - double the threshold for usurious lending set in the *Criminal Code*. Interest rates well above market norms can be an indication of lending for a criminal purpose, even if the rates themselves are not criminal.

Unusually low interest rates can also be an indicator of money laundering. Interest well below market rates suggests a relationship between the borrower and lender. An individual engaged in a 'loan-back' scheme (i.e., where he or she is both the borrower and the lender) may loan/borrow money at a preferential rate. Loan-back schemes can be difficult to identify if the launderer uses a company or nominee to give the appearance of an arms-length transaction.

Data analysis

As with most of the other financing indicators, we were only able to examine mortgages where the relevant information (in this case, the interest rate) was indicated on the registration form - and was retained by the LTSA in machine-readable format. That data provides a snapshot of the lending environment in recent years but may not be representative of the overall market.

In setting a threshold for 'unusual' within the context of the B.C. market, we interviewed mortgage brokers, lenders and regulators to determine a range of normal interest rates for residential mortgages. There was a general consensus that rates above 15% are unusual (though not necessarily a sign of criminality).

With benchmark interest rates at record lows in recent years, we used a rate of 1% as the threshold for unusually low interest rates.¹⁴⁶

The analysis for this indicator focussed on single-family detached, semi-detached and condominium properties. We limited our property types for this analysis since higher rates of

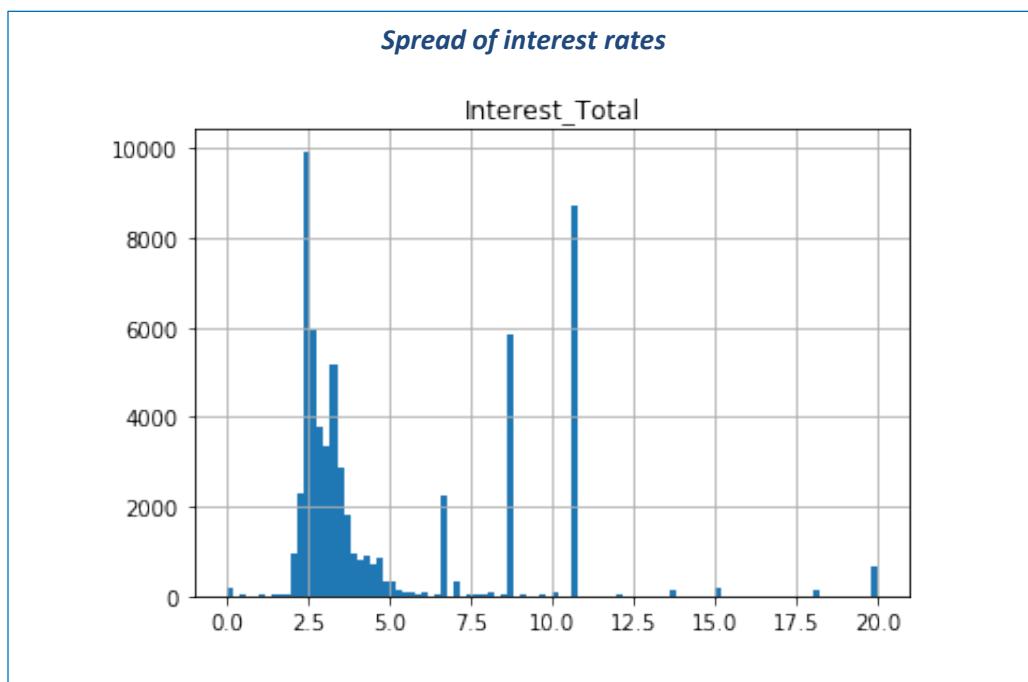
¹⁴⁵ Kathy Tomlinson, "B.C. vows crackdown after Globe investigation reveals money-laundering scheme", *Globe and Mail*, Feb. 16, 2018.

¹⁴⁶ For variable interest rates, we used the current Bank of Canada prime rate (3.7%) and set rates of Prime + 12.3% and Prime – 3.7% as our thresholds.

interest are common for development projects, multifamily buildings and agricultural properties. We note that strata properties (such as condominiums) were significantly underrepresented in the dataset used for this indicator, which may have influenced our findings.¹⁴⁷

Findings

The vast majority of mortgages in our sample of 59,506 charges had interest rates that fell within the ‘normal’ range of 1 to 15% (see figure below).



A total of 822 mortgages fell above our upper threshold of 15% interest, which amounts to 1% of the mortgages in our sample. Of those, only 86 were registered with private lenders while 734 were with OSFI-regulated banks and trust companies.

The sample contained 233 low-interest mortgages (<1%) that were registered against residential properties, of which 165 were loaned by individuals. Of the 67 mortgages with corporate lenders, 28 (42%) were unregulated entities.

Unsurprisingly, most of the mortgages with unusually low rates of interest were registered to individuals whose surname matched that of the titleholder. Many first-time homebuyers rely

¹⁴⁷ There were 2,963 mortgages taken out against strata properties in our data set but interest rates were only provided for 372 of them.

on financial help from their parents or other family members, and many choose to register low- or zero-interest mortgages on properties.

Only one of the lenders in the high-interest segment provided an address outside of Canada. There are seven low-interest mortgages registered to private lenders outside the country, all of whom are individuals (at least two appear to be intrafamily loans).

VALUE-BASED INDICATORS

Background

Real estate can be an attractive vehicle to launder money, in part because of the ease with which values can be manipulated. Even comparatively straightforward residential properties are difficult to accurately assess without specialized knowledge. Qualifying as a residential real estate appraiser in Canada requires two years of college-level coursework and apprenticeship training.¹⁴⁸ The challenge of reaching an accurate and objective value assessment makes manipulation hard to detect, particularly when that analysis is done at a distance.

There are opportunities for money laundering in over or understating the value of a property, which we summarize in turn below. Value manipulation has been identified by the CRA as a key vulnerability in real estate to tax evasion and fraud in Canada.¹⁴⁹ The same can be said with respect to money laundering.

Overvaluation

Overpaying for a property is a frequently cited money laundering red flag, yet one that is difficult to assess in a booming market fuelled by speculative investment. Individuals wishing to launder money through a property deal have a perverse incentive to overpay, as it enables them to wash larger sums through each transaction. This activity impacts housing affordability, as above-market purchases drive up prices of comparable properties in the surrounding area.¹⁵⁰

Overvaluing a property through an appraisal offers yet another path to launder money. By obtaining an inflated valuation, a launderer can secure a larger loan that can be repaid with dirty money. This type of overvaluation is a common feature of mortgage fraud as well as money laundering. In the money laundering scenario, the borrower repays the mortgage, while the fraudster may have no such intention.

Appraisers, mortgage brokers, real estate agents and others who earn a commission based on the value of a transaction benefit from overvaluations and can be complicit in inflating a property's value.

¹⁴⁸ Appraisal Institute of Canada.

¹⁴⁹ OECD, "Report on tax fraud and money laundering vulnerabilities involving the real estate sector", *supra*.

¹⁵⁰ Sean Hundtofte and Ville Rantala, "Anonymous capital flows and U.S. housing markets", Univ. of Miami Business School, 2018.

Undervaluation

Undervaluing a property in a transaction involves declaring a sale price lower than the amount actually paid. Legitimate funds (often obtained through a mortgage) can be used to pay for the declared value, and proceeds of crime can be used to cover the difference.

This type of transaction requires the complicity of the seller, who must be willing to accept a cash top-up. They may be incentivized by potential tax savings. By declaring an artificially low sale price the seller can reduce his or her tax bill on the property transfer and any capital gains.

Once an undervalued transaction is complete, the owner can resell the property at market value, declaring the apparent profit as legitimate capital gains and completing the laundering cycle.¹⁵¹

Data analysis

We tried to highlight possible over- and undervaluation by using the declared value on title and comparing it to the BCA assessment roll and MLS sold data for transactions. We did not have access to historic BCA data, so limited our analysis to 2018-2019. For the reasons outlined below, we ultimately concluded that we could not confidently identify suspicious valuations using the datasets available to us.

Data quality issues

In recent years, market values have become detached from BCA assessed values in some parts of the province (though that gap has narrowed since 2018, apparently due to the cooling market).¹⁵² In addition to comparing declared value with BCA assessed value, we used MLS sold data as another point of comparison that more accurately reflected market value. However, that measurement is still far from perfect for a few reasons:

- there is no way to link the MLS sale price and the declared value on title with absolute certainty;
- there is often a time lag of several weeks or months between the MLS listing entry date and the conveyance date; and
- MLS only captures approximately one half of total sales and includes some clearly erroneous entries (such as where \$1 has been inputted as the sale price).¹⁵³

There are a number of common irregularities in the declared values on title that further distorted our analysis. For instance, properties with multiple titleholders in common often

¹⁵¹ AUSTRAC, “Typologies and Case Studies Report”, 2012 at p. 48.

¹⁵² We found that BCA assessed values matched MLS sold data in about 90% of the records for 2018-2019.

¹⁵³ There were 61,000 sales recorded in our MLS dataset for 2018-2019, and 118,863 conveyances during that same period in our BCA dataset.

reflect the value of each of their shares rather than the total, and properties that have been inherited or otherwise transferred to related parties do not reflect market rate.

There are also major discrepancies between declared and assessed values for properties that comprise multiple titles (e.g. mobile home parks, farms, and vacant plots of land) or are subject to rezoning (e.g. land assemblies). Most of these irregular properties are in use categories other than condominiums and single-family detached homes, so we did not include them in our analysis.

Flaws in the methodology

As we analysed these indicators, we began to question whether manipulated values would be captured in the datasets we were using. Because undervaluation requires the complicity of the seller, who takes cash under the table for a portion of the transaction, the seller is unlikely to report the true sale value on MLS. In fact, the property may not be listed on MLS at all.

Evaluating the declared value of a property against recent transactions for comparable properties in the same area may have been a more appropriate method to identify over and undervalued deals. However, we were not able to test this methodology with the time and resources available.

Findings

We were able to match titles and MLS listing data for 44,322 transactions. Of these, 17,527 were single-family detached homes and 26,805 were condominiums. We found that 97% of them had a declared value on title that matched the MLS sale price. Of the 1,504 transactions that did not have matching declared values and sale prices, 555 were undervalued and 949 were overvalued.

TRANSACTION-BASED INDICATORS

Our study included two indicators that focus on the number of transactions associated with the same property or owner. One highlights properties that have changed hands multiple times over the course of a single 12-month period, while the other identifies individuals that have made three or more purchases within a two-year period.

FLIPPING

Background

In order to complete the money laundering cycle, dirty cash must be converted into apparently legitimate funds (the integration stage). In the real estate context that can be achieved by selling a property that was bought with criminal proceeds, with the criminal walking away from the deal with clean money.

In a rising market, property sales also provide an opportunity for capital gains that can be declared and taxed; when a property bought in whole or in part with dirty money is sold, that transaction can be reported to the CRA and the provincial government, integrating the sale proceeds into the legitimate economy. Criminals can leverage capital gains by flipping the same property multiple times between related but apparently arms-length parties, increasing the value with each transaction to give the appearance of legitimate profits.

More often, property flippers sell to unrelated parties and move onto a new property with each transaction. This type of home flipping has become a cottage industry in Canada, with the flipper often living in the renovated house for a year in order to claim a principal residence tax exemption on the sale. Identifying properties that are bought and sold within a year for no apparent gain can be a way to differentiate unusual transactions from the many lawful property flips.

[Alleged property flips by Vancouver gangster](#)

In November 2018, Winnipeg police announced that they had disrupted a major drug trafficking operation that involved shipping multiple kilograms of cocaine and ketamine from B.C. to Manitoba. According to police, the alleged “instrumental operator” of the network, Mohammed Khan, “has ties to the Independent Soldiers street gang in B.C. and is a member of the Wolfpack, an alliance of the Independent Soldiers, Hells Angels and Red Scorpions”.¹⁵⁴ Investigators also alleged that Khan owned properties in the Winnipeg area, which were used as stash houses for the drug trafficking operations.¹⁵⁵

According to an affidavit filed by a police officer involved in the investigation, Khan was an active house flipper and may have used property sales as a means of laundering drug money.¹⁵⁶ A November 2018 civil forfeiture claim lists a Winnipeg property he owns, as well as a \$2.17 million Vancouver property that he transferred to his father in 2017.¹⁵⁷

[Data analysis](#)

Analysing the two types of flips summarized above requires different methodologies.

Identifying individuals who have flipped multiple properties requires a dataset with historic ownership information that can be searched by titleholder name. We did not have access to that data so were unable to pursue this avenue of research.

¹⁵⁴ CBC News, “Lottery winner, heir to millions were 2 players in organized crime drug network, court papers say”, Nov. 8, 2018; and Cameron MacLean, “Alleged leader of drug trafficking ring has violent history: retired police officer”, CBC News, Feb. 13, 2019.

¹⁵⁵ CBC News, *ibid.*, and interview with police investigator.

¹⁵⁶ *Ibid.*

¹⁵⁷ *British Columbia (Director of Civil Forfeiture) v. The Owners and all Others Interested in the Real Property and/or the Vehicles, in particular Allan Ronald Rodney, Pfaff Motors Inc, and Mohammed Shakil Khan.*

The LTSA did provide us with a custom dataset of titles registered since January 2018 that have been transferred two or more times, which enabled us to analyse multiple flips involving the same property. This sample of properties was analysed for changes in declared value, after filtering for non-sales (e.g. address changes or name changes).

The sample used in our analysis was taken from a year in which there was a significant market slowdown, so the number of properties with multiple flips would likely have been higher in previous years.

Findings

BCA conveyance records indicate 98,027 sales of single-family detached homes and condominiums since January 2018. Of that total, 741 (0.76%) were subsequently flipped at least twice. Condos account for 503 of the flipped properties, while 226 were detached/semi-detached homes. All but 27 of the properties in the sample changed hands twice since January 2018. Twenty-five properties were transferred three times during that period, and two properties were transferred four times.

Like many of the other indicators, this one has been blurred by widespread real estate speculation in recent years. The vast majority of the condos in the sample are in newly built developments, where titleholders bought the unit on assignment and sold shortly after the project's completion. These properties include:

- a new Surrey townhouse that was registered in February 2018 to a numbered company in care of a Vancouver law firm, and sold two months later for a \$165,000 profit; and
- a North Vancouver condominium building with 17 units flipped within nine months in 2018, of which six were transactions involving private holding companies.

Those flipping the properties in our sample earned an average return of 50% on each transaction, which was distorted by a small number of large gains. The median gain for each sale was 17%.

Many of the detached and semi-detached homes were owned by companies that appear to be builders or developers, which appear to have made improvements to the properties before selling. These transactions account for most of the largest increases in declared value between transfers.

In a minority of cases, properties changed hands repeatedly following the death of an owner or other apparent family-related event, such as a separation.

BUYING SPREE

Background

This indicator was found in Brigitte Unger's 2011 *Suspicious Properties* study,¹⁵⁸ and is based on the premise that individuals with a need to launder large sums in a short period of time may acquire multiple properties. Other criminals who have hit a windfall may spend it on homes for themselves, their families, or close associates.

In a quiet real estate market, buying sprees may stand out as unusual. Yet that hardly applies to B.C., where rampant speculation and an influx of wealthy buyers from abroad have fuelled a lengthy real estate boom. Additionally, high home prices in much of the province means that more dirty money can be laundered through a single transaction. A criminal with a few million dollars to launder can do so in one Lower Mainland property, eliminating the need to make multiple purchases. Nevertheless, this indicator may still help to identify money laundering done on a larger scale.

Data analysis

To analyse this indicator we defined a buying spree as a titleholder acquiring more than three properties within a two-year period. While our dataset for this indicator goes back 20 years, it only includes active titles, thereby not capturing properties that were bought and subsequently sold. It also only includes properties registered directly to an individual. It does not capture properties purchased through legal entities or nominees.

We limited our analysis of this indicator to individual titleholders. A review of the approximately 1,850 corporate entities that met the criteria revealed a large number of major developers, property management companies, universities, crown corporations, and other organizations that acquire multiple titles in the ordinary course of business. The common practice among developers to register a special purpose vehicle for each project further complicates efforts to narrow down the dataset of corporate buyers to isolate irregular activity.

Findings

We identified 3,412 individuals whose transaction activity met our criteria for a buying spree (i.e., they acquired more than three properties within a two-year period). A breakdown by number of properties is set out in the following table.

¹⁵⁸ Brigitte Unger and Joras Ferwerda, "Money laundering in the real estate sector: Suspicious properties", *supra*.

Properties owned	Number of individual owners	% of 'buying spree' owners
3	1,701	50%
4	964	28%
5	334	10%
6	146	4%
7	98	3%
8	63	2%
9	27	1%
10+	79	2%
TOTAL	3,412	100%

Approximately 42% of the properties acquired through buying sprees are condominiums. Most of the remainder are single-family detached and semi-detached homes. Many of these prolific buyers acquire multiple units within the same building. There are 46 individuals who own eight or more units in a single development.

The following examples are a few of the buying sprees we identified.

- In 2001, a 'student' with a service address at a rented office outside B.C. acquired in excess of 15 properties in the same Vancouver condominium building, for \$2.9 million. The properties now have a combined value of \$11 million.
- Between 2004 and 2007, a 'homemaker' went on two buying sprees, acquiring over a dozen downtown row houses for \$4.1 million. Those properties have a current assessed value of \$15 million.
- Over the course of three years between 2014 and 2017, another 'homemaker' acquired five luxury homes for a total of \$21 million. Only one of the properties is mortgaged, with her husband believed to be the guarantor.

TESTING THE INDICATORS

In order to test the validity of our indicators, we compiled a list of 154 properties with known or strongly suspected links to money laundering and assessed the prevalence of each indicator in that sample relative to our larger datasets of B.C. residential property.

'SUSPICIOUS PROPERTIES' DATASET

The key source for our 'suspicious properties' list was the CFO, which provided us with the cases in which it had pursued forfeiture of real property, including properties named in successful, unsuccessful and ongoing actions.

Of the approximately 150 properties targeted by civil forfeiture claims since the CFO was established in 2006, most of the properties were identified in court documents as the proceeds of crime – for instance, where a deposit or mortgage has allegedly been paid with money from drug trafficking. Although this sample of properties is not representative of much of the money laundering identified during this Review, it was the best available list of properties with demonstrated links to suspicious or criminal activity.

In addition to the civil forfeiture-related properties, we included several that we knew or strongly suspected of being linked to money laundering based on information gathered during this Review.

Analysis

We applied the methodology outlined for each of the indicators above to the 154 'suspicious properties' in an attempt to test their validity. We also used the sample to test whether individual properties could be assessed for money laundering risk using a scoring system based on the number of indicators which are seen in a property.

Based on the results summarized below, it appears the sample was too small to adequately test most of the indicators. Conducting a similar comparative analysis with a larger sample that is more representative of money laundering typologies in real estate could be a worthwhile exercise to refine and validate these indicators (as well as others that were not included in this study).

The results of our analysis for each indicator are summarized below.

Ownership indicators

Opaque ownership structures are slightly more prevalent among the 'suspicious properties' sample than they are in the overall market. Eighteen of 154 titles in the sample are corporate entities, which amounts to 12% compared to 7% for all residential titles.

Three of 154 properties had titleholders who met our proxy indicator for nominee owners. All three were categorized as homemakers. While the percentage (5%) is higher than that for the overall market (3%), the 'suspicious properties' sample is simply too small to draw conclusions from that discrepancy.

As discussed above, occupations are a weak proxy for nominees, as evidenced by an owner of two of the 'suspicious properties' who identified herself as a homemaker on one title and a receptionist on another (we did not include the second property she owns when totalling those

held by nominees). A review of the civil forfeiture claims related to the ‘suspicious properties’ found that 23 of 150 properties (15%) had owners who were allegedly nominees.

Four overseas owners featured in the ‘suspicious properties’ list. They were connected to the BVI, India, the U.K., and the U.S. There were no registered trusts listed on any of the titles in the sample.

There were three post office boxes provided for owners on title - one in Kelowna, one in Penticton and one in the BVI - and three properties whose titleholders use a law firm as a service address.

[Financing indicators](#)

Approximately 8% of the properties in the list had no mortgage at all, while another 8% had no mortgage in the first 30 days after the title was registered. That range of 8% to 16% is just outside the lower end of our range for residential properties across B.C. (17% to 21%).

Of the 142 mortgaged properties, 53 (34%) had mortgages with unregulated lenders, 133 (86%) had mortgages with regulated institutions, while 44 had mortgages with both regulated and unregulated lenders. Unregulated mortgages are much more prevalent in the ‘suspicious properties’ sample than they are in the residential market as a whole (where only 5% of properties have mortgages with private lenders).

Few of the mortgages registered against the ‘suspicious properties’ were discharged within the parameters set for our indicator of quickly repaid mortgages. Once again the sample is too small to draw conclusions from this result. We did find that mortgages registered against the ‘suspicious properties’ were discharged more quickly on average, with a mean of 3.2 years and a median of 2.2 years compared to 4 years and 3.1 years for mortgages in total.

Due to time constraints we were unable to review the LTV ratios and interest rates for the mortgages registered against the ‘suspicious properties,’ as that would have involved manually reviewing each mortgage document.

[Values and transactions](#)

Comparing the declared and assessed values for the ‘suspicious properties’ with the market as a whole, we did not find any noteworthy differences. We could not confidently assess whether the values of any of the properties were over- or under-declared.

Analysing the sample for flipping activity, we found that seven of the ‘suspicious properties’ had been transferred twice within a year while one property had changed hands three times over the course of 15 months. We could not compare the frequency of flipping activity in the ‘suspicious properties’ list to the findings for our flipping indicator (see section [6.5.1](#)) because the latter dataset only covered the past 12 months. None of the ‘suspicious properties’ flipped two or more times between March 2018 and March 2019.

There are 39 titleholders of ‘suspicious properties’ that currently hold other titles, of which seven would have appeared in our ‘buying spree’ analysis had we been able to apply it to earlier years.¹⁵⁹

Property category and geographic region

We categorized the 154 properties in the list by property type in order to assess whether certain categories of property are more commonly linked to criminal activity. Of the seven general categories of property represented in the ‘suspicious properties’ sample, rural acreages (homes on 2+ acres) were the most overrepresented relative to B.C. real estate as a whole. Condominiums and townhouses were considerably underrepresented. A possible explanation is that those using property for criminal activities prefer to do so where there is greater privacy; a condo may not be an ideal location for a drug lab or marihuana grow-operation.

‘Suspicious properties’ by use category

Category of property	Count	% of suspicious properties	% of all properties
Single-family detached	85	55.19%	48.35%
Strata (condo/townhouse)	26	16.88%	36.07%
Acreages (2+ acres with home)	16	10.39%	3.65%
Vacant Land	9	5.84%	3.68%
Other detached/semidetached	6	3.90%	2.63%
Farm	2	1.30%	0.39%
Multi-family	4	2.60%	0.17%
Commercial	6	3.90%	

The locations of the properties in the list span much of the province. Analysed by municipality, there are two that stand out: Mission and Vancouver. Eleven of the 154 properties on the list are situated in Mission, which amounts to 7% of the total despite the municipality having only 0.8% of residential property titles in B.C. Mission’s large, semi-rural properties have in the past attracted cannabis growers and this could account for a portion of this number. Vancouver residences account for 27% of those on the ‘suspicious properties’ list, compared to 12% of total titles in the province.

¹⁵⁹ It is possible that multiple titleholders with the same name appeared in our search, in which case the total number of ‘buying spree’ hits would be lower.

SCORING SYSTEM

We used the ‘suspicious properties’ list to explore whether a scoring system could be an effective way to flag money laundering risk for specific properties. In doing so we assessed each property, giving it a point for every indicator that applied. This analysis also helped to evaluate whether certain indicators tend to appear together.

We evaluated the ‘suspicious properties’ with our indicators, some of which we repackaged, placing the ownership indicators into ‘opaque owner’ and ‘opaque address’ categories. The two financing indicators related to quickly discharged mortgages were grouped together, as were mortgages from unregulated and overseas lenders. As noted earlier, the LTV and interest rate indicators could not be applied to the ‘suspicious properties’ sample due to time constraints. Our repackaged indicators were as follows:

- opaque owner (legal entity, legal arrangement or nominee);
- opaque address (service address is overseas, a post office box, or a law office);
- unfinanced purchase;
- quickly discharged mortgage (single or multiple);
- mortgage with unregulated or overseas lender;
- property is overvalued or undervalued property has been flipped; and
- property was part of a buying spree.

Most properties (94, or 61%) received a point for one or more of the repackaged indicators. One property received three points, 37 properties received two points, and 54 properties received one point. Sixty properties (39%) did not receive any points. Note that overvalued and undervalued properties were only assessed for properties sold in 2017 and 2018, as historical assessed values were not available.

The most common indicators in the ‘suspicious properties’ list were opaque ownership structures and mortgages with unregulated lenders, which accounted for 14% and 24% of the sample, respectively. The two indicators appeared together in 11 properties (approximately 7% of the sample).

'Suspicious properties' scoring results

Indicator	Number of Titles	%	Number of Mortgages	%
1. Opaque owner (legal entity, legal arrangement or nominee)	21	14%		
2. Opaque address (service address is overseas, is a PO Box or law office)	6	4%		
3. Unfinanced purchase	12	8%		
4. Mortgage with unregulated or overseas lender			83	24%
5. Quickly discharged mortgage (single or multiple)			28	8%
6. Property is overvalued or undervalued	1	1%		
7. Property has been flipped	8	5%		
8. Property was part of a buying spree	10	6%		

'SUSPICIOUS PROPERTIES' FINDINGS

The 'suspicious properties' analysis suggests that a scoring system may not be an effective way to detect properties linked to money laundering, though we cannot be certain without a larger sample that is more representative of the money laundering typologies we identified in B.C. real estate. However, evaluating each of the indicators against the 'suspicious properties' list did provide some insights into their validity.

The only indicator that was significantly higher among the 'suspicious properties' than the market as a whole was borrowing from unregulated lenders. While there were higher rates of opaque ownership and quickly discharged mortgages among the 'suspicious properties', that could be attributed to the small size of the sample.

A review of the individual civil forfeiture cases, media reports, and other sources related to each of the properties confirms that our occupation-based proxy for nominees fails to capture many actual nominee owners.

The frequency with which criminals and alleged criminals appear to borrow from unregulated lenders and small credit unions underscores the need to broaden the application of the *POCMLTFA* and ensure proper compliance and enforcement, both regulatory and criminal.

CHAPTER 2-2

ENFORCING CRIMINAL DEBTS

Builders Liens & Other Restrictions on Title

FINDINGS

- Private mortgages can be used as a debt enforcement tool by organized crime, seeking to leverage the legal system for its own purposes.
- Builders liens have also been misused in this manner. They are particularly vulnerable to abuse because a creditor can register a lien without the consent of the titleholder.
- The abuse of legal mechanisms reflects the fact that organized crime is innovative and not encumbered by the niceties of law. It is also quick to shift commodities and processes when its activities are exposed to the light of public scrutiny.
- LTSA storage, data retention and retrieval practices make it difficult to research builders liens.

TERMS OF REFERENCE

The TOR for this Review include the following:

2. *Alleged issues of criminal activity and money laundering relating to real estate to determine the scale and scope of any actual problem*

Advise government whether the following alleged issues can be confirmed to exist and, if so, the extent of the problem and any identifiable patterns in firms or individuals engaging in or facilitating the identified conduct:

....

c. Abuse of the builders' liens system where, for the purposes of criminal activity, a builder's lien is registered against a property as a money laundering or grey market loan enforcement mechanism, not as a result of improvements done to a property for which payment is not received;

INTRODUCTION

An interesting phenomenon that occurred within Greater Vancouver during the past few years has been the use of the civil courts to enforce loan obligations which may have been either criminal loans or debts to organized crime. This has been accomplished by placing charges on title which do not reflect the underlying obligation, but instead are place holders for debts to criminal actors and organizations.

The two most common such charges are mortgages and builders liens. In the former case, the mortgage is really a means of securing a debt against real property and in the latter case, a builders lien is registered on title despite no improvements having been undertaken to the subject property. These are simply methods by which a debt is secured and is paid out in the normal course when property is sold. This activity is referred to as 'grey market loan enforcement'.

Surprisingly, considering the secrecy that normally co-exists with illegal debt enforcement, some of these charges on title have led to civil suits. In a trial, it is very difficult for a judge to enquire beyond the evidence, to determine if the plaintiff is appearing before the court with 'unclean hands', to borrow from the law of equity, in order to enforce an illegal obligation.

We considered regulated and unregulated mortgages in the preceding chapter, in particularly their use as a money laundering tool. Below are the results of our analysis of Builders liens being used for a purpose other than was contemplated by the legislation.¹⁶⁰

BUILDERS LIENS

The advantage that builders liens have over mortgages as an enforcement tool is not in the payout but in the registration. A builders lien can be registered on title by a claimant without the foreknowledge or consent of the registered owner. This is different, of course, from a mortgage which is signed by the borrower, who is or will become the registered owner of the property.

The use of builders liens as a money laundering instrument first came to light in a February 2018 *Globe and Mail* report by Kathy Tomlinson.¹⁶¹ Although most of the 45 properties identified in the story had mortgages registered against them, the alleged drug traffickers featured in the story also used builders liens on several occasions to register debts owed to them for cash-based loans made to the homeowners or family members.

A claim of a builders lien simply requires the filing of a one-page form with the LTSA to register the claim of indebtedness on a property. The liens are intended for use by laypersons, including contractors and tradespeople, as a means by which they can be paid for their work to the

¹⁶⁰ *Builders Lien Act*, S.B.C. 1997, c. 45.

¹⁶¹ Kathy Tomlinson, "B.C. vows crackdown after Globe investigation reveals money-laundering scheme", *supra*.

subject property. They are not intended to secure loans or debts, let alone illegal ones. In 2018, the LTSA received 4,222 builders lien applications, of which 2,296 were filed electronically.

Unlike a mortgage, the homeowner is not required to countersign the document for a builders lien to be registered. The only requirement is that the creditor must have a claim on the property itself. When the property is sold, the builder is paid out, unless the titleholder successfully disputes the charge in court.

We spoke with the B.C. Law Institute (BCLI) which is currently engaged in a ‘Builders Lien Act Reform Project’. As part of its project, the BCLI is examining ways to prevent liens from being exploited for money laundering purposes. The solution appears to revolve around the issue of notice to affected parties, which currently only occurs in response to a request. In other words, if you do not ask (and pay a fee), you will not know if a lien has been filed against your property. The process for removing liens from title is also being examined.¹⁶²

DATA ANALYSIS

We examined the five builders liens identified in the *Globe and Mail* report and found a few common characteristics between the charges. The descriptions for the work purportedly completed ranged from being very generic (“built the whole house”) to quite specific (“renovation work, including installation of floor tiles and kitchen cabinetry”). Two of the lien claims were submitted through lawyers, two were submitted directly by the applicant, and one was submitted by a notary. The only common features between the liens were the relatively high value of the claims (they ranged from \$205,000 to \$2 million), the rounded sums of money, and the claimants being either individuals or numbered companies.

It is not possible to conduct searches for builders liens by the name of an applicant or claimant. We were therefore unable to search records for liens filed by persons of interest identified during this Review. We were also unable to review builders liens from previous years due to the LTSA’s data retention practices and the PDF format in which many forms are submitted.

The LTSA provided us with a custom dataset containing information from Claim of Builders lien (CBL) forms that had been submitted electronically and were retained in machine-readable format.¹⁶³ Unfortunately that information was provided at a late stage in this Review and could not be analysed in a comprehensive manner. Nevertheless, we were able to conduct a cursory review of the nearly 11,000 CBL forms included in the dataset.¹⁶⁴

¹⁶² For background, see the following: <http://www.bcli.org/law-reform-resources/builders-lien-act/faq>.

¹⁶³ As with other data submitted through LTSA forms, the data is only retained in machine-readable format for a brief period and generally not more than 12 months. This particular dataset included partial records dating back to 2016, however.

¹⁶⁴ The dataset included many identical claims that had been filed against multiple titles related to the same projects. When we filtered those duplicate claims, the sample size included close to 3,000 CBL forms.

SUMMARY

The nearly 11,000 claims in our dataset were submitted by approximately 1,660 unique claimants. The vast majority were submitted through a lawyer or notary, though some claimants submitted theirs directly. The top 50 applicants, all lawyers and notaries, account for nearly 8,000 of the builders lien claims in the dataset.

Only 85 of the claimants were individuals, while another 23 were numbered companies without a ‘doing business as’ addendum to their name. Of the named companies, nearly all had names that suggest a business activity related to construction, trades, or another property-related service. Time constraints did not allow us to conduct open-source research to confirm whether those companies have a discernable online presence as operational businesses.

The dollar amounts claimed by the suppliers in the sample were mostly for smaller sums than those identified in the *Globe and Mail* investigation. Only 20% of the claims in the sample were for \$200,000 or more, and most of those appeared to be for work completed on commercial projects or multi-family developments where multiple liens were filed. Only six liens above \$200,000 were filed by individuals or numbered companies related to residential projects, and most of those claimants were found to have construction-related businesses.¹⁶⁵ A few of the CBL forms in the dataset provided by the LTSA include rounded dollar amounts, similar to those identified in the *Globe and Mail* story.

Most of the descriptions provided on the CBL forms in the sample we reviewed were detailed summaries of the work reportedly completed by the claimants. While there were some generic summaries such as “work regarding renovation of an existing family residential dwelling” and “general contracting services”, the claimants for those liens were named businesses that appear to be involved in work of that nature.

We found no indication of widespread misuse of builders liens as instruments by which to launder money or enforce debts for criminal loans. Although we cannot be certain, it may be that those using builders liens in that manner prior to the *Globe and Mail* report ceased doing so after the practice was exposed. The indicators present in those liens – claims by an individual or numbered company, large rounded dollar amounts, and vague descriptions of work completed – were not present in the CBLs that we reviewed.

We did not identify any other charge instruments subject to the same vulnerabilities as builders liens with respect to money laundering, with the notable exception of private mortgages. Builders liens appear to be unique in enabling a creditor to register a charge without the consent of the titleholder.

The unique example of builders liens re-enforces two recurring observations with respect to organized crime. The first is that it is extremely innovative and not encumbered by the niceties

¹⁶⁵ Two numbered companies did not have an open-source online footprint. We did not retrieve corporate records for either of those companies.

of law. The second is that it is quick to shift commodities and processes when its activities are exposed to the light of public scrutiny.

CHAPTER 2-3

CONSTRUCTION INDUSTRY

FINDINGS

- Associations representing the residential and commercial construction industries recognize the impact of money laundering and the underground economy on their industries and are supportive of actions to reduce both.
- Illegal foreign workers, many arriving in Canada as tourists, allow employers to pay low wages with no benefits. Often, they are hired on a day-by-day basis. The living and working conditions of these workers can be very poor.
- Migrant workers are paid in cash and generally no record is kept of these transactions. The cash can be derived from legal or illegal means. As no taxes are paid to the federal or provincial governments, the foreign workers become a feature of the underground economy.
- Construction supply stores accept large amounts of cash and are under no obligation to report cash transactions, nor to enquire into the source of cash. This allows the underground economy to operate as a unified system by allowing builders to receive wages or contract payments in cash and then purchase new product with cash, after taking their profit. The source of this money can be illegal.

TERMS OF REFERENCE

The TOR for this Review include the following:

2. *alleged issues of criminal activity and money laundering relating to real estate to determine the scale and scope of any actual problem*

advise government whether the following alleged issues can be confirmed to exist and, if so, the extent of the problem and any identifiable patterns in firms or individuals engaging in or facilitating the identified conduct:

....

d. use of the industrial or residential construction industry as a means of laundering money for the purposes of criminal activity. Money laundering in the residential construction sector, for example, could result in non-payment of taxes

and Worksafe BC premiums, erosion of employment standards, violation of safety codes and criminal activity.

INTRODUCTION

The construction industry in British Columbia includes both residential and commercial development. The nature of construction varies widely from small businesses which build one or more structures a year to huge commercial and residential developments. There are industry associations which provide support to this broad panoply of constructors. In this chapter we explore some of the vulnerabilities to money laundering which were brought to our attention during this Review, as well as best practices which exist in the industry.

LARGE SCALE DEVELOPMENT

We met with the Urban Development Institute – Pacific Region (UDI), which represents 850 corporate members engaged in the development sector. Their members build residential, commercial, industrial and mixed-use projects. The Institute made its position very clear in writing:¹⁶⁶

“UDI shares the public concern about the potential of money laundering activities, fraud and tax evasion in British Columbia and specifically within the real estate sector. As such, we have long been supportive of government and law enforcement efforts to ensure that everyone pays their appropriate taxes and that any potential illegal activity is thoroughly investigated and enforced to the full extent of the law. We maintain that if there are gaps in the regulatory regime, then those gaps should be closed.”

RESIDENTIAL AND SMALL COMMERCIAL CONSTRUCTION

We also met with the Canadian Home Builders' Association British Columbia (CHBABC), which represents over 2,000 member companies in the residential construction industry including home builders, renovators, tradespeople, service professionals, and others. Members are small and medium-sized businesses.

The CHBABC provided some very helpful ideas with respect to dealing with the underground economy and other matters, which we have attached as Appendix “J”.

As we discuss in the next Chapter, the critical money laundering vulnerability in terms of real estate transactions tends to be the transmission of closing funds, which are generally sent to a lawyer's trust account. The taking of deposits by realtors, developers and their agents is obviously important as well, but the sums generally pale by comparison to closing funds.

¹⁶⁶ Letter to Maureen Maloney, dated Dec. 5, 2018.

Other issues of concern involving the construction industry are the underground, cash economy in construction and the use of migrant workers. The former is dealt with in Chapter 5 and the latter is dealt with below.

MIGRANT WORKERS

Being situated directly north of the United States has meant that Canada does not face illegal border crossings to the degree that we see in other countries, including along the southern border of the United States.

Canada's vulnerability to illegal entry of foreign nationals tends to be via airports and seaports. The most common method appears to be for people to arrive in Canada with legitimate tourist documents or visas and then begin to work, in violation of the terms of their visa. They may also over-extend the terms of their entry document. This occurs with individuals coming from Mainland China and has recently been seen with tourists arriving from Mexico, with whom Canada removed its visa requirement in 2016.

A concern was raised to us by a major construction union that Mexican nationals are arriving in Canada on Electronic Travel Authorizations (eTA) and working on construction projects in various parts of B.C. They tend to move from project to project and are employed as unskilled labourers at less than minimum, or a bare minimum wage, usually \$14 to \$16 dollars per hour.

Illegal foreign workers take jobs away from Canadians and allow employers to pay low wages with no benefits. Oftentimes, the living and working conditions of the migrant workers are poor, taxes are not paid, and WorkSafeBC payments are not made. The foreign nationals will work until they are discovered by the authorities or choose to return home. Oftentimes they are hired on a day-by-day basis, meeting their employers at street corners or other rendez-vous locations.

The relevance to money laundering is the fact that migrant workers are paid in cash and generally no record is kept of the transaction. The cash can be derived from legal or illegal means. Needless to say, the absence of a paper trail makes it difficult to call the employers to account. Furthermore, because no taxes are paid to the federal or provincial governments, the foreign workers become a feature of the underground economy.

CONSTRUCTION SUPPLY BUSINESSES

We received tips that large building supply companies accept large cash payments at check-out. That was confirmed by one of Canada's leading chain stores, noting that there was no obligation on their part to report cash transactions, nor to enquire into the source of cash. This, of course, allows the underground economy to operate as a unified system by allowing builders to receive wages or contract payments in cash and then purchase new product with cash, after taking out their costs and profit. The only difference between this scenario and a typical money laundering scenario is that the focus is tax evasion. The source of the money may well be dirty and, if so, it is in fact money laundering.

CHAPTER 2-4

LAWYERS & NOTARIES

FINDINGS

- Lawyers are at high risk of being targeted by money launderers, not only because they are exempted from financial reporting but by the very nature of the risks inherent in dealing with real estate transactions, the formation of corporations and trusts, and most of all because they can hold funds in a trust account.
- Lawyers are the ‘black hole’ of real estate and of money movement generally. With no visibility by law enforcement on what enters and leaves a lawyer’s trust account, many investigations are stymied.
- Lawyers acting in real estate transactions are particularly vulnerable to being used as conduits for dirty money and must enquire into the source of funds when closing funds are wired into their trust accounts from foreign destinations.
- Lawyer trust account must not be used for purposes unrelated to the provision of legal services, as this increases the risk of money laundering.
- The cash rule governing the acceptance by lawyers of no more than \$7,500 is limited in its effect. It does not prevent persons from giving tens, or hundreds of thousands of dollars in cash to a lawyer for bail money, or in settlement of fees and expenses.
- In the *Federation* case, the SCC invited Parliament to revisit the POCMLTFA and attempt to deal with the non-reporting by lawyers to FinTRAC. Other countries which share our common legal origins have dealt effectively with this issue.
- There must, at a minimum, be visibility surrounding the financial accounts maintained by lawyers. There is no suggestion that privileged solicitor-client communications should be impacted.
- Possible workarounds include reporting transactions to a separate body, possibly administered by the law societies, such as the Federation of Law Societies, or creating some other blind that allows for the transmission of financial data without transgressing the sanctity of solicitor-client privilege. The U.K. is well advanced in this area.

- The simplest solution may be to follow the U.S. example, where lawyers are required to file reports on any transaction in which they receive more than \$10,000 in cash. These reports contain the barest of information; including name and address of the person from whom the cash was received, the amount of cash, and the date and nature of the transaction.
- It is anomalous that in B.C., lawyers can act as realtors and yet not report to FinTRAC; or can act as lawyers in a real estate transaction and not report, while notaries in the same transaction must report. With entitlement come expectations.
- The LSBC is recognized as a best practice among Canadian law societies with respect to AML initiatives. It takes the issue seriously and is willing to work on solutions.
- It is important that lawyers be aware of sanctions legislation and PEP requirements and incorporate both in their due diligence and client verification.
- Law societies are not police forces and should not become police forces. Their role is to serve as professional regulatory bodies and to refer criminality to the police, to receive complaints of inappropriate conduct by their members, and to proactively review lawyer trust accounts on a regular basis.
- Law enforcement cannot disregard crime committed by members of professional bodies, simply because they are professionals and their professional body can sanction behaviour. They must have the capacity and willingness to act upon criminal referrals.
- FinTRAC should be able to provide copies of STRs to the LSBC, for use with audits and investigations, as part of a working group with law enforcement, similar to the gaming sector.
- LSBC auditors and investigators should be required to obtain AML training, possibly including a form of certification.

TERMS OF REFERENCE

The TOR for this Review include the following:

2. *Alleged issues of criminal activity and money laundering relating to real estate to determine the scale and scope of any actual problem*

Advise government whether the following alleged issues can be confirmed to exist and, if so, the extent of the problem and any identifiable patterns in firms or individuals engaging in or facilitating the identified conduct:

....

b. Use of lawyer's trust accounts to avoid scrutiny of the source of funds in real estate transactions;

INTRODUCTION

This chapter explores the role which lawyers play in terms of residential and commercial realty. A few opening comments are important.

Lawyers in Canada do not report large cash transactions or suspicious transactions to FinTRAC. This is the result of constitutional challenges filed by provincial law societies, the final result being a Supreme Court of Canada decision - known as *Federation of Law Societies Canada v. Canada (Attorney General)*.¹⁶⁷ Since that decision was delivered, Canada has struggled to deal with international criticism for its non-compliance with international agreements, and law societies have been working hard to demonstrate that they are able to fill the gap created by non-reporting.

In British Columbia, notaries are a well-established profession, much as they are in the Province of Quebec. Those in Quebec joined with the law societies in the *Federation* case and are exempted from financial reporting, while those in B.C. did not. The B.C. Notaries Society supports financial reporting.

Most large land developments and commercial purchases in B.C. are handled by lawyers. Notaries handle many residential real estate transactions. Ironically, lawyers and notaries may represent parties to the same real estate transaction, with one side not reporting to FinTRAC and the other reporting. It is hard to rationalize this irony within the same transaction.

The opaque nature of lawyer trust accounts was mentioned to us many times by regulators and enforcement officials during this Review. The presence of a lawyer's trust account serves to interrupt the visibility that FinTRAC and law enforcement have on a transaction. For example, realtors may take deposits on a condo purchase from a foreign purchaser, but closing funds are almost always provided directly to a lawyer, by means of an EFT to the law firm's trust account at a financial institution.

Although the international EFT may be reported to the sender's national FIU and to FinTRAC, there is no visibility on the money after it enters the lawyer's trust account. It is, on its face, not suspicious as the origin is a foreign financial institution, its purpose is often unknown or generic (e.g. real estate closing funds), and what becomes of the money after arriving in the trust account is unknown. From the lawyer's trust account, the money will likely travel to another lawyer's trust account by way of a cheque, a draft, or a wire, in order to complete a transaction.

The only means by which law enforcement can obtain particulars of what took place once the money arrives in a lawyer's trust account is by way of a search warrant. This is a cumbersome process, requiring the requisite grounds and is fraught with delay. It will likely lead to a lengthy

¹⁶⁷ 2015 SCC 7.

delay to an investigation. In many cases, law enforcement chooses not to search law firms, even if they have the necessary grounds, simply because of the time involved.

The absence of reporting by lawyers to FinTRAC is a gap in Canada's AML regime and is a significant impediment to police investigations involving the movement of money through real estate and other financial sectors. Canada is an outlier, as other common law jurisdictions, including the U.K., have robust provisions in place which require financial reporting by lawyers. A workaround is required in order for Canada to comply with international standards and end the current anomalous situation.

To its credit, the Law Society of B.C. is at the forefront of Canadian law societies as they attempt to replace the absence of reporting with self-regulation by lawyers. It has extensive policy in place regarding lawyers receiving and recording cash transactions and was quite willing to meet with our reviewers and to provide requested information.

LAWYERS

Lawyers can encounter the proceeds of crime and money laundering in many situations. The solicitor-client privilege which lawyers enjoy, and jealously guard, sets the profession apart in the eyes of the law from all others. Lawyers may unknowingly facilitate the money laundering process by acting as a nominee, conducting financial and commercial transactions, incorporating companies, handling real property transfers, coordinating international transactions, or merely by receiving cash.¹⁶⁸

According to lawyer and author, Derek Lundy: “[n]o matter what kind of law you practice, you are potentially a money launderer’s facilitator - and his victim.”¹⁶⁹ Lawyers provide the knowledge, expertise, and access which criminal organizations may not possess in order to operate sophisticated money laundering schemes. They are the gatekeepers.¹⁷⁰

A critical issue is the impact of proceeds of crime and money laundering legislation on the administration of lawyer trust accounts. At what point are lawyers potentially at risk of criminal prosecution for concealing or converting illegal funds in those accounts?

Lawyers who are charged under money laundering legislation or face professional disciplinary proceedings for their actions are a very small subset of the profession, however their conduct tends always to attract considerable media attention when it becomes public.¹⁷¹

¹⁶⁸ Theresa M. Brucker, “Money Laundering and the Client: How Can I Be Retained Without Becoming a Party to An Offence?” *The Advocate*, V55:5, Sept. 1997 at p. 679.

¹⁶⁹ Derek Lundy, “It’s a Law Firm, Not a Laundry”, *Canadian Lawyer*, Jan. 1997 at p. 35.

¹⁷⁰ See Marvin R. Storrow and Lindsay Batten, “The New Proceeds of Crime Legislation or ‘Caveat Avocatus’”, *The Advocate*, V49:1 (1991) at p. 53; and P. Michael Bolton and M. Kevin Woodall, “The Age of Uncertainty: Due Diligence and Proceeds of Crime”, paper presented to the *Proceeds of Crime Seminar*, Continuing Legal Education Society, Vancouver, B.C., Apr. 24, 1993.

¹⁷¹ LSBC - Proceeds of Crime Subcommittee, “The Impact of the Proceeds of Crime Legislation on the Practice of Law in British Columbia”, *Benchers’ Bulletin Supplement*, V7:1, Aug. 1990.

A number of sources confirm that lawyers have frequently played significant roles in money laundering used to facilitate the purchase of real estate. A study of 149 RCMP proceeds of crime cases published in 2004 found that lawyers were involved in almost half of those cases,¹⁷² and that their involvement generally resulted from illicit funds used to purchase real estate transiting through a lawyer's trust account.¹⁷³

The author of the study, Stephen Schneider, noted the "relatively high proportion of cases where lawyers were exposed to the proceeds of crime is mostly the result of the popularity of real estate as a money laundering vehicle, combined with the necessary role of lawyers in real estate transactions"¹⁷⁴ and the significant potential for abuse of their trust accounts.¹⁷⁵

Similarly, a recent internal audit by the RCMP of 51 financial crime cases between 2013 and 2017 found that lawyers were involved in over 75% of those cases.¹⁷⁶

The following are a few examples of the RCMP cases from the 2004 study in which lawyers were involved in money laundering transactions.¹⁷⁷

- An Alberta drug trafficker used a partner at his "preferred law firm" to deposit a total of \$265,500 in cash between August 1999 and October 2000 in trust, which funds were then used to purchase various assets, including real estate and cars.¹⁷⁸
- Vancouver lawyer Basil Rolfe admitted receiving more than \$8 million from clients and depositing the money in his firm's trust account, from where it was

¹⁷² Stephen Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases* (Mar. 2004) at pp. 3-4 ("The professionals that most frequently came into contact with the proceeds of crime were deposit institution staff [67.8% of cases], lawyers [49.7% of cases], insurance agents or brokers [59.1%], and real estate professionals [38.3%]"). Accessed at <file:///C:/Users/Owner/Downloads/MONEY%20LAUNDERING%20IN%20CANADA.pdf>.

¹⁷³ *Ibid.* at:

p. 4 ("...most lawyers came into contact with illegally-generated funds because the transaction conducted by the offender – most notably, the purchase or sale of real estate – commonly requires the services of a lawyer..."),
p. 29 ("Of the 149 cases examined, 83 (55.7%) involved the purchase of real estate with criminal funds..."), and
p. 67 ("...lawyers came into contact with the proceeds of crime mainly through their role in facilitating a real property transaction by an individual engaged in drug trafficking or an accomplice of the offender. In conducting these transactions, lawyers physically handled the cash proceeds of crime or monetary instruments provided by an offender or nominee, deposited these funds into bank accounts in-trust for clients, and issued cheques on behalf of clients for the purchase of real estate...").

¹⁷⁴ *Ibid.* at p. 68.

¹⁷⁵ *Ibid.* at p. 70 ("One of the powers that lawyers have at their disposal – and which is regularly abused for money laundering purposes – is to hold money or assets 'in trust' for clients ... the significance of a legal trust account in the context of a money laundering operation should not be understated: it can be used as part of the initial first step in converting the cash proceeds of crime into other less suspicious assets; it can serve to help hide criminal ownership of funds or other assets...").

¹⁷⁶ Dept. of Finance, *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*, *supra* at p. 22; and Standing Committee on Finance, Evidence, Feb. 26, 2018, *supra* at p. 14.

¹⁷⁷ See Stephen Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, *supra* at pp. 68-73 for a more detailed summary of the cases involving lawyers.

¹⁷⁸ *Ibid.* at p. 71.

almost immediately withdrawn or wire-transferred to other bank accounts in Canada or overseas. In one transaction, Rolfe received a paper bag containing \$25,000 in 20-dollar bills, which was provided to a real estate agent as a down payment on a Vancouver house.¹⁷⁹ Rolfe denied knowing that the money was criminal proceeds.

- A property was purchased in New Brunswick using \$84,000 in cash delivered to a real estate lawyer in a “brown paper bag.”¹⁸⁰
- An Ontario-based drug trafficker admitted to police that he “purposely used legal trust accounts to help block access to information about the true ownership of the funds” and to “circumvent cash or suspicious transaction declarations at financial institutions.”¹⁸¹
- A convicted Edmonton drug trafficker admitted he used lawyers to launder his drug profits through purchases of real estate and other assets and described once visiting his lawyer with a suitcase containing \$140,000 in cash, which the lawyer deposited in his trust account. It was used for the purchase of a Porsche automobile.¹⁸²

In the U.S., there have been a number of high profile cases in which lawyers have become involved in money laundering schemes.¹⁸³ In one transaction, a Malaysian financier alleged to have misappropriated more than \$3.5 billion from the 1MDB state investment fund wired \$148 million from a Swiss bank account to law firm Shearman & Sterling’s pooled trust account, which funds were then used for a number of real estate transactions.¹⁸⁴ In another case, the son of the President of Equatorial Guinea was able to move over \$100 million into the U.S. through his lawyer’s client trust account at Bank of America, even though his own account at

¹⁷⁹ *Ibid.* at p. 72, citing a Vancouver Sun article, “Lawyer acquitted of money-laundering: Judge accepts Vancouver man’s testimony he didn’t know client’s \$8 million came from drugs”, Apr. 18, 1997.

¹⁸⁰ *Ibid.* at p. 71.

¹⁸¹ *Ibid.* at pp. 70-71.

¹⁸² *Ibid.* at pp. 72-73.

¹⁸³ *Wall Street Journal*, “Law Firms’ Accounts Pose Money-Laundering Risk”, Dec. 26, 2016 (“Tens of billions of dollars every year move through opaque law-firm bank accounts that create a gap in U.S. money-laundering defenses”).

¹⁸⁴ *Ibid.* Also, see “Are US Lawyers a Weak Link in the Fight Against Money Laundering?” *American Lawyer*, Dec. 22, 2016 (“the biggest firms can also be linked to money laundering activities, according to a series of civil asset forfeiture suits that the Department of Justice filed in July. The complaints allege that five major U.S. law firms, including Shearman & Sterling and DLA Piper, assisted in transactions in which \$1.3 billion in stolen Malaysian government funds were illegally laundered in the U.S. through purchases of luxury real estate and other transactions”); and “Money Laundering Case Highlights ABA Stance on Lawyers’ Obligations”, *American Lawyer*, Aug. 1, 2016 (“from 2009 to 2010, a client trust account held by Shearman & Sterling received 11 wire transfers totaling roughly \$368 million from the bank account of a company called Good Star Limited. Good Star’s bank account was fraudulently set up under the name of a private Saudi oil company ... At least \$85 million was wired out of that Shearman & Sterling client account to casinos and for other extravagant expenditures, the government claims. More than \$12 million went to the Caesars Palace casino in Las Vegas; \$13.4 million went to the owner of the Venetian Las Vegas casino”).

the same bank had already been shut down.¹⁸⁵

In 2016, *60 Minutes* broadcast a story about a Global Witness sting in which an actor met with 16 lawyers and posed as an African government official seeking to move millions of dollars in potentially illicit funds into the U.S., in order to buy a townhouse, jet and yacht. Film footage of the meetings showed that 15 of the 16 lawyers were receptive to representing the would-be client, including a partner at a major New York firm who was the former president of the American Bar Association.¹⁸⁶

FATF

As noted above, Canada has been singled out for criticism internationally due to non-reporting by lawyers. Most strident in its criticism has been the FATF, which has repeatedly chastised Canada during peer reviews. The Canadian response tends to be cookie-cutter, explaining the rationale of the *Federation* case and promising to work on a solution to the dilemma. It is important to note that we have had financial reporting in Canada since 2001 and the *Federation* case was decided in May 2015. Our efforts as a country to deal with this issue are, at best, plodding and without a sense of urgency.

THE LAW SOCIETY RESPONSE

Currently, most lawyers do perform due diligence on new clients. It would be against self-interest not to know your client, given the risk of professional misconduct and damage to the reputation of one's firm. Nevertheless, it is less clear if most lawyers enquire into the source of funds or perform PEP or sanctions list checks on clients. In fact, LSBC rules include nothing about PEP checks.

In an attempt to increase lawyer due diligence, the Federation of Law Societies of Canada recently approved changes to its 'Model Rules' regarding AML measures. If adopted, these rules require lawyers (and Quebec notaries) to take reasonable measures to identify and verify the beneficial owners of clients that are legal entities. They must also inquire into the source of funds for a transaction in which they are participating and can only use trust accounts for purposes "directly connected to the provision of legal services".¹⁸⁷

BACKGROUND OF THE POCMLTFA

The *Proceeds of Crime (Money Laundering) Act* was adopted in 2000 and created a mandatory reporting system for STRs, LCTRs and certain other prescribed transactions.¹⁸⁸ In December

¹⁸⁵ "Law Firms' Accounts Pose Money-Laundering Risk", *Wall Street Journal*, *supra*.

¹⁸⁶ "Are US Lawyers a Weak Link in the Fight Against Money Laundering?" *American Lawyer*, Dec. 22, 2016; Steve Kroft, "Anonymous Inc.", *CBS 60 Minutes*, Jan. 31, 2016, accessed at

<https://www.cbsnews.com/news/anonymous-inc-60-minutes-steve-kroft-investigation/>; and Global Witness, *Undercover in New York*, accessed at <https://www.globalwitness.org/shadyinc/>.

¹⁸⁷ <https://flsc.ca/wp-content/uploads/2018/10/Report-on-the-Model-Rules-1Oct2018.pdf>.

¹⁸⁸ Canada, House of Commons Standing Committee on Finance, *Confronting Money Laundering*, *supra* at p. 10.

2001, the *Act* was renamed and amended to include measures relating to terrorist financing, including terrorist property reports (TPR).

In its original form, the legislation included lawyers among the group of reporting entities who were obligated to report suspicious transactions and other specified financial transactions, but expressly excluded them from reporting any communications subject to solicitor-client privilege.¹⁸⁹ The legislation was challenged by law societies across Canada, and in November 2001 interlocutory injunctions were granted by various courts exempting legal counsel from the legislation.¹⁹⁰ In 2006, the *Act* was amended by Parliament to exempt lawyers from the obligation to report suspicious transactions under section 7 and the other financial transactions required to be reported under section 9.¹⁹¹

Other parts of the *Act* that were made applicable to legal counsel in 2008 (i.e., the client identification and record keeping requirements, and the compliance procedure authorizing FinTRAC to conduct searches of law offices)¹⁹² were challenged in a lawsuit filed by the Federation of Law Societies.

THE FEDERATION CASE

The *POCMLTFA* and *Regulations* as they applied to the legal profession were found in violation of the *Charter of Rights and Freedoms* at each stage of the proceedings in the constitutional challenge brought by the Federation: the B.C. Supreme Court (BCSC),¹⁹³ the B.C. Court of Appeal (BCCA),¹⁹⁴ and the Supreme Court of Canada.¹⁹⁵

The SCC ruled that the compliance procedure established by sections 62, 63, 63.1 and 64 of the *POCMLTFA* violated Section 8 of the *Charter* (the right to be free of unreasonable search and seizure) by authorizing “sweeping” searches of law offices and the seizure of documents without adequate protection for solicitor-client privilege.

¹⁸⁹ *POCMLTFA* at s. 11 (“Nothing in this Act requires a legal counsel to disclose any communication that is subject to solicitor-client privilege or, in Quebec, the professional secrecy of legal counsel”).

¹⁹⁰ See *Federation of Law Societies of Canada*, 2011 BCSC 1270 at para. 18 (“An interlocutory injunction was granted on November 20, 2001, exempting legal counsel in British Columbia ... pending the hearing of the petitions. Similar injunctions were obtained in Alberta, Ontario, Nova Scotia and Saskatchewan”).

¹⁹¹ *POCMLTFA* at s. 10.1 (“Sections 7 and 9 do not apply to persons or entities referred to in paragraph 5(i) or (j) who are, as the case may be, legal counsel or legal firms, when they are providing legal services”). Also, see *Federation of Law Societies of Canada* (BCSC), *supra* at paras. 37 and 39 (“Parliament repealed the sections which had been stayed by the various court orders”); Canada – Senate Standing Committee on Banking, Trade and Commerce, *Follow the Money: Is Canada Making Progress in Combating Money Laundering and Terrorist Financing? Not Really*, Mar. 2013 at p. A-26 (“...the 2001 provisions that required lawyers to submit suspicious transaction reports were repealed by the federal government in 2006”).

¹⁹² *Federation of Law Societies of Canada* (BCSC), *supra* at para. 40 (“Regulations that came into force on December 30, 2008 ... made the client identification and verification, recording and compliance provisions in the Regime applicable to the legal profession”).

¹⁹³ *Federation of Law Societies of Canada* (BCSC), *supra*.

¹⁹⁴ *Federation of Law Societies of Canada v. Canada (Attorney General)*, 2013 BCCA 147.

¹⁹⁵ *Federation of Law Societies of Canada* (SCC), *supra*.

Section 62(1) of the *Act* authorized FinTRAC to “examine the records and inquire into the business and affairs” of any lawyer, including by searching computers and printing or copying records. The *Act* only required warrants for searches of a residential dwelling under section 63, and permitted searches of law offices without warrants. The SCC noted that “[w]arrantless searches, such as those permitted under this scheme, are presumptively unreasonable,”¹⁹⁶ basing its ruling on constitutional principles applicable to searches of law offices that were established in the 2002 *Lavallee* decision:¹⁹⁷ “A law office search power is unreasonable unless it provides a high level of protection for material subject to solicitor-client privilege.”¹⁹⁸

The SCC found that the procedure established in section 64 of the *Act* failed to adequately protect against the disclosure of privileged material during searches, because:

- (i) the provisions for notice to clients, who are the holder of the privilege, were insufficient;¹⁹⁹ and
- (ii) judges were denied any discretion “to assess the claim of privilege on [their] own motion”, in cases where lawyers had claimed privileged but failed to file a formal application.²⁰⁰

The Court also observed a number of other principles relating to searches of law offices that might apply:

- (i) “before searching a law office, the authorities must satisfy a judicial officer that there exists no other reasonable alternative to the search;”²⁰¹
- (ii) “all documents in possession of a lawyer must be sealed before being examined or removed from the lawyer’s possession,” unless otherwise authorized by warrant,²⁰² and
- (iii) requiring lawyers to identify their client in order to claim privilege could be problematic, because in some cases the name of a client itself may be privileged.²⁰³

A majority of the SCC also held that the client identification and record-keeping requirements of the *Act* violated Section 7 of the *Charter* (right to life, liberty and security) by unduly undermining the ability of lawyers to comply with their duty of loyalty and commitment to their clients.²⁰⁴ The Federation of Law Societies argued that, because the POCMLTFA scheme required lawyers, under threat of imprisonment, to “prepare records of the clients’ activities,

¹⁹⁶ *Ibid.*

¹⁹⁷ *Lavallee, Rackel & Heintz v. Canada*, 2002 SCC 61.

¹⁹⁸ *Federation of Law Societies of Canada* (SCC), *supra*. at para. 36.

¹⁹⁹ *Ibid.* at para. 50 (“there is no requirement for notice to the client, who is the holder of the privilege, and no protocol for independent legal intervention where it is not feasible to notify the client”).

²⁰⁰ *Ibid.* at paras. 51-52.

²⁰¹ *Ibid.* at para. 54.

²⁰² *Ibid.* at para. 55.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.* at paras. 69-71 and 83-110.

relationships and details of their transactions as part of a regime whose overall purpose is predominantly criminal”, lawyers were “being conscripted against [their] clients by being required to obtain information from a client that is not required in order to provide legal services and to act as a government repository for that information.”²⁰⁵

The SCC recognized “as a principle of fundamental justice that the state cannot impose duties on lawyers that undermine their duty of commitment to their clients’ causes.”²⁰⁶ It reviewed professional rules of conduct that had been adopted by Canadian law societies, which included client identification and record keeping provisions, and concluded that the obligations imposed by the *POCMLTFA* were more onerous and required lawyers to “gather and retain considerably more information than the profession thinks is needed for ethical and effective client representation.”²⁰⁷

The SCC made it clear however that the duty of commitment to the client’s cause “does not countenance a lawyer’s involvement in, or facilitation of, a client’s illegal activities ... The duty is perfectly consistent with the lawyer taking appropriate steps with a view to ensuring that his or her services are not being used for improper ends.”²⁰⁸ It further observed:

“The information gathering and record retention provisions of this scheme serve important public purposes. They help to ensure that lawyers take significant steps so that when they act as financial intermediaries, they are not assisting money laundering or terrorist financing. ... In order to pursue these objectives, ***Parliament is entitled, within proper limits which I have outlined, to impose obligations beyond those which the legal profession considers essential to effective and ethical representation.***”²⁰⁹ [our emphasis]

The SCC also made it clear at multiple points in its decision that it believed there was room to draft different *POCMLTFA* provisions governing the legal profession that would be consistent with the *Charter of Rights*:

“Given that ***there are a number of ways in which the scheme could be made compliant with s. 8,*** I do not want to venture into speculation about how a modified scheme could appropriately respond to the requirements of s. 7. However, it seems to me that if, for example, the scheme were to ***provide the required constitutional protections for solicitor-client privilege as well as meaningful derivative use immunity of the required records*** for the purposes of

²⁰⁵ *Ibid.* at para. 75.

²⁰⁶ *Ibid.* at para. 84.

²⁰⁷ *Ibid.* at paras. 107-108. The lower courts had concluded that “regulation of lawyers by law societies already provides effective and constitutional anti-money laundering ... regimes.” *Ibid.* at paras. 26 and 30.

²⁰⁸ *Ibid.* at para. 93.

²⁰⁹ *Ibid.* at para. 113 [emphasis added].

prosecuting clients, it would be much harder to see how it would interfere with the lawyer's duty of commitment to the client's cause.”²¹⁰ [emphasis added]

In furtherance of this invitation by the SCC, Finance Canada has publicly stated that it intends “to develop constitutionally compliant legislative and regulatory provisions that would subject legal counsel and legal firms to the *POCMLTFA*.”²¹¹ However, a representative of the Department of Justice who testified before the Standing Committee on Finance in 2018, three years after the decision was rendered, expressed the view that it may be “difficult” to make the *POCMLTFA* reporting requirements applicable to lawyers.²¹²

SELF-REGULATION BY A LAW SOCIETY

While their constitutional challenge to the *POCMLTFA* and *Regulations* was pending, the Federation of Law Societies and its members adopted new rules intended to prevent money laundering and terrorist financing within the profession. Model rules governing cash transactions and client identification and verification were adopted by the Federation and implemented by all provincial and territorial law societies.²¹³ In its 2015 decision, the SCC indicated that the regulatory provisions enacted by the law societies would not be as susceptible to constitutional challenge, as were the *POCMLTFA* provisions:

“The issues that would arise in the event of a challenge to professional regulatory schemes are not before us in this case. Different considerations would come into play in relation to regulatory audits of lawyers conducted on behalf of lawyers’ professional governing bodies. The regulatory schemes in which the professional governing bodies operate in Canada serve a different purpose from the Act and Regulations and generally contain much stricter measures to protect solicitor-client privilege.”²¹⁴

²¹⁰ *Ibid.* at paras. 112-113 [emphasis added]. See also para. 56 (“I do not foreclose the possibility that Parliament could devise a constitutionally compliant inspection regime without a judicial pre-authorization requirement”).

²¹¹ Dept. of Finance, *Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime*, *supra* at p. 21.

²¹² Standing Committee on Finance, Evidence, *supra*, Feb. 26, 2018 at p. 16 (testimony of Paul Saint-Denis: “The Federation case ... makes it difficult for the PCMLA reporting requirements to apply to lawyers, because if a lawyer is taking information from his client and then reporting some of that to a federal agency, ... it might hamper the lawyer’s ability to properly defend his client. ... Based on that case, there just is not a lot of wiggle room”), and p. 20 (“If you read the decision, you’ll know that it leaves very little leeway for requiring information from lawyers or compelling them to provide information on their clients. We have to explore the limited possibilities available to us, in consultation with our charter experts ... we hope to work with the various provincial bar associations to figure out whether they can obtain certain information that we, at the federal level, cannot”).

²¹³ *Federation (SCC)*, *supra* at paras. 23 and 107; Federation of Law Societies of Canada, Anti-Money Laundering and Terrorist Financing Working Group, *Final Report on the Model Rules*, Oct. 1, 2018 at para. 2.

²¹⁴ *Federation (SCC)*, *supra* at para. 68.

CASH TRANSACTIONS

LSBC Rule 3-59, adopted in 2004, governs cash transactions. While misdescribed by the Federation of Law Societies as a ‘No Cash Rule’,²¹⁵ in reality the rule merely establishes limits on certain types of cash transactions. Specifically, the Rule only applies to lawyers who, on behalf of a client, are:

- (a) receiving or paying funds;
- (b) purchasing or selling securities, real property or business assets or entities; or
- (c) transferring funds or securities by any means.²¹⁶

With respect to such activities, it precludes lawyers from accepting cash amounting to \$7,500 or more in respect of any one client matter or transaction.²¹⁷ Lawyers who receive prohibited cash payments are required to make no use of the cash, to return the cash to the payer immediately, and to “make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash.”²¹⁸

A key exception to the Rule allows lawyers to accept “cash of \$7,500 or more ... for professional fees, disbursements, expenses, or bail.”²¹⁹ Lawyers are therefore permitted by the Law Society to accept cash payments for their own services or expenses without any limitation.

LSBC Rule 3-70 establishes record keeping requirements for cash transactions. It obligates a lawyer who “receives any amount of cash for a client” to “maintain a cash receipt book of duplicate receipts,” with each receipt recording: (i) the date on which the cash was received, (ii) the person from whom the cash was received, (iii) the amount of cash, (iv) the client for whom the cash was received, and (v) the number of the file in respect of which the cash was received.²²⁰ Each receipt must be signed by both the lawyer who receives the cash and the person from whom the cash was received.²²¹

CLIENT IDENTIFICATION & VERIFICATION

LSBC Rules 3-98 to 3-109 set forth the obligations of lawyers relating to client identification and verification. They are largely based on the Model Rules adopted by the Federation of Law

²¹⁵ See *Federation (BCSC)* at paras. 22 and 23 (“The No Cash Rule is intended to augment long-standing law society rules prohibiting lawyers from engaging in illegal activity by preventing lawyers from being unwittingly involved in money laundering ... It has been adopted by all of the petitioner’s member law societies except Quebec. It is expected that relevant rules will come into force shortly in Quebec”).

²¹⁶ LSBC Rule 3-59(1).

²¹⁷ LSBC Rule 3-59(3).

²¹⁸ LSBC Rule 3-59(6). It should be noted that sub-rule (6) is not part of the Federation of Law Society Model Rule on Cash Transactions, and is a significant professional responsibility added by the LSBC in its version of the rule.

²¹⁹ LSBC Rule 3-59(4).

²²⁰ LSBC Rule 3-70(1) & (2)(b).

²²¹ LSBC Rule 3-70(2)(a).

Societies in December 2008. Rule 3-100 establishes a general obligation applicable to all clients to “make reasonable efforts to obtain” and record basic information identifying individual and corporate clients, such as the client’s name, address, telephone number and occupation, and in the case of clients that are organizations, “the general nature of the type of business or activity engaged in by the client” and its incorporation or business identification number.²²² For purposes of this KYC rule, ‘client’ is defined to include “another party that a lawyer’s client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer.”²²³

The LSBC Rules impose additional requirements on lawyers providing legal services relating to financial transactions,²²⁴ including the sale or purchase of real property.²²⁵ For such matters, lawyers are obliged to verify their client’s identity using “reliable, independent source documents, data or information”, such as a driver’s license, birth certificate or passport for individual,²²⁶ and certificates of corporate status or publicly-filed annual reports, statements or similar records for clients that are organizations.²²⁷ For clients that are trusts or partnerships, lawyers are obliged to obtain “a copy of the organization’s constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.”²²⁸

In addition, lawyers providing legal services relating to financial transactions for clients that are organizations must make reasonable efforts to obtain and record: (a) the name and occupation of all directors of the organization, and (b) “the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.”²²⁹

If in the course of obtaining the information or documents required by these client identification rules, or otherwise while retained by the client, “a lawyer knows or ought to

²²² LSBC Rule 3-100(1).

²²³ LSBC Rule 3-98(1).

²²⁴ “Financial transaction” is defined in Rule 3-98(1) as “the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money.” Rule 3-101 establishes various exceptions to the additional verification requirements, such as where the client is a financial institution or public authority (Rule 3-101(a)), or the transaction is an electronic funds transfer between financial institutions of FATF-member countries and is documented by a proper transmission record (Rule 3-101(c)).

²²⁵ While the definition of “financial transaction” in Rule 3-98(1) does not expressly reference the purchase or sale of real property (as, by comparison, Cash Transaction Rule 3-59), any such transaction would presumably involve “the receipt, payment or transfer of money on behalf of a client.” In a meeting regarding these issues held on February 27, 2019, representatives of the LSBC confirmed that the additional verification requirements imposed for financial transactions applied to lawyers representing clients in relation to real estate transactions.

²²⁶ LSBC Rule 3-102(2)(a).

²²⁷ LSBC Rule 3-102(2)(b).

²²⁸ LSBC Rule 3-102(2)(c).

²²⁹ LSBC Rule 3-103.

know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.”²³⁰

GENERAL PROFESSIONAL & ETHICAL OBLIGATIONS

In addition to the specific rules relating to cash transactions and client identification, lawyers in British Columbia are also subject to general professional obligations that could give rise to disciplinary action in the event a lawyer were to knowingly or unknowingly facilitate money laundering.

For example, Section 3.2-7 of the B.C. Code of Professional Conduct (BC Code) states that: “A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.”²³¹ The LSBC’s commentary to this section²³² explains that lawyers “should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering,” particularly when they are engaged in certain types of matters, such as the establishment or sale of business entities or “purchasing and selling real estate”.²³³ Lawyers are instructed that if they have “suspicions or doubts” about whether they may be assisting a client in dishonesty, crime or fraud, they should “make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer”, including verifying the “legal or beneficial ownership of property and business entities and who has control of business entities” and clarifying “the nature and purpose of a complex or unusual transaction.”²³⁴

The Commentary to Section 3.2-7 also states that lawyers should make inquiries of a client who “seeks the use of the lawyer’s trust account without requiring any substantial legal services from the lawyer in connection with the trust matter.”²³⁵

There is one well-known and well-publicized case of a B.C. lawyer who was the subject of disciplinary proceedings for his alleged violation of these rules. In May 2016, Donald Gurney was cited by the LSBC for using his trust account to receive and disburse approximately \$26 million on behalf of a client without making reasonable inquiries about the subject matter and objectives of the transaction and without providing any substantial legal services.²³⁶

²³⁰ LSBC Rule 3-109(1). Also, see BC Code of Professional Conduct, section 3.7-7(b): “A lawyer must withdraw if ... a client persists in instructing the lawyer to act contrary to professional ethics”.

²³¹ Also, see BC Code, section 2.1-1(a): “A lawyer owes a duty to the state to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to act in any way contrary to the law.”

²³² Para. 4 of the LSBC Introduction to the BC Code notes: “In determining lawyers’ profession obligations, the Code must be consulted in its entirety and lawyers should be guided in their conduct equally by the language in the rules, commentary and appendices. Mandatory statements have equal force wherever they appear in the Code.”

²³³ BC Code, Section 3.2-7, Commentary [2].

²³⁴ *Ibid.*, Commentary [3].

²³⁵ *Ibid.*, Commentary [3.1].

²³⁶ *Law Society of BC v. Donald Franklin Gurney*, Decision of the Hearing Panel on Facts and Determination (May 18, 2017), 2017 LSBC 15 at para. 1. Also, see para. 23(b) (Law Society letter to Gurney asserting that his sole

The panel at Gurney's disciplinary hearing found that there were a number of circumstances that should have raised concerns about the transactions; including that: (i) the loans came from offshore lenders in Nevis, Marshall Islands and Belize, and were made to a newly incorporated B.C. company with no assets (Gurney's client); (ii) the transactions involved millions of dollars and "did not require the use of a lawyer's trust account to complete;" (iii) the only documentation for the loans were one-page line of credit agreements, with no security required from the borrower; and (iv) no legal advice was sought from Gurney, and his fee was based on a percentage of the money flowing through the trust account.²³⁷

The Hearing Panel noted that while funds entering a lawyer's trust account may be reported to FinTRAC by the recipient financial institutions, the disbursement of those funds by a lawyer (particularly where done by bank drafts) is shielded by privilege.²³⁸ Accordingly, because lawyers have been constitutionally exempted from the *POCMLTFA* as a result of the *Federation* decision:

"the legal profession has the responsibility for policing itself with regard to the use of lawyers' trust accounts. This means that there is a need for lawyers to understand the importance of their role in acting as gatekeepers to their trust accounts and to ensure that they make the necessary inquiries with regard to transactions that reasonably appear to be suspicious prior to their allowing funds to be deposited into their trust accounts."²³⁹

While the Hearing Panel did not dispute that Gurney had complied with the applicable client identification and verification rules,²⁴⁰ it nonetheless determined that Gurney had breached his professional responsibilities by failing to make reasonable inquiries respecting the purpose of the transactions and the source of funds deposited into his trust account,²⁴¹ and by allowing his trust account to be used without providing legal services.²⁴²

"service" was to receive, then immediately disburse, \$26 million in offshore funds by converting those funds into bank drafts).

²³⁷ *Ibid.* at para. 81; also, see paras. 23(c), 46-47, 49-50, 62, and 64(o).

²³⁸ *Ibid.* at paras. 79(a) and 80.

²³⁹ *Ibid.*, *Law Society of BC v. Donald Franklin Gurney*, Decision of the Hearing Panel on Disciplinary Action (Sept. 1, 2017), 2017 LSBC 32 at para. 36. Also, see para. 13 ("The Respondent's conduct is serious in that it involved the breach of one [of] the fundamental obligations of a lawyer in the operation of his trust account, and that is to make reasonable inquiries as to the source of the funds being deposited into his trust account").

²⁴⁰ *Gurney* (2017 LSBC 15), *supra* at para. 66(j) ("The Respondent continually emphasized in his evidence that he complied with the Law Society client verification rules. It should be noted that the LSBC did not take a contrary position on this issue").

²⁴¹ *Ibid.* at paras. 83-85, 88. Also, see para. 36 (noting that the *Federation* case preserved "the ability of a law society to regulate lawyers' use of trust accounts" beyond the no-cash and client identification rules).

²⁴² *Ibid.* at para. 79(a) (lawyer trust accounts are "not to be used as a convenient conduit") at para. 80 ("The gatekeeper function requires a lawyer to use trust accounts for legitimate commercial purposes for which the lawyer is a legal advisor and facilitator"), paras. 86 and 88.

Gurney was suspended from the practice of law for six months and required to disgorge the \$25,845 in fees he was paid as result of his professional misconduct.²⁴³ Conditions were also imposed on any future use of his trust account – specifically, that he report any trust transaction involving parties not located in Canada, to the LSBC’s Trust Regulation Department within five business days.²⁴⁴

To this day, Mr. Gurney defends his actions, asserting that he was satisfied that there was no illegality involved, and that his client was a reputable, local business person who he knew from previous dealings and who was prepared to be interviewed by the LSBC. Gurney made notes of the transactions in question and, in his mind, made reasonable enquiries with respect to the source and destination of the funds. The question that Mr. Gurney continues to ask is, what is the accepted standard of due diligence in a case such as his, where he already had personal knowledge of his client, and what is “substantial legal work”? Gurney is convinced that if his case had been a real estate transaction, in which he was the recipient of overseas money from an individual or a company, he would not have been cited by the LSBC.

It is interesting to note that many real estate transactions occur on a daily basis and oftentimes, large transactions involve newly incorporated companies. The source of funds for many real estate transactions is overseas. Questions arise in terms of what level of due diligence must real estate lawyers undertake with money arriving from overseas and what are lawyers to do when they have reason to believe that money is leaving a country in violation of currency restrictions?

The consciousness of lawyers to money laundering was less at the time of the incident that gave rise to Gurney’s case. He knew his client and encouraged the LSBC to interview all parties connected to the file. There is no evidence that Gurney was involved in money laundering and, in fairness, his days as the ‘poster boy’ of AML are probably in the past.

INVESTIGATIVE AUTHORITY & AUDIT POWERS OF THE LSBC

The representatives of the LSBC who were interviewed for this report emphasize that the Society has broad investigative powers relating to lawyers practicing in B.C., which provide them with access to virtually everything in a law office when conducting audits or investigations.

Section 26(4) of the *Legal Profession Act* authorizes designated LSBC employees to order persons to produce records and to appear to answer questions under oath.²⁴⁵ Section 33 of the

²⁴³ Gurney (2017 LSBC 32), *supra* at para. 65.

²⁴⁴ *Ibid.* at para. 65(2).

²⁴⁵ *Legal Profession Act*, SBC 1998, c. 9, section 26(4) (“For the purposes of an investigation authorized by rules made under subsection (2), an employee designated or person appointed [by the Benchers] under subsection (3) may make an order requiring a person to do either or both of the following: (a) attend, in person or by electronic means, before the designated employee or appointed person to answer questions on oath or affirmation, or in any other manner; (b) produce for the designated employee or appointed person a record or thing in the person’s possession or control”). Section 26(2) provides authority to the Benchers to make rules

Act, titled “Trust Accounts”, authorizes Benchers to require a lawyer or law firm to “have all or part of the lawyer’s or law firm’s books and accounts audited or reviewed annually.”²⁴⁶ Section 37, titled “Search and Seizure”, provides that the Society can apply to the BCSC “without notice to anyone or on such notice as the judge requires”²⁴⁷ for an order allowing the seizure of files or records of a lawyer, if there are reasonable grounds to believe that the lawyer “may have committed or will commit (a) any misconduct, (b) conduct unbecoming the profession, or (c) a breach of this Act or the rules.”²⁴⁸

By statute, lawyers in B.C. are precluded from asserting confidentiality or solicitor-client privilege during an investigation or audit conducted by the Law Society.²⁴⁹ The *Legal Profession Act* contains restrictions on the use and disclosure of confidential or privileged material obtained by the LSBC,²⁵⁰ and provides that the Society cannot be compelled to disclose information it acquires during such investigations or audits.²⁵¹ The Society therefore has significant investigative powers relating to lawyers that are not available to law enforcement or to FinTRAC. While the SCC in the *Federation* decision distinguished regulation by law societies in part on the basis that professional regulatory schemes “contain much stricter measures to protect solicitor-client privilege”,²⁵² in reality the Society in this province is authorized to step into the shoes of its members and review all records and files, including privileged documents.

The LSBC Rules also set out in detail the authority of the Society and the obligations of lawyers in relation to investigations and audits. Rule 3-5(8) authorizes the Society to require production of documents, interview lawyers and enter the business premises of lawyers when conducting investigations of complaints. Rule 3-5(11) requires lawyers to comply “even if the information

“authorizing an investigation into the conduct of a law firm or the conduct or competence of a lawyer, former lawyer or articled student, whether or not a complaint has been received.” Section 26(5) provides for applications to the BCSC for orders directing compliance with 26(4), and section 26(6) makes persons who fail to comply liable for contempt.

²⁴⁶ *Legal Profession Act*, s. 33(1)(b).

²⁴⁷ *Legal Profession Act*, s. 37(2).

²⁴⁸ *Legal Profession Act*, s. 37(1) (“The society may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer, an articled student or a law firm be seized from the person named in the order, if there are reasonable grounds to believe that a lawyer, articled student or law firm may have committed or will commit (a) any misconduct, (b) conduct unbecoming the profession, or (c) a breach of this Act or the rules”).

²⁴⁹ *Legal Profession Act*, s. 88(1.1) (“A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege, must do so, despite the confidentiality or privilege”).

²⁵⁰ *Legal Profession Act*, s. 88(3) provides: “A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or the rules.” Section 88(5) authorizes the BCCA and BCSC to hold non-public hearings of appeals and applications where “necessary to prevent the disclosure of information, files or records that are confidential or subject to solicitor client privilege,” and section 88(6) requires that “all reasonable precautions” be taken to ensure such material is not included in reasons given by the courts for its judgments.

²⁵¹ *Legal Profession Act*, s. 87(5). Under section 87(3), a lawyer or law firm who has responded to an LSBC investigation cannot be required to disclose or produce that response in any other proceeding.

²⁵² *Federation (SCC)*, *supra* at para. 68.

or files, documents and other records are privileged or confidential.” Rule 4-55 provides for investigations of the “books, records and accounts” of a lawyer if the chair of the Discipline Committee “reasonably believes that a lawyer or former lawyer may have committed a discipline violation.”²⁵³ Rule 3-6(1) provides that lawyers who fail or refuse to produce documents, provide information or attend interviews and answer questions, as required by Rules 3-5 and 4-55, are subject to suspension.²⁵⁴

With respect to trust accounts, the Society has the authority to order a “compliance audit of the books, records and accounts of a lawyer” at any time, for purposes of determining whether a lawyer “meets standards of financial responsibility.”²⁵⁵ Lawyers who fail to comply are “suspended until the records are produced, copying is permitted and explanations are provided to the satisfaction of the Executive Director.”²⁵⁶

There are approximately 3,500 law firms in British Columbia with trust accounts. The LSBC’s Audit Department consists of 22 auditors, 15 of whom are accountants. It presently conducts approximately 600 audits of lawyer trust accounts every year. The unit recently increased in size to address the AML risk and to support an initiative to increase the audit cycle for firms identified as high risk, which includes firms that are primarily involved in the practice areas of real estate or wills and estates.²⁵⁷ In the past a firm could be expected to be audited once every six years. With the addition of new staff, firms identified as high risk will be audited every four years. In addition to conducting these audits, the department reviews the annual trust account reports that are submitted by law firms, as required by LSBC Rule 3-79. It also audits compliance with the Society’s cash transaction and KYC rules.

The auditors receive in-house training, and LSBC representatives believe they have sufficient expertise in the area of AML to identify anomalous transactions through red flags (such as funds transferred from suspect jurisdictions or transactions that make no economic sense). However, only some of the auditors have their Association of Certified Anti-Money Laundering Specialists (ACAMS) certification. It was also not clear whether lawyers fulfilling client identification

²⁵³ Also, see *Legal Profession Act*, s. 36, which allows the Benchers to make such rules that: (b) “authorize an investigation of the books, records and accounts of a lawyer or law firm if there is reason to believe that the lawyer or law firm may have committed any misconduct, conduct unbecoming the profession, or a breach of this Act or the rules;” (c) “authorize an examination of the books, records and accounts of a lawyer or law firm;” and (d) “require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request.”

²⁵⁴ LSBC Rule 3-6(1) (“Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 [*Investigation of complaints*] or 4-55 [*Investigation of books and accounts*] to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director”). Under Rule 3-6(3), suspensions can take effect seven days following delivery of written notice and prior to any hearing before the Discipline Committee.

²⁵⁵ LSBC Rule 3-85(1).

²⁵⁶ LSBC Rule 3-86(1).

²⁵⁷ Other firms are assessed for risk based on a variety of criteria, including the size of the firm, its compliance history, discipline history, practice area, the volume of funds flowing through its trust accounts, the number of trust accounts and any complaint history.

obligations are sufficiently aware of available sanctions lists and other resources against which new clients can be checked.

In cases where serious issues are uncovered relating to the use of trust accounts (or other breaches of professional obligations), the matter is immediately referred to the Society's Investigation Department, which consists of 11 lawyers, one accountant and one investigator, as well as support staff. The department handles approximately 250 investigations each year. It has written guidelines for investigation of possible breaches of trust account, cash transaction and client identification rules.

As described above, the investigators have authority to compel lawyers to produce records and to appear and answer questions, failing which the member is subject to immediate administrative suspension. Based on the threat of suspension, the experience of the Society is that members are highly motivated to cooperate during investigations. Discipline Advisories are issued publicly describing the matters that come before the Society.²⁵⁸

The Investigation Department has made efforts to establish and maintain relationships with outside law enforcement agencies, and has certain written information sharing protocols in place. Nonetheless, the Society expressed interest in working more closely with those agencies and would welcome law enforcement referring reports of lawyer misconduct for investigation by the Society. It also advises that to date, it has not been the recipient of any FinTRAC disclosures, which it feels would be of assistance in monitoring and identifying trust accounts with suspect transactions.

Lawyers who have questions or concerns regarding their professional obligations are able to receive confidential advice from the LSBC's Practice Advice Department, which employs four practice advisors. Last year, the unit provided advice to approximately 5,200 practitioners. This unit also provides ongoing education and training courses, including presentations on AML issues. Continuing Professional Development hours are monitored and audited by the Society's Member Services Department.

The LSBC Benchers' Bulletin contains regular discussion of the cash transaction and client identification and verification rules, as well as conduct review summaries discussing practice examples of lawyers who were the subject of complaints. The Society has also made available to its members a Client Identification and Verification Checklist that can be used when onboarding a client.

OCTOBER 2018 MODEL RULE REVISIONS

In October 2018, the Federation of Law Societies approved various amendments to its Model Rule on Client Identification and Verification intended to update the rule and improve its

²⁵⁸ For example, a Discipline Advisory was published by the LSBC on Apr. 10, 2018, discussing the Gurney case and the role of lawyers as "gatekeepers".

effectiveness in combatting money laundering.²⁵⁹ One key amendment expands the obligation to identify the owners of an organization, now requiring legal counsel to make reasonable efforts to identify all persons who own 25% or more of an organization “directly or indirectly”, to identify “the names and addresses of all trustees and all known beneficiaries and settlors” of a trust, and in all cases to obtain “information establishing the ownership, control and structure of the organization.”²⁶⁰ If unable to obtain the requisite information on the directors and owners, the lawyer must “take reasonable measures to ascertain the identity of the most senior managing officer of the organization”, and “assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct”, among other things.²⁶¹

The Federation of Law Societies also expanded the additional verification obligation for lawyers providing legal services relating to financial transactions, mandating that lawyers must also obtain “information about the source of funds” for a transaction, from the client.²⁶² It explained that “the revised provision will require counsel to inquire into the source of funds involved in the financial transaction that triggers the verification requirement”.²⁶³ It viewed this as a necessary part of “due diligence in knowing the client, their business, and how it intersects with the lawyer’s services.”²⁶⁴ The amendment also added general language referencing “the lawyer’s obligation to know their client, understand the client’s financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client,” in order “to situate the requirements of the section in the broader context of lawyers’ due diligence obligations.”²⁶⁵

The Federation also adopted a new model rule on trust accounts, providing that lawyers may only accept payments into their trust accounts that are “directly related to legal services that the lawyer or the lawyer’s law firm is providing.” It noted that “allowing members of the legal profession to use their trust accounts for purposes unrelated to the provision of legal services unnecessarily increases the risk of money laundering.”²⁶⁶ A version of this rule is already in place in Ontario,²⁶⁷ and, if adopted in B.C., would apply in cases such as that of Mr. Gurney.

²⁵⁹ Federation of Law Societies of Canada, Anti-Money Laundering and Terrorist Financing Working Group, *Final Report on the Model Rules*, Oct. 1, 2018; “Submission of the Federation of Law Societies of Canada to the House of Commons Standing Committee on Finance”, *Statutory Review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, Mar. 20, 2018 at para. 12.

²⁶⁰ Federation of Law Societies of Canada, Anti-Money Laundering and Terrorist Financing Working Group, *supra* at paras. 29-32 (discussing proposed amendments to Model Rule Section 6(7)).

²⁶¹ *Ibid.* at para. 31 (discussing proposed revisions to Model Rule Section 6(10)).

²⁶² *Ibid.* at paras. 19-21 (discussing proposed revisions to Model Rule Section 6(1)).

²⁶³ *Ibid.* at para. 21.

²⁶⁴ *Ibid.* at para. 19.

²⁶⁵ *Ibid.* at paras. 13-14 (discussing revision to Model Rule Section 2(1)).

²⁶⁶ *Ibid.* at para. 39. See also “Submission of the Federation of Law Societies of Canada”, *supra* at para. 12 (“Also proposed is a new model rule (modeled on a rule that several law societies have implemented) that would tie the use of trust accounts to the provision of legal services thus ensuring that lawyer trust accounts cannot be used for purely financial transactions”).

²⁶⁷ Ontario Rule of Professional Conduct 3.2-7.3: “A lawyer shall not use their trust account for purposes not related to the provision of legal services.”

The LSBC has prepared amendments to its rules based on the October 2018 Federation of Law Societies Model Rules. It expects that these amendments will be considered and voted upon at its Benchers meeting in April 2019.

SOLICITOR-CLIENT PRIVILEGE

While the Law Society Disciplinary Panel in the Donald Gurney case opined (without citation to any authority) that disbursements of funds from a lawyer's trust account would be shielded by privilege,²⁶⁸ British Columbia courts have ruled in a number of decisions that trust account ledgers of lawyers are in general not protected by the solicitor-client privilege.

TRUST ACCOUNT RECORDS

In *Donell v. GJB Enterprises*,²⁶⁹ a receiver sought to compel production of a BC law firm's trust account ledgers relating to a \$524,000 payment made by the firm to one of the principals in receivership. In a majority decision, the BCCA held that trust account records are in general not protected from disclosure by solicitor-client privilege, which protects "communications for the purpose of obtaining legal advice," because they record facts or actions rather than communications.²⁷⁰ The Court referenced a number of other decisions supporting the conclusion that transactions within a solicitor's trust account are not privileged.²⁷¹ It also made clear that while entries of financial transactions would not be privileged, courts were still required to ensure that other "entries on a trust ledger do not contain information that is ancillary to the provision of legal advice."²⁷² The Court of Appeal ruled that references in the trust account ledgers to a real estate transaction, as well as entries recording "the movement of

²⁶⁸ *Gurney* (2017 LSBC 15), *supra* at paras. 79(a) and 80 ("transactions that occur through a lawyer's trust account are protected by solicitor-client privilege ... the facts regarding to whom funds are disbursed, the amounts and the purposes are shielded from the authorities by the privilege").

²⁶⁹ *Donell v. GJB Enterprises Inc.*, 2012 BCCA 135.

²⁷⁰ *Ibid.* at para. 35 ("The distinction between communications, which are privileged, and facts, which are not, has been recognized generally"), paras. 43, 46, 51 ("The Receiver seeks production of trust ledgers. Generally, such documents record facts, not communications, and are not subject to solicitor-client privilege, but I would not favour a blanket endorsement of the automatic production of such records") and para. 59.

²⁷¹ *Ibid.* at para. 30 and 36-38, *citing: Czech Republic v. Slyomovics*, 2010 BCSC 1274 at para. 31 (distinguishing communications for the purpose of obtaining legal advice, which are privileged, and "actions involving transactions within a solicitor's trust account, which are not privileged"); *R. v. Joubert* (1992) 7 B.C.A.C. 31 at para. 569 (concluding that a record of money paid into and out of a lawyer's trust account was not subject to the solicitor-client privilege); *Re Wirick*, 2005 BCSC 1821 at para. 13-14 & 17 (ordering production to the CRA of a cheque from a solicitor's trust account showing the identity of the person to whom funds were disbursed); *Re Ontario Securities Commission and Greymac Credit Corp.* (1983) 146 D.L.R. (3d) 73 at 82-83 (Ont. Div. Ct.) ("Evidence as to whether a solicitor holds or has paid or received moneys on behalf of a client is evidence of an act or transactions, whereas the privilege applies only to communications. Oral evidence regarding such matters, and the solicitor's books of account and other records pertaining thereto (with advice and communications from the client relating to advice expunged) are not privileged, and the solicitor may be compelled to answer the questions and produce the material"); *Stevens v. Canada (Prime Minister)*, [1998] F.C. 89 at para. 44 ("The statement of account is privileged because it is integral to the seeking, formulating and giving of legal advice. The trust account ledger is not protected because it relates to acts done by counsel").

²⁷² *Donell*, *supra* at para. 51.

funds held in trust into and out of investment vehicles,” were not privileged and should be produced.²⁷³

In two cases related to disbarred attorney Martin Wirick, the BCSC ruled that financial records from Wirick’s trust account were not protected by privilege. In 2002, the Court ordered the production of his trust account ledgers, as well as bank statements, deposit slips and cheques written on his trust account, in response to applications by financial institutions and a bankruptcy trustee who were attempting to trace over \$50 million in mortgage advances fraudulently procured by Wirick for his client.²⁷⁴ In 2005, the Court ordered the production of a cheque from Wirick’s trust account to the CRA, in order for it to determine to whom Wirick had disbursed \$79,000 in funds following the completion of a real estate transaction.²⁷⁵ In both cases, the Court based its ruling on the established principle that records of financial transactions conducted in a solicitor’s trust account constitute evidence of acts, rather than communications made for the purpose of receiving or providing legal advice.²⁷⁶

In *Wong v. Luu*,²⁷⁷ a bankruptcy trustee sought information and documents regarding a \$3 million judgment that had been paid into the trust account of the bankrupt person’s B.C. lawyers, but were not disclosed in his bankruptcy proceedings. The lawyers refused to provide any information to the trustee about the funds, on the grounds of legal privilege. The BCCA ruled that trust account ledgers of solicitors are not presumptively subject to the solicitor-client privilege, as they “merely represent records of actions or facts.”²⁷⁸ Such financial records can only be withheld as privileged if it is established that their production would “permit the deduction or acquisition of communications protected by solicitor-client privilege.”²⁷⁹ (By way

²⁷³ *Ibid.* at paras. 65-66 and 90.

²⁷⁴ *Re Wirick, supra* at paras. 15, 34, and 36 (ordering production of the records necessary to trace the monies in question, subject to redaction of the names of any third-party clients of Wirick).

²⁷⁵ *Ibid.* at paras. 9, 17.

²⁷⁶ *Ibid.* at para. 26 (“Ledgers and cheques are not ordinarily privileged because they are not communications”), citing *Re Taylor Ventures Ltd.* (1999) 60 B.C.L.R. (3d) 348 (BCSC) at para. 7 (“It is clear that there is a distinction between the ‘facts’ which may be in a solicitor’s file and ‘confidential communications.’ It is clear that, as to matters of fact, no privilege attaches to documents and that they are not confidential. Similarly, a solicitor must answer questions regarding the movement of funds in and out of his trust account”) and *Re Application under s. 441.1(3)(c) of the Criminal Code of Canada*, [1990] B.C.J. No. 2986 (BCSC) at p. 32 (“What is protected is communications. The privilege is for the protection of the client to enable him to confide in his legal advisor. ... Cheques, ledgers, deposit slips, documents of that nature, are not communications between solicitor and a client but are, rather, ... a report of acts”); *Re Wirick, supra* at para. 14 (citing *Re Ontario Securities Commission v. Greymac* and other authorities holding that “solicitor-client privilege does not extend to records of financial transactions directed through solicitor’s trust accounts as such records are evidence of an act or transaction rather than communications”).

²⁷⁷ *Wong v. Luu*, 2015 BCCA 159.

²⁷⁸ *Ibid.* at paras. 16(f) and 36 (“In my view, the chambers judge was correct to say there is no presumption that the information in a solicitor’s trust ledger is privileged”), paras. 34-37 (noting cases that distinguished records of financial transactions which merely record “actions or facts,” and communications made between solicitor and client “for the purpose of giving legal advice”).

²⁷⁹ *Ibid.* at para. 16(g),(h).

of contrast, legal bills are presumptively privileged “because they are ordinarily descriptive; by recording the work done by the solicitor, they disclose the client’s instructions.”²⁸⁰⁾

As a result, the Court of Appeal affirmed an order requiring production of the trust account records, including “records showing to whom, how and when funds were disbursed.”²⁸¹ Luu’s lawyers were allowed to redact entries in the trust ledger showing amounts paid towards his legal fees²⁸² or any portion of the records “containing legal advice or communications for the purpose of obtaining legal advice,”²⁸³ and were not required to produce records of funds held on behalf of agents or nominees of Luu, as the identification of those persons would require disclosure of privileged communications.²⁸⁴

In 2016, the SCC ruled in two cases that a statutory scheme that altogether excluded accounting records of lawyers from solicitor-client privilege was unconstitutional.²⁸⁵ Section 232(1) of the *Income Tax Act* had excluded any “accounting record of a lawyer” from the scope of solicitor-client privilege.²⁸⁶ The SCC held that the *Income Tax Act* provision violated section 8 of the *Charter* because it required production of the lawyers’ records even if they contained some privileged information, such as the names of certain clients or a description of the services rendered, and did not provide adequate procedures to protect privileged material.²⁸⁷ The Court noted that while accounting records of lawyers “will not always contain privileged

²⁸⁰ *Ibid.* at para. 38. See also *Maranda v. Richer*, 2003 SCC 67 at para. 33 (concluding that lawyer’s bills of account are presumptively subject to solicitor-client privilege); *Donell, supra* at para. 55 (“As was held in *Maranda*, a lawyer’s bill arises out of the solicitor-client relationship and generally will be protected. This is because bills flow out of communications between the solicitor and the client seeking legal advice”); and *School District No. 49 (Central Coast) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 427.

²⁸¹ *Wong, supra* at para. 18.

²⁸² *Ibid.* at para. 19.

²⁸³ *Ibid.* at para. 21.

²⁸⁴ *Ibid.* at para. 20.

²⁸⁵ *Canada (Attorney General) v. Chambre des notaires du Quebec*, 2016 SCC 20; and *Canada (National Revenue) v. Thompson*, 2016 SCC 21.

²⁸⁶ Section 232(1) of the *Income Tax Act*, when defining solicitor-client privilege, provided that “for the purposes of this section an accounting record of a lawyer, including any supporting voucher or cheque, shall be deemed not to be such a communication.”

²⁸⁷ *Chambre des notaires du Quebec, supra* at para. 6 (“the requirement scheme and the exception for accounting records do not provide adequate protection for the professional secrecy of notaries and lawyers. The procedure set out in the ITA does not require that the client, who is the holder of the privilege, be informed of the requirement or of any proceeding brought by the CRA to obtain an order to provide information or documents. The procedure also places the entire burden of protecting the privilege on the notary or lawyer”), paras. 44-46, 51, 69-71, and 72 (“accounting records of notaries and lawyers are inherently capable of containing information that is protected by professional secrecy”), para. 74 (“clients’ names may appear in accounting records ... In some cases, those names may be privileged, since the fact that a person has consulted a notary or a lawyer may reveal other confidential information about the person’s personal life or legal problems ... Accounting records may also include a description of the mandate the notary or lawyer was given and for which a statement of account was submitted to the client”), para. 78 (“the exception removes from the court’s jurisdiction the determination of whether accounting records in respect of which a requirement has been issued are privileged”), paras. 84-85; *Thompson, supra* at paras. 35-36 (“the purported abrogation in s. 232(1) is constitutionally invalid because it permits the state to obtain information that would otherwise be privileged to a far greater extent than is absolutely necessary for the administration of the ITA”).

information, ... the fact remains that they may contain some, so their disclosure could involve a breach of professional secrecy.”²⁸⁸

In *Canada (National Revenue) v. Thompson*,²⁸⁹ an Alberta lawyer had refused to submit the names of his clients in response to a CRA order requesting his accounts receivable.²⁹⁰ The SCC took issue with an approach that would categorize all financial records as facts rather than communications,²⁹¹ and held that the information contained in the accounts receivable documents was “presumptively privileged” and its disclosure could not be required “unless a court first determines whether solicitor-client privilege actually applies.”²⁹² It also held, in regards to safeguarding the rights of clients, that “a court assessing a request for access to presumptively privileged information will need to ensure that the clients whose information is being sought can participate in the process.”²⁹³

Accordingly, while the production of a lawyer’s trust account records cannot be ordered without regard to solicitor-client privilege, there is no blanket privilege that shields all such records from disclosure, and B.C. case law recognizes that information relating to financial transactions in trust account records will in general not be privileged.

CRIME-FRAUD EXCEPTION

Another exception to solicitor-client privilege that could arise in cases in which lawyers become involved in money laundering is the crime-fraud exception, which excludes from the privilege any communications made by the client for the purpose of facilitating or assisting the

²⁸⁸ *Chambre des notaires du Quebec, supra* at para. 73; see also para. 75 (“the outright exclusion of the accounting records of notaries and lawyers from the protection of professional secrecy ... causes a problem ... the expression ‘accounting record of a lawyer’ is not defined in the ITA ... This lack of precision creates a real risk that a wide variety of documents, some of which may contain information protected by professional secrecy, will be disclosed in response to a requirement”).

²⁸⁹ *Thompson, supra*.

²⁹⁰ *Ibid.* at para. 10 (in response to the CRA request, Thompson had provided a “general indication of the balance owing”, but asserted that “further details with respect to his accounts receivable, such as the names of his clients, were protected by solicitor-client privilege”).

²⁹¹ *Ibid.* at para. 20 (“we cannot conclude at the outset that Mr. Thompson’s communications with his clients are distinct from financial records that disclose various facts about their relationships in order to determine whether solicitor-client privilege covers those facts. Absent proof to the contrary, all of this information is *prima facie* privileged”). See also *Chambre des notaires du Quebec, supra* at para. 40 (“it is not appropriate to establish a strict demarcation between communications that are protected by professional secrecy and facts that are not so protected”), para. 41 (“we must reject the argument of the AGC and the CRA that some information, particularly information found in accounting records, constitutes facts rather than communications and is therefore *always excluded* from the protection of solicitor-client privilege”).

²⁹² *Thompson, supra* at para. 41.

²⁹³ *Ibid.* at para. 40.

commission of a crime. This exception is well established in both federal case law²⁹⁴ and B.C. case law.²⁹⁵

Accordingly, were a client to seek advice from a lawyer on how to launder money, that communication would not be protected by solicitor-client privilege, and the lawyer would be obligated by LSBC Rule 3-109 to withdraw from representation of the client. In these circumstances, there would not appear to be any legal impediment based on either privilege or duty of loyalty that would prevent a lawyer from reporting the transaction.

LAWYERS ACTING AS REAL ESTATE AGENTS

Despite not being subject to *POCMLTFA* obligations, lawyers in B.C. are allowed by statute to provide real estate services without a real estate license. Section 3(3)(f) of the *Real Estate Services Act* exempts from its licensing requirement “a practicing lawyer as defined in section 1 of the *Legal Profession Act*, in respect of real estate services provided in the course of the person’s practice.”²⁹⁶ A similar exemption existed in the preceding legislation (the *Real Estate Act*).²⁹⁷

The LSBC supports and defends a broad interpretation of the real estate license exemption. In 2001, B.C.’s Superintendent of Real Estate objected to a Vancouver Island law firm that had expanded its legal practice to become a “one-stop” centre for “solicitor residential property sales – from assisting in marketing and showing a vendor’s property, to negotiating purchase contracts, to completing the conveyance.”²⁹⁸ The LSBC supported the law firm, stating that it “encouraged the involvement of lawyers in the expanded provision of legal services,” which

²⁹⁴ *Solosky v. Canada*, [1980] 1 S.C.R. 821 at paras. 835-36 (“if a client seeks guidance from a lawyer in order to facilitate the commission of a crime or a fraud, the communication will not be privileged”); and *R. v. Campbell*, [1999] 1 S.C.R. 565 at para. 55.

²⁹⁵ *Donell, supra* at para. 70 (“The crime exception applies when a person seeks legal advice with the intention of facilitating the commission of a crime. In that case, the involvement of the lawyer does not attract protection. ... Solicitor-client privilege also may be lost if the lawyer is duped or becomes a conspirator”); *Majormaki Holdings LLP v. Wong*, 2007 BCSC 1339 at para. 21, quoting from *R. v. Campbell, supra* at para. 62 (“destruction of the privilege takes more than evidence of the existence of a crime and proof of an anterior consultation with a lawyer. There must be something to suggest that the advice facilitated the crime or that the lawyer otherwise became a ‘dupe or conspirator’”).

²⁹⁶ *Real Estate Services Act*, SBC 2004, section 3(3)(f).

²⁹⁷ *Real Estate Act*, RSBC 1979, section 2(1)(f), exempting from agent license requirement “a barrister or solicitor whose name is inscribed on the rolls of barristers or solicitors in the Province, or to a person employed by him, in respect of transactions in the course of the practice of the barrister or solicitor”.

²⁹⁸ LSBC, *Benchers’ Bulletin*, 2002: No. 2 March-April, pp. 4-5 (“Jones Seaborn ... has offered vendor clients more extensive legal services in the real estate field, from initial listing, to sale to conveyance ... Jones Seaborn takes transactions from start to finish for vendors: conducting recent title searches; ... obtaining appraisals and advising on market value; preparing sales particulars and advertising in local newspapers and on the firm’s website; erecting property signage; presenting information packages on the property to potential purchasers; showing the property; reviewing and advising on any purchase offers ...”), p. 6 (firm charged clients on a “contingency fee basis: typically, for a residential property, 4% of the selling price up to \$100,000 and 1% on any amount over \$100,000,” which contingency fee agreement had been “reviewed and approved by the Law Society Ethics Committee”).

“put lawyers at the forefront of property transactions to ensure clients benefit from professional legal guidance, from start to finish.”²⁹⁹ The Superintendent of Real Estate then sought a legislative amendment to remove the real estate license exemption for lawyers.³⁰⁰

At approximately the same time, FICOM raised concerns about “what it considered an expansion in the role of lawyers in the purchase and sale of real property in BC,” and took the position that the exemption in the *Real Estate Act* “did not permit members of the legal profession to advertise properties for sale on behalf of their clients in stand-alone transactions, that is, any transactions that are not an adjunct to an estate administration or a family law file.”³⁰¹ In response, the LSBC engaged a national law firm to provide an opinion letter to the provincial government on the scope of the lawyer exemption in the *Real Estate Act*. That opinion letter concluded that “soliciting buyers on behalf of clients through advertising and other marketing efforts” was permitted under the Act.³⁰² The Society did accept, however, that “a free standing real estate sales enterprise staffed by a lawyer who does not perform legal services would be in violation of the Act.”³⁰³

In 2003, the B.C. Ministry of Finance initiated a review of the *Real Estate Act*, and proposed limits on the exemption for lawyers to engage in real estate sales transactions.³⁰⁴ Specifically, the Ministry proposed that:³⁰⁵

“The new Act clarify that the lawyers’ exemption only applies to real estate trades which arise in the ordinary course of law practice. For example, a lawyer could sell property, without obtaining a real estate license, where the sale is ancillary to settling an estate, administering a will, or effecting a marriage settlement, but would not be allowed to solicit new listings, or show property outside of these kinds of circumstances.”

The B.C. Real Estate Association submitted a position paper that criticized the legal profession’s role in the real estate marketplace.³⁰⁶

²⁹⁹ *Ibid.* at p. 4.

³⁰⁰ *Ibid.* at p. 5.

³⁰¹ LSBC Discussion Paper, *A Response to the Real Estate Review*, May 16, 2003 at p. 7.

³⁰² Fasken Martineau letter to the Attorney General of British Columbia, Jan. 3, 2002 (“it appears to be accepted that lawyers could in the course of their practice introduce buyers and sellers to one another and charge legal fees for the work associated with that process ... if negotiating a purchase or sale of real estate is a legitimate part of a solicitor’s practice, then advertising for buyers will not alter the character of that professional engagement”); LSBC Discussion Paper, *A Response to the Real Estate Review*, *supra* at p. 7 (“activities undertaken by a lawyer on behalf of clients to advertise the availability for sale of client properties and to assist those clients with concluding an agreement for sale are clearly and substantially within the present exemption”).

³⁰³ Fasken Martineau letter, *ibid.* at pp. 1-2 (adding that “a member is not entitled to act as a real estate agent independently of his or her legal practice”); LSBC Discussion Paper, *ibid.* at p. 7 (lawyers “not permitted to open free-standing real estate sales offices staffed by lawyers”).

³⁰⁴ LSBC Discussion Paper, *ibid.* at p. 6.

³⁰⁵ *Ibid.*

³⁰⁶ *Ibid.* at p. 3.

In response, the LSBC submitted that “a proposal to limit the scope of practice for lawyers in conducting real estate sales is not warranted”, and that “consumers should not be deprived of the choice of retaining a lawyer to conduct a transaction throughout all its stages.”³⁰⁷ It noted that the exemption for lawyers in the *Real Estate Act* had existed for over 80 years, and that it had been necessary to provide this exemption because “the normal work of lawyers includes thousands of real estate and business matters every day.”³⁰⁸ The Society argued that there had been no court decisions or consumer complaints, and “[t]o the contrary, in certain communities in British Columbia, the engagement of lawyers in the more active aspects of buying and selling real property has met with considerable public favour.”³⁰⁹ It pointed to other countries, such as Scotland, where solicitors handled “90% of all real estate sales transactions, without the engagement of real estate agents.”³¹⁰

The LSBC submitted that it was clear that “lawyers are permitted under the present exemption to conduct all aspects of a transaction involving the sale of real estate in B.C., including the advertising of property for sale and the conduct of negotiations to settle a contract for the sale of the property.”³¹¹ It assured the public that they could have “confidence in the high regulatory standards of the Law Society with respect to the lawyer’s legal education, practice, ethics and financial responsibility.”³¹²

In the end, the exemption for lawyers in the *Real Estate Act* was not removed, and a similar exemption was included in the *Real Estate Services Act* when it was enacted in 2004.³¹³ As a result, lawyers in B.C. are permitted to provide all services associated with the sale of real estate, including those that would otherwise be performed by a real estate agent.

The LSBC Code of Professional Conduct expressly recognizes the additional roles lawyers can perform in real estate transactions. Section 6.1-8 authorizes lawyers to “employ an assistant in the marketing of real property for sale,” provided (a) the assistant is employed in the lawyer’s office and (b) “the lawyer personally shows the property.” The real estate marketing assistant is allowed to place signs for the sale of the property, arrange for maintenance and repairs, and to

³⁰⁷ *Ibid.* at p. 4.

³⁰⁸ *Ibid.* at p. 7.

³⁰⁹ *Ibid.* The LSBC specifically stated the importance of lawyers providing services “on such critical matters as best valuation information, exposing the property to the marketplace, examination and qualification of prospective purchasers, exploring the nature of the contract and participating in the closing of the transaction by registration at the Land Title Office” (*Ibid.* at p. 12).

³¹⁰ *Ibid.* at p. 8 (also citing a 1997 report by the UK Government’s Monopolies and Mergers Commission entitled *Solicitors’ Estate Agency Services in Scotland* that concluded “the public interest [had] been enhanced by the legal profession’s participation in, and indeed dominance of, the Scottish real estate marketplace”).

³¹¹ *Ibid.* at pp. 7-8.

³¹² *Ibid.* at p. 11.

³¹³ BC *Real Estate Services Act*, SBC 2004, section 3(3)(f). While the first version of the 2004 Act had removed the exemption for lawyers, “the bill was amended after second reading to bring the lawyers’ exemption back into the statute.” Pursuant to an agreement between the Real Estate Association and the Law Society, the licensing exemption did not extend to staff employed by lawyers (see “New Real Estate Legislation”, *The Scrivener*, Vol. 13, No. 2, June 2004, p. 58).

provide the public with “preprinted information about the property prepared or approved by the lawyer.”³¹⁴

The real estate license exemption for lawyers creates an anomaly in the *POCMLTFA* scheme, as lawyers who perform the same functions as a real estate agent in a property sale are not obligated to report to FinTRAC, while a real estate agent handling the very same transaction would have a reporting obligation. This gives rise to a concern that savvy parties intent on avoiding the *POCMLTFA* reporting requirements will rely exclusively on the services of lawyers and avoid hiring real estate agents.

REVIEWS OF CANADA’S ANTI-MONEY LAUNDERING REGIME

Notwithstanding the efforts of the LSBC to adopt rules designed to prevent lawyers from wittingly or unwittingly facilitating money laundering, the AML regime in Canada continues to be the subject of international criticism because of the non-reporting by lawyers to FinTRAC.

In September 2016, the FATF published its “Mutual Evaluation Report of Anti-Money Laundering and Counter-Terrorist Financing Measures in Canada”. The report was based on a November 2015 visit to Canada that analyzed “the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Canada’s AML/CFT system,” in order to provide recommendations on how the system could be strengthened.³¹⁵

The FATF found that the non-application of the *POCMLTFA* regime to the legal profession constituted a “significant loophole in Canada’s AML/CFT framework”³¹⁶ and a “serious impediment to Canada’s efforts to fight ML.”³¹⁷ It noted that the legal profession in Canada was “especially vulnerable to misuse for ML/TF risks,” because of its involvement in activities considered to have a “high ML/TF risk,” including real estate transactions, the formation of corporations and trusts, and the use of trust accounts.³¹⁸ The FATF was particularly concerned about money laundering vulnerability in the real estate sector:

³¹⁴ BC Code, section 6.1-9.

³¹⁵ FATF *Anti-Money Laundering and Counter-Terrorist Financing Measures: Canada*, *supra* at p. 3.

³¹⁶ *Ibid.* at p. 3 (2nd Key Finding listed in Executive Summary of report: “All high-risk areas are covered by AML/CFT measures, except legal counsels, legal firms and Quebec notaries. This constitutes a significant loophole in Canada’s AML/CFT framework”).

³¹⁷ *Ibid.* at p. 7, para. 27 (“In light of these professionals’ key gatekeeper role, in particular in high-risk sectors and activities such as real-estate transactions and the formation of corporations and trusts, this constitutes a serious impediment to Canada’s efforts to fight ML”).

³¹⁸ *Ibid.* at para. 50 and ft. 7 (“The use of trust accounts by lawyers has been recognized by the Department of Finance as a high vulnerability”), and para. 217 (“Representatives from the private sector and the Canadian authorities confirmed that lawyers in Canada are frequently involved in financial transactions, often related to high-risk sectors, such as real estate, as well as in the formation of trust and companies. In the context of real estate transactions, in particular, lawyers and Quebec notaries provide not only legal advice, but also trading services, and receive sums from clients for the purchase of a property or a business, deposited and held temporarily in their trust accounts”). Also, see Standing Senate Committee on Banking, Trade and Commerce, *Follow the Money*, *supra* at p. A-26 (“transactions that take place through lawyers’ trust accounts ... could hide the identity of clients and their associated financial transactions”).

“The real estate sector is highly vulnerable to ML, including international ML activities, and the risk is not fully mitigated, notably because legal counsels, legal firms and Quebec notaries (who provide services in related financial transactions) are not required to implement AML … Also, the real estate business is exposed to high risk clients, including [Politically Exposed Persons], notably from Asia and foreign investors (including from locations of concerns).”³¹⁹

Consequently, the first of the FATF’s recommended “Priority Actions” for Canada was to “[e]nsure that legal counsels, legal firms and Quebec notaries engaged in the activities listed in the standard are subject to AML/CFT obligations and supervision.”³²⁰ At the time of its report, there were 104,938 lawyers, 36,685 paralegals, and 3,576 civil law notaries in Canada who were not subject to the *POCMLTFA*.³²¹ In the view of the FATF, the professional rules of conduct adopted by provincial and territorial law societies on cash transactions and client identification were inadequate, because they were “limited in scope” and “var[ied] from one province to the other.”³²²

In February 2018, the federal Department of Finance released its Consultation Paper to assist Parliament’s five-year review of the operation of the *POCMLTFA*.³²³ The Department noted the concerns of the FATF. It also referenced a 2013 FATF report that specifically addressed the vulnerabilities of the legal profession to money laundering, finding that “criminals seek out the involvement of legal professionals in their money laundering and terrorist financing activities.”³²⁴ The Consultation Paper concluded:

“The lack of inclusion of the legal profession in Canada’s AML/ATF framework is a major deficiency that negatively affects Canada’s global reputation … As the Government continues to work on this issue, we look forward to further exploring with the law societies how we can address the issue of legal professionals being used to facilitate money laundering and terrorist financing. … The Department continues to believe that the application of the rules to the legal profession is important to maintain the integrity of Canada’s AML/ATF framework. … it is the Department’s intention to develop constitutionally compliant legislative and regulatory provisions that would subject legal counsel and legal firms to the POCMLTFAA.”³²⁵

³¹⁹ *Ibid.* at para. 52 & ft. 10 (noting “cases of Chinese officials laundering the [proceeds of crime] through the real estate sector, particularly in Vancouver”).

³²⁰ *Ibid.* at pp. 9 and 77.

³²¹ *Ibid.* at pp. 19-20.

³²² *Ibid.* at para. 217.

³²³ Dept. of Finance, *Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime*, *supra* at pp. 5-6.

³²⁴ *Ibid.* at p. 20, citing the FATF’s June 2013 report, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*.

³²⁵ Dept. of Finance, *Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime*, *supra* at p. 21.

The House of Commons Standing Committee on Finance conducted a review of the legislation using the Consultation Paper as its sourcebook. The Committee heard from witnesses, reviewed documents and visited other countries.

In the hearings before the Standing Committee, both the Department of Finance and the RCMP identified the exclusion of lawyers and Quebec notaries from the *POCMLTFA* as “the most significant gap within the AML/ATF regime.”³²⁶ The RCMP official who testified before the Committee described an audit conducted by the RCMP of 51 financial crime cases from July 2013 to June 2017, which found that “over 75% [of the cases] involved lawyers as either a direct suspect or someone identified during the investigation.”³²⁷

Transparency International Canada submitted that “the Act should designate all financial transactions by legal professionals – especially those using trust accounts – as high-risk and require reporting entities to take enhanced due diligence measures on those transactions, including identifying the beneficial owner and the source of funds.”³²⁸ It recommended that the federal government and the Federation of Law Societies collaborate to “bring legal professionals into the AML/ATF regime in a constitutionally compliant way.”³²⁹ British Columbia proposed legislation that would “require the legal profession to report the funds in lawyers’ trust accounts.”³³⁰

The Canadian Bar Association and the Federation of Law Societies recommended that Canadian law societies “continue to self-regulate their industry with respect to anti-money laundering,” citing their cash transaction and client identification rules as evidence of their commitment to “proactively regulate themselves.”³³¹ The Standing Committee’s report noted that the Federation had conducted a comprehensive review of AML/ATF measures used by law societies and adopted its amended rules in October 2018 (as described above).³³²

Unidentified witnesses (kept anonymous in accordance with Chatham House Rules) observed that lawyers were “not required to inquire into the source of funding of their clients”³³³ and “often perform no PEP [Politically Exposed Persons] or sanctions list screening of their clientele,” as “no such requirement exists for their profession.”³³⁴ They criticized the codes of

³²⁶ *Ibid.*

³²⁷ *Ibid.* at p. 22; Standing Committee on Finance, Evidence, *supra*, Feb. 26, 2018 at p. 14 (testimony of Joanne Crampton, Assistant Commissioner, Federal Policing Criminal Operations).

³²⁸ Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, *supra* at p. 22.

³²⁹ *Ibid.* at pp. 21-22.

³³⁰ *Ibid.* at p. 22.

³³¹ *Ibid.*

³³² *Ibid.*

³³³ *Ibid.* at p. 23. As described above, the Federation of Law Societies amended its Model Rule on Client Identification and Verification in October 2018 to include such a requirement.

³³⁴ *Ibid.* at pp. 23 and 64 (“certain witnesses brought to the Committee’s attention that lawyers and real estate agents do not check their clients against sanctions list, and that no list of ML/TF bad actors is readily accessible in Canada apart from that provided by Global Affairs Canada, which is of limited use to the AML regime. In

professional conduct of Law Societies for “only extend[ing] AML/ATF considerations to transactions that are obviously dubious.”³³⁵

The Standing Committee released its report in November 2018, and made three recommendations relating to the legal profession:

“Recommendation 4: Given that the legal professions in the U.K. are subject to the same AML/ATF reporting requirements as other reporting entities in all non-litigious work that is performed, the Government of Canada and the Federation of Law Societies should adopt a model similar to the U.K.’s Office of Professional Body Anti-Money Laundering Supervision.”

“Recommendation 5: That the Government of Canada bring the legal profession into the AML/ATF regime in a constitutionally compliant way with the goal of ensuring that the Canadian standards set by the POCMLTFAA protect against money laundering and terrorist financing.”

“Recommendation 6: That the Government of Canada consider implementing a body similar to the U.K.’s Office of Professional Body Anti-Money Laundering Supervision with respect to Canadian self-regulated professions.”³³⁶

It also recommended that the “Government of Canada request a reference to the SCC, asking whether solicitor-client privilege exists when a client requests advice on how to either launder money or structure finances for the purposes of illegal activity.”³³⁷ The answer to that question should be fairly obvious, not unlike the difference between tax avoidance and evasion.

Not surprisingly, the Government’s response to the Committee’s report does not stray very far from its own Consultation Paper.

APPLICATION OF AML RULES TO LAWYERS IN OTHER JURISDICTIONS

This section discusses the AML rules applicable to lawyers in the EU and the four countries whose legal systems are most analogous to Canada, two of which have subjected lawyers to their AML legislative schemes (the U.K. and New Zealand), and the other two of which have not (the U.S. and Australia).³³⁸

contrast, witnesses said that the U.K.’s Office of Financial Sanctions Implementation keeps a consolidated sanctions list that reporting entities must use to screen their clients”).

³³⁵ *Ibid.* at p. 23.

³³⁶ Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, *supra* at pp. 2-3.

³³⁷ *Ibid.* at p. 2.

³³⁸ Michael West, *Government Flip-Flops Again on Money-Laundering, Counter-Terror Finance Laws*, Oct. 17, 2018. Accessed at <https://www.michaelwest.com.au/government-flip-flops-again-on-money-laundering-counter-terror-finance-laws/> (noting that lawyers were subject to AML regulation in the United Kingdom, New Zealand, Hong Kong, Singapore and Malaysia, but not in Australia, Canada and the United States). Also, see the AML

European Union

In 2001, the EU amended its 1991 AML Directive to require member states to adopt legislation imposing AML obligations (including the filing of STRs) on lawyers and other non-financial professionals.³³⁹ By 2006, all EU member states had adopted legislation complying with the Directive.³⁴⁰

An EU Commission Staff Working Document noted that the reporting obligation represented a “radical change to the principle of confidentiality that the legal profession has traditionally observed.”³⁴¹ A number of EU states and national bar associations filed unsuccessful legal challenges to the requirement that lawyers file STRs, arguing a violation of the right of professional secrecy as guaranteed by the EU *Charter of Fundamental Rights*.³⁴²

Article 33(1) of the current EU Directive requires lawyers and other “obliged entities” to file reports with their country’s FIU where they know, suspect or have reasonable grounds to suspect that “funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing.”³⁴³ With respect to lawyers, accountants and other professionals, Article 34(1) allows member states to designate “an appropriate self-regulatory body of the profession” to receive the information required by Article 33(1). An exception to the reporting obligation is provided to legal professionals for “information that they receive from, or obtain on, one of their clients, in the course of ascertaining the legal position of their

website published by the International Bar Association, which provides information on the applicability of AML legislation to lawyers in various countries: <https://www.anti-moneylaundering.org/globalchart.aspx>.

³³⁹ Directive 91/308/EEC of June 10, 1991 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, as amended by Directive 2001/97/EC of the European Parliament and of the Council of Dec. 4, 2001. Article 2.1(3)(b) of the current version of this Directive (2015/849) provides that it applies to “notaries and other independent legal professionals” where they carry out certain categories of financial, real estate or corporate related activities. Paragraph 9 of the Preamble to the Directive explains, “Legal professionals ... should be subject to this Directive when participating in financial or corporate transactions, including when providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity ... There should, however, be exemptions from any obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client. Therefore, legal advice should remain subject to the obligation of professional secrecy, except where the legal professional is taking part in money laundering.”

³⁴⁰ EU, *The Application to the Legal Profession of Directive 91/308/EEC on the Prevention of the Use of the Financial System for the Purpose of Money Laundering*, Staff working document, Dec. 19, 2006 at pp. 5-6 (Denmark, Germany, Finland and the Netherlands complied by the June 2003 deadline, Ireland and Spain shortly afterwards, Austria, Belgium and the UK by the end of 2003, and by mid-2005, legislation was formally in place in almost all Member States, with only Italy and France not enacting legislation until 2006).

³⁴¹ *Ibid.* at p. 11, para. 19.

³⁴² *Ibid.* at pp. 12-13, para. 21 (noting challenges by Belgian and Polish Bar Associations, and Case C-305/05 filed with the European Court of Justice by the Belgian Constitutional Court); “Applying Anti-Money Laundering Reporting Obligations on Lawyers: The UK Experience”, *Global Anticorruption Blog*, June 8, 2018; Opinion of Advocate General in ECJ Case C-305/05, Dec. 14, 2006 at paras. 62-63, and 73 (finding the EU Directive to be valid, provided that it is interpreted as exempting “lawyers engaged in the provision of legal advice from any obligation to inform”).

³⁴³ Directive 2015/849/ EEC of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Article 33(1).

client, or performing their task of defending or representing that client in, or concerning, judicial proceedings.”³⁴⁴

United Kingdom

The U.K. implemented the 2001 EU Directive by passing the *Proceeds of Crime Act (POCA)* in 2002.³⁴⁵ The Act made it an offence for persons (including lawyers) to fail to submit a Suspicious Activity Report to designated authorities where they know or suspect (or have reasonable grounds for knowing or suspecting) that another person is engaged in money laundering.³⁴⁶ An exception was provided for “professional legal advisers” if “the information or other matter came to [them] in privileged circumstances.”³⁴⁷ The Act precludes lawyers from tipping off a client that such a filing had been made.³⁴⁸ It also established a consent process, by which individuals who report their suspicion of money laundering to the U.K. FIU, embedded in the National Crime Agency (NCA), can obtain permission to proceed with a suspect transaction.³⁴⁹

Money Laundering Regulations adopted in 2007 required lawyers to perform customer due diligence and to identify the beneficial owners of corporations and trusts.³⁵⁰ The AML Regulations “only apply to a legal professional’s activities where there is a risk of money laundering occurring.”³⁵¹ Specifically, the rules apply to lawyers who participate in “financial or real property transactions concerning: (a) the buying and selling of real property or business entities; (b) the managing of client money, securities or other assets; (c) the opening or management of bank, savings or securities accounts; (d) the organization of contributions

³⁴⁴ *Ibid.*, Art. 34(2).

³⁴⁵ *Proceeds of Crime Act 2002* (c. 29) [Part 7 of the Act, contained in sections 327 to 340, addresses Money Laundering]; UK Legal Sector Affinity Group, *Anti-Money Laundering Guidance for the Legal Sector*, Mar. 2018 at pp. 13-14 (paras. 1.4.2 & 1.4.3). The UK has amended the *POCA* and related Money Laundering Regulations over time to comply with revisions to the EU Directive. Most recently, the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* implemented the 2015 EU Directive (2015/849) and further detailed the scope of Client Due Diligence required by legal professionals (*ibid.* at para. 1.4.5).

³⁴⁶ *POCA*, section 330; U.K. Law Commission, *Anti-Money Laundering: the SARS Regime Consultation Paper*, July 20, 2018 at p. 7 (para. 1.14).

³⁴⁷ *POCA*, section 330(6)(b). Section 330(10) defines “privileged circumstances” as including communications from a client “seeking legal advice” or “in connection with legal proceedings or contemplated legal proceedings.” However, section 330(11) excluded from the privilege exception any communication made “with the intention of furthering a criminal purpose.” Also, see *Bowman v. Fels*, [2005] EWCA (Civ) 226 [Court of Appeal decision clarifying the application of privilege under the *POCA*].

³⁴⁸ *POCA*, section 333. A similar exception is provided by section 333(2)(c) and by 333(3) for disclosures made in connection with legal proceedings or the giving of legal advice.

³⁴⁹ *Ibid.* at section 335. See also Law Commission, *Anti-Money Laundering*, *supra* at p. 7 (para. 1.9).

³⁵⁰ *Money Laundering Regulations 2007*, section 3(1)(d) (regulations applicable to “independent legal professionals,” as defined by section 3(9)), sections 5-7, 14 (Similar provisions can be found in sections 8(2)(d), 12(1) and 27-38 of the 2017 Money Laundering Regulations.).

³⁵¹ UK Legal Sector Affinity Group, *Anti-Money Laundering Guidance*, *supra* at p. 16.

necessary for the creation, operation or management of companies; or (e) the creation, operation or management of trusts, companies, foundations or similar structures.”³⁵²

Law Societies are the designated “supervisory authority” responsible for overseeing their members’ compliance with AML rules.³⁵³ Since January 2018, the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) oversees the compliance of professional bodies with the U.K.’s AML rules.³⁵⁴ The agency is funded by fees paid by professional associations and operates under the Financial Conduct Authority (FCA).³⁵⁵ OPBAS does not directly supervise legal and accountancy firms. However, it has authority to gather information, review and issue directions to industry self-regulatory organizations.³⁵⁶ If the self-regulator doesn’t comply or provides misleading information, the FCA can name and shame or recommend to government that its authority as a designated self-regulatory organization be removed.

A 2018 article, based on a survey of lawyers from a number of firms, found a “general consensus” among those lawyers that the *POCA* had not undermined their professional duty to clients.³⁵⁷ One lawyer noted their firm was “very rarely in a situation” where they could not claim privilege. Others accepted the policy shift requiring lawyers to act with “broader public interests in mind,” or reported no impact on their practice because money launderers were savvy enough to find “dodgy” lawyers elsewhere.

However, another study based on interviews with legal professionals at the Top 50 U.K. law firms concluded that the failure of the UK’s AML scheme to exclude minor offences and regulatory breaches imposed a “needless administrative burden” on the legal profession.³⁵⁸ It

³⁵² *Money Laundering Regulations, 2017, supra*, section 12(1) (also stating that “a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction”). Also, see John A. Terrill, II & Michael A. Breslow, “The Role of Lawyers in Combating Money Laundering and Terrorist Financing: Lessons from the English Approach”, 59 N.Y.L. Sch. L. Rev. 433 (2014-2015) at 440, fn. 33, observing that many UK solicitors and law firms conduct the requisite Client Due Diligence irrespective of whether their engagement falls within the specified categories because “it is good practice to do so”.

³⁵³ *Money Laundering Regulations, 2017, supra*, section 7(1)(b) (“each of the professional bodies listed in Schedule 1 is the supervisory authority for relevant persons who are members of it”).

³⁵⁴ U.K. Law Commission, *Anti-Money Laundering, supra* at p. 47 (paras. 2.117-2.118) (“OPBAS directly oversees the 22 accountancy and legal professional body AML supervisors in the UK. It will ensure these 22 organisations meet the high standards set out in the Money Laundering Regulations 2017”); Standing Committee on Finance, *Confronting Money Laundering, supra* at p. 21 (OPBAS “sets out how certain professionals – such as lawyers and accountants – should comply with their professional obligations with respect to Anti-Money Laundering”).

³⁵⁵ Standing Committee on Finance, *Confronting Money Laundering, ibid.*

³⁵⁶ Law Commission, *Anti-Money Laundering, supra* at p. 47 (para. 2.118). The 22 professional bodies supervised by OPBAS are listed in Schedule 1 to the *Money Laundering Regulations, 2017*, and includes the Law Societies of England, Northern Ireland and Scotland.

³⁵⁷ Global Anticorruption Blog, *Applying Anti-Money Laundering Reporting Obligations, supra*.

³⁵⁸ Sarah Kebbell, “Everybody’s Looking at Nothing’ – the Legal Profession and the Disproportionate Burden of the Proceeds of Crime Act 2002”, *Criminal Law Review, 2017* (10) 741-753. See also Terrill, II and Breslow, *The Role of Lawyers, supra* at 444-445 (noting that criminal property and proceeds of crime are defined so broadly under the *POCA* that solicitors may be required to submit suspicious activity reports “in contexts which are relatively minor – or even absurd”).

noted that solicitors had submitted 3,461 Suspicious Activity Reports (SAR) in 2014-15, which represented under 1% of all SARs submitted to the NCA. One of the lawyers interviewed described the process as a “large scale ‘paper pushing’ exercise on the part of the profession and the NCA” in which “everybody’s looking at nothing.”

United States

The legal profession in the United States is exempt from AML/AFT reporting, as the AML and SAR provisions in the *Bank Secrecy Act*³⁵⁹ do not apply to lawyers.³⁶⁰ In addition, attorney trust accounts are exempt from federal rules requiring financial institutions to know the beneficial owners of accounts opened in the names of legal entities.³⁶¹ While the American Bar Association (ABA) developed voluntary practices in 2010 to assist lawyers combat money laundering,³⁶² there are no rules of professional conduct, similar to those in Canada, which are specifically related to AML practices.³⁶³

³⁵⁹ *Bank Secrecy Act*, 31 U.S.C. §§ 5311.

³⁶⁰ American Bar Association (ABA), *Gatekeeper Regulations on Lawyers*, Feb. 7, 2019 (noting opposition to measures that would “undermine the attorney-client privilege, the confidential lawyer-client relationship, and traditional state court regulation of the legal profession”); Standing Committee on Finance, *Confronting Money Laundering*, *supra* at p. 21.

³⁶¹ ABA *Gatekeeper Regulations*, *ibid.* (describing ABA submissions that successfully added language to a May 11, 2016 FinCEN rule, in order that lawyers opening trust accounts “need only disclose their own beneficial ownership information, not the identity or beneficial ownership of their clients for whom the accounts were established”); and “Law Firms’ Accounts Pose Money-Laundering Risk”, *Wall Street Journal*, *supra*.

³⁶² ABA, *Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing*, Apr. 23, 2010; ABA Standing Committee on Ethics and Professional Responsibility, *Client Due Diligence, Money Laundering and Terrorist Financing*, Formal Opinion 463, May 23, 2013 at p. 1 (“The Good Practices Guidance provides information to help lawyers recognize and evaluate situations where providing legal services may contribute to money laundering”).

³⁶³ “Money Laundering Case Highlights”, *American Lawyer*, *supra* (reporting that no state or local bar association had yet adopted the ABA’s 2010 voluntary guidelines). There are however, general rules of professional conduct in the U.S. that could apply in money laundering cases; including ABA Model Rule 1.16(a), which precludes lawyers from representing clients if it “will result in violation of the rules of professional conduct or other law”; Model Rule 8.4(b) and (c), which provide that it is “professional misconduct” to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness” or to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation”; and Model Rule 1.2(d), which provides that lawyers “shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.” At least one U.S. bar association has opined that a duty of inquiry is implicit in the Rules of Professional Conduct when a lawyer is asked to assist in a transaction that the lawyer suspects may involve a crime or fraud. See New York City Bar, Formal Opinion 2018-4, *Duties When an Attorney is Asked to Assist in a Suspicious Transaction*, July 18, 2018 (“notwithstanding the absence of an explicit requirement, a duty to inquire into suspicious transactions under some circumstances is implicit in the duty to avoid knowingly assisting wrongful conduct”), citing *In re Blatt*, 63 324 A.2d 15, 17-19 (N.J. 1974), holding that “a lawyer committed misconduct by helping a client effect a purchase after failing to investigate its suspicious nature”; and *In re Dobson*, 427 S.E.2d 166, 166-68 (S.C. 1993), sanctioning an attorney for “helping his client while remaining deliberately ignorant of his client’s criminal conduct”.

The ABA's *Good Practices Guidance* is based in part on the 2008 FATF RBA Guidance for Legal Professionals.³⁶⁴ It sets out recommended Client Due Diligence (CDD) for lawyers who engage in any of five categories of specified activities, including the purchase or sale of real estate.³⁶⁵ It uses a "risk-based approach", in which higher risk clients or transactions are subject to enhanced CDD and transaction monitoring.³⁶⁶ CDD includes identifying the beneficial owner of a client, where warranted by the risks presented by that client.³⁶⁷

In May 2013, the ABA issued a formal ethics opinion that lawyers who implement the risk-based control measures detailed in the *Good Practices Guidance* are acting in a manner consistent with the *Model Rules of Professional Conduct*.³⁶⁸ The opinion states that: "An appropriate assessment of the client and the client's objectives, and the means for obtaining those objectives, are essential prerequisites for accepting a new matter or continuing a representation as new facts unfold."³⁶⁹ It also identifies a number of risk factors that may require enhanced CDD, including clients who are PEPs, transactions connected to certain countries, and "clients who ask that the lawyer handle actual receipt and transmission of funds or those who request accelerated real estate transfers for no apparent reason."³⁷⁰

Lawyers in the United States are required to file reports to FinCEN for any transaction in which they receive more than \$10,000 in cash.³⁷¹ Those reports are to contain the name and address of the person from whom the cash was received, the amount of cash, and the date and nature of the transaction.³⁷² U.S. lawyers are also subject to regulations issued by the Office of Foreign Assets Control which prohibit persons from engaging in transactions with specified persons (terrorists, drug traffickers and certain former foreign leaders) and countries (e.g., Iran, Syria,

³⁶⁴ Laurel S. Terry, *U.S. Legal Profession Efforts to Combat Money Laundering and Terrorist Financing*, 59 N.Y.L. Sch. L. Rev. 487 (2014-15) at p. 515 (stating that the Good Practices Guidance "summarizes the FATF RBA Guidance but provides more detailed guidance to U.S. lawyers by including Practice Pointers and Appendix A regarding client intake").

³⁶⁵ ABA, *Voluntary Good Practices Guidance*, *supra* at pp. 12-15 (the five categories of activity covered by the Guidance are: (a) buying and selling real estate; (b) managing client money, securities or other assets; (c) management of bank, savings or securities accounts; (d) organization of contributions for the creation, operation or management of companies; and (e) creation, operation or management of legal persons or arrangements, and buying and selling of business entities).

³⁶⁶ *Ibid.* at pp. 7-8 ("CDD is intended to assist lawyers in forming a reasonable belief that they have appropriate awareness of the true identity of each client and the true nature of the matter they have been engaged to undertake ... The level of required CDD varies depending on the risk profile of the client"), and pp. 34-36 ("Higher risk clients require enhanced CDD. The lawyer needs to ensure that the client and its ownership and business activities comply with applicable law and that no criminal activity is involved").

³⁶⁷ *Ibid.* at p. 9, fn. 15 ("Beneficial owner" defined as "the natural person(s) who ultimately owns or controls a client and/or the person on whose behalf a transaction is being conducted") at p. 35.

³⁶⁸ ABA Standing Committee on Ethics and Professional Responsibility, *supra* at p. 2. The ABA advises in this opinion that "[i]t would be prudent for lawyers to undertake [CDD] in appropriate circumstances to avoid facilitating illegal activity or being drawn unwittingly into a criminal activity".

³⁶⁹ *Ibid.* at p. 3.

³⁷⁰ *Ibid.*

³⁷¹ 31 U.S.C. § 5331 and International Bar Association, *A Lawyer's Guide to Detecting and Preventing Money Laundering*, Oct. 2014 at p. 19.

³⁷² 31 U.S.C. § 5331(b).

North Korea).³⁷³ Accordingly, a “basic part” of the client verification process in the ABA’s *Good Practices Guidance* includes “performing an ‘OFAC scan’ to determine whether the client’s name appears on a Specially Designated Nationals list.”³⁷⁴

Notwithstanding the absence of specific AML legislation or professional rules, a 2013 report by the FATF cited the United States as one of only three countries that reported double digit numbers of disciplinary cases and criminal prosecutions of lawyers for money laundering or terrorist financing in the preceding five-year period.³⁷⁵

Australia

In Australia, while lawyers are presently not included as ‘reporting entities’ under the country’s *Anti-Money Laundering and Counter-Terrorism Financing Act*,³⁷⁶ they are subject to the *Financial Transaction Reports Act*, which obligates solicitors to report to AUSTRAC “significant cash transactions” (defined as AUD 10,000 or more) that are “entered into by or on behalf of a solicitor … in the course of practising as a solicitor.”³⁷⁷ The information that must be reported by the solicitor includes: the nature of the transaction; the date and amount; the name, address, occupation and date of birth of each person who was a party to the transaction; and the identity of any person (principal) on whose behalf the transaction was conducted.³⁷⁸

Australia committed to expand the scope of its AML/CTF Act in a ‘Tranche 2’ phase that would extend the law to “lawyers, notaries, other independent legal professionals and accountants when preparing for or carrying out certain transactions” and “real estate agents in relation to buying and selling of real estate.”³⁷⁹ The Australian government has faced significant criticism for repeatedly delaying this planned expansion.³⁸⁰

³⁷³ OFAC Regulations, 31 C.F.R. Part 500 to end.

³⁷⁴ ABA, *Voluntary Good Practices Guidance*, *supra* at p. 35. OFAC’s “Specially Designated Nationals and Blocked Persons” list can be found at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

³⁷⁵ FATF, *Money Laundering and Terrorist Financing Vulnerabilities*, *supra* at p. 30 (“the number of disciplinary cases reported exceeded double figures only in the Netherlands, the United Kingdom and the United States. Criminal prosecutions were started in 16 countries, with Austria, Spain, Italy and Poland joining the Netherlands, the United Kingdom and the United States reaching double figures of prosecutions in the last five years”). See also Laurel S. Terry, *U.S. Legal Profession Efforts to Combat Money Laundering*, *supra* at pp. 499-501 & footnotes 54 and 57 (citing U.S. cases in which lawyers were convicted or disbarred for money laundering).

³⁷⁶ Law Council of Australia, *Anti-Money Laundering Guide for Legal Practitioners*, 2009 (updated January 2016) at p. 3 (“Lawyers are not reporting entities as such under the AML/CTF legislation. Instead lawyers are subject to stringent requirements prescribed by the regulatory regime of the legal profession legislation and rules of professional conduct”).

³⁷⁷ *Financial Transaction Reports Act 1988*, section 15A; AUSTRAC, *Money Laundering Through Legal Practitioners*, 2015 at p. 6.

³⁷⁸ *Financial Transaction Reports Act*, Schedule 3A.

³⁷⁹ Law Council of Australia, *Anti-Money Laundering Guide*, *supra* at pp. 16-17.

³⁸⁰ Michael West, *Government Flip-Flops Again*, *supra*; Patrick Durkin, “Real Estate Agents, Lawyers & Accountants to Avoid Money Laundering Laws”, *Australia Financial Review*, Oct. 9, 2018. Accessed at <https://www.afr.com/business/banking-and-finance/real-estate-agents-lawyers-and-accountants-to-avoid-money-laundering-laws-20181009-h1qjw>

New Zealand

The AML/CTF regime in New Zealand was extended to lawyers, effective July 1, 2018.³⁸¹ The obligations imposed by the legislation include “risk assessment of client matters, understanding your customers, carrying out appropriate customer due diligence, ... maintain[ing] records, and fil[ing] suspicious activity reports with the FIU in the New Zealand Police, subject to legal professional privilege.”³⁸²

New Zealand’s *Anti-Money Laundering and Countering Financing of Terrorism Act* “requires lawyers to disclose suspicious transactions, but only if the lawyer has reasonable grounds to suspect and if section 42(2) (definition of what is not privileged communication) applies.”³⁸³ Section 40(3) of the *Act* requires reporting entities to file such reports “no later than 3 working days after forming its suspicion.” However, section 40(4) provides that: “Nothing in subsection (3) requires any person to disclose any information that the person believes on reasonable grounds is a privileged communication.” Section 42(2) of the *Act* provides that communications are not privileged if they are contained in a lawyer’s trust account records,³⁸⁴ or if there is a *prima facie* case that the communication was for “a dishonest purpose” or “to enable or aid the commission of an offence.”³⁸⁵

The application of the *Act* is limited to lawyers who engage in certain described activities, including: engaging in or giving instructions for real estate transactions or the sale of a business, company or other legal organization; providing real estate agency work to effect a transaction; acting as a formation agent of legal organizations, or acting as or arranging for persons to act as nominee directors, shareholders or trustees; and managing client funds (other than sums paid as fees for professional services), accounts, securities or other assets.³⁸⁶

[money-laundering-laws-20181008-h16dc](#) (“Real estate agents, lawyers and accountants have won a reprieve from tough new anti-money laundering measures with the federal government delaying a planned crackdown on the professions. The government had aimed to pass laws to cover these sectors before the end of this year, following a highly critical report from the FATF which warned three years ago that Australia’s real estate sector was at significant risk for money laundering”).

³⁸¹ The *Act* was also extended to accountants and bookkeepers on Oct. 1, 2018 and to real estate agents on Jan. 1, 2019. It will be extended to the “NZ Racing Board and High Value Dealers” on Aug. 1, 2019.

³⁸² New Zealand Law Society website article, *AML/CFT Compliance: Emerging Practical Issues*, Nov. 30, 2018.

³⁸³ *Ibid.*

³⁸⁴ *Anti-Money Laundering and Countering Financing of Terrorism Act* (N.Z.), section 42(2)(b) (communication not privileged “if, where the information wholly or partly consists of, or relates to, the receipts, payments, income, expenditure, or financial transactions of any specified person, it is contained in (or comprises the whole or a part of) any book, account, statement, or other record prepared or kept by the lawyer in connection with a trust account of the lawyer”); N.Z. Law Society *AML/CFT Compliance*, *supra* (“Lawyers’ trust account records are excluded from the scope of ‘privileged communication’ for purposes of the AML/CFT Act”).

³⁸⁵ *Anti-Money Laundering and Countering Financing of Terrorism Act* (N.Z.), section 42(2)(a) (communication not privileged “if there is a *prima facie* case that the communication or information is made or received, or compiled or prepared, (i) for a dishonest purpose, or (ii) to enable or aid the commission of an offence”).

³⁸⁶ *Ibid.*, section 6(4)(c).

NOTARIES

Notaries in B.C. handle a high proportion of residential property transactions as well as small commercial transactions. As indicated earlier, they are unique in Canada, as they are the only notaries that are subject to financial reporting to FinTRAC. The Society has expressed considerable support for reporting and provides its members with tools designed to help them understand AML risks.

Nevertheless, in its 2016 mutual evaluation of Canada, the FATF found that B.C. notaries had not submitted any STRs to FinTRAC by the time of its examination. For that reason, we requested statistics from FinTRAC, and were advised that the number of STRs submitted by B.C. notaries were as follows: 2014 (0), 2105 (3), 2016 (8), 2017 (27) and 2018 (14).³⁸⁷

The number of STRs submitted in 2014 and 2015 is not in accord with what would be expected in the Greater Vancouver housing market during those years. Reporting is much better post-2016. We note that the Society has increased its awareness campaign regarding money laundering, and recently featured an article on AML compliance, written by a leading Canadian AML trainer, in its Society magazine.³⁸⁸

SUMMARY

The gap left in Canada's AML regime by the non-reporting of lawyers is akin to following a route on your car's GPS, only to learn that satellite coverage ends half way to your destination. As a result, you must guess where to go in the hope that both you and the satellite will converge at just the right location and the GPS can continue its mission. Lawyers are at high risk of being targeted by money launderers, not only because they are exempted from financial reporting but by the very nature of the risks inherent in dealing with real estate, trusts, and other financial vehicles, and most of all because they can hold funds in a trust account.

Through no fault of their own, lawyers are the 'black hole' of real estate and of money movement generally. With no visibility by law enforcement on what enters and leaves a lawyer's trust account, many investigations are stymied. It matters not that a real estate deposit has been reported to FinTRAC by a realtor, if the closing funds can, without visibility, appear from a foreign destination and find their way into the hands of the purchaser's solicitor.

The cash rule governing the acceptance by lawyers of no more than \$7,500 in cash is limited in its effect. It does not prevent persons from giving tens, or hundreds of thousands of dollars in cash to a lawyer for bail money, or in settlement of fees and expenses.

³⁸⁷ Only one LCTR was submitted by B.C. notaries during this period and that occurred in 2017. This is anomalous as notaries are precluded from receiving a large sum of cash and certainly not \$10,000, which would trigger an LCTR.

³⁸⁸ "Money Laundering and Real Estate – Red Flags and the Potential for Being Indirectly Complicit", *The Scrivener*, V27 N1, Spring 2018 at p. 44.

Canadians have waited almost four years for the federal government to remedy the issues pointed out by the SCC in the *Federation* case and there remains uncertainty with what change may be contemplated and when. The SCC itself invited Parliament to revisit the *POCMLTFA* and attempt to deal with the issues which it raised.

Canada does not have to be the last Developed World country to deal with this anomalous situation. Being an outlier should not be seen as a feather in a nation's cap, or the manifestation of some higher sense of the Rule of Law. Other Commonwealth countries, which share our common legal origins, have dealt with this issue and dealt with it effectively. There must, at a minimum, be visibility surrounding the financial accounts maintained by lawyers. There is no suggestion that privileged solicitor-client communications should be impacted.

Workarounds are possible. The options include reporting financial transactions to FinTRAC, reporting those transactions to a separate body, possibly administered by the law societies, such as the Federation of Law Societies, or creating some other blind that allows for the transmission of financial data without transgressing the sanctity of solicitor-client privilege.

The simplest solution may be to simply look to the U.S., where lawyers are required to file reports on any transaction in which they receive more than \$10,000 in cash. These reports contain the name and address of the person from whom the cash was received, the amount of cash, and the date and nature of the transaction. It is difficult to understand how this basic information, none of which comes from the client, other than name and address, could violate solicitor-client privilege, except in unusual circumstances (for which recourse to the courts could be possible).

The anomalous situation which exists in B.C., whereby lawyers can be fully involved in a real estate transaction - from beginning to end, and yet not report suspicious or large cash transactions, despite the fact that for a good part of that transaction they are essentially performing the role of a realtor, is difficult to juxtapose against the fact that realtors must report to FinTRAC and so must notaries. This is not to say that lawyers should not be able to perform duties normally accorded to realtors, but with entitlement come expectations.

Law societies are not police forces and should not become police forces. Their role is to serve as professional regulatory bodies and to refer criminality to the police and to receive complaints of inappropriate conduct by their members. Law enforcement cannot walk away from crime committed by members of professional bodies, simply because they are professionals and their professional body can sanction behaviour. The reality is that ordinary Canadians are not shielded from the criminal law, nor should professionals be shielded. Likewise, law enforcement must act upon criminal referrals from law societies and from other professional bodies.

Self-regulation by provincial law societies is the sole due diligence mechanism by which lawyers seek to prevent money laundering. Regulation of lawyers through the LSBC presents at least one significant advantage over enforcement and regulation by FinTRAC and law enforcement, which is that investigators and auditors working for LSBC have unhindered access to all records and files of a lawyer, including documents that would otherwise be protected by solicitor-client

privilege. Why can they not act as the blind described above? And why should FinTRAC not provide copies of STRs to the LSBC, for use with audits and investigations, possibly as part of a working group with law enforcement, much like the JIGIT currently does with GPEB and BCLC? The latter has visibility of all suspicious transactions emanating from its casino operators.

It is essential that government continue to work with the LSBC to encourage and support (i) further strengthening of the professional rules governing lawyers, (ii) transparency and reporting by the LSBC that would inform and provide assurance to the public of the effectiveness of its AML self-regulation, and (iii) closer working relationships between LSBC's investigations department and external law enforcement agencies in relation to matters involving unprofessional or illegal conduct by lawyers. In addition, LSBC auditors and investigators should be required to obtain AML training, possibly including a form of certification.

PART 3

LUXURY VEHICLES

TERMS OF REFERENCE

The TOR for this Review include the following:

3. *Alleged issues of money laundering and organized crime in the horse racing industry and luxury car industry, as identified in the recommendations from Dr. German's "Dirty Money" report*

Review records and contact individuals as required to identify current issues and, if necessary, make findings related to:

....

- b. Organized crime and money laundering activity in the luxury car industry.*

OVERVIEW

It is difficult to determine what is and what is not a luxury vehicle. As with so many things, you know it when you see it. Rather than settle upon an arbitrary dollar figure, which is problematic due to pricing issues discussed in the following chapters, we have chosen instead to concentrate on the vehicles used by organized crime. This can include their use as offence related property or as an instrument of the offence, but also, and importantly, as a means for money laundering; including using vehicles to park dirty money or as an item to be purchased with the profits of crime.

This Part is divided into the following chapters:

Chapter 3-1 – Domestic & International Laundering Through Vehicles

Chapter 3-2 - Crime Vehicles

Chapter 3-3 – Luxury Vehicles & Money Laundering

Chapter 3-4 – The Grey Market of Export Vehicles

Chapter 3-5 – Independent Luxury Vehicle Resellers

CHAPTER 3-1

DOMESTIC & INTERNATIONAL LAUNDERING THROUGH VEHICLES

FINDINGS

- Vehicles are used both within Canada and internationally as conduits for the laundering of criminal proceeds.
- The disproportionate number of luxury vehicles not recovered by police supports the belief that organized vehicle theft rings are stealing vehicles for export.
- The need to address the export of stolen and fraudulently obtained vehicles from B.C. ports is a subset of the larger issue of criminal enforcement at ports.

INTRODUCTION

As we know from our earlier discussion of money laundering and organized crime, Canada and B.C. do not exist in isolation from the rest of the world. Instead, we are heavily influenced by trends elsewhere. This is very much the case in terms of vehicle theft, and the laundering of proceeds of crime through vehicle sales. Not only is there a connection to transnational organized crime but internationally, this form of crime and typology of criminal activity is used for the financing of terrorism. A big picture view will assist in placing our discussion in context.

A GLOBAL VIEW

Money laundering through automobiles is an international problem, which typically involves the purchase of vehicles in cash with the proceeds of crime, thereby converting the illicit cash into an asset, which will serve to disguise the origin of the money and can later be sold. This strategy is demonstrated in the examples below.

- In Orlando, Florida in 2012, the president of a car dealership was convicted of laundering the proceeds of narcotics trafficking on behalf of a Mexican cartel by providing vehicles for cash and sending the vehicles to members of the cartel in Texas and Florida.³⁸⁹
- In Shreveport, Louisiana in 2012, following a multi-agency investigation, three car dealers were charged with multiple offences related to money laundering

³⁸⁹ U.S. ICE, “Car dealership president convicted of money laundering”, Dec. 4, 2012. Accessed at <https://www.ice.gov/news/releases/car-dealership-president-convicted-money-laundering>.

through the alleged sale and financing of vehicles to individuals who boasted that they derived significant income from drug trafficking. It was also alleged that the car dealers allowed vehicles to be purchased in the names of nominees, falsified records of payments, and provided false information to law enforcement to facilitate the release of vehicles seized from drug dealers.³⁹⁰

- In Raleigh, North Carolina in 2014, a marihuana trafficker laundered the proceeds of crime by purchasing luxury vehicles and residences. He used sham companies to disguise the source of funds, and laundered drug proceeds by utilizing straw buyers³⁹¹ to purchase various assets, including 13 motor vehicles.³⁹²
- In San Diego, California in 2015, the former owner of a sports car dealership was sentenced to two years in prison after pleading guilty to assisting a drug trafficker to launder \$719,000 through cash purchases of exotic supercars.³⁹³
- In Colorado in 2015, the owner of a car dealership was sentenced to four years in federal prison for conspiring with others to structure currency and thereby evade reporting requirements. In four years, the offenders structured over 700 deposits totalling \$4,543,714, and were found to have laundered the proceeds of drug trafficking.³⁹⁴
- In Cincinnati, Ohio in 2015, the owner of a car dealership pleaded guilty to money laundering by selling a car for cash that was purported to be the proceeds from drug trafficking and failing to report a cash sale over \$10,000.³⁹⁵
- In Tampa, Florida in 2015, a car dealer pleaded guilty to a money laundering conspiracy in which he sold vehicles to straw buyers acting on behalf of drug traffickers and disguised the large cash payments. He placed liens on some of the vehicles, despite receiving full payment, in order that he could reclaim the

³⁹⁰ Carolyn Roy, “Used car dealership operators accused of laundering drug money”, *KSLA News12*, July 27, 2012. Accessed at <http://www.ksla.com/story/19132862/used-car-dealership-operators-accused-of-laundering-drug-money/>.

³⁹¹ A straw buyer is not the true purchaser of an asset but represents himself or herself as such, in order to insulate the true purchaser from contact with the seller.

³⁹² U.S. IRS, “Internal Revenue Service Examples of Money Laundering Investigations Fiscal Year 2015”. Accessed at <https://www.irs.gov/compliance/criminal-investigation/examples-of-money-laundering-investigations-fiscal-year-2015>.

³⁹³ Tony Perry, “Ex-sports car dealer gets prison in money laundering case in San Diego”, *Los Angeles Times*, Mar. 7, 2015. Accessed at <https://www.latimes.com/local/lanow/la-me-tn-money-laundering-20150307-story.html>.

³⁹⁴ U.S. Attorney’s Office, District of Colorado, “Owner of Colorado Car Dealership Sentenced for Structuring and Money Laundering”, Dec. 1, 2015. Accessed at <https://www.justice.gov/usao-co/pr/owner-colorado-car-dealership-sentenced-structuring-and-money-laundering>.

³⁹⁵ U.S. Attorney’s Office, Southern District of Ohio, “Owner of Fairfield Ohio Car Dealership Pleads Guilty to Money Laundering”, Dec. 16, 2015. Accessed at <https://www.justice.gov/usao-sdoh/pr/owner-fairfield-ohio-car-dealership-pleads-guilty-money-laundering>.

vehicles if they were seized by law enforcement, and then return them to the purchasers.³⁹⁶

- In Dallas, Texas in 2016, several people were convicted of conspiracy to commit money laundering and other offences in an elaborate scheme in which tax refunds were fraudulently obtained from unwitting victims. Using shell-company bank accounts, the refunds were converted into cash and cashier's cheques, and then used to purchase more than \$1 million in used luxury vehicles from wholesale vehicle auctions, exporting 204 cars to Nigeria.³⁹⁷
- In Latvia in 2016, four people were arrested for laundering money by purchasing expensive luxury vehicles worth at least €100,000 (~C\$152,000) in cash. The cars were registered to companies allegedly owned by people who turned out to be homeless. The group then purchased the cars from the companies at a low price.³⁹⁸
- In Jamaica in 2016, a money laundering scheme occurred in which vehicles were purchased for cash, circumventing the law which prohibits cash purchases involving amounts JMD\$1 million (~C\$10,245) or higher, by making purchases slightly below the threshold. Jamaican police noted that the “frequency of these cases is indicative of the whole process of intending to conceal criminal proceeds...It is deliberate because it is an opportunity to convert money or launder criminal proceeds through the used car industry or through the motor-vehicle sales industry.”³⁹⁹
- In Hong Kong in 2018, a car dealer received a five-year sentence for money laundering, involving approximately RMB 48 million (~C\$9.6 million). The scheme involved exporting left-hand drive vehicles from Hong Kong to Vietnam and laundering the proceeds back to Hong Kong.⁴⁰⁰

³⁹⁶ U.S. Attorney's Office, Middle District of Florida, “Tampa Auto Dealer Pleads Guilty to Money Laundering Conspiracy”, Sept. 22, 2015. Accessed at <https://www.justice.gov/usao-mdfl/pr/tampa-auto-dealer-pleads-guilty-money-laundering-conspiracy>. This is similar to the use of legal tools in real estate law, such as builders liens and mortgages, to enforce illegal obligations, as discussed in Chapter 2-2.

³⁹⁷ U.S. ICE, “Federal jury convicts Dallas woman in stolen identity refund scheme; some stolen identities belonged to incarcerated individuals”, Oct. 20, 2016. Accessed at <https://www.ice.gov/news/releases/federal-jury-convicts-dallas-woman-stolen-identity-refund-scheme-some-stolen>.

³⁹⁸ Public Broadcasting of Latvia, “Police bust luxury car money laundering scam”, Nov. 29, 2016. Accessed at <https://eng.lsm.lv/article/society/society/police-bust-luxury-car-money-laundering-scam.a212257/>.

³⁹⁹ Corey Robinson, “999,999 Ways to Beat The System – Car Marts Being Used To Launder Dirty Money Below the \$1M Threshold”, Jan. 17, 2016. Accessed at <http://w.jamaicagleaner.com/article/lead-stories/20160117/999999-ways-beat-system-car-marts-being-used-launder-dirty-money-below>.

⁴⁰⁰ Hong Kong Special Administrative Region, “Car dealer jailed for money laundering”, Press release, Apr. 6, 2018. Accessed at <https://www.info.gov.hk/gia/general/201804/06/P2018040600346.htm>.

MONEY LAUNDERING, LUXURY VEHICLES AND TERRORIST FINANCING

The U.S. Immigration and Customs Enforcement (ICE) Trade Transparency Unit notes that “Criminal and terrorist organizations frequently exploit global trade systems to move value around the world by employing complex and sometimes confusing schemes associated with legitimate trade transactions.”⁴⁰¹ Some of these schemes have a connection to Canada.

For example, according to a report by the U.S. Committee on Foreign Affairs, Hezbollah “has expanded its own financing operations to include what has become known as the business affairs component, a transnational criminal network that engages in everything from narco-trafficking to money laundering”.⁴⁰² The Committee heard evidence that Hezbollah laundered hundreds of millions of dollars through trade-based money laundering, “including used car dealerships in the U.S.”⁴⁰³ It was alleged that \$300 million was laundered in the U.S. through the purchase and shipment of used cars to Africa. Investigators identified over 300 used car businesses believed to be involved in the network.⁴⁰⁴ The cash was allegedly shipped from West Africa to Lebanon, safeguarded by Hezbollah security, routed through the Lebanese-Canadian Bank and other financial institutions, and wire transferred to the U.S. The cash was then used to purchase more vehicles for shipment to West Africa and resale to the benefit of Hezbollah,⁴⁰⁵ continuing the TBML loop.

Authorities targeted the Lebanese-Canadian Bank. In 2011, a principal associated with the bank was indicted by U.S. federal prosecutors in Virginia.⁴⁰⁶ In addition to other sanctions,⁴⁰⁷ the bank was designated under the *Patriot Act*⁴⁰⁸ as an “entity of primary money laundering concern.”⁴⁰⁹ The U.S. Attorney in New York launched a civil suit seeking more than US\$480 million from Lebanese financial institutions and others, including 30 U.S. car buyers, for allegedly assisting Hezbollah to launder narcotics and other criminal proceeds through West

⁴⁰¹ US ICE, “ICE leads trade-based money laundering investigations”. Accessed at <https://www.ice.gov/trade-transparency>.

⁴⁰² U.S. House of Representatives, Committee on Foreign Affairs, “Attacking Hezbollah’s Financial Network: Policy Options”, June 8, 2017 at p. 3 (Washington: U.S. Government Publishing Office). Accessed at <https://docs.house.gov/meetings/FA/FA00/20170608/106094/HHRG-115-FA00-Transcript-20170608.pdf>.

⁴⁰³ *Ibid.*, statement of Derek S. Maltz at p. 34.

⁴⁰⁴ U.S. House of Representatives, Homeland Security Committee, Subcommittee on Counterterrorism and Intelligence, Testimony of Dr. Emanuele Ottolenghi, Apr. 17, 2018. Accessed at <https://docs.house.gov/meetings/HM/HM05/20180417/108155/HHRG-115-HM05-Wstate-OttolenghiE-20180417.pdf>.

⁴⁰⁵ “Attacking Hezbollah’s Financial Network: Policy Options,” *supra*.

⁴⁰⁶ Dr. Emanuele Ottolenghi, Congressional Testimony, *supra* at p. 11.

⁴⁰⁷ Jo Becker, “Beirut Bank Seen as a Hub of Hezbollah’s Financing”, *New York Times*, Dec. 13, 2011. Accessed at <https://www.nytimes.com/2011/12/14/world/middleeast/beirut-bank-seen-as-a-hub-of-hezbollahs-financing.html>.

⁴⁰⁸ *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism*, Pub. L. 107-56.

⁴⁰⁹ U.S. Department of the Treasury, *Treasury Identifies Lebanese Canadian Bank Sal as a “Primary Money Laundering Concern”*, Press release, Feb. 10, 2011. Accessed at <https://www.treasury.gov/press-center/press-releases/Pages/tg1057.aspx>.

Africa and into Lebanon.⁴¹⁰ Furthermore, in 2013, American authorities imposed a \$102 million forfeiture order on the Bank for its complicity in Hezbollah's money laundering scheme.⁴¹¹ Despite these efforts, it was alleged that used cars remained an important part of Hezbollah's money laundering schemes in West Africa.⁴¹²

Since 2002, Public Safety Canada (PSC) has identified Hezbollah as a "Listed Terrorist Entity," and describes it as "one of the most technically capable terrorist groups in the world."⁴¹³ In 2008, Hezbollah was linked to a fraud and extortion scheme in Ontario, in which a woman of Lebanese decent was allegedly threatened by a purported Hezbollah member into fraudulently purchasing luxury cars, two of which were located in a shipping container in the Port of Montreal, destined for Lebanon. In his reasons for acquitting the woman of fraud, the trial judge found that the men who had threatened her were "serious felons with connections to a well-known and powerful terrorist organization".⁴¹⁴

ORGANIZED CRIME VEHICLE THEFT RINGS & MONEY LAUNDERING

The International Context

The theft of motor vehicles is a significant international problem for law enforcement and for the economies of some of the affected countries. The problem is relevant to the discussion of money laundering through the purchase of luxury and other vehicles because the pathways of theft and laundering often overlap, taking advantage of legislative regimes or lax enforcement that allows vehicles to be exported from ports with little scrutiny.

According to the Insurance Bureau of Canada (IBC), some stolen vehicles "are targeted as part of a trade-based money laundering scheme...and the proceeds are used to fund criminal activities."⁴¹⁵ Whether vehicles are purchased, obtained fraudulently or stolen for export, they may be used as part of a money laundering scheme, and as payment or credit for contraband, such as illicit drugs. According to Henry Tso, a former RCMP superintendent in charge of financial crime operations in B.C.:

"Canadian crime networks operate like criminal car dealerships. A broker working for a crime boss will get orders for vehicles in demand in different areas of the world. And a

⁴¹⁰ U.S. Attorney's Office, Southern District of New York, "Civil Suit Seeks More Than \$480 Million from Entities That Facilitated Hizballah-Related Money Laundering Scheme", Dec. 15, 2011. Accessed at <https://archives.fbi.gov/archives/newyork/press-releases/2011/civil-suit-seeks-more-than-480-million-from-entities-that-facilitated-hizballah-related-money-laundering-scheme>.

⁴¹¹ "Trade and money laundering – Uncontained", *The Economist*, May 3, 2014. Accessed at <https://amp.economist.com/international/2014/05/03/uncontained>.

⁴¹² Dr. Emanuele Ottolenghi, Congressional Testimony, *supra* at p. 30.

⁴¹³ <https://www.publicsafety.gc.ca/cnt/ntnl-sctr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#2027>.

⁴¹⁴ Stewart Bell, "Ontario extortion racket has ties to Hezbollah", *National Post*, July 21, 2011. Accessed at <https://nationalpost.com/news/canada/ontario-extortion-racket-has-ties-to-hezbollah>.

⁴¹⁵ IBC, "Gone in 60 seconds: Canada's Top 10 Stolen Vehicles", Dec. 11, 2018. Accessed at <http://www.ibc.ca/on/resources/media-centre/media-releases/gone-in-60-seconds-canadas-top-10-stolen-vehicles>.

team of crooks in different roles throughout the auto supply chain helps fill the orders, and leak inside information to facilitate the process.

When new cars come into Canadian ports...crooked port workers delivering the cars from ships to trucks and trains, take pictures of VINs and also collect key fob information. A new car will go to a dealer and get sold. And when the vehicle is registered, corrupt employees share the gathered information with crime bosses.”⁴¹⁶

Tso observed that “[t]heft, fraud and money laundering are all related and fraud can be an indicator of money laundering. You can chase the commodity forever and find it, but if you can track the money, that will reveal the money laundering.”⁴¹⁷

Theft of vehicles is linked to transnational organized crime and may be associated with other serious crimes. Interpol has identified several hubs and routes for the international distribution of stolen vehicles and parts, including:

- Dubai, where stolen cars have been reassembled and exported;
- along routes through Poland and Lithuania in Eastern Europe and Central Asia;
- along routes from Spain to North Africa and further east; and
- from Germany to The Netherlands in the west, and through Rotterdam’s seaport to Africa.⁴¹⁸

Examples of such cases include:

- In Detroit and San Diego in 2011, four suspects were arrested in a scheme that transshipped stolen luxury sedans and SUVs through the Port of Montreal to Iraq.⁴¹⁹
- In 2014, 22 people were arrested in New Mexico for money laundering, racketeering, and possessing stolen vehicles. They were alleged to be part of a major international car theft and drug trafficking group connected to the Sinaloa drug cartel. The group was accused of stealing hundreds of luxury cars,

⁴¹⁶ Sam Cooper, “Organized crime behind surge in Canadian vehicle thefts, auto insurance fraud: experts,” *Global News*, Dec. 31, 2018. Accessed at <https://globalnews.ca/news/4747217/organized-crime-vehicle-thefts-insurance-fraud/>.

⁴¹⁷ Meeting with Review team, Jan. 8, 2018.

⁴¹⁸ Interpol, “Analytical Motor Vehicle Crime in Global Perspective”, Jan. 24, 2014.

⁴¹⁹ U.S. ICE, “13 arrested in international car theft ring”, Aug. 31, 2011. Accessed at <https://www.ice.gov/news/releases/13-arrested-international-car-theft-ring>.

providing them with new vehicle identification numbers (VIN), and then shipping them to Mexico as payment for drugs that were trafficked in New Mexico.⁴²⁰

- In 2015, a New York multi-agency task force focused on disrupting border-related crime – including money laundering, drug smuggling, human trafficking, and other serious offences – seizing 249 luxury vehicles obtained by fraud and intended to be loaded on cargo ships destined for ports in West Africa.⁴²¹

The Canadian Context

Canada has suffered the impact of a significant auto theft for export problem linked to organized crime. IBC investigators identified countries in Africa as key destinations for Canadian vehicles, where the annual vehicular black market was estimated at US\$19 billion.⁴²² Canadian Intelligence Service Canada (CISC) has stated that, “[M]any of the luxury vehicles stolen each year by organized crime groups are destined for export. The vehicles are largely destined for Eastern Europe, Russia, the Middle East, South America, the Caribbean, Africa, and Southeast Asia.”⁴²³

Statistics Canada believes that the number of vehicles not recovered by police is a good proxy for the many that are stolen by organized theft groups, given that those taken for other purposes (e.g., joyriding or to use in the commission of an offence) tend to be located by the police.⁴²⁴

In 2002, it estimated that 20% of stolen vehicles were not recovered, a dramatic increase from the early 1970s when only about 2% were not recovered.⁴²⁵ While the highest rates of vehicle theft in 2002 were in the western provinces – with the Vancouver Census Metropolitan Area being among the highest⁴²⁶ – organized vehicle theft numbers also peaked in large urban centres in Quebec and Ontario, as well as in Halifax.⁴²⁷

Many of the vehicles stolen by organized crime groups were loaded into shipping containers in Montreal, Halifax and Vancouver for shipment to countries in Europe, South America, Mexico,

⁴²⁰ U.S. ICE, “22 arrested in New Mexico for operating international car theft ring connected to Sinaloa drug cartel”, June 25, 2014. Accessed at <https://www.ice.gov/news/releases/22-arrested-new-mexico-operating-international-car-theft-ring-connected-sinaloa-drug>.

⁴²¹ U.S. ICE, “ICE HSI’s Border Enforcement Security Task Force disrupts a scheme to ship stolen luxury cars overseas”, Nov. 5, 2015. Accessed at <https://www.ice.gov/news/releases/ice-hsis-border-enforcement-security-task-force-disrupts-scheme-ship-stolen-luxury>.

⁴²² Matthew McCleam, “Hey, dude, where’s your car? Auto theft is global and growing”, *Canadian Business*, Sept. 22, 2006. Accessed at <https://www.canadianbusiness.com/business-strategy/hey-dude-wheres-your-car-auto-theft-is-global-and-growing/>.

⁴²³ *Ibid.*

⁴²⁴ Marnie Wallace, “Exploring the involvement of organized crime in motor vehicle theft”, Statistics Canada, Canadian Centre for Justice Statistics, May 2004.

⁴²⁵ *Ibid.* at p. 10.

⁴²⁶ *Ibid.* at p. 8.

⁴²⁷ *Ibid.* at p. 5.

or East Africa.⁴²⁸ It is estimated that international vehicle trafficking is among the most profitable of black market activities, given that the only significant expenses are for the actual theft of the vehicle and the shipping, which may account for less than 10% of what the vehicle will sell for on the black market.⁴²⁹

In more recent years, IBC statistics show that organized vehicle theft rings are increasingly focused on stealing (or obtaining by fraud) “the sort of luxury all-wheel-drive vehicles popular on the harsh terrain of Ghana or Lebanon,”⁴³⁰ with the Cadillac Escalade and the Hummer being among the most popular, and that luxury vehicles can be sold for two to three times their Canadian value in Africa and Asia.⁴³¹

The following are examples of this trend:

- In 2014, the Toronto Police Service (TPS) led a multi-agency investigation that resulted in eight arrests and the recovery of \$2.3 million in luxury cars, including a Bentley, BMWs, Mercedes SUVs, an Aston Martin and a Porsche.⁴³²
- In 2015, TPS arrested 18 people alleged to be involved in a sophisticated auto theft ring that targeted high-end vehicles in Greater Toronto and shipped them overseas, to Nigeria and Ghana. It was alleged that the cars were “already maybe in a shipping container before they’re even reported stolen,” and that some of the cars had been “promised to black market buyers before they even reached the city...before it’s even delivered to the dealership”.⁴³³

The TPS noted that more than 500 vehicles worth \$60,000 to \$80,000 each were stolen from driveways of homes in high-end neighbourhoods, and that stolen vehicles totalling \$30 million in value had been attributed to the auto theft ring members, who faced 640 criminal charges.⁴³⁴

- In 2016, York Regional Police announced the arrest of 23 people, 137 charges, and the recovery of 60 stolen vehicles, including a Lamborghini Huracan and other high-value cars, as well as weapons, and cash valued at \$5 million. The

⁴²⁸ *Ibid.* at p. 14.

⁴²⁹ *Ibid.*

⁴³⁰ Cathal Kelly, “Criminal gangs go for luxury”, *The Star*, Dec. 10, 2009. Accessed at https://www.thestar.com/business/2009/12/10/criminal_gangs_go_for_luxury.html.

⁴³¹ *Ibid.*

⁴³² James Armstrong, “Police seize \$2.3M in stolen high-end cars in international bust”, *Global News*, Aug. 28, 2014. Accessed at <https://globalnews.ca/news/1531663/police-conduct-raids-in-vehicle-home-break-in-investigation-in-toronto-niagara/>.

⁴³³ Selena Ross, “How high-tech car theft became a billion-dollar Canadian racket”, *Globe and Mail*, Jan. 15, 2016. Accessed at <https://www.theglobeandmail.com/news/toronto/how-high-tech-car-theft-became-a-billion-dollar-canadianracket/article28226997/>.

⁴³⁴ David Shum, “West African ‘Black Axe’ group targeted in major GTA-wide auto theft ring”, *Global News*, Dec. 11, 2015. Accessed at <https://globalnews.ca/news/2394862/toronto-police-execute-35-search-warrants-in-luxury-vehicle-trafficking-probe/>.

accused were alleged to have removed VINs from the stolen cars to avoid them being identified as stolen. They were alleged to have replaced the original VINs with others from cars that had been legally shipped overseas.⁴³⁵

- In 2017, the West Vancouver Police Department (WVPD) arrested a man for “an alleged scheme to buy expensive vehicles using fraudulent credit cards, then quickly ship them offshore to Africa.”⁴³⁶ The scheme involved trucks and luxury SUVs, each worth between \$70,000 and \$100,000, several of which were seized from a container terminal in Vancouver. The Canada Border Services Agency (CBSA) assisted WVPD and tracked three more vehicles held in a port in Shanghai, China, and an additional three vehicles in Cape Town, South Africa, for a total of 10 vehicles.

The accused, who came to Canada as a refugee from the Congo, was detained without bail, refused to speak to police, and pleaded guilty to the sophisticated scheme. His lawyer claimed he was only a “foot soldier” who had been recruited by someone in Quebec.⁴³⁷

After years of decreasing auto thefts in Canada (which likely can be attributed in significant part to the introduction of electronic theft prevention devices), auto thefts have been trending upward for the past several years. In 2017, vehicle thefts in Canada increased by 6% from 2016 (to 85,020 vehicles stolen),⁴³⁸ with about one sixth (16.7%) never recovered.⁴³⁹ In, B.C., stolen vehicles increased by 2% in 2017 compared to 2016, with 14,373 vehicles stolen,⁴⁴⁰ and 18% not recovered.⁴⁴¹

In B.C., several initiatives have been implemented since the late 1990s to address multi-jurisdictional vehicle crime. In 1998, The Auto Theft Task Force (ATTF) was formed to combat what was then a growing trend in auto theft. It was comprised of police officers from municipal departments and the RCMP, as well as Insurance Corporation of B.C. (ICBC) investigators. In

⁴³⁵ Nicole Thompson, “Ontario police bust luxury car theft ring that sold vehicles internationally”, *Canadian Press*, Nov. 25, 2016. Accessed at <https://globalnews.ca/news/3088981/york-police-bust-luxury-car-theft-ring-that-sold-vehicles-across-canada/>.

⁴³⁶ Jane Seyd, “WVPD uncovers alleged \$750K fraud scheme”, *North Shore News*, May 30, 2017. Accessed at <https://www.nsnews.com/news/wvpd-uncovers-alleged-750k-fraud-scheme-1.20290458>.

⁴³⁷ Jane Seyd, “Export fraud scheme involving high-end vehicles nets jail time”, *North Shore News/Squamish Chief*, Dec. 15, 2017. Accessed at <https://www.squamishchief.com/news/local-news/export-fraud-scheme-involving-high-end-vehicles-nets-jail-time-1.23123679>.

⁴³⁸ Mary Allen, “Police-reported crime statistics in Canada, 2017” (Table 7, p. 42), *Juristat* (Ottawa: Statistics Canada, July 23, 2018). Accessed at <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54974-eng.pdf?st=I3SY7h0n>.

⁴³⁹ Douglas Quan, “Many cars stolen in Canada end up smuggled to distant destinations like Asia, Middle East: study”, *National Post*, Dec. 11, 2018. Accessed at <https://nationalpost.com/news/canada/many-cars-stolen-in-canada-end-up-smuggled-to-distant-destinations-like-asia-middle-east-study>.

⁴⁴⁰ Mary Allen, “Police-reported crime statistics in Canada, 2017”, *supra*.

⁴⁴¹ B.C. stolen vehicle recovery statistics provided by IMPACT on Jan. 17, 2018. These figures include all stolen vehicles reported to police in B.C., not just those insured by ICBC.

2002, the ATTF was amalgamated with other “E” Division RCMP resources committed to auto theft, forming the Integrated Municipal Provincial Auto Crime Team (IMPACT). This team is comprised of “twenty-two specialized police auto theft investigators from seven police forces in the Greater Vancouver Area” and has a mandate to develop “innovative strategies to reduce auto crime in British Columbia.”⁴⁴²

IMPACT provided us with statistics comparing the recovery rate of vehicles overall, compared to those of selected luxury car brands. The graphic below clearly indicates that the non-recovered rate for luxury cars (24%) is significantly higher than the non-recovered rate generally in B.C. (18%). This supports the hypothesis that luxury cars are being stolen for export.⁴⁴³

Make	Pre 2007 Models			Post 2007 Models			All Models Total		
	# Stolen	# Unrecovered	% Unrecovered	# Stolen	# Unrecovered	% Unrecovered	# Stolen	# Unrecovered	% Unrecovered
BMW	52	21	40%	55	10	18%	107	31	29%
MERCEDES-BENZ	35	10	29%	59	10	17%	94	20	21%
AUDI	29	2	7%	47	10	21%	76	12	16%
LEXUS	9	2	22%	24	3	13%	33	5	15%
LAND ROVER	6	4	67%	18	6	33%	24	10	42%
PORSCHE	11	6	55%	10	2	20%	21	8	38%
JAGUAR	4		0%	4	1	25%	8	1	13%
FERRARI	1	1	100%	1	0	0%	2	1	50%
BENTLEY				2	1	50%	2	1	50%
TESLA MOTORS				1	0	0%	1	0	0%
TOTAL	147	46	31%	221	43	19%	368	89	24%

The total loss payouts by ICBC for all unrecovered stolen vehicles in B.C. from 2015 to 2018, inclusive, have averaged in excess of \$40 million annually, a significant cost to taxpayers.⁴⁴⁴

IBC has raised concerns that there is so much focus on the Canadian border with what is being smuggled into Canada, such as fentanyl, that not enough attention is paid to exports, including stolen vehicles intended for the black market overseas.⁴⁴⁵ CBSA officers have also raised concerns, noting in 2018 that when they located suspected stolen vehicles in the Port of Montreal, police were reluctant to investigate, citing a lack of resources or jurisdictional

⁴⁴² <https://www.baitcar.com/about-impact-bait-car-program>.

⁴⁴³ Provided by IMPACT on Jan. 29, 2019 (the vehicles are divided between pre- and post-2007 because in 2007 electronic immobilizers became mandatory for cars sold in Canada and this initiative had a significant impact on auto theft rates).

⁴⁴⁴ Data provided by ICBC Information Management. Also, see Mia Dauvergne, “Motor vehicle theft in Canada, 2007”, Juristat (Ottawa: Statistics Canada, Dec. 2008). Accessed at <https://www150.statcan.gc.ca/n1/pub/85-002-x/2008010/article/10744-eng.htm#r5>.

⁴⁴⁵ Douglas Quan, “Many cars stolen in Canada end up smuggled...”, *supra*.

issues.⁴⁴⁶ That situation in Montreal has now improved. According to Inspector Brian MacDonald, the Officer in Charge of IMPACT:

“CBSA has two agents who work the declarations looking for anomalies such as odd routing, etc. Once they have identified them they notify Montreal Police. Montreal Police and IBC examine the vehicles and determine whether they are stolen. If they are stolen they are removed from the container and held for examination. They seized over 300 cars last year including 29 in one weekend.”

Inspector MacDonald noted that in January 2019, as a result of information from CBSA in Vancouver, IMPACT located a container with three stolen vehicles inside. He remains concerned however that “no one is working our ports like they should be.”⁴⁴⁷

We interviewed CBSA representatives who described the great challenges which they face in attempting to locate stolen vehicles in containers without unreasonably slowing down commerce and interfering with the legal shipment of goods. Furthermore, the CBSA is focused on the import of opioids and precursors, given the devastating impact of the fentanyl crisis in B.C. Its officers are responsible for multiple sites, including border crossings, airports, marine facilities, and the Canada Post mail centre.

The three officers assigned specifically to reviewing exports and related documentation in Vancouver are responsible for reviewing over 100,000 files a year. If there are indicators present (e.g., suspicious documentation) or they receive reliable information from police, CBSA officers will administratively detain containers to assist police investigations and will seize containers or vehicles in them if the VINs are listed on the Canadian Police Information Centre (CPIC) system as stolen.

They note that exporters of stolen vehicles engage in a number of strategies to thwart CBSA, including hiding stolen vehicles behind other products, placing them in containers with vehicles that are not stolen, and suspending vehicles with chains, which requires that the container be transported to a specialized facility to safely unload the vehicles for examination. In fiscal 2018, CBSA seized eight stolen vehicles in Metro Vancouver port facilities.

Adding to all of this, it has been alleged for many years that outlaw motorcycle gangs have a strong presence on Greater Vancouver waterfronts, particularly in terms of container traffic.⁴⁴⁸

⁴⁴⁶ Stewart Bell and Andrew Russell, “Border officers frustrated at police inaction over stolen cars being exported through Montreal”, *Global News*, June 28, 2018. Accessed at <https://globalnews.ca/news/4297929/stolen-cars-export-canada/>.

⁴⁴⁷ E-mail conversation with review team on Feb. 2, 2019.

⁴⁴⁸ Kim Bolan, “Organized crime and the port: part one of my series”, *Vancouver Sun*, May 8, 2015. Accessed at <https://vancouversun.com/news/staff-blogs/organized-crime-and-the-port-part-one-of-my-series>.

CRIMINAL ENFORCEMENT AT PORTS

Vehicle theft is increasing in Canada and B.C. The disproportionate number of luxury vehicles not recovered by police is compelling evidence of organized vehicle theft rings stealing cars for export overseas.

Canadian ports, including Vancouver, Surrey and Prince Rupert do not have a dedicated police presence. Since the demise of the Ports Canada Police in 1997, it has been left to municipal police to patrol docks and ports. In the post-911 world this is a serious gap in our law enforcement umbrella. The comparison to Seattle is stark, where the Port of Seattle Police Department has 150 staff to police SeaTac Airport and the Seaport, including numerous specialized units.⁴⁴⁹ In addition, U.S. federal authorities are present at the ports, including border patrol, customs officers, and others.

The need to address the export of stolen and fraudulently obtained vehicles from ports in Greater Vancouver is a subset of the larger issue of port enforcement. IMPACT has recommended a joint police-CBSA unit, with secondments from ICBC and IBC. Although an *ad hoc* arrangement such as that can target a specific commodity, without long-standing funding commitments and a permanent presence, it really is a temporary solution.

⁴⁴⁹ <https://www.portseattle.org/about/port-police>.

CHAPTER 3-2

CRIME VEHICLES

Life and Death in the Fast Lane – Gangsters and their Luxury Cars

FINDINGS

- Vehicles are often used as a means by which to perpetrate crimes (i.e., offence related property).
- Many criminals are attracted to a lifestyle of luxury and consumptive wealth, in which they invest their profits of crime. Luxury vehicles is an example.

INTRODUCTION

Gangsters in B.C. have often been associated, for good reason, with living a fast life of upscale restaurants, designer clothes, expensive jewellery, and luxury cars, funded and fuelled by drug trafficking and other crimes.⁴⁵⁰ Through their ostentatious lifestyle, they seek to portray power and wealth. One expert on gangs internationally wrote, “In none of the places that I visited did I see the same level of wealth on display by gang members that I have observed in B.C.”⁴⁵¹

British Columbia gangs are unlike territorial street gangs in other cities in the world that are a product of economic necessity or oppression; rather, they are motivated by the “ability to make quick money and enjoy a lifestyle of hedonism and decadence,”⁴⁵² and their girlfriends have “a desire to live in the upper echelon of society – fast cars, fast drugs and fast parties.”⁴⁵³ In the words of gang expert, Sergeant Keiron McConnell:

⁴⁵⁰ One gangster’s seized jewellery was valued at over \$245,000. Most of it was forfeited to the province after he was murdered. See, “Gangster bling sought by B.C. Forfeiture Office”, *CBC*, accessed at <https://www.cbc.ca/news/canada/british-columbia/gangster-bling-sought-by-b-c-forfeiture-office-1.1176958>; and Mark Nielsen, “Dead gangster’s bling forfeited to government”, *Prince George Citizen*, Nov. 14, 2014. Accessed at <https://www.princegeorgecitizen.com/news/local-news/dead-gangster-s-bling-forfeited-to-government-1.1587420>.

⁴⁵¹ McConnell, Keiron, *The Construction of the Gang in British Columbia: Mafioso, Gangster, or Thug? An Examination of the Uniqueness of the BC Gangster Phenomenon*, Doctoral dissertation, 2015 at p. 172. Accessed at <https://kora.kpu.ca/islandora/object/kora%3A279/dastream/PDF/view>.

⁴⁵² *Ibid.* at p. 194.

⁴⁵³ Gottenbos, N., et al., “Gangster Girlfriends in British Columbia: The Allure of Louboutin, Chanel, and Tiffany”, *Journal of Gang Research*, V26N1 (2018) at pp. 17-37. Accessed at <https://kora.kpu.ca/islandora/object/kora%3A544/dastream/PDF/view>.

"The main ingredient and uniqueness of B.C. gangsters is the sheer money involved. In Chicago, you see gang guys making minimum wage selling drugs on the corner because as soon as an employer sees their zip code, they can't even get a job at McDonald's. It's a rational choice in an irrational situation. It's the same in London, England, Los Angeles and other cities. Here, it's irrational choices to rational situations – they are *choosing* to get into gangs; it's not about being born into it, protecting your friends, neighbourhoods, territory. They don't care about any of that other stuff except money. Over 50 percent of our kids who enter gangs are coming from middle or upper class homes but they want more and want it quicker. With our proximity to the Pacific Rim and Mexico, the money available is so huge."⁴⁵⁴

Notwithstanding the flamboyant displays of apparent wealth, the truth can be somewhat different than outward appearances suggest, as many gangsters, at least those not in the highest echelons, tend to live for the moment, spending their cash as quickly as they make it, leasing vehicles and upscale condominiums without accumulating any real wealth.

Gangsters in B.C. are well-known to have either purchased, leased, or rented expensive luxury vehicles, and on those occasions when gangsters are murdered, the incidents often occur in or near their vehicles. For example, in its 2014 Report to the Community, CFSEU-BC noted that of a sample of 139 homicides of gangsters, almost 31% took place inside a vehicle, and almost 4% occurred outside or near a vehicle.⁴⁵⁵ Furthermore, on many occasions, gangsters' vehicles have been seized pursuant to criminal investigations and subsequently been made the subject of civil forfeiture applications. Media reports about many of these incidents provide a rich source of information about the vehicles in which gangsters live and die (see Schedule "A").

Sometimes, criminals purchase vehicles using cash with the intention of laundering criminal proceeds. They often have no legitimate source of income and wish to avoid the oversight regime which regulates most financial institutions.

[Police Investigations](#)

In October 2008, the *Vancouver Sun* reported that a car lot in Coquitlam, B.C. leased more than a dozen high-end cars to leaders of the UN gang, associates of the Red Scorpions, and to an accused drug trafficker, among others. The story noted that "police and regulators say many gangsters are leasing cars as an easy way to unload some of their illicit cash on big-ticket luxury vehicles" and that gangsters were leasing vehicles to "more easily avoid having vehicles seized by the government" under civil forfeiture. Inspector Dean Robinson noted that his gang task

⁴⁵⁴ Interview with Sergeant Keiron McConnell, PhD, long-time Vancouver Police Department member and gang expert, on Jan. 21, 2018.

⁴⁵⁵ CFSEU – BC, "BC's Anti-Gang Police 2014 Community Report: Prevention and Public Engagement", 2015, at p. 4. Accessed at https://www.cfseu.bc.ca/wp-content/uploads/2014/09/Combined_Forces_Special_Enforcement_Unit_CFSEU-BC_British_Columbia_BCs_Anti_Gang_Police_2014_Community_Report_On_Prevention_and_Public_Engagement1.pdf.

force officers were stopping gangsters in their “expensive rides, often modified with bullet-proof Kevlar and secret gun compartments.”⁴⁵⁶

Several senior police investigators interviewed for this Review have advised that they are aware of several recent cases (including some currently before the courts) in which gangsters have purchased or leased expensive vehicles in Greater Vancouver using cash.

The VPD and Surrey RCMP Detachment are the two largest municipal police agencies in B.C. They each police a municipality where significant organized crime/gang activity occurs, and they are the only municipal police agencies that have asset forfeiture teams (AFT). The VPD team noted that gangsters are increasingly leasing vehicles rather than purchasing them, likely in the hope of suffering less financial impact when vehicles are seized by police.

The trend for gangsters to lease vehicles has resulted in a steady reduction in the number of vehicles referred for civil forfeiture proceedings, with 103 vehicles referred by the VPD in 2016, 72 in 2017, and 66 in 2018. The VPD indicated that the vast majority of vehicles were seized as offence related property, such as vehicles used by traffickers in the sale of drugs, sometimes with hidden compartments to hide drugs and other contraband.

Surrey's AFT was created in 2001 and supports the drug unit as well as frontline officers. Historically the team was focused on the seizure of residences used for cannabis grow-ops, but more recently it has focused on the vehicles and cash being seized as a result of the street level drug trade. Currently, more than 90% of their referrals to the Civil Forfeiture Office are for seized vehicles and cash related to drug offences. Proceeds of crime investigations were found to be too resource-intensive to justify the results, although certain cases are referred to FinTRAC and to CRA.

Since 2014, the Surrey AFT has referred 278 vehicles to the CFO, with only 35 cases declined or discontinued by the CFO. The majority of the vehicles are worth \$10,000 or less and are almost always seized as offence related property (e.g., a car used for drug trafficking), and not as the proceeds of crime. The method of purchase is not investigated.

Surrey AFT advised that it is currently seeing a trend in ‘fly-by-night’ companies renting luxury cars to gangsters, as well as nominee owners, such as drug addicts without jobs who ostensibly own numerous cars, with the true owner being a drug trafficker seeking to disguise his ownership and/or guard against seizure.

“E” Division RCMP has a provincial AFT that supports RCMP detachments around the province and is the “gatekeeper” for all RCMP referrals to the CFO. A representative advised that in 2018, the total files referred by the RCMP to the CFO was 861, of which 287 involved vehicles. Similar to the VPD and Surrey RCMP, almost all the vehicles were seized as offence related

⁴⁵⁶ Kim Bolan, “Gangsters find rides at four star auto lease”, *Vancouver Sun*, Oct. 25, 2008. Accessed at <https://www.pressreader.com/canada/vancouver-sun/20081025/281732675314915>.

property because they were used in crimes, such as by a dial-a-doper, with very few being the actual proceeds of crime.

In October 2014, the CFO announced that in the previous eight years, “approximately 250 vehicles had been forfeited, most with links to drugs, gangs or organized crime,” examples being a Nissan 350Z, a BMW SUV, and a Hummer.⁴⁵⁷

Investigators from several police agencies noted that the Public Prosecution Service of Canada (PPSC or Federal Crown) preferred to proceed on the primary offence alleged, generally drug trafficking, and is less likely to approve proceeds of crime prosecutions for vehicles or even cash when seized from an alleged drug trafficker. It was also noted that obtaining evidence sufficient to meet the burden of proof for a criminal charge was high, the return on investment of scarce resources was low, and because a case could typically take two years to conclude in court, the storage costs for the vehicles seized could exceed their value and “then there’s a fight over who pays the storage costs”. A referral to the CFO was seen as more efficient and effective.

⁴⁵⁷ Peter Meiszner, “More forfeited gangster vehicles to end up in hands of police”, *Global News*, Oct. 7, 2014. Accessed at <https://globalnews.ca/news/1603048/more-forfeited-gangster-vehicles-to-end-up-in-hands-of-police/>.

SCHEDULE “A”

- In November 2007, well-known gangster Ali Abhari and his associate, Ronal Shakeel Raj, were shot to death in Abhari’s leased Mercedes on Granville Street in Vancouver’s Marpole neighbourhood. Abhari was reported to have co-owned a house assessed at \$802,000 and to have leased a Cadillac Escalade and a Mercedes.⁴⁵⁸ A VPD Deputy Chief who attended the scene of the murders later commented to the media, “Those who think the gang lifestyle is appealing, looking at these two men, full of bullet holes, they didn’t look glamorous at all.”⁴⁵⁹
- In January 2008, reputed hitman-for-hire Ricardo Scarpino and another person were murdered in a Range Rover as it approached the upscale Gotham Steakhouse, where Scarpino was about to celebrate his engagement.⁴⁶⁰
- In May 2008, an innocent car stereo installer, Jonathan Barber, was killed by gunfire from an AK-47. He was the victim of mistaken identity while driving a black Porsche Cayenne, in which he was hired to install a stereo. The Porsche was owned by gangsters who were being hunted by rivals.⁴⁶¹
- In February 2009, Nicole Marie Alemy was shot and killed after being mistaken for her alleged gangster-husband while driving his Cadillac with her four-year-old son in the back seat.⁴⁶²
- Also in February 2009, the media reported that police seized a fully armoured luxury BMW 745i leased by Bacon brothers Jamie, Jarrod and Jonathan from Four Star Auto Lease in Coquitlam, B.C. The agency had reportedly leased a number of vehicles to the Bacons and their associates. The same article noted that Jamie Bacon had been shot at the previous month while driving his armoured Mercedes.⁴⁶³

⁴⁵⁸ Kim Bolan and Neal Hall, “Police vow to get tough on gangs”, *Vancouver Sun*, Nov. 7, 2007. Accessed at <http://www.vancouversun.com/touch/news/metro/police+tough+gangs/9799588/story.html>.

⁴⁵⁹ Mark Hume, “Gang conflict claims two more lives in Vancouver”, *Globe and Mail*, Nov. 7, 2017. Accessed at <https://www.theglobeandmail.com/news/national/gang-conflict-claims-two-more-lives-in-vancouver/article1089123/>.

⁴⁶⁰ Jon Woodward, “Vancouver men targeted in steakhouse shooting”, *CTV News Vancouver*, Jan. 23, 2008. Accessed at <https://bc.ctvnews.ca/vancouver-men-targeted-in-steakhouse-shooting-1.272018>.

⁴⁶¹ Kim Bolan, “UN gang twins sentenced to two years for roles in Metro Vancouver murders”, *Vancouver Sun*, Sept. 28, 2016. Accessed at <https://vancouversun.com/news/crime/un-gang-twins-sentenced-to-two-years-for-roles-in-murders>.

⁴⁶² “Police identify White Rock mother killed in Surrey shooting”, *CBC News*, Feb. 17, 2009. Accessed at <https://www.cbc.ca/news/canada/british-columbia/police-identify-white-rock-mother-killed-in-surrey-shooting-1.861787>.

⁴⁶³ “Police holding armoured car belonging to Bacon brothers”, *CBC News*, Feb. 27, 2009. Accessed at <https://www.cbc.ca/news/canada/british-columbia/police-holding-armoured-car-belonging-to-bacon-brothers-1.857597>.

- In September 2009, a well-known former UN gang member, David Tajali, was shot to death in Calgary while driving his luxury BMW.⁴⁶⁴ He was believed to have been the target of a murder plot in Richmond, B.C. in 2007, in which an innocent man driving an identical vehicle to Tajali's was murdered.
- In August 2011, Red Scorpion gang member Jonathan Bacon was murdered, and three others seriously injured, when gunmen opened fire on a white Porsche Cayenne outside a Kelowna hotel.⁴⁶⁵
- In August 2013, gangster Albert Arrance was fatally shot while sitting in a luxury SUV in Coquitlam, B.C.⁴⁶⁶
- In October 2017, Taqdir Singh Gill and Walta Abay, along with five others, were arrested for conspiracy to commit murder and other offences.⁴⁶⁷ They were driving a rented Mercedes.⁴⁶⁸ A director of the rental agency denied knowingly renting to gangsters.⁴⁶⁹ In December 2018, Gill pleaded guilty to conspiracy to commit arson, conspiracy to discharge a firearm, and possession of a loaded prohibited gun. He was sentenced to six years in prison. Abay was sentenced to an additional four years for being in a vehicle with Gill knowing there was a loaded firearm inside.⁴⁷⁰
- Also in October 2017, former B.C. Hells Angel Jamie Holland was shot to death in Toronto. He was well known to police in B.C., lived in an expensive condo and drove a Lamborghini. Reportedly he had also owned an armoured BMW.⁴⁷¹

⁴⁶⁴ "Former B.C. gangster shot to death in Calgary", *CTV News Vancouver*, Sept. 7, 2009. Accessed at <https://bc.ctvnews.ca/former-b-c-gangster-shot-to-death-in-calgary-1.431947>.

⁴⁶⁵ Andrea Peacock, "Three men plead guilty in gangster's shooting death outside B.C. hotel in 2011", *Kelowna Daily Courier*, May 1, 2018. Accessed at http://www.kelownadailycourier.ca/news/national_news/article_76e54668-c723-55e3-87e2-caa90f1952a0.html.

⁴⁶⁶ Mark Nielsen, "Dead gangster's bling forfeited to government," *supra*.

⁴⁶⁷ Kim Bolan, "Vancouver police's anti-gang operation leads to seven arrests", *Vancouver Sun*, May 17, 2018. Accessed at <https://vancouversun.com/news/local-news/live-vancouver-police-say-they-dismantled-violent-crime-group>.

⁴⁶⁸ Interview with a VPD senior investigator on Jan. 25, 2019.

⁴⁶⁹ Kim Bolan, "B.C. gangsters take the wheel of rental cars to commit crimes", *Vancouver Sun*, Oct. 7, 2015, accessed at <http://www.vancouversun.com/news/gangsters+take+wheel+rental+cars+commit+crimes/11419278/story.html>; and Keith Fraser, "Another forfeiture lawsuit filed against Vancouver car rental agency", *Vancouver Sun*, May 12, 2016, accessed at <https://vancouversun.com/news/local-news/another-forfeiture-lawsuit-filed-against-vancouver-car-rental-agency>.

⁴⁷⁰ Kim Bolan, "Young Lower Mainland gangsters sent to prison on arson conspiracy, gun charges", *Vancouver Sun*, Dec. 14, 2018. Accessed at <https://vancouversun.com/news/crime/young-gangsters-sent-to-prison-on-arson-conspiracy-gun-charges>.

⁴⁷¹ Kim Bolan, "Former B.C. Hells Angel gunned down outside Toronto strip mall", *Vancouver Sun*, Oct. 16, 2017. Accessed at <https://vancouversun.com/news/crime/ex-b-c-hells-angel-gunned-down-outside-toronto-strip-mall>.

- In August 2018, a multi-agency police task force investigation into gang activity in Greater Vancouver arrested members of the “Kang/Latimer Group”; including seizing 93 firearms, an improvised explosive device, 59 prohibited devices, 9.5 kilograms of fentanyl, almost 40 kilograms of other illicit drugs, \$833,000 in cash, \$800,000 in jewellery, and \$350,000 in collector cars, all of which became the subject of civil forfeiture proceedings.⁴⁷² Fourteen individuals were charged with 92 criminal offences.⁴⁷³
- The next week, the Delta Police Department announced additional drug trafficking and weapons charges against seven men linked to the Red Scorpion gang, including Kyle Latimer, who had recently been arrested in the case described above. In relation to this set of charges, four luxury vehicles were seized along with \$82,000 in cash.⁴⁷⁴
- In December 2018, Langley RCMP announced that a high-performance Mercedes Benz C63 AMG seized from an alleged drug dealer would be used for anti-gang programs in Langley.⁴⁷⁵

⁴⁷² Kim Bolan, “Police probe leads to dozens of charges against Red Scorpion, Kang gangsters”, *Vancouver Sun*, Aug. 18, 2018. Accessed at <https://vancouversun.com/news/crime/police-probe-leads-to-dozens-of-charges-against-red-scorpion-kang-gangsters/>.

⁴⁷³ VPD, “Joint Forces Police Operation Brings Down Major Crime Groups”, Press release, Accessed at <https://mediareleases.vpd.ca/2018/08/10/joint-forces-police-operation-brings-down-major-crime-groups/>.

⁴⁷⁴ Kim Bolan, “Delta Police announce more charges against Red Scorpions”, *Vancouver Sun*, Aug. 15, 2018. Accessed at <https://vancouversun.com/news/crime/delta-police-announce-more-charges-against-red-scorpions/>.

⁴⁷⁵ Matthew Claxton, “New Langley anti-gang vehicle was seized from drug trafficker”, *Langley Advance*, Dec. 5, 2018. Accessed at <https://www.langleyadvance.com/news/new-langley-anti-gang-vehicle-was-seized-from-drug-trafficker/>.

CHAPTER 3-3

LUXURY VEHICLES & MONEY LAUNDERING

FINDINGS

- Organized crime figures are unhindered in their ability to launder the proceeds of crime through high-end, luxury vehicle purchases within Greater Vancouver.
- Some dealers have accepted large sums of cash from suspicious individuals, to pay for high-end, luxury vehicles.
- The fact that dealers deposit the cash proceeds of vehicle sales (including bank drafts) in mainstream financial institutions fails to provide any visibility on the transaction at the point of sale, including the purchaser's source of funds.
- There is no ability to determine the source of wealth of luxury vehicle purchasers when foreign credit and other payment systems are used.
- The absence of financial reporting by vehicle dealers to FinTRAC leaves this sector largely unregulated from a financial crime perspective.
- Vehicle auction house are also not a reporting sector to FinTRAC. The degree to which money is laundered through B.C. vehicle auctions is unknown.
- The provincial regulator of vehicles is focused on consumer protection and not money laundering.
- Vehicle industry associations do not view cash-based sales as a significant concern.
- Canada would benefit from universal cash reporting of cash sales over a threshold, as exists in the U.S. and applies to vehicle dealers.
- Geographic Tracking Orders would be a valuable supplement to cash reporting, by placing additional reporting requirements on business within a geographic area of concern.

INTRODUCTION

Vancouver has been dubbed the “luxury car capital of North America”⁴⁷⁶ and UBC has been dubbed the “University of Beautiful Cars for the student-owned fleet of Lamborghinis, Aston Martins and Porsches parked in campus lots.”⁴⁷⁷ Greater Vancouver even has its “first luxury car condo” being constructed in Richmond, designed to house luxury cars in style.⁴⁷⁸ Nevertheless, ‘supercars’ and extreme luxury vehicles are still a small proportion of vehicles sold in B.C. There are also many other high-value vehicles attractive to both organized theft rings, gangsters and money launderers, as evidenced by the types of vehicles recovered in major police investigations.

There are no laws or regulations prohibiting the cash purchase of vehicles and, unlike banks and casinos, car dealerships are not required to report large cash transactions or suspicious transactions to FinTRAC. In fact, there is no mechanism for them to do so because they are not designated as reporting entities under the *POCMLTFA*.

INTERVIEWS OF NEW CAR DEALERS

There is no better way to describe what is occurring than through the words of auto dealers.

A new car dealer assured us that their business has a policy of not accepting cash in an amount exceeding \$9,999. This is a curious figure as it corresponds with the maximum amount that a FinTRAC reporting entity can receive without filing an LCTR. As auto dealers are not reporting entities, it may reflect dealers not wishing to have LCTRs filed by financial institutions on their deposits.

Another new car dealer told a very different story, describing large cash sales occurring on a monthly basis. The employee candidly stated. “I’m right in the thick of money laundering here”. He noted that they can and do accept cash. Several years ago, a young person purchased a vehicle for in excess of \$200,000. For safety, a few employees of the dealership took the money, in a bag, to the dealer’s bank. The bank asked what it was for. An employee replied that it was from the sale of a car and the bank employee said that was fine.

A new car dealer provided some background on cash transactions:

⁴⁷⁶ Jon Azpiri, “Metro Vancouver the luxury car capital of North America”, *Global News*, Jan. 11, 2016. Accessed at <https://globalnews.ca/news/2447804/metro-vancouver-the-luxury-car-capital-of-north-america/>.

⁴⁷⁷ Natalie Obiko Pearson, “Rich Moms and Millennials Make Canada Hot for Rolls-Royce”, *Bloomberg*, June 6, 2018. Accessed at <https://www.bloomberg.com/news/articles/2018-06-06/rich-moms-millennials-make-canada-a-hot-market-for-rolls-royce>.

⁴⁷⁸ Stephanie Mitchell, “Sneak Peek: Vancouver’s First Luxury Car Condo”, *Vancouver Magazine*, Sept. 20, 2017. Accessed at <https://vanmag.com/city/sneak-peek-vancouvers-first-luxury-car-condo/>.

"Sales with physical cash have become a lot less frequent in the last few years, I think with all the publicity, but I would say it happens now about once a month. Usually it's 40, 50, or 60 thousand dollars.

I think cash is going further away with all the publicity recently. One of the reasons they were paying cash is because they couldn't get financing because they couldn't show a legitimate source of income. Traditionally for financing, the bank would need a T4 or a pay stub or something like that to show there was a job with income. Until a few years ago you had to substantiate income or have a really good credit history, like have paid off mortgages and loans. Or they would want to verify their job. Now the banks are willing to allow us to show the bank a bank statement of money going in and out of multiple accounts through wire transfers 10 or 20 or 30 thousand a month and the bank will accept that as income for the purposes of financing. That will negate the need for cash because the bank will give them the loan and then they're paying for it with money wired into their [bank] accounts from overseas.

About 10 times a month we'll get a foreign student with zero credit, zero job income, but proof of income through incoming wire transfers and the bank will provide financing because they are accepting the wire transfers and bank statements as proof of income.

It's unequivocally money laundering. People who are not employed, don't pay tax, showing bank statements with large sums being wired frequently into their accounts... Why is it multiple transfers being wired into accounts in relatively small amounts [to] several accounts? These are people who aren't paying income tax, who don't work, but can buy expensive cars with money coming from out of the country.

[In my discussion with colleagues in the high-end auto business], if there wasn't the money laundering...we are selling way too many luxury and premium cars for this economy, for what people earn here. They're telling me five or six years ago these guys were buying these supercars with cash, but now they lease them. There would be a fairly substantial down payment, like 20 percent, then that vehicle would stay registered in the lease company's name and then the leaser would be wiring in \$5,000 a month on this very expensive car...it makes me sick because these guys aren't paying income tax on this income coming in."

The employee also described an incident in which a gangster purchased a limited production high performance vehicle for cash:

"The [individual] came and paid cash for that car, physical cash, it was \$[six figures].... He showed up with the cash in a bag. When we took that money to the bank they just said, what's it for? And we said a car, and they said fine and that was it.

I don't know what you do. We used to have to fill in a form for cash over \$10,000 but that went away, that was the late 1990s. If I have the ability to say yes or no to filling out the form and I have to tell that guy and he thinks I'm getting him into trouble or

starting an investigation on him by reporting the cash sale, that's not a good spot to be in.

We have WeChat Pay⁴⁷⁹ and UnionPay.⁴⁸⁰ These are some kind of direct debit or credit card to China that they pay for cars with and the money comes out of China. There's not a dealership in [city] that doesn't take payment like that. They're not buying on Canadian Visa cards and paying bills here.

As a dealership operator, I see these young kids driving these super cars and super luxury cars, and no one has looked at the source of income and audited this. Some of these cars are a half million dollars. It's so blatant. It seems like it's a norm here now. As a citizen I see a young person bringing funds in from China and driving cars like that as a norm and someone should be doing something about it...

Making cash payments reportable fixes the problem from 10 years ago but not now and it puts us in a hard spot... I want a rule that says no cash transactions period on cars because I don't want to have to deal with it and tell the buyer I have to report the cash sale...

In talking with other dealers, I don't think physical cash transactions are that common anymore; you're 8 years behind the game because they've found other ways to do it, like getting financing based on bank statements of cash wired in from China and then they're paying for the financing or the lease with money that comes in and the source is not being looked at. So I don't think the big problem is cash sales anymore, it's how the cash gets here...I think the problem is that so much cash is coming into the country through suspicious means, that's what needs to be dealt with.

But don't put us between the government and [gangsters] because that's not fair...We should require people to substantiate their income is coming from a valid source. I would target people who claim no income and buy a \$500,000 car and make \$5,000 a month payments. How can that fly under the radar? How is a 19-year-old kid driving a \$500,000 car that he's making huge payments on, yet I get a letter from CRA because I forgot to report one T5 with \$60 interest?"

Another dealer of high-end vehicles provided the following:

⁴⁷⁹ According to its website, WeChat Pay is used by hundreds of millions of users every day and is one of the most popular payment methods in China, allowing payment by Quick Pay, QR Code, In-APP Web-Based or Native In-App Payments and allows cross-border settlement across foreign currencies. Accessed at <https://pay.weixin.qq.com/index.php/public/wechatpay/home>.

⁴⁸⁰ According to the UnionPay website, "UnionPay cards can be smoothly used at 174 countries and regions worldwide...more than 10 million overseas online merchants accept UnionPay Online Payment...UnionPay online payment has the characteristics of convenient, and other characteristics, through multiple security technology and risk monitoring, to ensure the safety of cross-border online payment." Accessed at <http://www.unionpayintl.com/en/servicesProducts/products/innovativeProducts/onlinePayment/>.

"Anything above \$10,000 I ask them to sign a declaration form and I take the cash to the bank. I've taken cash three times in the last 12 months. But when I say I won't take more than \$10,000 unless they sign a declaration, then they always say ok, ok and then they don't try to pay in cash anymore so it's never more than \$10,000.

...Our leasing company doesn't take cash. But I know of small independent dealers and leasing companies that will take cash. Just the fact that they use an independent leasing company is suspicious because there's no reason to involve multiple parties because those transactions add cost. So on an [expensive car], that's going to be three or four thousand a month payment which doesn't attract a lot of attention and is less noticeable than a large amount. If they come in and they have made arrangements with one of these independent leasing companies, I'll deal with them. If they don't have a leasing company, we have several reputable ones that we can refer them to.

Sometimes I'm approached by a small independent leasing company who say they have a client, and it just smells fishy... Real business people are really tight with their money. But the hoods, they just walk in and say I want that and don't even care about the price. And I deal with independent leasing companies who give me the feeling their client doesn't care about the cost, they just want the car.

I feel like where the money laundering is happening is in the independents. I'm not going to risk my franchise agreement...with a few sales to bad people because our reputation is everything.

The guy who has no job and making the big lease payments, he doesn't deal with me, he's dealing with a leasing company. Sometimes they're students and mom and dad don't live here and they're just depositing money in their accounts here, so it could be legit...But who knows with some of these students here from Asia.

There are a lot of small independent car dealers in [city] who I'd be looking at. If [another high-end new car dealer] has one of my cars it makes sense, to resell as a used car. But when a small fly-by-night company is all of a sudden selling \$300,000 or \$400,000 cars, where does he get the means to do that?

Any luxury car that isn't leased through the luxury car company itself is suspicious because if they have the means to buy the car, they should be able to prove their source of income to the manufacturer's leasing company or who the dealership uses. Why are these [small independent leasing companies] getting this business to lease high end vehicles? ...it just doesn't feel right to me.

... we'll get guys come in here with a bank draft for a car and they just drive away. We'll hear their parents own a factory in Guangzhou or work for the Chinese government and it sounds solid....The gangsters who have the means to drive my cars keep a lower profile than the ones who are in your face and have a profile in the media.

It's not as prevalent as it used to be. But I sold [a murdered gangster] a [high-end luxury car], and he leased it through [a leasing company],.... I used to sell a lot of [luxury/performance cars] to known gangsters...It doesn't feel like that anymore. So they're getting better at covering up. And some of these guys will send someone in and only come in to sign the paperwork.

[A leasing company] was investigated for illegal consignments and fined \$300. They weren't licensed to do consignments. A \$300 fine for someone moving \$400,000 or \$500,000 cars is a joke.

I had a guy who owned a [business] and he insisted on paying \$200,000 cash and I said ok, well you meet me at the bank and you pay them and they can count it. He said it was a cash business and I told him straight out I knew he wasn't paying tax on a third of his income... and I didn't care, I wasn't going to take the cash. He was all mad about it but he brought me a draft. I have too much at stake with [the manufacturer], it's not worth it. But I can see the smaller dealers and independents being willing to take cash [for purchase or lease]...I think it's more often about avoiding paying income tax on income, not laundering money that's proceeds of crime...so they'll deal with someone where "a guy" is making the decision about whether to lease, not banks with rules about showing source of income, debt/income ratios, that kind of thing."

We recognize the fact that there can be animosity between new car dealers and resellers, and that this could influence comments which we received. At the very least, it is apparent that the luxury car industry is home to a wide range of dealers, some of whom are quite prepared to express concerns about their competitors in related markets.

A dealer reported being defrauded of a high-end vehicle by a gangster providing an altered bank draft at the end of a Friday before a long weekend. Before the bank draft could be verified the following week, the gangster had already sold the car to a luxury car reseller. A police officer involved in the subsequent investigation confirmed to us that the reseller had paid \$120,000 less for the vehicle than its purchase price the day before. The cash proceeds were placed in a safe on the premises. He promptly advertised the car for \$120,000 more than he had just paid, but he refused to disclose to police the source of the cash. Police did not seize the vehicle. By the time they located it, the new car dealer's insurance on the fraudulently obtained vehicle had already been paid out. The matter never came to trial because the original purchaser/fraudster was subsequently murdered in another jurisdiction.

Another car dealer who sells luxury vehicles reported making cash sales about once every month or two. He also advised that his dealership tries to avoid leasing vehicles to gangsters because of the numerous times that the cars have been seized by police, creating costs for the dealership. He advised that each time this occurred, the lessee would be blacklisted from leasing in the future.

A common money laundering scheme reported by a new car dealer and confirmed by police was described as follows. The suspect attends a dealership to test drive a vehicle. He then

makes a large cash deposit ranging from \$10,000 to \$25,000 to hold a vehicle for a possible sale and advises that he will come back the next day to discuss and finalize the sale. The suspect returns the next day and claims he “changed his mind” about purchasing the vehicle. He requests the return of his deposit. Since the dealership has already deposited the cash in its bank, it issues a cheque to refund the deposit. The owner of one dealership advised that he only became aware of this being a money laundering scam because he recognized the same name on refund cheques issued from four different dealerships.

A police investigator advised us that the same scheme also occurs through groups of straw buyers organized by a drug trafficker. For example, a drug trafficker seeking to launder money will hire ten, low-level criminals at a cost of a few hundred dollars each, or as payment for a drug debt. Each will go to a dealership and make a \$9,500 cash deposit on a vehicle, then return a few days later once the cash has been deposited and advise the dealer that he or she has changed their mind. The deposit will be returned by cheque, effectively laundering the drug trafficker’s \$95,000 at very little cost.

We appreciate the candor of some new car dealers interviewed during this Review. Their stories provide a perspective from the sales floor. Unfortunately, some other luxury car dealers refused to acknowledge our requests for interviews.

OVERSIGHT OF MOTOR VEHICLE SALES IN BRITISH COLUMBIA

The Vehicle Sales Authority (VSA) of B.C. is an independent, non-profit, regulatory agency that oversees the retail sales of personal-use motor vehicles in British Columbia. It was incorporated in July 2003 as the Motor Dealer Council and became the VSA in 2007. It was given authority to administer the *Motor Dealer Act*,⁴⁸¹ parts of the *Business Practices and Consumer Protection Act*⁴⁸² and associated regulations through a delegation agreement with the province. The VSA has an 11-member Board of Directors, which includes six vehicle sales industry appointees, three members of the general public, and two government appointees.⁴⁸³ According to a representative of the VSA, the issue of money laundering through the purchase of vehicles at dealerships has not been a regular topic for discussion at Board meetings.

In February 2016, the provincial government announced amendments to the *Motor Dealer Act* through the *Motor Dealer Amendment Act*, which received Royal Assent on May 19, 2016.⁴⁸⁴ Changes included:

⁴⁸¹ *Motor Dealer Act*, RSBC 1996, c. 316, accessed at http://www.bclaws.ca/civix/document/id/complete/statreg/96316_01; and *Motor Dealer Act Regulation*, BC Reg 447/78, accessed at http://www.bclaws.ca/civix/document/id/complete/statreg/447_78.

⁴⁸² *Business Practices and Consumer Protection Act*, SBC 2004, c. 2. Accessed at http://www.bclaws.ca/civix/document/id/lc/statreg/04002_00.

⁴⁸³ Further information about the VSA can be found on its website: <https://mvsabc.com/>.

⁴⁸⁴ SBC 2016, c. 6. Accessed at <https://mvsabc.com/v1/wp-content/uploads/2018/02/Bulletin-5.18-MDA-Amendments-Part-2-1.pdf>.

- vehicle wholesalers, brokers, and broker agents were added to the regulatory scheme;⁴⁸⁵
- a strengthened prohibition on motor dealers using an unlicensed salesperson;
- the ability of a dealer or a person licensed under the *Act* to advertise that they are licensed by the VSA, subject to terms and conditions set by the Registrar; and
- new licence categories were added for consumer compensated broker-agents and broker-agent representatives, as well as vehicle wholesalers.⁴⁸⁶

Other changes required regulations to be developed and came into force on January 1, 2018, including:

- Motor Dealer Customer Compensation Fund changes;
- amended *Motor Dealer Act* administrative penalties; and
- wholesaler, broker agent and broker agent representative licensing was required, effective April 1, 2018.⁴⁸⁷

Importantly, the amendments addressed unregulated vehicle auction sales in which curbers (i.e., unlicensed individuals or businesses “selling vehicles for profit, often while posing as a private seller”)⁴⁸⁸ could buy and sell vehicles. Curbers take advantage of unwitting consumers, act in defiance of municipal bylaws by failing to obtain a business licence and evade income tax. Anyone selling more than five vehicles per year is automatically deemed to be a dealer under the *Motor Dealer Act*, but the sale of even one vehicle to a retail consumer as a business activity may require a licence.⁴⁸⁹

The New Car Dealers Association (NCDA) represents an estimated 97% of all new car dealers, or 392 new car dealers throughout the province. The dealers collectively generate more than \$16B in economic activity, inject \$2.9B net GDP directly into B.C.’s economy, and employ more than 30,000 individuals in over 50 communities. The NCDA speaks on behalf of B.C.’s new car industry to the public, media, and government, and deals with the legal, environmental, and consumer issues relating primarily to new vehicle sales in B.C. The NCDA also provides services, products, consultants and benefit partnerships to its dealer members.⁴⁹⁰ It is a member of the Canadian Auto Dealer Association (CADA), a national association representing new car and truck dealers. CADA is a federation of dealer associations and provides services to provincial

⁴⁸⁵ PS&SG, “New Motor Dealer Act rules to protect consumers”, Press release, Feb. 18, 2016. Accessed at <https://news.gov.bc.ca/releases/2016PSSG0041-000242>.

⁴⁸⁶ <http://mvsabc.com/v1/wp-content/uploads/2016/05/Bulletin11.16.pdf>.

⁴⁸⁷ <https://mvsabc.com/v1/wp-content/uploads/2018/02/Bulletin-5.18-MDA-Amendments-Part-2-1.pdf>.

⁴⁸⁸ <https://mvsabc.com/consumers/how-to-spot-a-curber>.

⁴⁸⁹ *Ibid.*

⁴⁹⁰ <https://www.newcardealers.ca/>.

dealer associations. It also engages in government and industry relations, legal affairs, and acts as the voice of dealers at the national level, serving as “an advocate to government, industry and the public.”⁴⁹¹

According to a recent submission by CADA to the House of Commons Standing Committee on Finance, “large transactions involving large sums of physical cash are very rare in our sector” and cash sales of vehicles in “excess of \$10,000 represent less than one percent of sales.”⁴⁹² This estimate is based on the number of vehicles sold that involve bank financing. A vehicle purchased partially with cash (e.g., \$50,000 cash with \$50,000 in financing), would not be captured in the 1% estimate. Nevertheless, CADA has asserted that physical cash (versus a cheque or bank draft) is at an “insignificant level”.

Michael Hatch, the chief economist for CADA, stated that:

“between 2010 and 2017, the share of new vehicle sales that were fully cash purchases decreased from 17% of the market to 8%. That share of cash transactions has gone down, and the portion of that share that’s physical cash has also gone down, in our view.”

He explained that a cash sale does not mean physical cash, just a purchase without financing, and that a sale using physical cash “just doesn’t happen”.⁴⁹³

An official representative of the NCDA provided a similar perspective during this Review, suggesting that the sale of a car for physical cash is extremely rare and advising that he had only heard of it occurring once. In that case he said it involved a long-time customer of the dealership who insisted on paying cash, so the dealer walked him to the dealer’s bank to deposit it: “I’ve asked our people how many cash deals they do and they say very few, particularly with the ones over \$200,000. Most deals are financed and that’s good business for the dealers.” The NCDA does not, however, track the number of cars financed, purchased without financing, or purchased with physical cash.

The Canadian Automobile Association (CAA) advised the Finance Committee that only 8% of new vehicle sales in 2017 were concluded without formal leasing or loan arrangements, so in theory 92% of new auto transactions would be subject to some oversight by financial institutions (and thereby included in *POCMLTFA* reporting). Of the 8%, only a fraction of 1% involved cash payments.⁴⁹⁴ This fails to consider the fact that there is no reporting at the transactional level and that third-party financial institutions have no visibility, and likely are not terribly interested, in what occurs at the dealership in terms of the point of sale transaction.

⁴⁹¹ <https://www.cada.ca/web/cada/>.

⁴⁹² Canada, House of Commons Canada Standing Committee on Finance, Evidence, *supra*, April 16, 2018 at p. 2. Accessed at <https://www.ourcommons.ca/Content/Committee/421/FINA/Evidence/EV9768497/FINAEV142-E.PDF>.

⁴⁹³ *Ibid.* at p. 6.

⁴⁹⁴ *Ibid.* at <http://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/meeting-142/evidence#Int-10048613>.

AUCTION HOUSES

Vehicle auctions are big business in B.C. This is typically where dealers send used vehicles which they have taken in on trade. Many of the auction sales occur in cash or by cheque. Auction houses, like vehicle dealerships, do not report to FinTRAC under the *POCMLTFA*. In the course of this Review, we attempted to speak with officials of a large vehicle auction sales house in B.C., in order to obtain their perspective on this issue. We were initially informed that they would have to seek authority from legal counsel in Toronto before speaking to us. Follow-up calls went unanswered. Time did not permit further follow-up with other, smaller auction houses.

SUMMARY

Greater Vancouver is home to thousands of luxury vehicles. Dealers we spoke to were quite comfortable disclosing the interactions they had with gangsters and persons with unknown sources of income wishing to purchase vehicles. At the transactional level, dealers are faced with clients who have lots of money and wish to buy a vehicle. Nothing prevents them from selling the vehicle to the individual and nothing prevents them from accepting the total amount in cash, by bank draft, by overseas wire, or on a credit card.

When the *POCMLTFA* was enacted in 2000, vehicles were simply not considered to be of sufficient value to be used as tools for laundering the proceeds of crime. The situation today is quite different. It is hard to draw a distinction between bags of cash arriving in a casino and bags of cash arriving at a car dealership, although our current financial reporting does create a distinction.

The current situation provides an excellent opportunity for the federal government to include auto sales in the *POCMLTFA* and to create Geographic Tracking Orders, which can be used to require reporting of luxury vehicle sales in this province. In the event that the federal government chooses not to include luxury vehicles in the financial regulatory environment, the province has that opportunity through its provincial oversight of the auto industry.

Canada's current situation is in stark contrast to the United States, where "any person in a trade or business who receives more than \$10,000 in cash in a single transaction or related transactions must complete a Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business."⁴⁹⁵

Auto dealerships are included among the businesses required to comply with this obligation.⁴⁹⁶ We have already referred to this filing requirement in the context of U.S. law firms. Form 8300 is jointly issued by the U.S. Internal Revenue Service (IRS) and FinCEN and is used to track individuals who evade taxes or profit from crime. Guidance is provided by the IRS for various

⁴⁹⁵ <https://www.irs.gov/businesses/small-businesses-self-employed/report-of-cash-payments-over-10000-received-in-a-trade-or-business-motor-vehicle-dealership-qas>.

⁴⁹⁶ *Ibid.*

industries, including the auto industry.⁴⁹⁷ The failure of a car dealer suspected of laundering to comply with the law can result in a charge.⁴⁹⁸

⁴⁹⁷ U.S. IRS, *Report of Cash Payments Over \$10,000 Received in a Trade or Business – Motor Vehicle Dealership Q&As.* Accessed at <https://www.irs.gov/businesses/small-businesses-self-employed/report-of-cash-payments-over-10000-received-in-a-trade-or-business-motor-vehicle-dealership-qas>.

⁴⁹⁸ See, for example, U.S. Attorney's Office, District of Colorado, "Owner of Colorado Car Dealership Sentenced for Structuring and Money Laundering", Press release, Dec. 1, 2015. Accessed at <https://www.justice.gov/usao-co/pr/owner-colorado-car-dealership-sentenced-structuring-and-money-laundering>.

CHAPTER 3-4

THE GREY MARKET OF EXPORT VEHICLES

FINDINGS

- Grey market vehicle exports are a well known and effective trade-based money laundering strategy.
- In B.C., the ‘grey market’ in the sale of luxury vehicles for export to China is huge; involving straw buyers, dealers, and exporters.
- The grey market is unregulated from a financial crime perspective, resulting in very little being known about the persons and companies involved, the source of funds of purchasers, and their methods of payment.
- The grey market has resulted in considerable expense to the Province of B.C., due to the refund of sales tax to straw buyers who export vehicles.
- In 2016-17, Provincial Sales Tax refunds totalling \$55 million were made on 7,980 vehicles, with a total purchase value of \$555 million.
- Provincial employees identified numerous red flags of money laundering; including 4,108 unique straw buyers, with 48 making in excess of 11 transactions, one making in excess of 25 purchases, and 1,000 apparently linked to one exporter.

INTRODUCTION

Trade-based money laundering has been defined by the FATF as “the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illegal origins or finance their activities.”⁴⁹⁹ Quite simply, it is “the misuse of commerce to move money across borders.”⁵⁰⁰

The FATF considers TBML as one of the principal methods by which criminal organizations and terrorist financiers move money for the purpose of disguising its origin and integrating it into the formal economy.”⁵⁰¹ TBML typologies identified by the FATF include:

⁴⁹⁹ FATF, *Best Practices on Trade Based Money Laundering*, Guidance Document, June 2008 at p. 1.

⁵⁰⁰ “Trade and money laundering – Uncontained”, Economist, May 3, 2014. Accessed at <https://amp.economist.com/international/2014/05/03/uncontained>.

⁵⁰¹ FATF *Best Practices on Trade Based Money Laundering*, *supra* at p. 1.

- the purchase of high-value goods using the proceeds of crime, followed by the shipment and re-sale of goods overseas; and
- using the proceeds of crime to purchase goods for legitimate re-sale, with payment for goods made to drug traffickers/distributors by legitimate business owners.⁵⁰²

Money laundering through exporting vehicles purchased for domestic use, known as the vehicle grey market, is an example of TBML. It is estimated to be “responsible for sending as many as 25,000 new luxury cars a year to China from the United States.⁵⁰³ A grey market exists where a brand owner or manufacturer’s products are purchased and then resold outside of their approved distribution networks. Due to the tax structure and soaring demand that exists for high-end cars in China, dealerships charge much higher prices in that marketplace than they do in North America. This has created an arbitrage opportunity in the form of a grey market for people willing to purchase these vehicles in North American locations and ship them to China for a significant profit.

A *New York Times* report described authorities in several states targeting straw buyers who are paid a few hundred dollars to purchase a car but quickly turn it over to the true owner for export, as well as other deceptive practices required to complete the transactions. Both criminal and civil actions have been launched in the U.S.⁵⁰⁴ A related scheme in the U.S. involves the purchase of new vehicles from legitimate dealerships, which are then shipped to China as used vehicles.

The funds for these transactions are often routed through a shell company located in a high-risk jurisdiction. Numerous straw buyers are used to make the actual purchases, in order to circumvent directives from manufacturers to dealers that they may not sell a vehicle for export. These straw buyers advise the dealerships that the vehicles will not be registered in the state of purchase, which is a strategy to evade the state’s taxes. The vehicles are then taken to a port for export.⁵⁰⁵

Don Semesky, retired Chief of the DEA’s Office of Financial Operations and an expert witness for the United States at the trial of Sinaloa Cartel kingpin Joaquin “El Chapo” Guzman⁵⁰⁶, provided the following statement for this Review:⁵⁰⁷

⁵⁰² FATF, *Professional Money Laundering*, *supra* at p. 30.

⁵⁰³ Matthew Goldstein, “U.S. Targets Buyers of China-Bound Luxury Cars”, *New York Times*, Feb. 11, 2014. Accessed at <https://dealbook.nytimes.com/2014/02/11/u-s-targets-buyers-of-china-bound-luxury-cars/>.

⁵⁰⁴ *Ibid.*

⁵⁰⁵ John Wintrow, “Transnational Trade-Based Money Laundering”, *AML RightSource*, Dec. 28, 2016. Accessed at <https://amlrightsouce.com/posts/transnational-trade-based-money-laundering/>.

⁵⁰⁶ *United States v. Joaquin Archivaldo Guzman Loera*, Criminal Docket No. 09-466 (S-4) (BMC). On Feb. 12, 2019, Guzman was convicted of all 10 counts on the indictment.

⁵⁰⁷ Mr. Semesky was speaking for himself and not on behalf of the DEA in his Jan. 2018 E-mail to the review team.

“New, and particularly used cars are a favorite vehicle for repatriating value of drug proceeds to foreign jurisdictions. As DEA saw in Operation Titan, used cars were also a mechanism for increasing drug profits and thus increasing terrorist financing revenues for Hezbollah. In that particular case, European drug profits were laundered through Lebanese FX [foreign exchange] businesses in Beirut, then wired into the US through Lebanese Canadian Bank to purchase used cars that were then shipped to Benin and sold for an estimated 30% profit on top of the already huge profit generated by the drug trafficking. We've also had many cases where West African drug traffickers have repatriated their profits to countries like Nigeria through the purchase and export of used cars. Like the Mexican and Colombian BMPE models, countries like Nigeria and Ghana have their share of money brokers who work with Nigerian and Ghanaian fraudsters and drug traffickers, who are generating illicit proceeds abroad, to buy these proceeds which they then sell on their informal/black FX markets to businesses who need the FX to pay off their foreign trade debts.”

The grey market export of vehicles in B.C. is a significant and rapidly growing problem. There has been an explosion in the number of grey market vehicles exported to China since 2013, growing from less than 100 vehicles in 2013 to over 4,400 vehicles in 2018.⁵⁰⁸

These vehicles are purchased for domestic use by straw buyers, working for a fee or commission on behalf of exporters, who then rapidly ship the vehicles overseas where international price differentials ensure huge profits. B.C.'s unique geographic location and ethnography make it an incredibly attractive venue for this activity.

A straw buyer is not the true purchaser of an asset but represents that he or she is. An exporter of luxury cars will employ networks of family, friends, or sometimes people recruited online or via word of mouth. These straw buyers or agents will sign the paperwork at dealerships, buy cars, and then drop them off to be exported. In return, they receive a small commission on the vehicle, typically ranging up to a few thousand dollars and corresponding to less than 5% of the vehicle's value.

Because the grey market vehicles are being exported with appropriate taxes paid and are not stolen, CBSA has neither the mandate nor the authority to detain or seize the vehicles prior to export, even if trade-based money laundering is suspected.

CTV News in Edmonton investigated a similar scheme in Alberta and found “multiple ads posted on public job sites that offer thousands of dollars in commission to outsource cars at dealerships using exporter cash.”⁵⁰⁹ An anonymous vehicle exporter interviewed by CTV

⁵⁰⁸ Based on B.C. Ministry of Finance PST data.

⁵⁰⁹ “Luxury car dealerships are targets of growing multi-million dollar export businesses”, *CTV News*, Apr. 14, 2017. Accessed at <https://www.ctvnews.ca/business/luxury-car-dealerships-are-targets-of-growing-multi-million-dollar-export-businesses-1.3368819>.

claimed that the more popular the vehicle, the more commission would be paid. He would pay up to \$8,000 to \$9,000 commission for a Mercedes GLS 450.⁵¹⁰

To combat the grey market, some auto manufacturers have responded by requiring dealers to include clauses in purchase agreements which state that the buyer may not export the vehicle. In turn, the dealer will require the purchaser, as part of the sales contract, to confirm that a vehicle is not being purchased for export. This is almost impossible to enforce.

If a manufacturer subsequently identifies a vehicle which has been exported in violation of its dealer agreement, it will penalize the dealership. This may consist of a monetary penalty or disruptions to future inventory. We learned of one new car dealer who had received a substantial penalty from a manufacturer. It refused to acknowledge our request for an interview.

As a result of concern with manufacturers, dealerships will not sell luxury vehicles in large quantities to an individual party, giving rise to an industry of straw buyers.

Another strategy employed by dealerships is to require a deposit of up to \$50,000 on top of the purchase price of the vehicle, which is only refundable if the purchaser can demonstrate that he or she still owns the vehicle one year later. Considering the extraordinary profit made by exporting luxury cars to China, even this may not be a sufficient deterrent.⁵¹¹

As noted in the U.S. example above, in some cases the straw buyers book the transfer of the vehicle as a “resale” to the exporter. This does two things:

- it distances the actual exporter from the restrictive purchase clauses, shielding them from civil action, as the agent has not exported the vehicle but rather engaged in a domestic sale; and
- in B.C., it permits the Provincial Sales Tax (PST) portion of the sales tax, paid by the original buyer to the dealership, to be reclaimed from the province.

There are several financial typologies demonstrated in these transactions:

Incoming transactions

- Funds are wired from China by either the actual purchasers of the cars or from local dealerships in China which purchase in large volume.

⁵¹⁰ *Ibid.* In a 2015 Ontario case, a salesperson/business manager at a Markham, Ontario BMW dealership was charged under the *Motor Vehicle Dealers Act*, S.O. 2002, c. 30, Sched. B, for allegedly creating false bills of sale using the identification of unwitting dealership customers to facilitate the purchase of vehicles for export to China (Ontario Motor Vehicle Industry Council, “Salesperson Charged in Elaborate Vehicle Export Scheme”, Aug. 25, 2015. Accessed at

<https://www.omvic.on.ca/portal/NewsPublications/NewsReleases/2015/tabid/426/aid/288/Default.aspx>.

⁵¹¹ *Ibid.*

- Funds are deposited with a bank via a negotiable instrument such as a draft or a cheque by an individual or entity participating in an informal remittance system to repatriate revenue from China and circumvent currency controls.
- The PST portion of the vehicle purchase price is refunded and deposited following the “resale” of the vehicle from the straw buyer to the exporter.

Outgoing transactions

- The exporter purchases a draft payable to a dealership and one of its straw buyers gives it to the dealership at the time of purchase, filling out their own name on the paperwork. Agents are paid a commission via cash, bank transfer, or cheque.
- A draft or transfer is sent to the straw buyer’s own bank account, and then a draft or cheque payable to a dealership is drawn from the account with a small percentage remaining as the commission.
- Funds are sent through multiple entities before being issued to a dealership via the first two methods.

AVOIDANCE OF PROVINCIAL SALES TAX AND FEDERAL INCOME TAX

The grey market for the export of luxury vehicles takes advantage of current legislation to avoid paying provincial sales tax, which is not payable if the vehicle is purchased with the intent to resell.⁵¹² The exporters are legally entitled to have the PST refunded, generating a significant increase in Ministry of Finance workload and costing B.C. tens of millions of dollars in lost PST revenue. On luxury vehicles in B.C., the PST amounts to 10% of the purchase price of vehicles worth \$57,000 to \$124,999.99, 15% on vehicles \$125,000 to 149,999.99, and 20% on vehicles \$150,000 and above.⁵¹³

The number of applications for refunds of PST on vehicles is a strong indication of the size of the grey market for exported vehicles from B.C. Data from the B.C. Ministry of Finance demonstrates that the market has rapidly increased in size during the past five years.

Prior to 2014, the number of applications was negligible – less than 100 per year – but the number grew dramatically to over 700 in 2014 and 2015, and then multiplied by 500% to 3,674 in 2016.

⁵¹² Provincial Sales Tax Act, SBC 2012, c. 35. Accessed at http://www.bclaws.ca/civix/document/id/complete/statreg/12035_00.

⁵¹³ British Columbia, PST Bulletin, rev. Apr. 2018 at p. 3. Accessed at <https://www2.gov.bc.ca/assets/gov/taxes/sales-taxes/publications/pst-308-vehicles.pdf>.

The number of applications has continued to grow since then, reaching 4,452 in 2018, as described in the adjacent chart. Also depicted are the yearly PST refund totals, averaging approximately \$6,300 per refund, and totalling \$28 million in 2018. Since 2013, Finance staff have processed almost 14,000 refunds totalling about \$85 million.

Ministry of Finance staff have also raised concerns about several red flags for possible money laundering activity, including:

- vehicle registration documents which appear to have been altered;
- the type of cars, including Mercedes, Ferrari, Lamborghini, and other less exotic but still high-value cars;
- generic-looking export documents with suspicious inconsistencies;
- straw buyers struggling to explain anomalies in documents;
- the same straw buyers showing up in multiple transactions;
- PST refunds are going directly to vehicle exporters, rather than the purchasers of the vehicles, who are clearly straw buyers receiving a fee or commission; and
- the straw buyers often do not speak English and are “clearly just a signature”.

Finance staff gathered the following statistics for the 2016/2017 fiscal year:

- one straw buyer made in excess of 25 purchases;
- 48 straw buyers made in excess of 11 transactions;
- 4,108 unique straw purchasers were identified;
- 4,060 buyers were involved in the purchase of one to 10 vehicles;
- 1,000 straw buyers were apparently linked to one exporter;
- in many cases, the identification provided by the straw purchaser is a PRC passport, not a B.C. driver’s licence;

- most vehicles are purchased via bank drafts, not physical cash, but the exporter is not identified on the bank drafts; and
- PST refunds were at least \$55 million on 7,980 vehicles with a total purchase value of \$555 million.⁵¹⁴

Incidental to the money laundering implications of this grey market are the following negative consequences.

- If the vehicles purchased by straw buyers are resold to the exporters within seven days of purchase, then the provincial government refunds the PST. Not only is this a net loss of revenue, but the exponential growth in such refunds has required significant increases in provincial Finance staff to process the transactions.
- As part of their legitimate duties, provincial civil servants are assisting straw buyers and exporters to maximize their profits through the provision of administrative support in arranging PST refunds. The civil servants that we spoke to found this very concerning.
- There is reason to believe that millions of dollars in fees to straw buyers are not being reported as income. It is equally possible that exporters are not declaring the income which they pay to straw buyers.
- Although the vehicles purchased by straw buyers are clearly being purchased for business purposes, they are purported to be purchases by private individuals, who are not required to pay federal Goods and Services Tax (GST).

THE RISK FOR MONEY LAUNDERING POSED BY THE VEHICLE EXPORT GREY MARKET IN CANADA

The transactions described above create a money laundering risk in B.C. through placement, layering, and integration, as follows:

Placement

As the people buying the cars are essentially acting as nominees, they provide a convenient channel for the proceeds of crime to be placed in the financial system if the car dealerships are willing to accept cash payments. The identity of the cash provider is not recorded. Furthermore, as this trade-based activity involves large dollar sums leaving China, it generally requires the services of an underground banker to repatriate revenue and purchase new inventory. Some of these unregulated banking channels accrue large amounts of illicit cash and dealing with it

⁵¹⁴ The amount of GST refunded was estimated by Ministry of Finance staff based on the assumption that the value of the vehicles reached the 10% luxury tax threshold of \$57,000. Vehicles purchased for at least \$125,000 or at least \$150,000 would generate larger PST refunds.

raises the risk that exporters may be receiving a portion of their revenue from the proceeds of crime.

Layering

As any trade-based activity involving shipping products to China typically requires the use of nominees to transfer funds from that country, layering would be difficult to distinguish from completely legitimate activity. Once the funds arrive in Canada they move through one or more entities into the possession of individuals, who use the funds to acquire additional vehicles. As various nominees may be involved in the money trail, it becomes difficult to distinguish layering from ordinary business operations.

Integration

The purchase and disposition of luxury assets has always been a method used to integrate illicit funds back into the economy. The grey market in vehicles provides lucrative profits for anyone seeking to integrate funds through large vehicle purchases, which are then shipped to China, or resold domestically to an exporter.

SUMMARY

In summary, the export of grey market vehicles is of considerable concern for a number of reasons. It is an underground market, which seeks to avoid regulatory and industry directives. It provides a wonderful opportunity for large-scale money laundering, with very little chance of detection. The trade is supported by a nuance of provincial legislation which also co-opts civil servants to assist straw buyers and exporters in their scheme to federal tax authorities and some vehicle dealerships. There is a loss in revenue to the provincial government from sales tax rebates and an increase in costs due to staff requirements to process the thousands of claims.

Ministry of Finance staff co-operated fully with our Review and we thank them for their able assistance. The province possesses data which identifies the repeat straw buyers and the export companies involved. Furthermore, the province possesses data regarding dealerships which repeatedly engaged with the same straw buyers. Although Finance staff provided extraordinary assistance to this review, they considered themselves bound by legislation not to release data to us that would identify the straw buyers, dealerships or exporters.

The absence of financial reporting by luxury vehicle dealers to FinTRAC is a huge gap which allows the grey market to operate without detection. As noted earlier, this can be remedied by including the sector under the *POCMLTFA*. Geographic Tracking Orders would also be a useful adjunct. In addition, there are options for the provincial government to consider, including those listed below in Schedule “A”.

SCHEDULE “A”

GREY MARKET OPTIONS

1. Currently, many motor vehicle purchase agreements contain a clause in which the purchaser agrees that the vehicle is “not for export”. These agreements could be amended to insert a time frame of, for example, one year during which the purchaser would commit to not export the vehicle. Then the refund regulation could be amended to exclude vehicles exported within a year from eligibility for the PST refund, and to require the person seeking the refund to demonstrate that the vehicle had not been exported within the year.
2. Require straw purchasers of vehicles for export to provide a copy of the purchase agreement. If the purchaser has committed to not purchasing the vehicle for export (i.e., a contract between the purchaser and the new car dealer), there should be no PST refund. This should not impact the tax-exempt status of *bona fide* purchasers, provided that they state their intention to export the car or resell the car at the time of original purchase. If the dealer agrees to sell the vehicle, the purchaser would qualify for a PST exemption at the time of the original purchase. This would require an amendment to the refund regulation.
3. Another way to accomplish the foregoing would be to provide Ministry of Finance staff with the ability to track vehicles within Canada by way of a VIN search (e.g., through a subscription to “CARFAX Canada”⁵¹⁵). If a vehicle was not registered in Canada for one year, it would not be eligible for a refund. This would serve as a deterrent to purchasing vehicles for export, because there would be no PST refund; and exporters would have a significant amount of money committed for at least one year.
4. If agreement could be reached with CBSA, create a requirement that all vehicles exported be subject to a cursory review by CBSA to confirm ownership by way of a VIN search. CBSA clearance could be required for a PST refund, and it would have to be demonstrated that the vehicle was registered and insured in Canada for one year. In the U.S., Customs and Border Protection officers are actively involved in enforcement action against grey market exporters where fraud is suspected.⁵¹⁶
5. Amend the refund regulation to require that straw buyers applying for a PST refund demonstrate that they owned and registered the vehicle for one year prior to it being exported and provide evidence of tax being paid in the jurisdiction to which it was exported.

⁵¹⁵ <https://www.carfax.ca/>.

⁵¹⁶ See, for example, Eric Kulisch, “Scams and schemes create enforcement morass at ports”, *AutoNews*, Nov. 12, 2018. Accessed at <https://www.autonews.com/article/20181112/LEGALFILE/181119953/scams-and-schemes-create-enforcement-morass-at-ports>.

6. Impose an export fee for grey market vehicle exports, equivalent to a percentage of the PST refund. This would preclude the need to amend the refund regulation. Provided that the export fee was not too high, it would still be worthwhile applying for a refund. A by-product of this process would be the acquisition of useful data on the size of the market, the straw purchasers, and exporters. The export fee should at least cover the cost of PST processing expenses.
7. Alternatively, charge an administrative fee for PST refunds. The Province of Manitoba charges a \$25 processing fee for each application.⁵¹⁷ Other publicly funded organizations impose similar charges.⁵¹⁸ The fee could also be a percentage of the purchase price of the vehicle. As it is a fee and not a tax, there would be no eligibility for a refund.
8. Many straw buyers appear to be “students” from overseas and are likely not Canadian citizens or permanent residents. Policy could require that refund cheques be mailed to the address of the straw buyer, not the third-party representative’s address or the exporter’s address. Unfortunately, various workarounds could occur in this scenario.
9. Require that the straw buyers provide proof of payment via their bank account. Almost all funds come from the exporter’s bank account and/or an exporter’s credit card. This would require the exporter to trust the straw buyer with large amounts of money and create more risk for the exporter.
10. Conduct a scan of legislation in other provinces and foreign jurisdictions, which might serve as a model to emulate (or to avoid). For example, in California, because of manufacturers taking action against new car dealers selling vehicles that were exported, the state vehicle code was amended in 2014 to make it illegal for a manufacturer or distributor to:⁵¹⁹

“...take or threaten to take any adverse action against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition, unless the export or sale-for-resale prohibition policy was provided to the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known of the customer’s intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease. If the dealer causes the vehicle to be registered

⁵¹⁷ Based on the 4,452 PST refunds in 2018 for vehicles purchased for ‘grey market’ export, a \$25 administrative fee would have generated \$111,300, which is likely the approximate cost of salary and benefits for one Finance Ministry employee, far less than the staff resources required to process all the refunds.

⁵¹⁸ For example, municipal police agencies will charge a fee for criminal records checks, and the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 permits the collection of fees to cover the cost of processing certain applications.

⁵¹⁹ Joseph E. Berberich, “California franchise law helps dealers resist export and resale claims chargebacks”, *Manning Leaver Attorneys at Law*, July 24, 2014. Accessed at <https://manningleaver.com/resources/articles-alerts/california-franchise-law-helps-dealers-resist-export-and-resale-claims-cha>.

in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state, a rebuttable presumption is established that the dealer did not have reason to know of the customer's intent to export or resell the vehicle."

Before exploring any amendments to the refund regulation, there should be a legal/policy analysis of why the PST exemption for exported vehicles was created in the first instance. The policy objective must be understood in order to mitigate any unintended consequences that amendments discussed in the options above might create.

Despite the foregoing proposals, the grey market may still continue to flourish, as a loss of the PST may not have a sufficiently deleterious impact on luxury car shipments. For this reason, we re-emphasize that the key is transparency and ensuring that the export market is not a convenient means by which organized crime can launder its ill-gotten gains.

CHAPTER 3-5

INDEPENDENT LUXURY CAR RESELLERS

FINDINGS

- Certain resellers of high-end, luxury vehicles have sullied the reputation of resellers generally, due to their willingness to deal with individuals involved in organized crime.
- Certain high-end, luxury vehicles dealers are known to police, including for serious drug and other offences.
- The absence of financial reporting to FinTRAC is a serious impediment with respect to resellers as it is with new car dealers.
- B.C. could consider amending the *Motor Dealer Act* to prevent the acceptance of over \$10,000 as a deposit on, or payment for a vehicle.
- B.C. could also consider prohibiting cash leases of vehicles where the yearly accumulated lease payments equal or exceed \$10,000.
- B.C. could empower the VSA to superintend luxury car resellers and require that the principals obtain criminal record and background checks.

INTRODUCTION

Independent luxury car resellers and lease companies purchase new or near new vehicles, often from new car dealerships and resell them. Luxury car resellers do not have the same concern as new car dealers with respect to consequences from manufacturers. Resellers can be successful for several reasons, including:

- dealerships sell to them because they will pay ‘top dollar’ for a car;
- customers buy from them because they do not have to wait for desirable models if there is a waiting list;
- some resellers add significant customizations that appeal to a certain wealthy segment of the market; and
- some resellers offer alternative financing options, including accommodating students and visitors to Canada.

In the course of this Review, new car dealers, other industry insiders, police investigators, and tips from the public have repeatedly pointed to some small independent resellers and associated independent lease companies displaying highly suspicious business practices. Furthermore, both a police investigator and a confidential source in the auto industry indicated that significant money laundering occurs via certain independent auto resellers, lease companies, and vehicle auction companies. Keeping a showroom full of high-end cars requires significant capital. While some luxury auto resellers and automobile auction companies have been in business for many years and are no doubt reputable, others are not.

For example, the principal of a luxury car reseller was recently convicted of an integrity-related offence under the *Motor Dealer Act* and principals in the same dealership are the subject of two recently-launched lawsuits. The first alleges fraudulent conversion of a high-end performance vehicle. The second claim is for well over \$1M and alleges breach of contract, conspiracy, and fraud related to luxury cars.

Not only have new car dealers raised suspicions that some resellers are accepting large amounts of cash from criminals, police investigators have confidentially provided specific examples of investigations that corroborate these suspicions.

LAW ENFORCEMENT CASES

We cross-referenced publicly available information and learned that a number of luxury car resellers are operated by individuals with serious criminal histories, typically for drug trafficking.

Police investigated a high-level drug trafficker who had worked for a luxury auto reseller, essentially as a broker to steer potential buyers to the company. He leased luxury vehicles from the reseller, including top-of-the-line Mercedes autos. As a money laundering strategy, he would make a large cash deposit of between \$50,000 and \$100,000 on a car and sign a lease for several years. Within six months he would return and ask to trade up to a more expensive vehicle. He would lease the higher-end car with an additional \$100,000 deposit and instruct the reseller to roll over the deposit from the previous car. This happened repeatedly, allowing the purchaser to accumulate the equivalent of a large savings account in his lease account. He would then return to the dealership when he needed money and ask for some of his accumulated deposits to be refunded by company cheque, effectively laundering the money. He pleaded guilty to drug trafficking, but no proceeds of crime charges were approved.

Police identified a luxury car reseller owned by a well-known gangster. Money laundering was a concern: “He wouldn’t be able to get a liquor or casino licence, but he can own a car dealership.”⁵²⁰ This individual’s business model was to buy luxury vehicles, particularly ones that were typically on waiting lists at new car dealerships, and add fancy wheels and other customizations. According to the police investigator, his “target audience [was] the super-rich Asian students. They can get the car right there on the spot without waiting, tricked out, the car

⁵²⁰ Interview with police investigators.

company will have upped the price...and then they'll come back and trade them in again. And who knows where the money came from.”⁵²¹

In various investigations, it was observed that drug trafficking rings performing dial-a-dope sales will have a ‘manager’ for multiple drug lines working below a ‘boss’. The boss will arrange for the lease of vehicles for the manager and the street traffickers, partly as a reward and partly to facilitate the drug trade. In one investigation, police learned that the boss had a friend in a dealership who set up the leases. The boss would pay the friend in cash, who would deposit the money for the leases, without the boss ever entering the dealership: “They’ll meet for coffee and he’ll give an envelope full of cash and then the friend takes care of it.”⁵²²

Police described an investigation in which police learned that an alleged drug trafficker was in possession of a high-end vehicle purchased from a luxury vehicle leasing company with a cash down payment well in excess of \$30,000. We identified the leasing company, but the general manager, after agreeing to be interviewed, failed to meet as arranged and would not reschedule.

In an investigation into a highly organized drug trafficking gang, a high-end performance car was seized. By tracking the sales history of the vehicle over the past several years, police determined that it had been gifted between gangsters. It was then sold for cash to a luxury car reseller, who leased it to another known gangster. The gangster kept the car for a few months, then returned it to the dealer who sold it for cash to a person believed to be a proxy owner, and who was also a known gangster. A year later, that person gifted it to the gangster who had originally leased it. The dealership had a “reputation for questionable business practices” and a principal of the business had been convicted of importing a huge shipment of narcotics.⁵²³

According to both a police expert and a confidential source in the auto sales industry, “pop-up” lease businesses are the “major source of [vehicles associated] money laundering in B.C.”, along with some small independent dealers selling luxury vehicles. The police investigator and the confidential source both described a scam in which an individual with criminal ties opened a high-end leasing company. Lessees, often straw persons with a money or drug debt, would place a large deposit on a vehicle, the cars were registered in someone else’s name (such as a wife or girlfriend), and the deposit and lease payments made with dirty cash. The lessees kept the cars for six months to a year before either passing the lease on to someone else or obtaining a “dealer buy back”. In this fashion, they are refunded their initial deposit, or sell the vehicle; in either case, the laundering is complete.

A police investigator described a case in which a B.C. gangster opened a leasing company in another province which he used to purchase exotic vehicles, then sell or lease them to B.C. gangsters. Some vehicles were sold below cost as a method to launder money.

⁵²¹ *Ibid.*

⁵²² *Ibid.*

⁵²³ Interview of confidential source, public VSA records and media reports.

A police investigator described a recent case that began as a surveillance-based investigation into a criminal organization from outside B.C., which trafficked women in the sex trade. This organization formed connections with organized criminals in Greater Vancouver and frequented the premises of a luxury car reseller, the owner of which was connected to the criminal organization from outside B.C.

The investigation revealed that gangsters who were selling large amounts of cannabis to illegal cannabis dispensaries in Vancouver for cash were then leasing luxury cars with the cash. But rather than making lease payments, they would pay up front in cash for the entire lease costs, and eventually the lease would be bought out and the car sold at auction.

Nominees were also used as part of various complicated money laundering scams using high-value vehicles, in which the true owner would sell the car to himself through a nominee who would sometimes pay an inflated price for the car, based on it allegedly appreciating in value because it was rare or exotic.

Gangsters were also involved in the ‘outcall’ escort business, which generates large amounts of cash that must be laundered. The purchase and lease of exotic cars through a complicit luxury car reseller was one method used.

We received a tip concerning a luxury car resale business operated by a drug trafficker. By cross-referencing publicly available sources of information, we determined that the dealership is currently operated by a person who was convicted in a sophisticated inter-provincial cocaine trafficking scheme. The cocaine was shipped to Alberta from B.C. During the investigation, police intercepted a package containing a large amount of cash intended to be delivered to the suspect. He is currently licensed by the VSA to sell vehicles in B.C.

Many money laundering strategies involve vehicles. These include repeat cash deposits at unsuspecting dealers where there is no real intention to purchase a car; creating a hidden bank account with a complicit dealer by making cash deposits on lease vehicles that can be refunded by cheque, fraudulent selling or gifting of luxury cars between gangsters, the use of nominees, and so many more. There seems to be no lack of imagination.

SUMMARY

Gangsters want to live the gang lifestyle, including an ostentatious display of their apparent wealth, by driving luxury vehicles. The vehicles are purchased or leased with the proceeds of crime. There is no other explanation because most mid-level gangsters do not have jobs and have no legitimate source of income other than crime.

Without a legitimate source of income, a person cannot obtain bank financing. Furthermore, organized criminals do not make large deposits of cash into bank accounts, for fear of being reported to FinTRAC, thereby alerting police or tax authorities. Using luxury car sales and leases is an ideal route to place money in an asset, even if the asset does depreciate over time (some supercars actually appreciate). In any event, it is the cost of doing business, not much different

from losing a percentage of your ill-gotten gains in a casino or paying a fee to an underground banker or professional money launderer.

It is bad enough that organized crime is able to launder the proceeds of its crimes through luxury vehicles. It is much worse when dealers themselves are corrupt. This clearly elevates the risk to the public and inevitably breeds further corruption.

Once again, the principal issue is the lack of financial reporting to FinTRAC. As noted in the previous chapter, adding auto dealers as reporting entities, supplemented by GTOs, will afford FinTRAC an ability to analyze LCTRs and STRs and refer them to law enforcement.

At a provincial level, consideration could be given to amending the *Motor Dealer Act* to prevent cash sales of vehicles for \$10,000 or more, as well cash deposits on vehicles of \$10,000 or more. Similarly, the province could consider legislation to prohibit cash leases of vehicles where the yearly accumulated lease payments equal or exceed \$10,000.

The province could empower the VSA to superintend luxury car resellers and could require that the principals of vehicle dealerships obtain criminal record and background checks.

PART 4

HORSE RACING

CHAPTER 4

HORSES, TRACKS AND BETS

Money Laundering Vulnerability & Horse Racing

FINDINGS

- In B.C., the horse racing sector is in decline, propped up financially by government and the co-location of slot machines.
- Vulnerabilities to money laundering exist, although they are much less of a concern than in other sectors.
- The lack of uniform currency reporting across sectors in Canada leaves some parts of the economy vulnerable to money laundering.
- The Source of Funds Declarations, now in use within casinos, should also be used at horse racing venues and for the purchase of horses that race.
- Training on AML should be provided to all current staff and to new staff who work at live horse racing and teletheatre venues.
- Regulation of the horse racing sector should transition from GPEB to the proposed independent regulator for gaming in B.C.
- Legislative amendments which are intended to provide the regulator with a mandate to deal with AML should also include the horse racing industry.
- Horse racing in B.C. should be added to the mandate of the proposed designated policing unit for casino policing.

TERMS OF REFERENCE

The TOR for this Review include the following:

3. *Alleged issues of money laundering and organized crime in the horse racing industry and luxury car industry, as identified in the recommendations from Dr. German's "Dirty Money" report*

Review records and contact individuals as required to identify current issues and, if necessary, make findings related to:

a. Organized crime and money laundering activity in the horse racing industry;

INTRODUCTION

Internationally, horse racing attracts a fascinating mix of people, from royalty to rogues, from the wealthy to petty criminals. It has endured scandals related to cheating in both racing and betting, as well as sophisticated criminal enterprises, including money laundering, which is our focus.

Money laundering in the industry can occur in many ways; including by converting cash through corrupted pari-mutuel tellers, through the purchase and sale of race horses with proceeds of crime, and by rigging races as part of a broader criminal scheme, to name but a few.

British Columbia's horse racing industry has suffered financially in recent decades and has only recently stabilized but is a mere shadow of its former glory days. It cannot survive without support from the provincial government, including sharing in profits from slot machines in casinos co-located at B.C.'s two operating racetracks. They are Hastings Racecourse (Hastings), where thoroughbred racing occurs, and Fraser Downs, which hosts standardbred (harness) racing. Slot machines were introduced to Hastings in the late 2000s amid considerable controversy. There are now 536 at the Hastings casino and over 500 at the Fraser Downs casino.

Stakeholders in the industry, although confident that money laundering is not occurring, told us that they welcome reasonable changes to reduce the risk and increase public confidence that appropriate measures are in place to prevent it from occurring, as long as the changes will not unduly burden the struggling industry.

GAMING – A BRIEF HISTORY

Gaming confounded the British common law for centuries. For well over a thousand years, Westminster recognized the desire of citizens to bet and wager. For almost as many years, the law attempted to develop a framework to determine which forms of betting or wagering should be lawful, and which should not.

At common law, wagering was not against the law, except in regard to cock fighting. Common gaming houses⁵²⁴ were permitted, provided that the wager was not against morality, decency, or sound policy. What was relatively simple became much more complex once Parliament outlawed the quaint but deadly blood sport of fencing in 1285. Things got worse yet when the King of England's archers, today's equivalent of special forces, became enamoured by dice games. A blanket statutory prohibition in 1388 ended the practice and archers returned to their

⁵²⁴ The term 'casino' is today considered synonymous with a legal betting house. The word is sometimes referred to as a 'false friend', due to it having different meanings in different languages.

bows and arrows. However, the die had been cast and we live today with the legacy of that statutory prohibition.⁵²⁵

The British Parliament gradually legislated in discreet areas: no betting on religious holidays, declaring certain games to be unlawful, and prohibiting betting in private homes and on public streets.⁵²⁶ These discreet prohibitions expanded over time as statutes were passed in an often haphazard manner to deal with the issue of the day, resulting in what has been coined “a patchwork of fossilized law”.⁵²⁷ Betting at horse races, the sport of the aristocracy, received preferential treatment and was allowed to continue with little interference.

Canada’s *Constitution* granted exclusive jurisdiction to enact criminal law to the federal government.⁵²⁸ Provincial governments have jurisdiction over the maintenance of charitable institutions,⁵²⁹ business licensing,⁵³⁰ and property and civil rights.⁵³¹ Provinces can impose sentences for any matter coming within their authority.⁵³²

By the time that Canada enacted its first *Criminal Code* in 1893, the ancient right to wager had been replaced in British law by an almost total ban on betting. Canada’s criminal law mimicked the British model of prohibition.⁵³³

THE CRIMINAL CODE

Over time, the *Criminal Code* was amended to permit "Paris mutuel" betting in horse racing; occasional games of chance for charitable or religious purposes; and certain games at agricultural fairs and exhibitions.⁵³⁴ The bulk of gaming remained illegal in the early Twentieth Century as there was never sufficient political will to make a change to the scheme, likely due in large part to a fear of antagonizing organized religion.⁵³⁵

Gambling did develop in discrete areas of the world. It was generally seen as an indulgence for the rich (for example, Monaco) or a breeding ground for organized crime (for example, Nevada). As income levels rose in post-war Canada and the United States, governments came under increased pressure to loosen the rules around gaming and allow the general populace to

⁵²⁵ G.E. Glickman, “Our gaming laws: conditions dicey, to say the least”, 3 *Can. Law.* 11, Mar. 1979.

⁵²⁶ *R. v. Howel*, (1675) 3 Keb., 465, 510, and C.F. Shoolbred, *The Law of Gaming and Betting* (London: Pitman & Sons, 1932) at pp. 1-2.

⁵²⁷ *Ibid.*

⁵²⁸ *The Constitution Act, 1867* (UK), 30 & 31 Victoria, c. 3, s. 91(27).

⁵²⁹ *Ibid.* at s. 92(7).

⁵³⁰ *Ibid.* at s. 92(9).

⁵³¹ *Ibid.* at 92(13).

⁵³² *Ibid.* at 92(15).

⁵³³ See Part V of the *Criminal Code*, RSC 1985, c. C-46, entitled “Disorderly Houses, Gaming and Betting”.

⁵³⁴ Paris mutual betting was abbreviated to ‘pari-mutuel betting’. Bets are pooled and the winners share the pool minus a commission or fee to the operator.

⁵³⁵ Judith A. Osborne and Colin S. Campbell, “Recent Amendments to Canadian Lottery and Gaming Laws: The Transfer of Power between Federal and Provincial Governments”, *Osgoode Hall Law Journal* 26.1 (1988) at p. 22.

engage in this pastime, and not just at the racetrack. Religion was often seen as an inhibitor to a broader gaming environment, however the increased use of bingos and other games at church fairs likely produced the opposite result. In the end, the economics of gaming persuaded governments to open the doors.

A *Criminal Code* amendment in 1969⁵³⁶ granted the federal and provincial governments an exemption from the prohibition against commercial gaming, provided that government is responsible for its conduct and management.⁵³⁷ The provinces could therefore “run approved lottery schemes, including casinos”.⁵³⁸

In 1985, the federal and provincial governments agreed that the *Criminal Code* should be amended again, leaving gaming to the provinces. In exchange, the provinces agreed to make payments to the federal government.⁵³⁹

A BRIEF HISTORY OF MODERN HORSE RACING

Horse racing, commonly known as “the Sport of Kings” (and also much loved by HRM Queen Elizabeth II), has existed in one form or another since horses were first domesticated in Central Asia, thousands of years B.C. By the 12th century, English knights were returning from the Crusades, bringing with them fast Arabian horses, which were bred with English mares to produce horses for both endurance and speed (and almost all thoroughbreds in the world are reputed to be descendants of three of these horses). Members of the noble class would wager on horse races. These private races were the origin of professional horse racing in England, which began during the reign of Queen Anne (1702-1714), when wagering on multi-horse races became commonplace, and racecourses emerged throughout England.⁵⁴⁰

The rapid growth of the sport led to the creation of the U.K.’s Jockey Club, in 1750, by “a group of gentlemen brought together by a shared passion for horse racing.”⁵⁴¹ This group of influential citizens was first described in a racing publication in 1752 when it was noted there would be a race for “horses the Property of the Noblemen and Gentlemen belonging to the Jockey Club.”⁵⁴² The Jockey Club continues to be responsible for English horse racing to this day.

Modern horse racing emerged in many other countries, including the United States, Australia, and Canada. There are very significant horse racing operations in Hong Kong, where the Hong

⁵³⁶ *Criminal Law Amendment Act*, 1968-69, S.C. 1968-69, c. 38.

⁵³⁷ Now *Criminal Code*, s. 207(1)(a) and (g).

⁵³⁸ *Ibid.* at s. 190.

⁵³⁹ *Criminal Code (Lotteries) Amendment Act*, S.C. 1985, c. 52.

⁵⁴⁰ “Horse Racing History”, Winning Ponies.com. Accessed at <https://www.winningponies.com/horse-racing-history.html>.

⁵⁴¹ www.thejockeyclub.co.uk/about/our-heritage.

⁵⁴² *Ibid.*

Kong Jockey Club (HKJC) was formed in 1884,⁵⁴³ and more recently in Macau, where the Macau Jockey Club was formed in 1989.⁵⁴⁴

In the United States, horse racing began in New York's Long Island, where the first track was created in 1665. However, organized horse racing did not begin until after the Civil War, in 1868, and then rapidly expanded to more than 300 race courses in the U.S.⁵⁴⁵ But without a governing body, criminal elements rapidly infiltrated horse racing. This led to the creation of the American Jockey Club in 1894, which provided strong governance intended to "establish racing on such a footing that it may command the interests as well as the confidence and favourable opinion of the public".⁵⁴⁶ It reportedly eliminated much of the corruption.⁵⁴⁷ By 1908, however, horse racing was drastically reduced to only a few dozen racecourses by an anti-gambling sentiment that swept the nation. The sport was saved by the introduction of "pari-mutuel" betting on its most famous race, the Kentucky Derby.⁵⁴⁸

Since then, the popularity of the sport has waxed and waned in the U.S., with upswings tied to the fortunes of extraordinary racehorses such as Secretariat (ridden to Triple Crown victory in 1973 by Canadian jockey Ron Turcotte) and other Triple Crown winners,⁵⁴⁹ whose incredible feats of athleticism captured the public's imagination and made them household names. But a long period of decline for the sport began as the result of a 27-year drought of Triple Crown winners from 1978 until American Pharaoh won in 2015.⁵⁵⁰ An article in *Forbes* magazine commented on the U.S. industry:⁵⁵¹

"Horse racing is in a long-term decline...betting totals peaked at \$15.2 billion in 2003; today they barely crack \$11 billion. Racing's core demographic is aging – they're 56 years old and up – and questions over drug use and horse treatment have tainted the sport for younger fans. Almost one fifth of America's tracks have closed in the past decade, and those that remain open are hosting far fewer races."

There are jurisdictions, however, where horse racing remains a popular sport. Ontario is the heart of horse racing in Canada and accounts for 69% of all betting on horse racing in Canada. It boasts 15 horse racing tracks and 929 racing days annually. Ontario customers wagered a total of \$235.3 million on live races at Ontario tracks in the 2017/2018 season, compared to the \$7.4

⁵⁴³ <https://corporate.hkjc.com/corporate/english/history-and-reports/index.aspx>.

⁵⁴⁴ http://www.mjc.mo/race_en/info/i_pages.php?id=83.

⁵⁴⁵ "Horse Racing History", Winning Ponies.com, *supra*.

⁵⁴⁶ <http://www.jockeyclub.com/default.asp?section=About&area=0>.

⁵⁴⁷ "Horse Racing History", Winning Ponies.com, *supra*.

⁵⁴⁸ In pari-mutuel betting, bets are pooled and those who have bet on the winners share in the total amount wagered minus a percentage taken by the operator in the form of a commission or fee.

⁵⁴⁹ Triple Crown winners are three-year-old thoroughbreds who have won the three premier races – the Kentucky Derby, the Preakness, and the Belmont Stakes – in a single racing season.

⁵⁵⁰ "Horse Racing History", Winning Ponies.com, *supra*.

⁵⁵¹ Maggie McGrath, "Kentucky Derby Special: How 143-Year-Old Churchill Downs Keeps Betting – And Winning – On A Dying Sport", *Forbes.com*, May 3, 2018. Accessed at <https://www.forbes.com/sites/maggiemcgrath/2018/05/03/churchill-downs-doubles-down-on-the-success-of-the-kentucky-derby/#9dd6d3d1c80b>.

million wagered on live races in B.C. This represents approximately 3% of the amount wagered in Ontario, where horse racing is apparently also struggling and relies on government subsidies for its survival.⁵⁵²

When we compare Canada's \$1.24 billion in annual wagering on horse racing to international venues, the results are stark. In 2016/2017, bets made during 88 days of horse racing in Hong Kong totalled HK\$115 billion (~C\$19.55 billion),⁵⁵³ for a population of only 7.4 million.⁵⁵⁴ In an average day of betting on horse races in Hong Kong, ~C\$222 million is wagered, about 30 times as much as the yearly total on horse races in B.C. The annual wagers on horse racing in Hong Kong are more than 15 times that for all Canadian tracks and online combined. It is important to note, however, that Hong Kong does not have casinos, making betting on horse racing and soccer (also overseen by the HKJK) as its primary avenue for legal gaming.⁵⁵⁵

Another dramatic comparator is the amount wagered on horse racing in the U.K. In 2017/2018, 4.3 billion British pounds (C\$7.18 billion)⁵⁵⁶ was wagered on horse races, in a population of about 66 million people.⁵⁵⁷

Wagering on Thoroughbred horse races alone in Australia in the 2016/2017 season totalled AUD\$32.6 billion (C\$31.6 billion),⁵⁵⁸ with a population of 24.9 million, substantially smaller than Canada's 36.7 million.⁵⁵⁹ Clearly, the horse racing industry in Canada and B.C. is small when compared internationally.

HORSE RACING IN CANADA

Horse racing in Canada began before Confederation.⁵⁶⁰ Although the sport was generally associated to the wealthy, it always had "a shady side". By 1771, authorities in Halifax banned horse racing because the associated gambling was considered immoral. The ban did not last for long, however. Turf Clubs soon opened in Quebec (1789), Halifax (1825) and Upper Canada (1837). The industry continued to grow, and other courses were established elsewhere.

Ontario has always dominated the industry. The Queen's Plate, introduced in 1860 in Toronto and named for Queen Victoria, was an attempt to improve the breeding stock. The organizers

⁵⁵² See <http://www.agr.gc.ca/eng/about-us/partners-and-agencies/canadian-pari-mutuel-agency/pari-mutuel-betting/?id=1362070544860>.

⁵⁵³ <https://www.scmp.com/news/hong-kong/education-community/article/2109235/hong-kong-jockey-club-has-record-breaking-year>.

⁵⁵⁴ <https://www.censtatd.gov.hk/hkstat/sub/so20.jsp>.

⁵⁵⁵ <https://football.hkjc.com/football/english/index.aspx>.

⁵⁵⁶ <https://www.statista.com/statistics/469783/gambling-turnover-horses-in-great-britain-betting-uk/>.

⁵⁵⁷ <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates>.

⁵⁵⁸ <https://responsiblegambling.vic.gov.au/about-us/news-and-media/australian-racing-fact-book-20162017-edition-published/>.

⁵⁵⁹ <https://www150.statcan.gc.ca/n1/pub/12-581-x/2018000/pop-eng.htm>.

⁵⁶⁰ The main sources for this section were <https://www.gamblinginsider.ca/casino-news/history-of-horse-racing-in-canada/>; <http://www.canadianhorseracinghalloffame.com/sample-page/the-way-we-were/>; and <https://www.thecanadianencyclopedia.ca/en/article/thoroughbred-racing>.

sought to accomplish this with a large purse and by associating the event with British Royalty. In doing so, they hoped to entice breeders with exceptional horses from the U.S. and Great Britain. The Queen's Plate is the oldest continuously run stakes horse race in North America. Members of the Royal Family were attracted to the Queen's Plate, giving it respectability, and very wealthy families, such as the Seagrams of distiller fame, became prominent figures in horse racing. In 1881, some of Toronto's elite formed the Ontario Jockey Club "to lift horse racing out of the mire", in reference to some of the more unsavoury elements involved.

Since the amendments to the *Criminal Code* which introduced legal gaming alternatives, the horse racing industry in Canada has struggled to survive. When slot machines⁵⁶¹ were first introduced to Canada in 1998, the new revenue source helped keep segments of the horse racing industry alive, but in those locations where slots were not permitted or were removed, the local horse racing industry suffered greatly.⁵⁶²

While online betting on horse races has provided additional revenue, it has further reduced the live fan base.⁵⁶³ As the *Globe and Mail* reported, "those fans are gone. If they bet, they're betting on computers at home. If they like sports, they're watching something that provides an hour and a half of continuous thrills..."⁵⁶⁴ Nevertheless, a considerable amount of money is still wagered on horse races, albeit much of it online.

THE HORSE RACING INDUSTRY IN BRITISH COLUMBIA

Hastings Racecourse

The horse racing industry has existed in B.C. for over 125 years. Horse races were first held in Vancouver on a track near Howe and Nelson Streets, near the original site of the Hotel Vancouver. In 1888 the provincial government granted 160 acres of provincial property (not then part of the City of Vancouver) for a new "East Park" for the "enjoyment of the public." In 1890, the City of Vancouver received a request from a group of citizens to use 16 acres of the park, renamed Hastings Park, for horse racing, and subsequently approved a lease to the fledgling British Columbia Jockey Club, comprised of prominent citizens. In 1892, the Jockey Club opened Hastings Racecourse. It has been in continuous use since, as a site for thoroughbred horse racing, making it Vancouver's longest running sports facility.

⁵⁶¹ A "slot machine is typically a computer containing a random number generator that determines where the reels will stop [after] each spin and thus game outcomes for that machine are in accordance with programmed game rules" (Robert Kroeker and Jeffrey Simser, *Canadian Anti-Money Laundering Law: Gaming Sector* (Toronto: Thompson Reuters, 2017 at p. 5).

⁵⁶² Elizabeth Renzetti, "Canadian horse racing industry desperate for a comeback", *Globe and Mail*, July 5, 2013. Accessed at <https://www.theglobeandmail.com/sports/canadian-horse-racing-industry-desperate-for-a-comeback/article13048229/>.

⁵⁶³ "The History of Horse Racing in Canada", *Canadian Gambler Insider*, June 29, 2016. Accessed at <https://www.gamblinginsider.ca/casino-news/history-of-horse-racing-in-canada/>.

⁵⁶⁴ Elizabeth Renzetti, "Canadian horse racing industry desperate for a comeback", *supra*.

When the Pacific National Exhibition (PNE), an annual agricultural fair, opened at Hastings Park in 1910, along with a streetcar line, the track's popularity increased rapidly. Horse racing pioneer S.W. (Sam) Randall entered the racing business in 1919 and for 35 years directed the Ascot Jockey Club of Vancouver and the Vancouver Thoroughbred Association. He was a long-time operator of Exhibition Park (the renamed Hastings Park), and also built Lansdowne Park in Richmond (the current site of Lansdowne Center Mall), the Willows track in Victoria, and several others in B.C.⁵⁶⁵ By the 1930s, "Hastings on a race day back then was the equivalent of the Granville Strip now on a Saturday night" and was described as a "hub for socialites, sports enthusiasts and Vancouver's well-to-do."⁵⁶⁶

During World War II, races normally held outside Vancouver at the Brighthouse (Richmond) and Lansdowne tracks were transferred to Hastings, apparently to accommodate gas rationing.⁵⁶⁷

In the 1950s, the racing oval at Hastings was increased in size to five-eighths of a mile and has remained that size ever since (much smaller than the common one-mile size). Sam Randall retired due to illness in 1955, but was succeeded by his son, W.A. Randall. With his brothers Robert and John, he managed horse racing activities at several tracks in B.C. through "Ascot Jockey Club Ltd". The current 5,000-seat grandstand was constructed in 1965, and in 1968 lighting was added so that night racing events could be held.

In the 1970s, W.A. Randall and his partner, Jack Diamond, a prominent Vancouverite, directed the B.C. Jockey Club, which operated Exhibition Park. When their lease expired in 1993, the provincial government stepped in "to save racing in the province", which was suffering from the advent of legal gaming, and a deteriorating track and facilities. A non-profit organization, the Pacific Racing Association, took over operations.⁵⁶⁸ Some long-time horse industry insiders interviewed for this Review had a different perspective on what occurred, somewhat bitterly viewing the transition as an unwelcome "expropriation" by government and "the worst thing that ever happened to racing in B.C."

In March 2003, the province entered into an agreement with the City of Vancouver to transfer the PNE to the city and created legislation allowing the City to conduct and manage gaming events, which included slot machines.⁵⁶⁹ In January 2004, Vancouver City Council rescinded its prohibition on the machines and approved their installation at the Edgewater Casino in

⁵⁶⁵ Canadian Horse Racing Hall of Fame. Accessed at <http://www.canadianhorseracinghalloffame.com/1978/01/01/s-w-sam-randall/>.

⁵⁶⁶ <https://www.vancouverheritagefoundation.org/place-that-matters/hastings-park-race-course/>.

⁵⁶⁷ Stevie Wilson, "You Should Know: About the History Of Vancouver's Iconic Hastings Racecourse", *Scout Vancouver*, Jul 25, 2012. Accessed at <http://scoutmagazine.ca/2012/07/25/you-should-know-about-the-history-of-vancouvers-iconic-hastings-racecourse/>.

⁵⁶⁸ Andrew Beyer, "Hastings Park is on Track", *Washington Post*, Sept. 1, 1995.

⁵⁶⁹ *Hastings Park Conservancy v. Vancouver (City)*, 2008 BCCA 117 at para 7.

Vancouver, subject to numerous conditions. A City of Vancouver Council Report from May 31, 2004 noted that:⁵⁷⁰

“... the Great Canadian Gaming Corporation announced that it had completed the purchase of Hastings Entertainment Inc. (HEI) through a wholly-owned subsidiary (686486 BC Ltd). The HEI had been operating the Hastings racetrack since May 1, 2002. It was also announced that the Wall Financial Corporation has agreed to acquire a 40% interest in 686486 B.C. Ltd. The investment by Wall Financial is subject to the approval of the Gaming Policy and Enforcement Branch of British Columbia.”

The 40% share acquired by Wall Financial was reported to have been purchased for \$5.4 million,⁵⁷¹ but Wall Financial sold its share in the racetrack within months of the purchase, reportedly for a \$17 million profit.⁵⁷² Since then, Hastings has been wholly owned by Great Canadian Gaming Corporation (GCGC).

On October 4, 2005, Vancouver Council enacted a bylaw to permit the use of slots at Hastings Park.⁵⁷³ Despite Council’s approval, neighbourhood activists and anti-gambling advocates, represented by the “Hastings Park Conservancy”, challenged the decision in the BCSC, but lost.⁵⁷⁴ Following the decision, 150 “temporary” slots were installed, but not until November 27, 2007.⁵⁷⁵ The BCSC decision was appealed by the Hastings Park Conservancy and, in March 2008, the B.C. Court of Appeal found that “the City had the power to authorize the use of slot machines at Hastings Park and to enter into the Operating Agreement with the Racetrack Operator.”⁵⁷⁶ The matter was put to rest in August 2008 when the Supreme Court of Canada refused leave to appeal, clearing the way for expansion to 600 permanent slot machines.⁵⁷⁷

Fraser Downs Racetrack

B.C.’s second significant race track, Fraser Downs at Elements Casino in Surrey, the site of Standardbred harness racing, has had a much shorter and less storied history than the Hastings track, but significant nonetheless. It began as Cloverdale Raceway in 1976, but was renamed Fraser Downs.⁵⁷⁸ On April 5, 2004, the Fraser Downs Gaming Centre opened with 200 slot

⁵⁷⁰ City of Vancouver, “Hastings Racecourse Updated Information”, Memorandum, May 31, 2004. Accessed at <https://council.vancouver.ca/20040608/ub1i.htm>.

⁵⁷¹ “The Legacy of Peter Wall”, *Vancouver Magazine*, June 2, 2012. Accessed at <http://vanmag.com/uncategorized/the-legacy-of-peter-wall/>.

⁵⁷² *Ibid.*

⁵⁷³ *Hastings Park Conservancy, supra.*

⁵⁷⁴ *Ibid.*

⁵⁷⁵ City of Vancouver, “Slots at Hastings Recourse – Report Back on Public Benefits...”, Administrative report, July 9, 2009, RTS No.: 04458. Accessed at <http://former.vancouver.ca/cityclerk/documents/penv4.pdf>.

⁵⁷⁶ *Hastings Park Conservancy, supra.*

⁵⁷⁷ “Top court won’t hear appeal over slots at Hastings Park”, *CBC News*, Aug. 14, 2008. Accessed at <https://www.cbc.ca/news/canada/british-columbia/top-court-won-t-hear-appeal-over-slots-at-hastings-park-1.730918>.

⁵⁷⁸ Gord Goble, “Fraser Downs celebrates 40 years of harness racing”, Oct. 5, 2016. Accessed at <https://www.surreynowleader.com/sports/fraser-downs-celebrates-40-years-of-harness-racing/>.

machines.⁵⁷⁹ In 2015, the Gaming Centre was replaced by Elements Casino Surrey following a multi-million dollar renovation⁵⁸⁰ and now boasts over 500 slot machines, as well as table games.⁵⁸¹ Fraser Downs is currently the only racetrack in B.C. where harness racing occurs, under the auspices of Harness Racing B.C. Its racing season runs from September to April.

HOW WAGERING ON HORSE RACING WORKS

Wagering on the outcome of horse races has been the main appeal of the sport since the beginning and is the sole reason horse racing has survived as a major professional sport.

All betting at Canadian tracks (and elsewhere) is done using a pari-mutuel wagering system, which was developed by a French citizen, Pierre Oller, in the late Nineteenth century. With this system, a fixed percentage (usually 14% to 25%) of the total amount wagered is taken out for racing purses, track operating costs, and taxes. The remaining sum is divided by the number of individual wagers to determine the payoff on each bet. The projected payoff, or ‘odds’, are continuously calculated and posted on the track ‘tote board’ during the open betting period before each race. For example, odds of ‘2-1’, means that the bettor will receive a \$2 profit for every \$1 wagered (\$3 total returned) if his or her chosen horse wins.

Bettors may wager on a horse to win (finish first), place (finish first or second), or show (finish first, second, or third). Other popular wagers are the daily double (picking the winners of two consecutive races), exactas (picking the first and second horses in order), quinellas (picking the first and second horses in either order), and the pick six (picking the winners of six consecutive races).⁵⁸²

Unlike gambling in a casino, where the players are playing against the ‘house’, in the pari-mutuel system, the players are betting against each other and so the more that is bet on a particular horse, the lower the odds are and the less the potential winnings.

Wagerers on horse races can buy tickets with cash through an on-track account established at a particular race track; at a ‘theatre’ or site other than the race track where the odds, results and payout prices of each race are displayed; and through a telephone account, which allows a wagerer to make bets via a telephone or computer to a racetrack where the patron has an account.⁵⁸³

CRIME, CORRUPTION AND MONEY LAUNDERING IN HORSE RACING

Horse racing has always attracted an eclectic audience from all walks of life – blue collar, white collar, and the wealthy. It has also attracted an unsavoury criminal element; petty criminals

⁵⁷⁹ City of Vancouver Memorandum, “Hastings Racecourse Updated Information”, *supra*.

⁵⁸⁰ <https://gcgaming.com/history/>.

⁵⁸¹ <https://elementscasinosurrey.com/gaming/>.

⁵⁸² <https://www.winningponies.com/horse-racing-history.html>.

⁵⁸³ <http://www.agr.gc.ca/eng/about-us/partners-and-agencies/canadian-pari-mutuel-agency/pari-mutuel-betting/?id=1362070544860>.

who find menial work at race courses and engage in criminality there (e.g., drug trafficking); corrupt race course employees and officials; and criminals engaged in sophisticated schemes to make money. For some criminals, gambling and betting on horse races is simply part of their lifestyle. For example, notorious gangster Al Capone was a well-known fan of betting on horse races, although he apparently was not very successful.⁵⁸⁴ Other criminals saw gambling, including on horse races, as another opportunity to exploit the industry for profit. This has occurred most notably by rigging races through various strategies, including doping and poisoning horses, disguising one horse as another, manipulating betting, holding back horses, and conspiracies between jockeys.⁵⁸⁵ Horse racing, like other forms of gambling, has also been associated with money laundering and corruption, examples of which are described below.

THE PURCHASE AND SALE OF RACEHORSES AND RACING-ASSOCIATED PROPERTY

A criminal seeking to launder the proceeds of crime can purchase a valuable race horse with cash. Their subsequent winnings from races would be legitimate. Examples include the following.

- Authors Margaret Beare and Stephen Schneider documented a case involving a Toronto drug dealer who purchased seven harness race horses for more than \$180,000 in total.⁵⁸⁶
- In Texas and Oklahoma, 15 suspects were arrested in an alleged money laundering and drug trafficking ring. The allegations included using horse sales to evade income reporting requirements.⁵⁸⁷
- In an extraordinary case in New Mexico, the Federal Bureau of Investigation (FBI) uncovered a massive money laundering case in which the Zetas drug cartel from Mexico had laundered millions of dollars through the purchase of more than 400 “narco horses”.⁵⁸⁸

⁵⁸⁴ Berger, Meyer, “Bookmakers Recite Big Capone Losses”, *New York Times*, Oct. 15, 1931 at p. 48, as quoted in Eliza McGraw, “Al Capone, No Great Bettor”, *Raceday 360*, Feb. 14, 2014. Accessed at <http://www.raceday360.com/2014/02/14/al-capone-no-great-bettor/>.

⁵⁸⁵ See for example, “The Most Shocking Horse Racing Scandals in History”, accessed at <https://betoclock.com/most-shocking-horse-racing-scandals/>; “Top 10 Horse Racing Scandals”, accessed at <http://www.manspacemagazine.com.au/top-ten-horse-racing-scandals/#prettyPhoto>; “Horse trainers guilty in Australia’s ‘biggest’ racing scandal”, *BBC News*, May 8, 2018, accessed at <https://www.bbc.com/news/world-australia-44035667>; and “Horse-racing doping scandal: eight found guilty of taking part in Aquanita ‘conspiracy’”, *Guardian*, May 8, 2018, accessed at <https://www.theguardian.com/sport/2018/may/08/horse-racing-doping-scandal-eight-found-guilty-of-taking-part-in-aquanita-conspiracy>.

⁵⁸⁶ Margaret E. Beare and Stephen Schneider, *Money Laundering in Canada*, *supra* at p. 134.

⁵⁸⁷ “Arrests Made in Money Laundering Ring Tied to Quarter Horse Sales”, *Paulick Report*, June 22, 2016. Accessed at <https://www.paulickreport.com/news/the-biz/arrests-made-money-laundering-ring-tied-quarter-horse-sales/>.

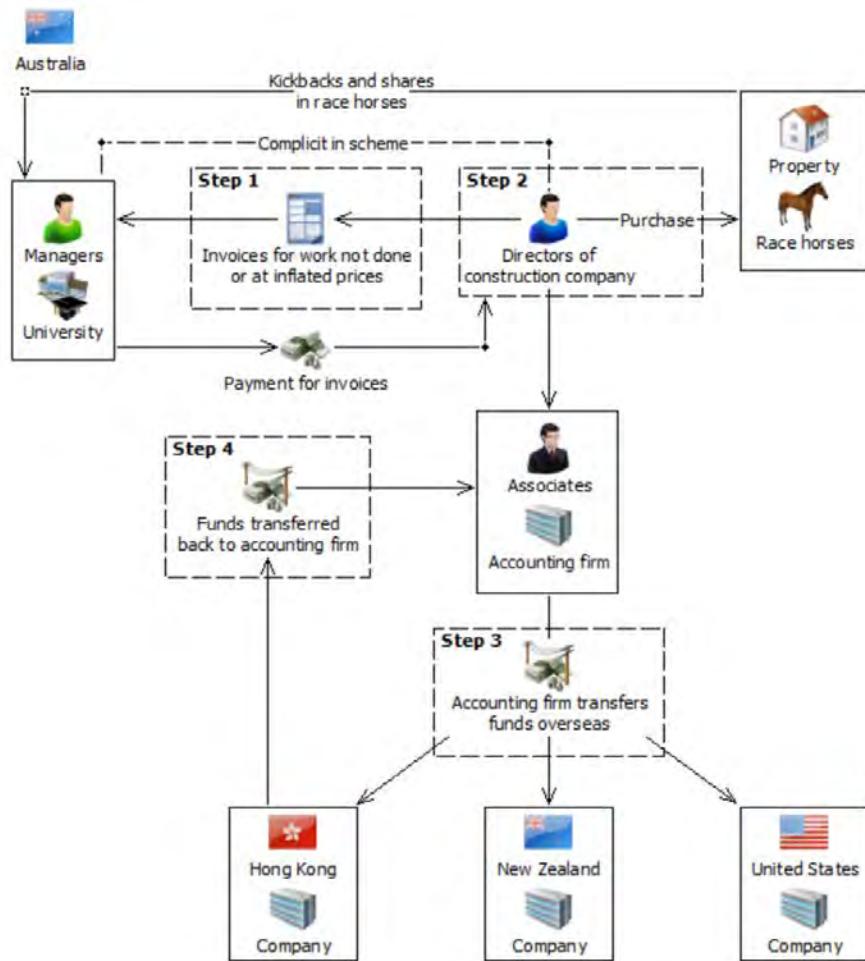
⁵⁸⁸ Ioan Grillo, “A True Tale of Drug Cartels, Money Laundering and Horse Racing”, *New York Times*, Sept. 22, 2017. Accessed at <https://www.nytimes.com/2017/09/22/books/review/bones-joe-tone-trevino-brothers.html>.

- In Australia, where trackside criminals have “long been a feature of horse racing”, the 1990s and 2000s saw the Mokbel drug trafficking syndicate use horse racing to launder drug proceeds through bookmakers as well as by purchasing top race horses.⁵⁸⁹
- In another Australian case, AUSTRAC reported in 2013 that it had assisted in unravelling an AUD\$30 million fraud on a university, in which the proceeds were laundered through the purchase of property and racehorses, paying the corrupt university managers with kickbacks or shares in the horses. The indicators were a large number of horses purchased by customers with unexplained wealth and links to the horse racing industry, outgoing funds transfers sent to overseas entities matched by incoming funds transfers in similar amounts from different entities located in the same countries, and a sudden increase in the purchase of properties inconsistent with customers’ established transaction / wealth profiles. The fraud had international aspects, with laundered funds being sent mainly to companies linked to horse racing, including in Canada. Eventually, law enforcement laid more than 2,000 charges, and subsequent convictions resulted in sentences ranging from fines to multi-year prison terms.⁵⁹⁰ The diagram below gives some sense of the sophistication of the scheme.⁵⁹¹

⁵⁸⁹ Richard Baker, “Trackside criminals long a feature of horse racing”, Sydney Morning Herald, Oct. 26, 2015 at <https://www.smh.com.au/sport/racing/trackside-criminals-long-a-feature-of-horse-racing-20151026-gkiky7.html>.

⁵⁹⁰ AUSTRAC, *Annual Report 2013-2014* at p. 51. Accessed at <http://www.austrac.gov.au/sites/default/files/documents/austrac-ar13-14-web-full.pdf>; and AUSTRAC, *Typologies and Case Studies Report, 2013* at pp. 36-37. Accessed at http://www.austrac.gov.au/sites/default/files/documents/typ13_full.pdf.

⁵⁹¹ AUSTRAC, *Typologies and Case Studies Report, ibid.*



CORRUPTING PARI-MUTUEL TELLERS

Small denominations bills (e.g., \$20) can be converted to larger bills (or vice versa) through wagering. While this activity should raise suspicion and result in some form of intervention, it can be accomplished by criminals corrupting and colluding with betting clerks. For example, in 2000, after a New York State Police investigation into a complex money laundering scheme at several race tracks, more than a dozen pari-mutuel clerks pleaded guilty to various charges, including money laundering and tax evasion.⁵⁹²

In a variation of this scheme, several Hastings Racecourse insiders reported hearing historical anecdotes about criminals purchasing winning tickets from the actual winners as a method of laundering cash. One long-time horse owner, a successful businessman who has attended Hastings Racecourse since the 1970s and worked as a pari-mutuel teller for many years, recalled that 25 or 30 years ago, "if someone won \$20,000, a shady character might try to buy

⁵⁹² Tom Precious, "New York Revokes Licenses in Money Laundering Case", Feb. 21, 2003. Accessed at <https://www.bloodhorse.com/horse-racing/articles/183545/new-york-revokes-licenses-in-money-laundering-case>.

their ticket from them to show a legitimate source of income, but that was the local hood, guys on the margins, pimps, a drug dealer, that kind of thing.” Echoing that observation, award-winning author Kevin Chong, who wrote a memoir about his experiences at Hastings Racecourse as a horse owner in 2009/2010, reported, “I once heard a story about how someone with a winning pick-six ticket in the five-figures was offered something like 125% of the value of the payout in cash by a shady person...”⁵⁹³

MULTIPLE CASH BETS ON THE FAVOURITE

To avoid having to corrupt a teller or otherwise draw attention to themselves, money launderers can place numerous small cash bets on the favourite to win, reducing the risk of losing money, or can further reduce the risk by betting on the favourite to place (come first or second) or show (come first, second, or third). Even though the net winnings would be very small, the money wagered is eventually ‘cleaned’.⁵⁹⁴

FIXING RACES

Races can be fixed to benefit a gambling operation and to launder money. For example, in 2005, 17 people were charged in New York as part of a gambling ring that had fixed a race. Implicated, among others, were a thoroughbred trainer, a harness racing driver, and a horse owner. Allegations included doping a horse, conspiracy, wire fraud and money laundering.⁵⁹⁵

Beare and Schneider note that a jockey in the U.K. claimed that up to one in ten jockeys had been “corrupted by criminal syndicates in Britain to facilitate money laundering by rigging horse races...and said his life had been threatened by a gangster who told him not to finish in the first six.”⁵⁹⁶

In Australia, the “Glamour couple” of Australian harness racing, Amanda Turnbull and Nathan Jack, were arrested in 2015 for allegedly fixing a race that benefited associates in the sum of \$30,000. Irregular betting patterns were observed and reported to the Victoria Police Sporting Integrity Intelligence Unit. Mr. Jack, the driver during the race, was convicted but charges were dismissed against Turnbull in November 2018.⁵⁹⁷

In 2004 in England, *The Guardian* newspaper reported a number of examples in which horse races had been fixed through various scams, including corrupted jockeys, trainers substituting horses, and horses being doped or otherwise tampered with. *The Guardian* reported that the

⁵⁹³ E-mail correspondence with review team, Dec. 5, 2018.

⁵⁹⁴ Margaret Beare and Stephen Schneider, *Money Laundering in Canada*, *supra* at p. 134.

⁵⁹⁵ Joe Drape and William K. Rashbaum, “Suspension of Licenses Follows Indictments”, *New York Times*, Jan. 15, 2005. Accessed at <https://www.nytimes.com/2005/01/15/sports/othersports/suspension-of-licenses-follows-indictments.html>.

⁵⁹⁶ Margaret Beare and Stephen Schneider, *Money Laundering in Canada*, *supra* at p. 134.

⁵⁹⁷ “Cobram Crew receive verdict and consequences”, *National Trotguide - Harness Racing Weekly*. Accessed at <https://nationaltrotguide.com.au/cobram-crew-receive-verdict-and-consequences/>.

phenomenon of online betting exchanges in recent years has transformed the horse racing industry and facilitated profit-making by those who wager on horses to lose.⁵⁹⁸

In Hong Kong, a top Australian jockey, Chris Munce, was disqualified from racing worldwide for 30 months in 2008 and served a 20-month jail sentence after pleading guilty to 36 criminal charges laid by the Hong Kong Independent Commission Against Corruption (ICAC).⁵⁹⁹ The criminal offences related to providing “tips for bets” and were laid as the result of a surveillance operation.⁶⁰⁰ In a similar and more recent case, another champion Australian jockey, Nash Rawiller, was banned by the HKJC for 15 months after being accused of accepting money or gifts in exchange for race tips.⁶⁰¹

In Canada, beginning in 2009, a six-month investigation conducted jointly by police and racing authorities in Michigan and Ontario, assisted by the Canadian Pari-Mutuel Agency (CPMA), resulted in several harness racing drivers being handed lengthy suspensions in both Ontario and Michigan, and large fines in Ontario for conspiring with others to affect the outcome of races at tracks in both jurisdictions. There were allegations that drivers had been paid to fix races, and that one had taken gifts of liquor and cigars from a gambler in exchange for inside information about horses and drivers that could influence the outcome of races, an illegal practice known as “touting”.⁶⁰²

Two of the alleged conspirators appealed their suspensions and fines and succeeded in having them overturned by the Ontario Racing Commission finding in 2011 that the evidence failed “to meet the standard as clear and convincing support for a finding on a balance of probability that [they] participated in the claimed conspiracy.”⁶⁰³

INSURANCE FRAUD

Much has been written about various insurance fraud schemes associated with horse racing. One of the most notorious was an alleged multi-million dollar insurance fraud relating to the 1990 death in Kentucky of a champion race horse, Alydar, “one of the greatest sires in Thoroughbred history”. Believed at first to have accidentally broken his leg, resulting in the horse being euthanized, Lloyd’s of London paid out on a multi-million dollar policy. But six

⁵⁹⁸ Paul Kelso and Ken Oliver, “A fair race?” *Guardian International Edition*, Mar. 10, 2004. Accessed at <https://www.theguardian.com/sport/2004/mar/10/horseracing.kenoliver>.

⁵⁹⁹ See <https://www.icac.org.hk/en/home/index.html>.

⁶⁰⁰ John Schell, “Munce hit with ban on top of jail term”, *Sydney Morning Herald*, Dec. 2, 2008. Accessed at <https://www.smh.com.au/sport/racing/munce-hit-with-ban-on-top-of-jail-term-20081202-gdt4zu.html>.

⁶⁰¹ Michael Cox, “Top Australian jockey Nash Rawiller banned for betting offences by Hong Kong Jockey Club”, *South China Morning Post*, Apr. 25, 2018. Accessed at <https://www.scmp.com/sport/racing/article/2143285/top-australian-jockey-nash-rawiller-banned-betting-offences-hong-kong>.

⁶⁰² Bob Duff, “Three harness drivers banned for race fixing”, *Windsor Star*, Sept. 4, 2010 at pp. A1 and A4. Accessed at <https://www.pressreader.com/canada/windsor-star/20100904>.

⁶⁰³ Ontario Racing Commission, Ruling Number Com SB 036/2011. Accessed at <http://standardbredcanada.ca/files/2011%20COM%20SB%20036%20WALLIS%20Kevin%20and%20PIROSKI%20Gene.pdf>.

years later, through the perseverance of a suspicious prosecuting attorney, working in concert with the FBI, multiple criminal charges were laid. After a trial that occurred almost 10 years after Alydar died, the prime suspect was convicted of bribery and sentenced to four years of imprisonment. The judge concluded there was insufficient evidence to also find him responsible for the horse's death.⁶⁰⁴

MANIPULATING OFF-TRACK BETTING SYSTEMS

One of the most significant betting scandals in horse racing history occurred at the Breeders Cup World Thoroughbred Championships in Toronto, in 2002. Three men, fraternity brothers from Drexel University in the 1990s, were alleged to have hacked an automated phone betting system allowing them to change bets after some races were over and while data was still being processed. This allowed them to pick multiple winners, including a 41-1 long-shot, earning more than \$3 million.⁶⁰⁵ But the highly unlikely wagering success immediately drew attention and the payout was withheld, pending an investigation. Although they initially denied wrongdoing, all three eventually pleaded guilty, receiving sentences of one year and a day, two years, and 37 months, respectively.⁶⁰⁶ After the charges, racing officials hired a consulting firm led by former New York City Mayor Rudolph Giuliani to develop a plan to improve security "and protect the \$14.5 billion bet annually in the United States. The firm concluded that the scam appeared to be an isolated event."⁶⁰⁷

THE LEGAL FRAMEWORK FOR HORSE RACING IN B.C.

Horse racing in Canada is subject to a bifurcated legal regime, involving both federal and provincial legislation, as depicted below and explained following the graphic.⁶⁰⁸

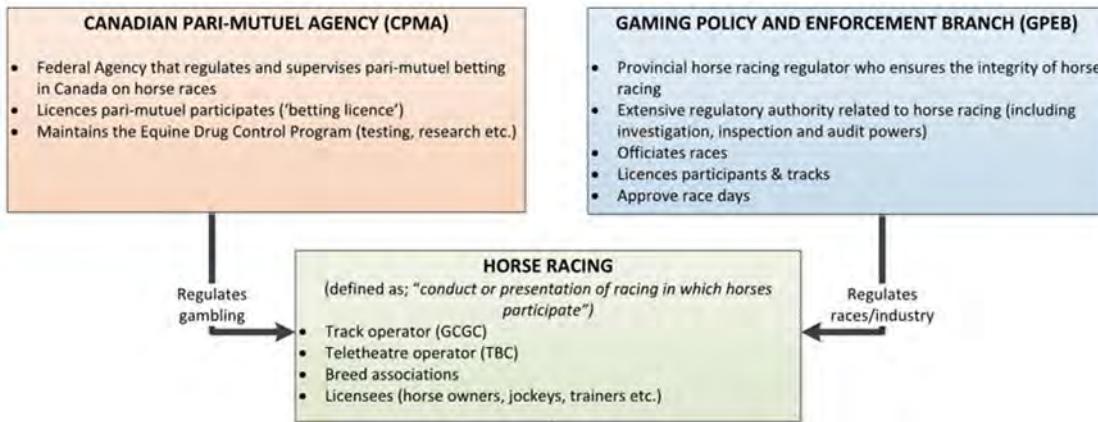
⁶⁰⁴ Skip Hollandsworth, "The Killing of Alydar", *Texas Monthly*, June 2001. Accessed at <https://www.texasmonthly.com/articles/the-killing-of-alydar/>.

⁶⁰⁵ Greg S and oval, "3 Friends, 3 Bets And Millions in Question", *Washington Post*, Nov. 12, 2002. Accessed at https://www.washingtonpost.com/archive/politics/2002/11/12/3-friends-3-bets-and-millions-in-question/6aa65d78-dc48-46c9-bd2e-15859fd99463/?utm_term=.b87013876683.

⁶⁰⁶ James Christie, "Horse racing rocked by 'Fix Six' bet scandal", *Globe and Mail*, Oct. 31, 2002. Accessed at <https://www.theglobeandmail.com/sports/horse-racing-rocked-by-fix-six-bet-scandal/article4140113/>.

⁶⁰⁷ "Horse Racing; 3 Sentenced in Breeders' Cup Betting Plot", *New York Times*, Mar. 21, 2003. Accessed at <https://www.nytimes.com/2003/03/21/sports/horse-racing-3-sentenced-in-breeders-cup-betting-plot.html>.

⁶⁰⁸ Graphic provided courtesy of Rachel M. Cheng, GPEB.



FEDERAL OVERSIGHT

At the federal level, horse racing is subject to section 204 of the *Criminal Code*, which sets forth the legal requirements. Section 204 provides an exemption for horse racing from the general prohibition on commercial gaming in Canada that remained in place until 1969. Until *Criminal Code* amendments in that year, wagering on horse races was the only legal betting that could occur in Canada, other than “occasional games of chance for charitable or religious purposes; and certain games at agricultural fairs and exhibitions.”⁶⁰⁹

Section 204 is also the enabling legislation for the CPMA, created in 1991 as a special operating agency within Agriculture and Agri-Food Canada (AAFC). Prior to the creation of the CPMA, it was known as the “Racetrack Division” of the AAFC. In one form or another, the federal Agriculture Minister has been responsible for pari-mutuel betting on horse racing since the 1920s.

The CPMA regulates and supervises pari-mutuel betting in Canada to ensure fairness through a regulatory framework and the enforcement of national standards. Services include, but are not limited to, permits, licences and authorizations for racetrack and betting theater operators; auditing and monitoring of pari-mutuel betting; testing of horses for prohibited substances; enforcing the *Pari-Mutuel Betting Supervision Regulations*;⁶¹⁰ and compiling statistical information on betting.⁶¹¹

The CPMA, formerly the Racetrack Division of the AAFC, was created a century ago when betting on horse racing was the only legal form of gambling. It has shrunk with the decline of the industry. It is funded by removing 8% of every dollar wagered, making it dependant on the declining revenue from track betting. Until the 1970s, the CPMA had a Memorandum of Understanding (MOU) with the RCMP in which RCMP officers did on-track monitoring of betting. A decade ago, there were approximately 120 CPMA staff. Today there are only 32,

⁶⁰⁹ Osborne, Judith A. and Campbell, Colin S., "Recent Amendments to Canadian Lottery and Gaming Laws", *supra* at pp. 19-43.

⁶¹⁰ *Pari-Mutuel Betting Supervision Regulations*, SOR/91-365.

⁶¹¹ <http://www.agr.gc.ca/eng/about-us/partners-and-agencies/canadian-pari-mutuel-agency/?id=1204043533186>.

however the agency does have the benefit of new technology and algorithms to alert them to suspicious betting patterns.

While the CPMA has a window on how much is bet and on what, including anonymous cash bets, it does not have access to the identities of those making bets online through wagering accounts, as that information is held provincially. The CPMA views itself as an organization analogous to OSFI, which audits regulatory compliance by banks. The CPMA monitors betting patterns to guard against cheating, however according to senior staff, the agency does not have the mandate nor the capacity to investigate or audit for money laundering.

PROVINCIAL OVERSIGHT

In addition to federal legislation, each province also has provincial legislation in place to govern gaming. Following the *Criminal Code* amendments in 1969, B.C.'s legislation and governance of gaming activities was eventually consolidated in the *Gaming Control Act (GCA)*.⁶¹² Parts 2.1 and 7 of the Act focus on horse racing.

To enforce the *GCA*, the Gaming Policy and Enforcement Branch has a Compliance Division that is responsible for regulatory compliance with the *GCA*, the *Gaming Control Regulation* and the *Criminal Code*. There are now two units with responsibilities relevant to horse racing. The first is the Racing Unit, which develops and enforces rules and policies for horse racing, regulates horse racing events, and registers all racing participants. The second is an Intelligence and Investigations Unit, which has recently been restructured. According to GPEB's annual report, the intelligence role is intended to provide government and police agencies with intelligence regarding organized crime and illicit activity impacting the integrity of gaming. The investigations role is designed to investigate *GCA* offences, as well as to assist police regarding reports of illegal gambling activity.

In addition, five GPEB staff are assigned to the RCMP-led Joint Illegal Gaming Investigation Team, which has a mandate to investigate organized crime involvement in illegal gaming, as well as to investigate money laundering in B.C. gambling facilities.⁶¹³

To meet its mandate, the Compliance Division relies in part, on the obligation of registrants and licensees under the *GCA* to notify the General Manager of GPEB, immediately, concerning any conduct, activity or incident occurring in connection with a lottery scheme or horse racing, if the conduct, activity or incident involves or involved (a) the commission of an offence under a provision of the *Criminal Code* that is relevant to a lottery scheme or horse racing, or (b) the commission of an offence under the *GCA*.⁶¹⁴

⁶¹² S.B.C. 2002, c. 14.

⁶¹³ GPEB. *Annual Report 2017-2018* (Victoria: Province of B.C., 2018).

⁶¹⁴ *GCA*, s. 86(2).

The Racing Unit relies on the Stewards at Hastings and the Judges at Fraser Downs, who are responsible for ensuring fair play in horse racing, to remain vigilant and to report rule infractions and suspicious conduct to the Unit.

In 2017, the Racing Unit registered 679 horse racing workers. It also conducted numerous investigations regarding various infractions. As a result, 104 rulings were made, with the highest number (50) being for “racing or driving infractions committed during a race”, the second most frequent infraction (20) being “inappropriate behaviour in the backstretch area of a racetrack”, and the third being 14 incidents of drug or alcohol infractions involving either horses or registered horse racing workers. This is a large number of infractions considering the size of the industry, which may be indicative of systemic problems and/or aggressive and effective enforcement.

Until recently, GPEB had a manager in charge of horse racing investigations, with several investigators assigned, but when the JIGIT was formed in 2016, the position was eliminated and the investigators were seconded to JIGIT.

THE IMPACT OF LEGAL GAMING ON HORSE RACING IN B.C.

Prior to the 1969 amendments to the *Criminal Code*, there was little legal competition for gaming dollars and the horse racing industry prospered. Other forms of legal gaming soon became available, beginning in 1974 when Manitoba, Saskatchewan, Alberta and B.C. formed a partnership to conduct lotteries in Western Canada. The national “6/49” lottery was introduced in 1982, with a jackpot reaching 13.9 million in 1984, spawning ‘jackpot fever’. In 1985, BCLC began operations, introducing many new lottery options.

In 1997, BCLC introduced “SuperStar Bingo”, and was given approval to bring slot machines into the province. A year later, it assumed responsibility for casino gaming in B.C., with the first destination casino opening in 1999. In 2004, BCLC introduced a secure gaming website which provides online play and sales of some lottery products. More casinos opened and in 2010, B.C. became the first jurisdiction in North America to offer legal, regulated online casino games on “PlayNow.com”.⁶¹⁵

The horse racing industry suffered after lotteries were introduced and then as faster-paced casinos, online gaming, and other options became ubiquitous. By 1997, in person wagering at horse races and wagers by residents betting on live races in B.C. via simulcast, was in a virtual free-fall, declining from \$100 million in 1997 to less than half that number, \$42 million, five years later. The sharp decline continued unabated, dropping to \$29 million in 2007, \$12 million in 2012, and levelling off at \$7.4 million in 2017.⁶¹⁶

However, wagering on “import” horse racing (i.e., on races taking place outside B.C. via simulcast at “racebook” or “teletheatre” venues, or online through “HorsePlayer Interactive”)

⁶¹⁵ <https://corporate.bclc.com/who-we-are/our-history.html>.

⁶¹⁶ Data provided by the B.C. HRIMC.

fared much better, fluctuating between \$126 million in 1997 and \$140 million in 2017, with a peak in 2007 of \$172 million wagered.⁶¹⁷

Long-running racetracks outside the Lower Mainland, four in the Interior of B.C. and one each in Vernon, Princeton, and Kamloops, were no longer viable. Desert Park in Osoyoos introduced horse racing again in 2013 after a 10-year hiatus. It was the only Interior racetrack to host live horse racing in 2016 (for only one day). By 2017, only Hastings and Fraser Downs hosted races.⁶¹⁸

By 2000, the horse racing industry was in serious trouble and facing an uncertain future; the rapid decline in wagering meant a corresponding reduction in breeding and available horses, further imperiling the industry, which was riddled with disputes within and between stakeholders for the two breeds (Thoroughbreds and Standardbreds). Organizational dysfunction was also blamed on the governance model and the existing B.C. Racing Commission.

In 2001, the Ministry of Public Safety and Solicitor General (PS&SG) announced a restructuring of gaming in the province. Five agencies were consolidated into two: GPEB and BCLC. The B.C. Racing Commission was replaced by three senior government staffers chaired by the Acting Deputy Solicitor General.⁶¹⁹ Although it was announced in September 2001 that BCLC would assume responsibility for horse racing, that decision was not implemented.⁶²⁰

The *Gaming Control Act*, which received Royal Assent in April 2002, and its regulations issued in August 2002 reflected this new structure. Also proclaimed in August 2002 were the “Rules of Thoroughbred & Standardbred Horse Racing in British Columbia”.

In 2003/4, GCGC purchased both Hastings Racecourse and Fraser Downs, and continues to operate both, as well as their associated casinos.

In a 2005 report to government by George Morfitt, it was noted that in 2001, horse racing stakeholders in B.C. operated seven horse racing tracks and 21 operational teletheatre outlets. Morfitt also reported that gross revenues from pari-mutuel betting on horse racing represented \$210 million of the \$2 billion in total gaming revenue in B.C. At that time, he reported the horse racing industry employed approximately 5,000 licensed jockeys, drivers, trainers, grooms and exercise persons and that there were approximately 200 days of live horse racing per year.

⁶¹⁷ Fees are paid to import broadcast signals to B.C., in order for bettors to place bets and watch foreign races. B.C. exports its broadcast signals to other racing jurisdictions and earns a fee of approximately 2.5% of the wagering “handle” (i.e., the total amount wagered).

⁶¹⁸ Stephanie Mercier, “Is it the final stretch for small town horse racing in B.C.?” *CBC News*, Aug. 21, 2016. Accessed at <https://www.cbc.ca/news/canada/british-columbia/interior-bc-horse-racing-down-to-one-day-1.3727236>.

⁶¹⁹ Randy Goulding, “B.C. Disbands racing commission”, *Daily Racing Forum*, Sept. 14, 2001.

⁶²⁰ George L. Morfitt, *Horse Racing in British Columbia: A Consideration of Organizational and Operational Issues*. Government of British Columbia, unpub., July 15, 2005.

Morfitt's 2005 review of organizational and operational issues in horse racing made numerous recommendations respecting:

- the independence and objectivity of horse racing officials;
- registration and licensing (determining licensing eligibility and post-registration and -licensing background investigations and protocol);
- investigations, inspections, and security; and
- qualifications and training of personnel.

In December 2006, GPEB provided a detailed matrix outlining Morfitt's recommendations and demonstrating that they had been acted upon, with the majority fully implemented. Despite improvements to various accountability processes, the industry continued its decline. To quote one key stakeholder, "the industry was a hot mess".

In 2009-2010, the Minister responsible for Gaming responded to industry concerns by creating the B.C. Horse Racing Industry Management Committee. The Committee was intended to act as a single supervising body with authority over all financial and operational aspects of the industry. Major industry stakeholders were represented, and each signed an MOU setting forth the mandate of the Committee and the various parties.

A key stakeholder we interviewed for this Review gave credit to then Minister Rich Coleman for his leadership in revamping the governance structure of the industry, which provided a basis for stakeholders to take action to stabilize and sustain the industry. These actions included eliminating unprofitable race days, cutting costs, developing an equitable funding model and a satisfactory governance model, and reaching an agreement with the provincial government to share in the profits from slot machines installed at race track casinos, first at Fraser Downs and then at Hastings. The agreement provided that 25% of the profits from onsite slots would be returned to the industry.

VULNERABILITY OF THE HORSE RACING INDUSTRY IN CANADA TO MONEY LAUNDERING

In its February 2018 consultation paper on the five-year review of the *POCMLTFA*, Finance Canada commented as follows on the horse racing industry:⁶²¹

"This sector presents money laundering vulnerabilities similar to the casino sector, given that the methods used to launder money through horse racing are similar to those used in casinos, which have been covered by the *PCMLTFA* since 2007. For example, criminals can convert small denominations of cash generated from criminal activities into larger bills through pari-mutuel betting. Similarly, funds can be deposited into player accounts, either in person or online, in exchange for cashier's cheques or wire transfers. The FATF

⁶²¹ Dept. of Finance, *Reviewing Canada's AML and ATF Regime*, *supra* at p. 26.

has found that there is significant money laundering risk through this type of activity in Canada.”

The paper also noted that unlike casino gaming, which is regulated provincially, oversight of horse racing is split between the CPMA and the provinces. On September 5, 2018, the Alcohol and Gaming Commission of Ontario (AGCO), Ontario’s regulator for horse racing, responded to Finance Canada’s comments. It expressed support for the federal government’s efforts to combat financial crime in the horse racing and pari-mutuel betting industries, noting that: “the horse racing industry has several factors that are similar to casinos (which are currently subject to federal anti-money laundering requirements); namely: being a generally cash-intensive business and the use of online and/or remote wagering.”⁶²²

“Racetracks of Canada” provided an eight-page submission to the Standing Committee on Finance.⁶²³ It noted several anti-money laundering strategies adopted by race tracks in Canada, as follows.

- The maximum amount of cash wagered at tellers cannot exceed \$100.
- The maximum transaction at self-serve terminals cannot exceed \$1,000.
- The 50% of pari-mutuel betting done through registered online account betting is “safeguarded by having identification authenticated via a secure third-party platform, as approved by CPMA”, thereby tracking all transactions and making them auditable.
- Anti-fraud software flags activity consistent with potential money laundering.
- Requests for disbursements over \$10,000 from an account or through cashing a voucher are investigated to ensure the request is the result of a winning bet, not a ‘cash in and out’ transaction, and all cheques are issued with a verified name and address.
- EFTs are subject to the foregoing procedures and anti-fraud measures and may not be sent internationally.

The submission also noted that most online wagering is “funded using credit or debit cards (not cash), and is therefore already subject to the FINTRAC requirements at the bank level.” The submission conceded, however, that it is:

“possible for patrons to establish anonymous player card accounts for use at the physical racetrack locations. Such accounts are set up to protect the identity of the

⁶²² Derek Ramm, AGCO, Letter, Sept. 5, 2018.

⁶²³ Woodbine Entertainment Group (on behalf of Racetracks of Canada). *Response to the Review of Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime with Respect to Pari-Mutuel Wagering*, 2018. Accessed at <https://www.fin.gc.ca/consultresp/amlatfr-rpcfat/amlatfr-rpcfat-32.pdf>.

account holder, but still require age information to verify that the patron is of legal age to wager in Canada and are subject to financial limits. Anonymous accounts can only be set up and used at physical racetrack locations, and cannot be used to wager online.”

The Racetracks of Canada submission claimed that it was not able to implement additional AML detection and prevention procedures due to a lack of resources in the struggling industry (e.g., real-time transaction tracking for cash wagering activities, and monitoring security cameras at all betting terminals), and there would be a decrease in wagering activity “due to time constraints based on the condensed timeframes involved in horse racing wagering transactions...” The submission noted that the horse racing industry is already “largely dependent on government funding for survival.”

In its November 2018 report, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, the Standing Committee on Finance made no specific mention of horse racing. There was, however, a generic recommendation:⁶²⁴

“That the Government of Canada expand FINTRAC oversight to ensure that all casino operators, employees, and *frontline gaming personnel* [emphasis added] are trained in anti-money laundering legislation.

Finance Canada has advised us that the horse racing sector is, in fact, “currently being examined as part of the broader work being undertaken to update our [POCMLTFA] legislative framework.”⁶²⁵

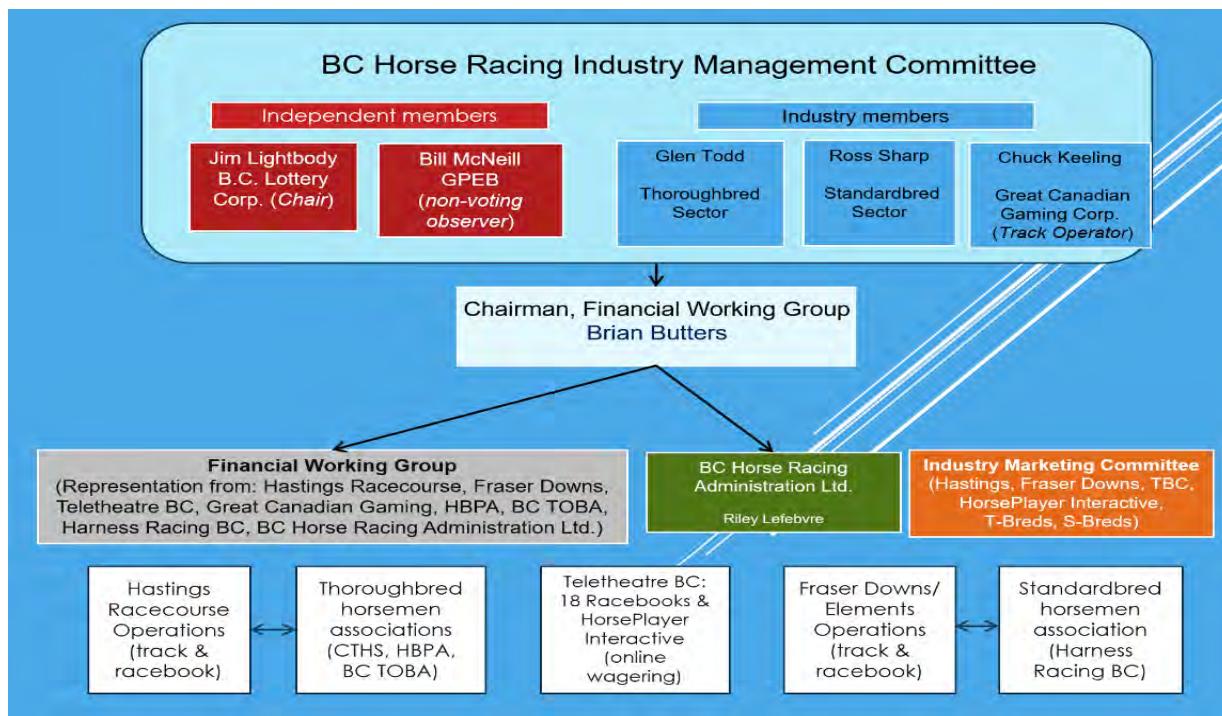
THE CURRENT GOVERNANCE MODEL FOR THE HORSE RACING INDUSTRY IN B.C.

Horse racing in B.C. is currently conducted and managed by Thoroughbred and Standardbred associations, in conjunction with the racetrack operator, GCGC. The B.C. HRIMC formed in 2010 remains in place, and has reportedly provided stable leadership in the industry, recently renewing the funding model for a three-year term (2017-2019). The current governance model is depicted in the graphic below.⁶²⁶

⁶²⁴ Canada, House of Commons Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing*, *supra*, Recommendation 21.

⁶²⁵ E-mail to review team from Finance Canada, Dec. 24, 2018.

⁶²⁶ Graphic courtesy of Brian Butters, B.C. Horse Racing Industry Management Committee (BCHRIMC).



THE FUNDING MODEL FOR HORSE RACING IN B.C.

According to GPEB's most recent annual report, legal gaming in B.C. generated revenue of \$3.3 billion in fiscal year 2016/2017, returning \$1.4 billion to the government. However, the revenue generated by wagering on horse racing in 2017 was only \$18 million, realized from \$7.4 million in wagers on live races, and \$140 million wagered on "import horse racing".⁶²⁷ Of the total amount wagered, live betting at Hastings Racecourse generated 6% of revenue and live betting at Fraser Downs generated 2% of revenue. Ninety-two per cent of wagering revenue was generated by betting on import horse racing.

Because the horse racing industry has struggled to survive ever since casinos were introduced, the entire \$18 million in revenue generated by wagering was returned to the industry. In addition, \$11.6 million, reflecting 25% of slot machine net revenue from the casinos co-located at the Hastings and Fraser Downs racetracks, was returned to the industry. This created a total budget of \$29.6 million in 2017. This funding was divided among the operator, GCGC for operational expenses (43%), and the Thoroughbred (34%) and Standardbred (23%) associations to fund purses and breeding incentives.⁶²⁸

⁶²⁷ Wagers on races taking place outside B.C., broadcast via simulcast to one of 19 'teletheatres' in B.C., including at Hastings and Fraser Downs racecourses.

⁶²⁸ Data provided by BCHRIMC.

THE CURRENT STATE OF HORSE RACING IN B.C.

The horse racing industry in B.C. is only a shadow of its former self. However, the industry has rebounded somewhat from the worst of times and it is hopeful for the future. There were 51 racing days at Hastings and 58 at Fraser Downs in 2018, and there are 51 and 65, respectively, planned for 2019.

With a funding and governance model described by stakeholders as unique in North America, the industry now reportedly employs over 2,300 licensed owners, jockeys, drivers, trainers, grooms and exercise riders.⁶²⁹ Although not an inconsiderable number, it is less than half the size of the industry in 2008.⁶³⁰ The public profile of horse racing in B.C. received a welcome boost when Mexican-born jockey Mario Gutierrez joined the Hastings Racecourse in the mid-2000s and went on to ride in the U.S., where he won the Santa Anita Derby, the Kentucky Derby and the Preakness Stakes in 2012. This generated much positive media coverage, not to mention great pride at Hastings Racecourse.⁶³¹

The horse racing industry is appreciative of the ongoing support of the provincial government and is acutely aware of the fact that it is not a revenue generator for the operator, GCGC (other than with respect to the associated casinos).

IS MONEY LAUNDERING OCCURRING IN B.C. HORSE RACING?

We explored the vulnerability of the horse racing industry to money laundering by examining a variety of factors, including police and GPEB information and investigations; demographics of wagerers; size of wagers; sales of race horses, including a cursory examination of who the buyers and sellers are; the use of self-serve terminals to wager; and online betting.

INVESTIGATIONS BY THE POLICE FORCE OF JURISDICTION

Historically, the VPD maintained a Gaming Unit comprised of two detectives. The Unit had a mandate to investigate gaming-related offences such as bookmaking, cheating at play, keeping a common gaming house, illegal lotteries, illegal video lottery terminals, loansharking, money

⁶²⁹ GPEB, *Annual Report 2017/2018*, *supra*. The information in this GPEB report is at odds with the “Five thousand licensed owners, jockeys, drivers, trainers, grooms and exercise persons” noted on its website (likely outdated information). Accessed at <https://www2.gov.bc.ca/gov/content/sports-culture/gambling-fundraising/horse-racing>, as of Nov. 30, 2018.

⁶³⁰ <https://www2.gov.bc.ca/gov/content/sports-culture/gambling-fundraising/horse-racing>.

⁶³¹ See, for example, David Ebner, “The magic hands of Mario Gutierrez”, *Globe and Mail*, June 7, 2012. Accessed at <https://www.theglobeandmail.com/sports/more-sports/the-magic-hands-of-mario-gutierrez/article4241025/>; and “Mario Gutierrez returns to ride in B.C. Cup Day at Hastings Racecourse”, *Vancouver Sun*, Aug. 3, 2013. Accessed at <http://www.vancouversun.com/technology/mario+gutierrez+returns+ride+hastings+racecourse/8744518/story.html>.

laundering,⁶³² and illegal poker clubs.⁶³³ In January 2005, the Unit was disbanded on the understanding that GPEB would assume conduct of gaming investigations.

Several former VPD Gaming Unit members were interviewed for this Report, including one who had worked on gaming investigations for 10 years prior to the disbanding of the Unit and was a recognized expert in the field. The former members were all concerned that GPEB had not lived up to its commitment. They allege that GPEB simply gathers information concerning alleged improprieties at Hastings Racecourse and refers it to the VPD, which no longer has the mandate or staff to conduct such investigations. A former police officer who was also a GPEB member in the mid-2000s corroborated these assertions, noting: “we did NOTHING there...it was just smoke and mirrors, we made no arrests”. More recently retired GPEB staff agreed but advised that much has changed and working in GPEB is no longer considered a “retirement job”.

Notwithstanding the concerns about GPEB in the 2000s, all the former Gaming Unit investigators said that while there was crime occurring at Hastings Racecourse, it was typically drug dealing and petty offences. None of the investigators had ever had a file or even received information concerning money laundering: “We knew we had criminals with easy come/easy go cash who would drop a lot of money on horse races, but they were just criminals who liked to gamble.”

There was, however, a seamy side to Hastings Racecourse, associated with a transient workforce, some of whom were known to be involved in drug or alcohol abuse, and sometimes worse. For example, in 2002, a Hastings horse trainer and his girlfriend were murdered, their bodies left in the trunk of a car. In 2007, a former Hastings Racecourse jockey’s agent was convicted at trial on two counts of first-degree murder. The murders resulted from a dispute over a drug operation outside Vancouver.⁶³⁴

We interviewed a successful Vancouver businessperson and horse owner, who has attended Hastings Racecourse since the 1970s. He observed that there was:

“...petty stuff, never anything big. Just your run of the mill pimps, or people trying to fence 20 shirts. We had guys who came to the track who had been in jail for bad things, but we would just tell them they had to behave. But I never saw someone actually involved in money laundering. I don’t believe it was happening when the industry was big, and it would be completely unrealistic for it to be happening now in B.C... It’s horribly depressing, but the average daily betting at Hastings is about 100K, and 25 years ago it was over a million. So there is just not

⁶³² It has been a *Criminal Code* offence to possess property “knowing that it was obtained [by the commission of an indictable offence]” since the 1950s (R.S.C. 1953 – 54, c. 51, s. 296.), however laundering was not a criminal offence until 1989 (*An Act to amend the Criminal Code, the Food and Drugs and the Narcotic Control Act*, S.C. 1988, c. 51.).

⁶³³ Inspector D. LePard, *Status Report: Workload Changes 1993-2000*, VPD, Dec. 2000.

⁶³⁴ *R. v. Wilson*, 2007 BCSC 1940.

the capacity – if someone came in with \$10,000 now it would raise a bunch of red flags. There isn’t the volume to make crime or money laundering realistic.”

Several former Gaming Unit investigators noted occasional allegations of cheating in races and doping of horses. Only one had conducted such an investigation and it related to a trainer’s refusal to let his horse be tested for a prohibited veterinary drug. An experienced investigator stated: “I’m sure there was money laundering going on in horse racing at some point, but it has been a dying industry since casinos came in and really where the opportunities are is with online gambling...”

Another Gaming Unit investigator worked at Hastings Racecourse as a teenager in the mid-1960s: “Before casinos and online betting when the race track was ‘it’ and it was booming and you could see all the criminal element there...I have no doubt from the [amount of] betting, money laundering was going on then, but I didn’t make any specific observations.”

To assist our Review, the VPD compiled a 10-year spreadsheet (from July 1, 2008 to Nov. 12, 2018) of police-reported incidents at Hastings Racecourse. Over the entire 10-year period, there were 61 files. Those of note included:

- three fraud files, in which suspects presented fake identification, or identification in another person’s name;
- two “counterfeiting currency” files involving small denominations (a \$5 bill and a \$20 bill); and
- one “counterfeiting currency” file created to document multiple counterfeit bills, some of which came from Hastings Racecourse.

The remaining files were of minor incidents or petty crimes, such as assault, mischief, theft, and public intoxication. There were no files related to an allegation of money laundering, or of any related offence.

The RCMP also greatly assisted this Review by conducting a detailed analysis of all incidents/files associated to horse racing venues throughout B.C. over a ten-year period, from January 1, 2009 to January 1, 2019. The analysis was intended to determine if any involved money laundering or other incidents with a nexus to organized crime. The venues examined included horse racing tracks, associated casinos, and 16 licensed teletheatres.

There were 110 files over the ten-year period. Of those, 93 were determined to be irrelevant, being primarily calls regarding disputes, threats, fights, intoxication, removal of patrons, and other petty issues.

Seventeen were determined to have potential relevance to money laundering, loan sharking or other incidents that might be associated to organized crime or organized criminal activities.

Fifteen occurred at Fraser Downs,⁶³⁵ one at Hastings, and one at an online telephone wagering service in Abbotsford. Eleven files involved large buy-ins of chips at gaming tables or a large number of bills used in slot machines or self-service betting machines; three incidents involved counterfeit currency and/or fraudulent credit cards; two incidents involved patrons attempting to covertly pass casino chips or other tender (a cheque); and one incident involved an excluded patron using false identification to claim a jackpot.

In every case, however, the incidents of concern were associated with the onsite casino at the horse racing venue, not wagering on horse racing. No files were identified in the RCMP analysis at any horse racing venue or teletheatre that suggested money laundering was occurring.

INVESTIGATIONS BY GPEB REGARDING HORSE RACING

A GPEB investigator in the mid to late 2000s, a highly experienced former police serious crimes investigator, advised us that he had received information that money was laundered through pari-mutuel tellers at Hastings Racecourse by criminals with “bags of ten or twenty thousand dollars in cash”. Despite his best efforts, he was never able to confirm the allegations and was satisfied with proactive efforts that were being taken to ensure that it did not occur in the future. By the time of his retirement in the late 2000s, the introduction of casinos had provided much better opportunities for laundering.

Current GPEB and JIGIT staff interviewed for this Review noted that they had never received any information or any complaint about money laundering or suspicious financial transactions at a race track, although they had received information concerning assaults, sexual assaults, and illegal drugs. Each noted that the average financial transaction is small, with one observing:

“I don’t know how you could make any real money...In a casino you have \$100,000 hands, but you probably wouldn’t have that much bet in a day in horse racing...Even horse sales: high risk, low return...not like buying high-priced cars here and selling to China for WAY more money...we never get information about [money laundering] in horse racing and don’t think it’s going on because it’s just not realistic when it’s so much easier in the casinos and there’s so much more money involved.”

THE DEMOGRAPHICS OF HORSE RACING WAGERERS IN B.C.

Another factor that must be considered in determining the likelihood of money laundering is the demographics of the bettors. Several people in the horse racing industry commented that horse racing fans were an aging demographic and were literally and figuratively “dying out”. Author Kevin Chong observed in his book on Hastings Racecourse that “the primary demographic at Hastings Racecourse [was] old and male, equal parts white or Asian...”⁶³⁶ The

⁶³⁵ This reflects the fact that Fraser Downs is located within the jurisdiction of the RCMP’s Surrey Detachment.

⁶³⁶ Kevin Chong, *My Year of the Racehorse*, (Vancouver: Greystone Books, 2012) at p. 2.

HRIMC has reported that the “demographic of bettors is skewed heavily toward older male individuals in metro areas, with an Asian predominance.”

Wagering statistics bear out the foregoing observations of the aging horse racing clientele. In B.C. in 2017, online horse racing bettors (who must provide their identification, including date of birth, to open an account) were dominated by those 50 years and older, comprising 79% of all online customers. The 21% of customers under 50 years were underrepresented in wagering, accounting for only 9.4% of the total amount wagered, with those between 50 and 80 years, accounting for 85% of money wagered. As author Kevin Chong pointed out:⁶³⁷

“No wonder this sport is dying, made irrelevant to today’s gambler by looser gaming restrictions and more expedient methods of wagering...A half-hour passes between races at any track; living in this hurry-hurry world, people can’t lose their money fast enough.”

THE SIZE OF WAGERS BY B.C. HORSE RACING PATRONS⁶³⁸

There is a small number of wagerers in B.C. who bet large sums on horse races over a day of racing. This occurs through online betting. The HRIMC reports that “a large percentage of total wagering is done by a relatively small percentage of big bettors (‘whales’). Only 6% of the total is bet on live races at Hastings, and 2% on live races at Fraser Downs. Average betting on live racing per racing day in the 2017/2018 season was approximately \$66,000 for Hastings Racecourse and Fraser Downs combined.⁶³⁹

In 2018, the top online wagerer on races at Hastings bet \$130,203, but that was more than double the second-highest bettor. The vast majority of account holders had wagered less than \$5,000 during the year. The pattern was similar at Fraser Downs, where the top online wagerer bet \$98,118, more than three times as much as the second highest bettor, and the vast majority wagered less than \$2,000 during the year.⁶⁴⁰

Most online wagering occurs on races outside of B.C. On one sample day, the top online bettor had wagered over \$45,000 (losing a total of \$5,000 and netting \$40,000 for the day), with the second highest bettor wagering approximately \$6,000. The size of bets rapidly decreased from these outliers, with most betting only a few hundred dollars a day or less. The average wagering of all 6,083 horse racing customers in B.C., during the entire 2016/2017 racing season, was a little over \$15,000.

⁶³⁷ *Ibid.* at p. 4.

⁶³⁸ Data provided by BBCHRIMC and by Hastings Racecourse.

⁶³⁹ Calculated by dividing the \$7.2 million bet on live races by the 109 total racing days (51 at Hastings and 58 at Fraser Downs).

⁶⁴⁰ In fact, while the average yearly online wagering on races at Hastings was \$1,016, the median wagering total was \$168. At Fraser Downs, the average yearly online wagering was \$785, with a mean total of \$116. Data was provided by the B.C. Director of Horse Racing.

It is also important to understand that someone who has bet, for example \$1,000 in a day, may not have arrived at the track with \$1,000. Rather, the bettor may have arrived with \$100, wagered on races throughout the day and continued to reinvest any winnings on more bets. The \$1,000 wagered that day is the accumulated total of bets made, referred to in gaming parlance as ‘churn’. The Director at Hastings Racecourse commented on those who attend to bet on live races, or online on races being simulcast at Hastings:

“On a busy Saturday, only two bettors would bet over \$10,000 in the day, and these big bettors don’t even bet on the horses here; mostly it would be on the big tracks (via simulcast). That’s because the pool size is so small here. If you were to bet \$1,000 on a horse to win at Hastings, you would drastically change the odds. Our average pool would be \$15,000 to \$20,000, so if you bet a thousand bucks, most times you would be 5% of the pool.”

Any significant payouts (e.g., over \$1,000), are made by cheque, and according to the Director, that only occurred on 35 occasions in the most recent season. Furthermore, before a cheque is written, staff run a check to determine that the individual did in fact win money and did not simply move money through the system.

With respect to cash bets, Hastings Racecourse staff advise that the typical bettor is betting only two to four dollars on a race, with the pari-mutuel tellers limited to taking a maximum of \$100 per wager. Total cash betting may reach approximately \$100,000 on an average racing day. With about 2,000 fans in attendance on average (although there is considerable fluctuation between racing days depending on the weather, the horses racing, and other variables), this means the average fan is betting approximately \$50 per day. A former employee at Hastings noted:

“At the teller, the bets are quite small, two dollars, four dollars, up to a couple hundred. [Because of the maximum bet of \$100] someone betting \$10,000 would have to make multiple bets to get to that level. If that happened, that would ring a lot of alarm bells in the last 10 years and it just doesn’t happen. It would go to the mutuel manager and be flagged by them and with security.”

At Fraser Downs, the number of customers and the amount of betting is much smaller, with about 500 patrons on an average day and the wagering about one third of the amount at Hastings, less than \$30,000 total, for an average of less than \$60 per patron per day. As a result, the pool size is much smaller compared to Hastings Racecourse, with \$1,500 to \$2,000 in a typical “win pool” and a good race generating a win pool of up to \$6,000.

One long-time horse racing insider and owner, believes that money laundering would be detected easily at a B.C. racetrack:

“You would know right away. And if you bet 10K on a horse, your return would be like 5 cents, and if the horse loses you’re out 10K...Re betting, any big amount knocks the odds down so you’re risking money for a small return. But the big bettors, the Vancouver

stockbrokers that used to flood the place, they're all gone... It would be great if we saw some rich Asians getting involved in horse racing and buying horses and gambling, but they want to bet on races in China. They want a nice place to go to, they want to be treated well, and we've got none of that. The casino [at Hastings] is in the basement, no frontage, have to go into the PNE grounds, it's shabby, nothing nice there, there's no way wealthy Asians are going to go there."

In B.C., given the relatively small amount bet in cash, and the average size of a bet, money laundering is not currently a significant issue in cash betting.

HORSE SALES

As described earlier, the purchase and sale of horses does however provide an opportunity for money laundering. Since 2003, the number of horses sold in B.C. has been on a general downward trend. For example, with respect to thoroughbreds, sales have declined from a high of 158 horses sold in 2005, to a low of 57 in 2016, increasing to 67 in 2018. Horses sold in B.C. tend not to be of high value, with the average price in 2018 being under \$15,000 and the highest price paid for a horse being \$86,000. The same company that bought this horse was also the leading buyer in 2018, with the purchase of three horses averaging over \$62,000.⁶⁴¹

In B.C. in 2018, 40 horses were sold for less than \$10,000 and 27 sold for \$10,000 or more. As noted by one industry insider, who worked in various roles at Hastings and is a former horse owner:

"Racing is on its last legs...amplified in Vancouver with the expense of living here. Only a small number of people can afford to buy and keep a race horse...When you don't have great numbers of horses, you don't have a lot bet [on horse races]...That's an ongoing trend for 25 years...In all my years, I've never seen money laundering at Hastings...If there was money laundering going on, [the industry] wouldn't be dying!"

The owners interviewed were confident that thorough GPEB screening would prevent a known criminal from obtaining the registration required to participate in the industry. While we believe this is generally true, during this Review we did learn of a suspected drug trafficker and money launderer who owned and raced a horse at Hastings. His registration had recently been renewed. This was brought to GPEB's attention.

Another method of purchasing a horse, is to "claim" it at a claiming race. A claiming race is one in which all horses entered by their owners are subject to being claimed or purchased for a specified price, regardless of where they finish. The horse goes to the new owner but any purse money won goes to the former owner."⁶⁴² The horse owners essentially set the market value of the horse. If the horse is entered for a price that other trainers think is a good value, it is

⁶⁴¹ Canadian Thoroughbred Horse Society, B.C. Division. Accessed at <https://www.cthsbc.org/2018-sales-results>.

⁶⁴² Woodbine Glossary of Terms. Accessed at <https://woodbine.com/wp-content/uploads/Woodbine-Glossary-of-Terms.pdf>.

likely to be claimed, but if it is entered for too much, the horse often ends up being a long shot and has a slim chance of being claimed.⁶⁴³ Therefore, horses placed in each claiming race are generally of similar value. There were 84 horses claimed at Hastings in 2018, with 67 being claimed for less than \$10,000 and only 17 for \$12,500 or more, as follows: \$25,000+ (7), \$12,500 to \$25,000 (10), \$6,000 to \$8,000 (22), and \$3,000 to \$4,000 (45).

A “Horseperson’s Bookkeeper” at Hastings processes the transactions, which can be by cheque, cash, or transfer to a horseperson’s account. Clearly a cash transaction provides a vulnerability to money laundering, but according to Hastings Racecourse officials, a cash transaction is rare, and is usually an impulse buy of a low value horse.

At Fraser Downs, there were 16 standardbred horses sold in 2018, six for more than \$10,000 and 14 for under \$10,000. There are also claiming races at Fraser Downs. In 2017, there were 28 horses claimed, four for \$10,000 or more and 24 for less than \$10,000. As of November 25, 2018, there had been two horses claimed for \$10,000 or more, and 16 for less than \$10,000. The majority of horses claimed are purchased by cheque but, again, a small number are purchased with cash by someone making a last minute decision for a low value horse.

A long-time attendee at horse races and horse owner, noted that buying horses is a high-risk business:

“A horse could be worth nothing tomorrow and you’d really have to know what you’re doing. I bought a horse in Kentucky for \$95,000 and it turned out to have medical problems and it will never run...these horses are made out of glass – they are bred to run fast on spindly legs and they’re fragile...Even if you could buy a horse for cash, I own several higher end horses at Hastings Park and I would know if a strange owner turned up; I would know and it’s just not happening. Maybe 30 or 40 years ago, there could have been criminals involved in horse racing but it’s just not happening. How would they do it? It’s too big a risk...it costs \$30,000 a year just to keep a horse.”

The ownership and breeding of race horses is a financially risky business. The Horse Council of British Columbia released an “Equine Industry Study” funded by AAFC, with data compilation and analysis provided by the B.C. Ministry of Agriculture and Lands. Based on data from 2009/2010, the report concluded that “owners, on average, do not take profits from the industry”. The report noted that it is possible for owners to make money by competing for purses, but the owners also gain value, “from the thrill, passion and entertainment value of owning or breeding a race horse”.⁶⁴⁴

⁶⁴³ “Horse Betting: Claiming Races”, US Racing. Accessed at <https://www.usracing.com/horse-betting/claiming-race>.

⁶⁴⁴ Horse Council British Columbia, “Equine Industry Study” at p. 41. Accessed at <https://www.hcbc.ca/wp-content/uploads/2015/08/2009-BC-Horse-Council-Industry-StudyFINAL.pdf>.

ONLINE BETTING

The majority of betting on horse races by B.C. residents occurs online, through a system called “Horse Player Interactive” (HPIbet.com) managed by Woodbine Entertainment Group (Woodbine) in Ontario. The majority of bets through HPIbet.com are on races occurring in other jurisdictions. The view of GPEB and others interviewed for this report is that there are already *de facto* AML provisions in place with online betting. These were described earlier in the submission by Racetracks of Canada. These provisions are premised, however, on an assumption that because online betting accounts must be funded through the banking industry (i.e., accounts are funded by transfers from banks or charges to credit cards), suspicious transactions would be reported by the banks to FinTRAC.

Furthermore, those betting online must have accounts created with legitimate identification. In B.C., betting is tracked in considerable detail by the Director of Racing B.C. with, for example, a daily analysis available of each of the 4,678 active bettors in the 2017/2018 season: by name, by community where they placed their bets, by type of bet, and at which race track.⁶⁴⁵ There is an assumption that because the identities of the bettors are known and their wagering is tracked, people would be deterred from using their accounts to launder money.

While having to disclose one’s identity *might* be a deterrent, the fact is that bettors’ personal information is collected for various purposes, but according to the privacy statement of HPIbet.com, review for potential money laundering is not one of them.⁶⁴⁶ Personal information collected by HPIbet.com must also comply with the *Personal Information Protection and Electronic Documents Act*.⁶⁴⁷ Furthermore, for B.C. residents, collection of their personal information is subject to B.C.’s *Personal Information Protection Act*.⁶⁴⁸

A fundamental principle of privacy legislation is that personal information can only, with some exceptions, be collected with consent, and can only be used or disclosed for the purpose for which it was collected. Exceptions include a legitimate law enforcement investigation, or where lives are at risk. Proactively reviewing for money laundering patterns is likely not consistent with the enumerated purposes for which HPIbet.com collects personal information.⁶⁴⁹ It should be noted, however, that collection and use of information to protect customers and Woodbine against errors and frauds, and to comply with legal requirements, is covered by the privacy statement.⁶⁵⁰

The vast majority of online wagers by B.C. bettors, over 95% of all wagers in dollar value, are placed at large tracks outside of B.C.⁶⁵¹ These include the following.

⁶⁴⁵ Data provided by the Director, B.C. Horse Racing.

⁶⁴⁶ See <https://www.hipibet.com/About/Privacy>.

⁶⁴⁷ S.C. 2000, c. 5.

⁶⁴⁸ SBC 2003, c. 63.

⁶⁴⁹ See <https://www.hipibet.com/About/Privacy>.

⁶⁵⁰ *Ibid.*

⁶⁵¹ Data provided by Director, B.C. Horse Racing.

- Gulfstream Park in Florida, where annual wagers total \$1.8 billion⁶⁵² and purses total \$2.3 million for the annual Florida Derby alone.⁶⁵³
- Santa Anita Park in Arcadia, California, where annual wagers total over US\$1 billion,⁶⁵⁴ the purses total \$1 million for the Santa Anita Derby,⁶⁵⁵ and the total wagered at races on Derby Day in 2018 totalled over \$24 million, with \$3.5 million wagered at the track.⁶⁵⁶
- Churchill Downs in Louisville, Kentucky, where wagering on the Kentucky Derby alone totalled almost \$150 million in 2018,⁶⁵⁷ with a \$2 million purse.⁶⁵⁸
- Saratoga Racecourse in Saratoga, New York, where total wagering for 2017 was over \$648 million.⁶⁵⁹
- Royal Ascot Racecourse in Ascot, Berkshire, England, where in the 2018 season purses totalled £13.45 million (~C\$22.73 million).⁶⁶⁰
- Hong Kong, where annual wagers total HK\$16.6 billion (~C\$2.2 billion) and purse sizes reach an astounding HK\$1.16 billion (~C\$197 million).⁶⁶¹

A large bet at these premier race tracks will draw less attention because of the extraordinary aggregate sums. As a well-respected horse owner interviewed for this Report noted:

“If you could get your money into an online account, on a big race day in New York, California, Kentucky, you could bet \$100,000 on a race and it might not be noticed, but with all the documentation to do that, it would be way easier to do through online

⁶⁵² Clark Spencer, “In the ‘Sport of Kings,’ \$1.8B in wagers helps this track earn reputation as crown jewel”, *Miami Herald*, Jan. 25, 2018. Accessed at <https://www.miamiherald.com/sports/horse-racing/article196693854.html>.

⁶⁵³ Christina Moore, “Nine Things You Should Know About the Florida Derby”, *America’s Best Racing*, Mar. 26, 2018. Accessed at <https://www.americasbestracing.net/the-sport/2018-nine-things-you-should-know-about-the-florida-derby>.

⁶⁵⁴ <http://www.santaanita.com/press-releases/all-sources-handle-hits-1-billion-mark-up-eight-percent-over-a-year-ago-as-santa-anitas-102-day-winterspring-meet-draws-to-a-close/#.XBbaUFxKjD4>.

⁶⁵⁵ <http://www.santaanita.com/press-releases/59940/#.XBbbq1xKjD4>.

⁶⁵⁶ *Ibid.*

⁶⁵⁷ Dustin Gouker, “Record Kentucky Derby Numbers Show Why US Sports Betting Needs to be Online”, *Legal Sports Report*, May 6, 2018. Accessed at <https://www.legalsportsreport.com/20131/kentucky-derby-record-and-sports-betting/>.

⁶⁵⁸ Khadrice Rollins, “How Much Money Does the Kentucky Derby Winner Make?” *Sports Illustrated*, May 1, 2018. Accessed at <https://www.si.com/horse-racing/2018/kentucky-derby-prize-money-purse-breakdown>.

⁶⁵⁹ Robin K. Cooper, “Saratoga Race Course sets wagering record”, *Albany Business Review*, Sept. 5, 2017. Accessed at <https://www.bizjournals.com/albany/news/2017/09/05/saratoga-race-course-sets-wagering-record.html>.

⁶⁶⁰ <https://www.ascot.co.uk/news/ascot-racecourse-announces-2017-financial-results>.

⁶⁶¹ “Hong Kong Jockey Club Announces Purse Increases For 2017/2018 Season”, Press release (edited), *Paulick Report*. Accessed at <https://www.paulickreport.com/news/the-biz/hong-kong-jockey-club-announces-purse-increases-201718-season/>.

casinos than through race track betting. I think that would be the only way to launder a reasonable amount of money.”

Woodbine has several measures in place to deter money laundering activity at its racetracks and/or using its systems, including the following.

- Applicable staff are trained annually with respect to the requirements of Woodbine’s AML policy.
- Software to detect transactions involving little or no wagering activity, which must be reported in accordance with the provisions of AML policy.
- Policy requiring that a customer continuously feeding bills into a tote machine be reported to security.
- A maximum voucher amount of \$10,000 on the self-service terminals, and the tote system will not issue a paper voucher with a value in excess of \$10,000. The transactions that create a voucher are traceable and auditable (as are all tote transactions).
- If a customer presents a voucher or series of vouchers that adds up to \$10,000 or more and requests a cheque, Woodbine staff will research the source of the voucher balance and winning wagers.
- Software that analyzes all HPIbet activity across Canada and detects any withdrawal transactions that are not related to winnings.

The policies and mechanisms in place to guard against money laundering through the online betting system operated by Woodbine appear to be reasonable. There remain, however, some vulnerabilities and there is a real possibility of money laundering given that AML strategies in horse racing are not as robust as they are for entities that must report to FinTRAC.

SELF-SERVICE TERMINALS AND VOUCHERS

Patrons at Hastings and Fraser Downs racecourses can create an anonymous account in which to store funds and purchase vouchers to use for betting on horse races, but only if they attend the track in person. A senior police officer assigned to a gaming intelligence role with the Ontario Provincial Police (OPP) noted:

“I can buy a voucher for 10K, and there are fewer and fewer tellers with the move to automated machines. I can take that voucher to a machine and launder it by betting on a couple of races, have \$9,500 left, and then cash that voucher in. And then I have a receipt making the money look legitimate even though I bought it with cash. If CPMA had a reporting regime in place, you could target suspicious activity.”

This situation creates another potential vulnerability for money laundering, but it would be limited to relatively small amounts. The maximum transaction at a self-service terminal is \$1,000, and a person who purchases a voucher at a racetrack and then tries to cash it without betting or with minimal betting would likely draw the attention of racetrack staff. According to the B.C. Director of Racing:

“We wouldn’t give someone a cheque that just showed up with a \$9,500 voucher, and if they came to a mutuel teller to cash it out they wouldn’t get a receipt that we cashed out the voucher....any requests for a cheque will be verified through their account as a winning wager, or if the person was playing at a self-serve machine they would have to identify the machine to us so that we could do our due diligence to ensure that there was a wager made that generated the money.”

Aside from the two racetracks, most of the 19 teletheatres in B.C. are in casinos, where there is a high degree of surveillance. There are three teletheatres in bars/pubs in B.C., which do not have the sophisticated surveillance systems that exist in casinos. A site visit at one such operation and an interview with the owner/operator demonstrated that money laundering would be unlikely:

“If you put \$100 cash in (a self-service terminal) and bet \$20, then you could get a voucher for \$80, but there is never more than a few thousand dollars in there at the end of the day and that would be from about 30 different people who used the machine in a day generally. One person could keep putting money into the machine, but people would get annoyed if you were tying up the machine all day because that would take a long time (to insert cash of significant value). I’ve never seen that happen and we would know if one person did something unusual like that because it would get so much attention.

People could pump money into the machine...but not wager, and they can transfer that money to their HPI account and then bet at home, which I don’t like because I don’t get anything out of it. But it’s not much money...Once a few years ago I went to Hastings and put 5K in cash in my HPI account but then I took it right out because I decided to wager at Hastings and HPI called Hastings right away and said, ‘What’s going on there?’ because I’d put money in and out without wagering. So they obviously have a system in place to flag suspicious transactions.”

AML PRACTICES IN OTHER JURISDICTIONS

The table below summarizes AML practices in B.C. and several other horse racing jurisdictions, ranging from very small to very large. The smallest jurisdiction, Washington State, is similar to B.C. except for a requirement that applies to *all* racetracks in the U.S., which is that cash wagers over \$10,000 require a report to FinCEN. At the other end of the spectrum is Hong Kong, an enormous operation that has extremely sophisticated and well-resourced AML practices that are instructive for gaming generally, but not realistic in the context of the B.C. horse racing industry.

AML STRATEGIES IN B.C. vs. EXAMPLES FROM U.S. & HONG KONG					
Jurisdiction	Cash Wagering	Online Wagering	Horse Sales & Purchases	Fixing Races	Miscellaneous
Kentucky	Any cash wagers 10K and up subject to federal reporting requirements (FinCEN/IRS Form 8300, Report of Cash Payments Over \$10,000 et al.) at any track in U.S.	Yes. No additional info provided.	No. Sales are handled privately and not subject to Horse Racing Commission.	Jockeys tightly regulated. Cannot wager. CCTV on every rider.	Kentucky Racing Commission currently revamping all its policies, including those related to AML.
Hong Kong (Hong Kong Jockey Club)	Cash betting approx. 20% of total betting. No regulation to report large transactions to regulator, but HKJC has a policy of reporting any bet over C\$17K and suspicious transactions of any amount – obtains ID of wagerers. All frontline staff trained re AML. Live monitoring of betting	Yes. Majority of betting is online. Sophisticated surveillance of betting patterns, including timing, IP addresses, cash deposits into accounts, common depositors of linked accounts, using custom software to consolidate info from all data systems, as well as manual methods. Due	Only HKJC members can purchase/sell and race a horse in HK and are subject to careful vetting. Re silent control/ ownership of horses, careful on track monitoring for anyone showing up in parade circles without legitimate reason, who will be identified and	Jockeys and others, e.g., trainers, have very strict rules. Systematic analysis of betting patterns to look for associations between specific jockeys or trainers that may suggest corruption in racing, fixed races, tips for bets. Use of CCTV and live surveillance on and off track.	Very sophisticated approach in collaboration with other stakeholders, including police. Extraordinary resources, e.g., 60 analysts doing research & developing money laundering typologies, physical surveillance teams. HK residents who go on gambling junkets to Macau are

AML STRATEGIES IN B.C. vs. EXAMPLES FROM U.S. & HONG KONG

Jurisdiction	Cash Wagering	Online Wagering	Horse Sales & Purchases	Fixing Races	Miscellaneous
	at racetrack and monitoring of all bets over C\$3,500.	diligence on customers, including patterns of betting on particular jockeys or trainers. This has led to examination of CCTV and to physical surveillance on/off track to determine if associating to known criminals.	researched, e.g., re betting patterns.		researched to see if they pose a risk. HKJC has an integrated financial crime risk team for AML, fraud, corruption, betting markets, sports integrity – takes a holistic approach to guard against missing broader patterns. Looks at typologies, not just individual STRs. Packages information of suspicious behaviour and provides to police, and also produces research. HKJC is the sole betting operator in Hong Kong. It operates as a not-for-profit organization and allocates its surplus revenue to

AML STRATEGIES IN B.C. vs. EXAMPLES FROM U.S. & HONG KONG

Jurisdiction	Cash Wagering	Online Wagering	Horse Sales & Purchases	Fixing Races	Miscellaneous
					charitable and community projects, and paid the government C\$3.69 billion in duty and profits tax in the 2016/2017 financial year. ⁶⁶²
Washington (Emerald Downs)	Cash wagering amounts small; money laundering seen as very low risk. Total amount wagered in 2018 season was ~\$39 million, down 11.7% from 2017 season. ⁶⁶³ Informal surveillance of purchase/cashing of vouchers from self-service machines	Washington state allows online betting but money laundering not viewed as a concern at Emerald Downs.	No info provided.	Total winnings of ~US\$2.72 million divided by 172 owners & ownership groups; ⁶⁶⁴ average of \$15,837. Suggests low desirability for money laundering.	N/A

⁶⁶² Danny Mok, "Hong Kong Jockey Club has record-breaking year with HK\$216 billion turnover", *South China Morning Post*, Sept. 1, 2017. Accessed at <https://www.scmp.com/news/hong-kong/education-community/article/2109235/hong-kong-jockey-club-has-record-breaking-year>.

⁶⁶³ <http://www.whrc.wa.gov/>.

⁶⁶⁴ *Ibid.*

AML STRATEGIES IN B.C. vs. EXAMPLES FROM U.S. & HONG KONG

Jurisdiction	Cash Wagering	Online Wagering	Horse Sales & Purchases	Fixing Races	Miscellaneous
	to ensure wagering occurred. Most patrons are tourists.				
British Columbia (Hastings Racecourse and Fraser Downs)	Cash wagering amounts small and money laundering seen as low risk. Those using self-serve machines to load cash and then cash out to obtain a voucher without wagering would draw attention of management in a major casino, but unclear what procedures are in place in a small teletheatre, e.g., in a pub.	Yes. On line wagering occurs through HPIbet.com, managed by Woodbine Entertainment Group in Ontario. B.C. account holders' wagering monitored daily for suspicious betting patterns. Very small number of significant wagerers. No formal AML regime in place.	All horse owners must be vetted by GPEB to race a horse in B.C. Value of horses sold in B.C. relatively low, averaging under \$15K and most expensive horse sold in B.C. in 2018 for \$86K. Relatively small number of owners. Other than vetting, no formal AML regime in place. Low value horses can be claimed for cash, but generally involves only several thousand dollars.	Races are monitored by CCTV. Stewards (Hastings) and judges (Fraser Downs) monitor for infractions of racing rules. No formal AML program, no policing, but also low attractiveness to significant money laundering given small purse sizes.	Cash can be loaded into self-serve terminals to wager, or be transferred to HPIbet account for wagering, or cashed out. May present vulnerability – unknown what AML procedures are in place at HPIbet.com.

SUMMARY

We do not view horse racing in B.C. to be a high money laundering risk at present, although there are vulnerabilities due to the absence of reporting to FinTRAC, a lack of staff training, and the absence of regulatory and law enforcement oversight. These issues are discussed below.

Uniform Currency Reporting

As noted elsewhere in this Report and at length in the following chapter, the lack of uniform currency reporting across sectors in Canada leaves some parts of the economy vulnerable to money laundering and the ‘whack a mole’ syndrome, as organized crime moves from one opportunity to another. Universal reporting, as it exists in the U.S., is the simplest way to close this gap in Canada’s AML framework. Who walks around with \$7500 or \$10,000 in their pocket? The added burden on industry should be low. As an adjunct to this reporting, the province could consider making the Source of Funds Declarations for large cash transactions, now in use within casinos, applicable to horse race venues, and to the purchase of race horses, including at claiming races.

Staff Training

Training for staff on AML is very important. Pari-mutuel tellers and other racing staff in B.C. do not receive the AML training that casino staff receive. GCGC was apparently considering AML training for horse racing staff as a result of the *Dirty Money* report and should proceed with implementation, in concert with BCLC and GPEB. It is important for staff to understand their role in AML, and what is expected of them. This training should be provided to all current staff and to new staff when they are on-boarded. Staff should also receive refresher training at appropriate intervals. Staff working in teletheatres should receive the same training and be subject to the same policies and procedures as staff working at live racing venues. This training is consistent with the spirit of the recommendation from the Standing Committee on Finance that: “That the Government of Canada expand FinTRAC oversight to ensure that all casino operators, employees, and *frontline gaming personnel* are trained in anti-money laundering legislation.”⁶⁶⁵ [emphasis added]

Regulator

Regulation of the horse racing sector should transition from GPEB to the proposed independent regulator for gaming in B.C. In addition, legislative amendments which are intended to provide the regulator with a mandate to deal with AML should also include the horse racing industry.

Law Enforcement

British Columbia no longer has a police unit dedicated to racetracks. The VPD Gaming Unit was abolished when GPEB took over regulatory enforcement of horse racing, and the RCMP units

⁶⁶⁵ Canada, House of Commons Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing, supra*, Recommendation 21.

were abolished across Canada, leaving federal regulation to the CPMA. In Ontario, the OPP maintains a large gaming, liquor, and horse racing unit, attached to its regulator. Investigators are cross-trained on the different industries.

The *Dirty Money* recommendations included the establishment of a designated policing unit that would provide policing services to legal gaming venues.⁶⁶⁶ Horse racing in B.C. should be added to the mandate of this new policing unit. This would allow for: a regular police presence at tracks, the development of criminal intelligence, high visibility crime prevention campaigns, and investigations of criminal activity associated to horse racing.

⁶⁶⁶ Recommendations 37-43.

PART 5

MONEY LAUNDERING VULNERABILITIES

CHAPTER 5-1

MONEY LAUNDERING VULNERABILITIES

The ‘Whack A Mole’ Phenomenon

FINDINGS

- Luxury goods are attractive to organized crime and provide excellent opportunities to reintroduce illegal cash into the legitimate economy.
- As traditional financial institutions tighten their systems and reporting, other industries and professions become more attractive to criminal elements
- Many sectors, possibly the majority, have no reporting requirement to FinTRAC and are particularly vulnerable to organized crime.
- A localized form of trade-based money laundering prevalent in Greater Vancouver consists of criminals laundering money by paying the debts of legitimate businesses and receiving a cheque or other negotiable instrument in return.
- The Vancouver Model is premised on the existence of informal banking systems, or underground bankers, who move money without there being an actual international money transfer. These underground operations are unregistered MSBs.
- Without a legitimate channel to move money, new Canadians must often resort to underground networks in order to remove their assets from countries with currency controls.
- Very little attention is being paid to unregistered MSBs by law enforcement and regulators.
- With the legalization of cannabis, the illegal drug trade will move to other commodities and adapt to the new environment; whether by infiltrating legal businesses, engaging in cultivation and the supply of cheaper product; selling stronger and, or, cheaper varieties; or simply moving to another commodity. All these activities are cash-based and involve the laundering of proceeds of the trade.

- Speed boats and other luxury craft are purchased by organized crime for pleasure, and also serve as a place to park money, until recouping most of their cost on resale. Boats are not subject to financial reporting to FinTRAC.
- Large and small auction houses routinely transact business in cash. They are also not subject to financial reporting to FinTRAC.
- Fisheries quotas have been purchased by overseas investors, diminishing control of the industry. There is no requirement that there be a vetting of individuals who purchase quotas, or a determination of their source of funds.
- Some private and public colleges accept cash from domestic and international students for tuition fees and for other purposes. Some students have dealt with colleges through nominees and have engaged in schemes to convert cash.
- Cryptocurrencies are more advantageous to money launderers than cash due to their anonymity and speed.
- Credit cards issued by financial institutions in the PRC are routinely used in Greater Vancouver, however law enforcement has no visibility respecting the holder's source of funds.
- Universal cash reporting over a certain threshold avoids the need to constantly reassess sectors and effectively prevents organized crime and the underground economy from seeking the unregulated path of least resistance.
- As a supplement to universal cash reporting, Geographic Tracking Orders allow authorities to target a certain sector in a specific geographic area, such as Greater Vancouver.

TERMS OF REFERENCE

The Terms of Reference for this Review contained the following:

"If an issue is identified, the Minister requires advice on:

1. *What connection, if any, the issue has with other areas of the BC economy, laws or policies that require government, law enforcement, statutory or regulatory attention".*

OTHER MONEY LAUNDERING AVENUES

It is well documented that the criminal lifestyle is often attracted to expensive consumer goods. In previous chapters, we considered the luxury car phenomenon in Greater Vancouver. This is

one sector which attracts attention by the very nature of the goods themselves. Luxury cars are, however, just one sub-sector of the economy.

There are many other examples of luxury goods which are attractive to organized crime for one of two reasons: they are an attractive commodity in and of themselves, and due to their high value, they provide excellent opportunities to reintroduce illegal cash into the legitimate economy during the integration, or ‘dry cycle’ of the laundering process.

During this Review, interviewees and tipsters have told us of other sectors and sub-sectors of the B.C. economy which are facing the same challenge as the luxury car market. Many of these examples are not quite so obvious to the lay person but have equal or greater potential for money laundering than do luxury cars.

Canada’s financial reporting system is structured in such a way that only designated sectors of the economy are required to report cash transactions to FinTRAC. Many sectors, possibly the majority, have no reporting requirement. Presumably this distinction is premised on research which indicated that one sector is more vulnerable than another. Luxury cars are an example. When reporting legislation began in 2001, luxury cars were an oddity on Canadian streets and auto dealers ably argued that reporting of new and used vehicle sales would pose an undue burden for allegedly little return to law enforcement.

Today, however, the environment is vastly different. Although great strides have been made in the past decade to regulate financial institutions, the reality of prevention and containment through legislation is that persons in the business of laundering will invariably move from one weak link to the next. As traditional financial institutions tighten their systems and reporting, other industries or professions become ever more attractive to criminal elements. By only targeting certain sectors of the economy with reporting obligations and ignoring others, organized crime is encouraged to move to the unregulated markets. Attempting to shed a light on these sectors would require a never-ending series of reviews as we chase and attempt to ‘whack the mole’.

For its part, FinTRAC acknowledges that it does not regulate certain sectors of the economy which are vulnerable to money laundering including motor vehicle dealers, auction houses and boat sellers.

Below is a brief overview of sectors and industries within B.C., which have allegedly been affected by money laundering, to a greater or lesser degree. This is by no means an exhaustive list. They are:

- trade-based money laundering;
- money service businesses;
- illegal cannabis cultivation and sales;

- luxury boat sales;
- piano and high value musical instruments;
- auctions;
- fisheries licences;
- public and private colleges;
- cryptocurrency, and
- foreign credit cards.

Of the foregoing list, only registered MSBs, and soon Cryptocurrency, are the subject of financial reporting to FinTRAC. This list is likely evidence of organized crime moving to areas of least resistance.

[Trade-based money laundering](#)

International experts now believe that the comingling of legitimate trade with illegal trade has become the leading form of transnational money laundering.

TBML has been defined by the FATF as “the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illegal origins or finance their activities.”⁶⁶⁷ The FATF has recognized “misuse of the trade system as one of the main methods by which criminal organisations and terrorist financiers move money for the purpose of disguising its origins and integrating it into the formal economy.”⁶⁶⁸

Examples of TBML include “misrepresentation of price, quantity or quality of import or exports, and money laundering through fictitious trade activities and/or through front companies.”⁶⁶⁹ Among many strategies are the following.

- The purchase of high-value goods using the proceeds of crime, followed by the shipment and re-sale of those goods overseas.
- The transfer of funds which purport to be related to trade, or to the purchase of goods that are ultimately never shipped or received (“phantom shipments”).

⁶⁶⁷ FATF, *Best Practices on Trade Based Money Laundering*, *supra* at p. 1.

⁶⁶⁸ *Ibid.* Also, see “Trade and money laundering – Uncontained”, *Economist*, *supra*.

⁶⁶⁹ FATF, *ibid.* at p. 2.

- Falsifying the number and/or value of goods being shipped to be higher or lower than the corresponding payment, allowing for the transfer or receipt of the value of proceeds of crime (over- or under-invoicing).
- Using the proceeds of crime to purchase goods for legitimate resale, with payment for goods made to drug traffickers/distributors by legitimate business owners.⁶⁷⁰
- Inserting illegal goods in a legitimate shipment of goods (“tailgating”).

One research report described TBML as typically occurring through mis-invoicing, “the main vehicle for illicit financial flows (IFFs) around the globe”.⁶⁷¹ As described by an investigator, one challenge is that if the pricing is only slightly different than normal, and only one end of the transaction is examined, “You can study the slips all day long, and all you see is stuff being imported and exported.”⁶⁷² The broker will typically be paid a commission from both sides and will also benefit from fluctuating exchange rates - clipping their ticket at both ends!

In the course of our Review we often asked the question, where is money being laundered now that there has been a dramatic drop in dirty money being laundered through Lower Mainland casinos? A source involved in moving money internationally advised us that a localized form of TBML is now widespread in Greater Vancouver. It consists of criminals laundering money by paying the debts of legitimate businesses and receiving a cheque or other negotiable instrument in return. It could be as simple as paying a hydro bill for a business and having that business reciprocate by providing the launderer with a cheque in return, minus a service charge.

[Money service business](#)

As we have seen, the Vancouver Model is premised on the existence of informal banking systems, or underground bankers, who can move money without there being an actual international money transfer. These underground operations are, in effect, unregistered MSBs. In place of electronic transfers, they settle accounts by e-mail, WeChat, or other informal means.

MSBs have become a fixture of the urban Canadian financial system. Their primary purpose is to transmit funds electronically to distant locations. Some cater to a particular clientele or ethnicity. All must be registered with FinTRAC. Only in the Province of Quebec are MSBs licensed by the province, although licensing is common in the United States.

⁶⁷⁰ FATF, *Professional Money Laundering*, *supra* at p. 30.

⁶⁷¹ Carolina Lessa, “Trade-Based Money Laundering: The US Ranks First in Destination for Illicit Money from Latin America”, *Accuity*, Dec. 15, 2017. Accessed at <https://accuity.com/accuity-insights-blog/trade-based-money-laundering-the-us-ranks-first-in-destination-for-illicit-money-from-latin-america/>.

⁶⁷² *Ibid*. Also, see “Trade and money laundering – Uncontained”, *Economist*, *supra*.

The volatility of the MSB industry has been apparent in the U.S., with many banks ending their relationship with MSBs as part of a de-risking process to avoid the AML requirements and other hurdles faced by MSBs.

This occurs in Canada as well, particularly in émigré communities when a person wishes to set up an MSB as a standalone enterprise or as part of another business, such as a corner store. The person's banking history in Canada may not suffice for them to obtain a business account with sufficient capital to support an MSB. In this event, despite being registered with FinTRAC, the MSB will have to obtain its capital somewhere else. We spoke to one MSB operator who found himself in this very situation. The solution was to move money out of his home country through informal means in order to fund the operation in the Lower Mainland. He could just as easily have relied upon dirty money from the underground economy.

In a similar vein, we spoke to a person familiar with registered and unregistered MSBs in the Iranian community. The individual pointed to the problem that Iranian citizens have when it comes to bringing their money into Canada. Due to currency restrictions and sanctions, it is difficult to take money out of Iran, even if the intent is to move to Canada under the immigrant investor program. Without a legitimate channel to move the money, these new Canadians must resort to underground networks which almost invariably move money through Dubai and from there to Vancouver and other North American destinations.

This view was echoed by an immigration consultant who we interviewed. His work primarily involves Mainland Chinese immigrants. We asked him how individuals move their money out of the PRC in order to satisfy the immigrant investment requirements. He noted that none of the provincial nominee programs provide any assistance in this regard. They simply require the transfer of funds to a designated financial intermediary. For example, Quebec's program, the QIIP, requires that funds be transferred to one of a number of designated financial institutions, such as Alliance and Desjardins.

His assumption is that most clients will transfer funds from multiple accounts, held by more than one account holder. They may use Macau or Hong Kong as a stopover for the money, before it is sent to Canada. Some clients will preplan the movement of money by taking a vacation or business trip to the U.S. or Canada and begin to move funds at that time into a North American bank account.

Another method is the use of an associate or friend in Canada and the transfer of funds to this trusted party. Some individuals will utilize law firms. The individual we spoke to advised that underground bankers will now move funds simply at the cost of the exchange rate, if they have proceeds of crime in Canada to be laundered.

Unregistered MSBs obviously do not submit LCTRs or STRs to FinTRAC. According to the RCMP, "Their intent is to hide the identity of the remitter, evade banking laws and circumvent suspicious currency transaction reporting".⁶⁷³ These MSBs are often located near cargo/ freight

⁶⁷³ Memo to PMG, dated Jan. 1, 2018, for *Dirty Money Review*.

forwarding businesses and immigration consultancy offices. Armoured cars are not seen arriving to make cash drops. Cash often arrives by courier. It is not surprising therefore, that police believe there may be several other operations in Greater Vancouver similar to that seen in E-Pirate.

We asked senior officials at FinTRAC what the agency does when it becomes aware of an unregistered MSB. We were advised that it is a serious offence under the *POCMLTFA* and cases would be reported to the police. In B.C., this generally means the RCMP, which has received few reports of unregistered MSBs.

We asked the RCMP in B.C. what it does when it becomes aware of an unregistered MSB. We were advised that the RCMP “is reactive to both intelligence and other sources of information which pertain to MSB’s and their complicity and facilitation of criminal activities, vis a vis, money laundering. Once received, the enforcement response is driven by an intelligence assessment, triage and capacity.”⁶⁷⁴ Translated, that means that unless there is a related criminal investigation, the RCMP will generally refer information concerning an unregistered entity to FinTRAC, in order for that agency to take action under the *POCMLTFA*.

The upshot of the last two paragraphs is that very little, if any, attention is being paid to unregistered MSBs, who are moving considerable money on a daily basis. Those that register are subject to regulatory oversight. Those that don’t register, are off the proverbial radar screen.

The *Dirty Money Report* included a recommendation that the Province consider a licencing and recording regime for MSBs, similar to the *Metal Dealers Recycling Act*.⁶⁷⁵ This recommendation was accepted. We did not recommend implementation of the same statutory scheme. The *Metal Dealers Recycling Act* does not contain a vetting component for entry into the business, which is important when allowing a business to engage in financial transactions on behalf of the public. It is, however, a useful example of a provincial licensing scheme.

Illegal cannabis cultivation and sales

Legalization of cannabis in Canada on October 17, 2018 did not, nor will it, eliminate organized crime from the drug trade. Over time, as legal outlets for cannabis become more widespread, it is reasonable to assume that the illegal trade will move to other commodities and otherwise adapt to the new environment; whether that means by infiltrating legal businesses, engaging in cultivation and the supply of cheaper product; selling stronger and, or, cheaper varieties; or simply moving to another commodity. Today, however, sources indicate that the illegal business thrives in terms of outlets, cultivation, and mail order.

⁶⁷⁴ *Ibid.*

⁶⁷⁵ Recommendation 46.

If anyone doubts the foregoing, a rhetorical question to ask is where illegal outlets obtain their product. The outlets are simply the front of a much longer and oftentimes illegal supply chain.

Luxury boat sales

Much like luxury vehicles, pleasure boats and yachts are a luxury item for most budgets. With the exception of car toppers and small fishing craft, most new boats of 25 feet or more in length will exceed \$50,000 in value and the sky is the limit from there. Much the same as luxury vehicles, speed boats and other luxury craft are popular items in which organized crime can park its money and still have the use of the item, until recouping most of their cost when reselling. We were advised by one law firm that its lawyers handle \$10 million per year in small vessel sales, using escrow accounts. This is apparently not uncommon. None is subject to financial reporting to FinTRAC.

Piano and high value musical instruments

A somewhat surprising tip related to expensive pianos, purchased with cash. Many high-end homes in Greater Vancouver contain pianos valued in excess of \$100,000. They are considered to be desirable from both the perspective of esthetics and status, regardless of whether or not a member of the household plays the instrument. As with cash renovations and furniture purchases, these musical instruments are an easy parking spot for money and will retain much of their value until resale.

Auctions

Large and small auctions take place across B.C. on a weekly basis for all manner of items, including heavy equipment, vehicles, construction supplies, office furnishings, antiques, collector items, paintings, and countless other items. Many purchases at auctions are made in cash and none of it is reportable to FinTRAC. They provide a convenient forum for organized crime to purchase items with cash which can then be resold in any number of different ways, including online.

Fisheries licenses

In much the same manner as transparency is important in terms of property ownership, so it is in other enterprises which impact on the public. As a coastal province, the fishery is of the utmost importance to British Columbians, particularly with respect to the social and economic impact on fishers and small coastal communities. Elsewhere in the world, there are strong connections between fisheries, organized crime and drug smuggling.⁶⁷⁶ This is not an avenue which has been explored in depth within B.C. As an adjunct to the TOR for this Review, we were asked to enquire into concerns raised by EcoTrust, with respect to the purchase of commercial fishing licences and possible connections to money laundering in casinos.

⁶⁷⁶ See for example: U.N. Office on Drugs and Crime, *Fisheries Crime*. Accessed at https://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/focus_sheet_PRINT.pdf.

The owners of commercial fishing licenses in B.C. are recorded in a registry, however the owner is often a numbered company. Attempts to determine the beneficial owner(s) can be difficult. This lack of transparency serves to shield the license holder from public scrutiny. Furthermore, there do not appear to be any restrictions on the citizenship of the beneficial owners of licenses, or a requirement that their source of funds / wealth be vetted prior to purchasing a license.

The situation in B.C. is quite different from that in Atlantic Canada, where local control and management of the fishery has continued within the industry and Fisheries and Oceans Canada develops management policies with local input. In B.C., the fishery is highly complex with many competing interests. What is clear, however, is that local involvement has diminished as a result of the lack of an effective policy regime, a situation that allows certain persons with seemingly endless financial resources to purchase fishing licenses and quotas.

Ecotrust is a non-profit public advocacy organization focused on generating “economic solutions that enable rural and remote communities across Canada to lead in the management, protection and development of local resources”.⁶⁷⁷ One of its areas of interest is community fisheries. Through various initiatives, Ecotrust seeks to ensure that “ocean resources benefit fishing communities and Canadians now and for many generations to come”.⁶⁷⁸ In the course of its work, Ecotrust identified concerns with the situation on the West Coast, including:⁶⁷⁹

- consolidation of the industry in the hands of people with wealth;
- corporatization of what was a local industry, leading to less local input and benefit;
- overseas investors, resulting in a decline in local influence over policy-setting;
- apparent foreign ownership; and
- no citizenship requirement when purchasing the companies that own the licences.

According to Ecotrust, the top four ‘visible’ owners of ground fish trawl, halibut and sablefish quotas own 50% of all the quota in B.C. and none of them are the actual fishers. Even the beneficial ownership of fish boats is unclear. Although it has been suggested that large companies can better conserve stocks, Ecotrust strongly disagrees.

If a company has control over licences and quotas rather than the fishers, they entirely control what the fisher receives. In the past, the “landed value” was the proxy for what fishers owned. Now, in many cases, that goes to the corporate owners, who in turn pay fishers a wage, rather

⁶⁷⁷ Ecotrust Canada, *Focus* (Annual Report 2017), Vancouver at p. 3. Accessed at http://ecotrust.ca/wp-content/uploads/2018/06/2017-Ecotrust-Annual-Report-web_doublespread.pdf.

⁶⁷⁸ *Ibid.* at p. 5.

⁶⁷⁹ Interview with Ecotrust staff, Feb. 27, 2019.

than a portion of landed value. Without control over the industry, or the company for which they work, and possibly even over their own boats, the fishers become analogous to sharecroppers. Furthermore, between the dock and wholesale, considerable value is leaving the community and possibly the country.

Without local control over fisheries licenses and quotas, we see similar issues to those identified in the real estate market. A counterpoint to this is the First Nations fishery, in which the community becomes the owner and can address problems through rule-making and hiring other indigenous people.

Bill C-68, a modernization of the *Fisheries Act*, is currently making its way through the legislative process and has been referred to the Standing Committee on Fisheries and Oceans.⁶⁸⁰ This Committee has received considerable evidence about the challenges and complexities of B.C.'s fishery. Of interest to this Review, in February 2019 Ecotrust's Vice President, Tasha Sutcliffe, stated:⁶⁸¹

“First and foremost, [corporate control and concentration in licence ownership] is extremely difficult to track, even for government, due to the lack of transparency in the licensing system. However, through an information request to DFO for 2017 data, we can see that of the 345 licence and quota holders in the groundfish trawl, halibut and sablefish fisheries, the top 26, or 7.4%, hold 50% of the quota value, and the top four, or 1.2%, hold 50% of all the quota pounds. We can also see that the majority of groundfish quota pounds are not fished by owner-operators. They are held by processors, overseas companies and even fishing family companies that for the most part no longer fish the majority of their quota. As for overseas investment, besides a few large companies, this is very hard to trace, but there are examples. For instance, you may have heard of the recent scandal with money laundering through gambling and real estate in B.C. We traced one company that has been investing in groundfish and now owns 5.9 million pounds of quota. The director of this company is the same overseas investor named in newspaper articles on money laundering through casinos and real estate in Vancouver.”

In response to a question from a Committee member, Sutcliffe advised that the person she was describing was from China but did not provide further information.

⁶⁸⁰ *An Act to amend the Fisheries Act and other Acts*, 42nd Parl., 1st Session, Bill C-68.

⁶⁸¹ Canada, House of Commons, Standing Committee on Fisheries and Oceans, No. 132, 42nd Parl., 1st Session, Evidence of Feb. 20, 2019 at p. 5. Accessed at

<https://www.ourcommons.ca/Content/Committee/421/FOPO/Evidence/EV10327514/FOPOEV132-E.PDF>.

Ken Hardie, the Member of Parliament representing Fleetwood – Port Kells in Surrey, sits on the Committee and is very active in advocating for improved conditions for B.C. fishers. Prior to the Committees hearings, he questioned the current situation:⁶⁸²

“Why is the one sector that’s taking on the greatest share of the physical work and risk getting the smallest share of the overall reward... Why would some fishers pay so much to rent quota, to pay up front for the opportunity to fish, when the ultimate price they get might not cover expenses, much less leave them and their crews with a reasonable income?”

Hardie has described the West Coast Fishery being “like a cartel”, and expressed a concern that “the profits are simply ending up in the hands of ‘slipper skippers’ who own and lease quotas from office towers”. He noted:⁶⁸³

“American and Chinese entities are gobbling up Canada’s fish licenses and quotas, however determining who owns what is not of public record.... The lion’s share of proceeds are going to people treating it as an investment. And it’s more than an investment. It means something to these communities. It’s social and cultural; things that are important to us.”

After hearing Sutcliffe’s evidence, Hardie tweeted:⁶⁸⁴

“Quite startling testimony today at Fisheries & Oceans Committee...an individual tied to alleged money laundering may have also purchased quota in the West Coast fishery. Another example of hidden off-shore money? We need to know more about who’s buying shares of allowable catch.”

When we interviewed Ms. Sutcliffe, she confirmed that she was speaking about Guo Tai Shi and provided further information about his fisheries-related companies. Guo Tai Shi is the sole director of Tinlet Holdings Ltd.⁶⁸⁵ and Tinshi Holdings Ltd.⁶⁸⁶ In addition, he is the sole director of Wonderful International Travel Ltd.⁶⁸⁷ and is the CEO of Island West Resort in Ucluelet, B.C. (also known as Wonderful Hotel Resort and Management Ltd.)⁶⁸⁸ He was identified in a

⁶⁸² Jason Huffman, “Canadian parliamentary panel takes aim at BC halibut quota rules”, *Undercurrent News*, Mar. 4, 2019. Accessed at <https://www.undercurrentnews.com/2019/03/04/canadian-parliamentary-panel-takes-aim-at-bc-halibut-quota-rules/>.

⁶⁸³ Graeme Wood, “Offshore ‘slipper skippers’ and local monopolies target of new fishing industry study”, *Richmond News*, June 21, 2018. Accessed at <https://www.richmond-news.com/news/offshore-slipper-skippers-and-local-monopolies-target-of-new-fishing-industry-study-1.23344171>.

⁶⁸⁴ <https://twitter.com/KenHardie/status/1098419887045836801>.

⁶⁸⁵ BC Registry Info: TINLET HOLDINGS LTD., Inc. No. BC1021582. Incorporated on Dec 10, 2014. Director Information: Shi, Guo Tai, Vancouver.

⁶⁸⁶ BC Registry Info: TINSHI HOLDINGS LTD., Inc. No. BC1036139. Incorporated on May 11, 2015. Director Information: Shi, Guo Tai, Vancouver.

⁶⁸⁷ <http://www.wonderful-travel.com/>.

⁶⁸⁸ <https://www.bbb.org/ca/bc/ucluelet/profile/resort/island-west-resort-0047-14195>.

Vancouver Sun article as a whale gambler who allegedly accepted cash drop-offs from alleged money launderer Paul King Jin.⁶⁸⁹

Guo Tai Shi has attracted negative media attention for other reasons as well. A *Globe and Mail* investigation into exploitation of tax breaks on agricultural land in Richmond, B.C. found that Guo Tai Shi built two “mega-mansions” on seven acres of farmland. The operator of his travel agency, Wonderful International Travel, told the *Globe and Mail* that several suites in his 22,000 square foot mansion had been rented out and that she planned to “market the luxury accommodations to visitors from China”. The second of Guo Tai Shi’s mansions on agricultural land attracted a property tax bill of only \$4,867, despite there being no crops on the property.⁶⁹⁰

A review of B.C. land title records shows that Guo Tai Shi, as an individual, currently owns seven properties, with a total assessed value in July 2018 exceeding \$20 million, with no financial charges currently on title.⁶⁹¹ One property was sold since the *Vancouver Sun* report in 2017.

There is no evidence that Guo Tai Shi or any of the companies that he controls are engaged in any illegal activity or that he has laundered the proceeds of crime. The issue is that it is possible for our natural resources to find their way into the hands of a small number of owners, without a requirement that there be a vetting of individuals and their source of funds. This would appear to be a minimum expectation if we are to protect our natural resources for future generations.

[Public and private colleges](#)

Earlier in this Report we noted the presence of Mexican OC in Vancouver and that a lieutenant of El Chapo Guzman allegedly registered at a private college in Vancouver, as a cover for his illicit activities.⁶⁹² Tip files which we received also referenced the willingness of private colleges in Greater Vancouver to accept cash for tuition fees and for other purposes. Tuition for an international student tends to be a minimum of \$7,000 to \$10,000, before living and other costs.

We spoke to a senior employee of a post-secondary institution and learned that the same situation exists in a number of B.C.’s public, post-secondary institutions. They are not uniform

⁶⁸⁹ Sam Cooper, “‘Whale’ gamblers identified by BCCLC”, *supra*.

⁶⁹⁰ “Speculators buying BC farmland while exploiting”, *Globe and Mail*, Nov. 18, 2016. Accessed at <https://www.theglobeandmail.com/news/investigations/farmland-and-real-estate-in-british-columbia/article32923810/>.

⁶⁹¹ Information obtained from land title records in Vancouver and New Westminster on Mar. 10, 2019. Guo Tai Shi is the registered owner of each of the seven properties. The mailing addresses for the owner are either that of Tinlet Holdings Ltd. or Tinshi Holdings Ltd.

⁶⁹² There is no suggestion that the college was aware of the individual’s connection or that it knowingly accepted laundered proceeds of crime.

in their criteria for accepting cash, falling into three categories: those that do not accept cash, those that accept cash under a certain limit, and those that accept any amount of cash.

Among the concerns expressed to us were international students paying tuition and other expenses in cash, overpaying into their student account, seeking refunds by cheque, and the use of agents, including:

- some students bring only cash to pay for their tuition and expenses, and sometimes attempt to pay for multiple semesters in advance;
- students have been known to register in person and, after paying their fees, will withdraw from the institution and receive an institutional cheque in reimbursement of their fees;
- students have registered from abroad and will then withdrawn before the deadline for refunds, utilizing an agent to collect their refund cheque; and
- some overseas students will appoint an educational agent, a nominee, or a proxy to register on their behalf, pay their tuition, and later withdraw and collect their refund.

On a recent occasion, one college was faced with a student who was required to pay a charge of \$150. The student attended with \$9,000 in cash in a duffel bag and asked to deposit that amount minus the \$150 owing. In effect, the institution was being asked to act as a bank.

Cryptocurrency

In recent years, cryptocurrency has captured headlines around the world for its unique characteristics and ability to act as an alternative to cash and other forms of payment. Most people associate cryptocurrency with the explosive growth of Bitcoin, established in 2009. Since its inception, there has been a close connection between Bitcoin and Vancouver, where the first Bitcoin dispenser was installed.

Cryptocurrency is a popular term for virtual currencies, which by their nature are decentralized, without the presence of a central issuer or trusted third party to provide transactional approval or to issue new currency. It relies instead on cryptographic proof of ownership. It is a point to point transaction, much like cash but not limited by physical presence. For this reason, it is often referred to as digital cash. Cryptocurrency has received official recognition in the *POCMLTFA*.⁶⁹³

FinTRAC defines cryptocurrency as digital currency that is not fiat currency and that can readily be exchanged for other funds. Proposed regulatory amendments will extend the reporting scheme which currently exists for MSBs to include those businesses which deal in virtual

⁶⁹³ See Jean-Francois Lefebvre, “Managing Emerging Financial Crimes”, Money Laundering in Canada 2018 Conference, ABC Solutions Inc., Halifax, N.S.: Sept. 17, 2018.

currencies. This will include all reporting sectors within real estate, which must submit reports when receiving \$10,000 or more in virtual currency. No cryptocurrency exchanges are currently reporting to FinTRAC.

The problem with cryptocurrency in its present state of development is that it is vulnerable to both facilitating illegal transactions and laundering the proceeds of such activity. Professor Gerry Ferguson of the University of Victoria describes it as “the next big tool in money laundering”. He notes that at present, it is very hard to regulate cryptocurrency “both in fact and in law”.⁶⁹⁴ This concern has been mirrored by the FATF, which has identified an increased use of new payment methods being used for money laundering. It notes that the anonymity provided by cryptocurrency places it outside the reach of nation states.⁶⁹⁵

The infamous ‘Silk Road’ case, which touched Canada, involved an illegal marketplace for narcotics and other items that operated on the Dark Web. It relied on Bitcoin for payment. Liberty Reserve is another celebrated case, in which an online remittance service based in Costa Rica used its own Liberty Dollars to allow users to anonymously settle transactions while retaining their anonymity. Allegedly US\$8 billion in illegal transactions flowed through its service.⁶⁹⁶

Cryptocurrencies are more advantageous to money launderers than cash because:

- there is no need for face-to-face transactions, reducing the risks of apprehension;
- cryptocurrency transactions are conducted anonymously; and
- the increased speed of transactions allows for more activity (and laundering).

Vancouver lawyer Christine Duhaime observed that “bitcoin has become a big way to move money out of China”, noting that it is “instantaneous and no one knows at either end”.⁶⁹⁷

Foreign credit cards

UnionPay and WeChat Pay credit cards are routinely used by citizens of China to purchase luxury goods. A recent media story in the *South China Morning Post* provided an extraordinary example of the son of a “Chinese tycoon” purchasing a US\$3.8 million (C\$5.1 million) Bugatti Chiron in Vancouver using his father’s UnionPay credit card, which the dealer described as a “regular mode of payment”.⁶⁹⁸ The story noted that:

⁶⁹⁴ E-mail to Review team.

⁶⁹⁵ FATF, *Virtual Currencies: Key Definitions and Potential AML/CFT Risks*, 2014.

⁶⁹⁶ See Jean-Francois Lefebvre, “Managing Emerging Financial Crimes”, *supra*.

⁶⁹⁷ Kerry Gold, “Vancouver home sellers take a wild ride”, *Globe and Mail*, Oct. 7, 2017 at p. S4.

⁶⁹⁸ Ian Young, “Chinese tycoon’s son buys US\$3.8 million Bugatti Chiron in Vancouver with dad’s Union Pay credit card, complains about Canadian taxes”, *South China Morning Post*, Apr. 13, 2019. Accessed at

“China’s Union Pay credit cards have been the subject of increasing scrutiny as a conduit for money out of the mainland. China has an annual cash export limit of US\$50,000, and Union Pay says it enforces an annual overseas cash withdrawal limit of 100,000 yuan (US\$14,880).

But while overseas purchases of more than 1,000 yuan (US\$149) must be reported to Chinese regulators, there is no general limit on spending, and there is no suggestion that the purchase of the car is improper.”

The use of China-based credit cards raises concerns about the source of funds and the potential for money laundering, as well as circumvention of China’s currency controls. In 2018, Reuters reported that:⁶⁹⁹

“Authorities in Macau, the world’s biggest gambling hub, have told financial institutions to tackle the illegal use of UnionPay cards to evade exchange controls, China’s latest move to clamp down on illicit capital outflows.

The announcement from Macau’s monetary authority late on Wednesday adds to a series of measures being implemented in the Chinese territory as it cracks down on such “illegal acts”.

The warning to banks came after pawn shops operating in Macau casinos had their UnionPay point-of-sale terminals removed, state broadcaster TDM said this week...A 2014 Reuters investigation found that many mainland Chinese used UnionPay cards to circumvent cash withdrawal limits of 20,000 yuan (\$3,200) a day, and either use that money to gamble or transfer it abroad.”

Canadian law enforcement has no means by which to determine the origin of funds used to pay down these credit cards, making them very effective tools for moving money and money laundering.

DISCUSSION

Senior management at FinTRAC candidly admits that it relies on banks and other financial institutions, through the exercise of routine due diligence when accepting deposits, to cover off those entities which are not required to report under the *POCMLTFA*. At the outset, this assumes that non-reporting sectors will place their business receipts in a bank or other financial institution. Assuming they do, this reliance on mainstream financial institutions is fraught with problems, as we saw with the luxury vehicle sector. Problems include the following.

<https://www.scmp.com/news/china/society/article/3005989/chinese-tycoons-son-buys-us38million-bugatti-chiron-vancouver>.

⁶⁹⁹ “Macau clamps down on use of UnionPay cards to dodge currency controls”, *Reuters*, June 6, 2018. Accessed at <https://www.reuters.com/article/us-macau-regulation/macau-clamps-down-on-use-of-unionpay-cards-to-dodge-currency-controls-idUSKCN1J309C>.

- It removes responsibility from the business at point of sale to perform routine due diligence and KYC. It may well be that the cash should not be accepted in the first instance.
- The business at point of sale is in a much better position to obtain accurate information concerning source of funds. A financial institution is one step removed.
- Banks do not view themselves as overseers of unregulated industries, and why should they?
- The business at the point of sale has a better opportunity to know its customer than does a bank, which has no visibility on the point of sale.

UNIVERSAL CASH REPORTING

Legislation in the United States addresses the phenomenon above by requiring all trades and businesses to report cash payments of more than \$10,000 to the federal government on an IRS Form 8300.⁷⁰⁰ As noted earlier, vehicle dealers and lawyers are included in the reporting.⁷⁰¹ The government can proceed civilly or criminally against offenders. Universal cash reporting avoids the need to constantly reassess sectors and effectively prevents organized crime and the underground economy from seeking the unregulated path of less resistance.⁷⁰²

A broad-based, economy-wide requirement can be structured to provide exemptions in the case of sectors which are clearly not at risk. On a very practical level, it is extremely uncommon in today's economy for consumer purchases above \$7,500 or \$10,000 to be made using cash. It is therefore equally unlikely that a cash reporting requirement would inconvenience the vast majority of consumers.

The downside to universal reporting is, of course, the need for additional training within industry and for FinTRAC to deal with an increased volume of reports. The deterrent value and potential benefits to law enforcement would, however, be tremendous.⁷⁰³

Interestingly, jewellers, who are currently a reporting entity, have advocated for a sector-wide cash reporting requirement. The position of the Canadian Jewellers Association, expressed to

⁷⁰⁰ U.S. IRS, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*. Also, see IRS, *IRS Form 8300 Reference Guide*. Accessed at <https://www.irs.gov/businesses/small-businesses-self-employed/irs-form-8300-reference-guide>.

⁷⁰¹ The private seller of a vehicle is exempt, but someone who is operating a car dealership is not.

⁷⁰² Considerable thought must be given to an appropriate threshold, which avoids structuring by organized crime, yet does not stifle legitimate sales.

⁷⁰³ The issue of who should report parallels the question of what offences should serve as predicates in Part XII.2 of the *Criminal Code* and therefore give rise to forfeiture. Originally only certain criminal offences, referred to as enterprise crime offences and designated drug offences, were included. Over time it became apparent that the great majority of crime is committed for financial gain and that a better approach was to indicate that all crimes are captured by the Part, other than those very few which are exempted by regulation.

the Standing Committee on Finance, is that all luxury product dealers, including car dealers and auction houses, should report large cash transactions to FinTRAC.⁷⁰⁴

A recommendation in *Dirty Money*, which was accepted by the Province, stated that B.C. should continue to encourage the federal government to amend the *POCMLTFA* in order “to broaden the entities subject to reporting, specifically luxury goods of interest to organized crime”.⁷⁰⁵ A rhetorical question might be to ask, are you comfortable knowing that certain sectors of the economy are not required to submit terrorist property reports?

GEOGRAPHIC TARGETING ORDERS

The Standing Committee on Finance recommended that the *POCMLTFA* be amended to include GTOs. Authority to issue a GTO could be given to Finance Canada or to FinTRAC, or both.

As an alternative to broad-based reporting or, better yet, as a supplement to it, GTOs allow authorities to understand what is taking place in a particular sector of the economy. They can be focussed on a province, or a geographic region within a province, such as Greater Vancouver. In the absence of universal reporting, they obviate the criticism of national reporting if some areas of the country or of a province do not have a money laundering problem.⁷⁰⁶ A GTO could, for example, require the submission of STRs and LCTRs by luxury vehicle dealers in Greater Vancouver, but not in other parts of the country.

The U.S. has both broad-based reporting and GTOs. The latter are found in a section of the *Bank Secrecy Act*⁷⁰⁷ that authorizes FinCEN to impose reporting and recordkeeping requirements on entities for a limited period of time. FinCEN can issue a GTO of its own volition, or at the request of law enforcement. In November 2018, FinCEN reissued real estate GTOs for 12 metropolitan areas in the U.S., hoping to capture beneficial ownership and cryptocurrency information, as well as other data.⁷⁰⁸

⁷⁰⁴ House of Commons, Standing Committee on Finance, Evidence, *supra*. Accessed at <http://www.ourcommons.ca/Content/Committee/421/FINA/Brief/BR9761612/br-external/CanadianJewellersAssociation-e.pdf#page=7>.

⁷⁰⁵ Recommendation 48.

⁷⁰⁶ This does not have much merit when one considers that virtually no part of Canada is unaffected by the underground economy, in which individuals and corporate entities seek to evade taxes.

⁷⁰⁷ 31 U.S. Code §5326. Records of certain domestic transactions. Accessed at <https://www.law.cornell.edu/uscode/text/31/5326>.

⁷⁰⁸ FinCEN, “FinCEN Reissues Real Estate Geographic Tracking Orders and Expands Coverage to 12 Metropolitan Areas”, Press release, Washington, Nov. 15, 2018. Accessed at <https://www.fincen.gov/news/news-releases/fincen-reissues-real-estate-geographic-targeting-orders-and-expands-coverage-12>. Also, see Justin Davidson, “The High Line Has Become a Tunnel Through Glass Towers”, *New York Intelligencer*, Jan. 7, 2019, which describes buildings constructed beside an elevated walkway in New York City. The article notes the extent by which the new buildings may be part of New York's money laundering and “treasure islands” scene. Accessed at http://nymag.com/intelligencer/2019/01/the-high-line-has-become-a-tunnel-through-glass-towers.html?utm_source=Sailthru&utm_medium=email&utm_campaign=Intelligencer%20-January%207%2C2018&utm_term=Subscription%20List%20-Daily%20Intelligencer%20%281%20Year%29.

As in the United States, GTOs should be viewed as a supplement to broad-based reporting and not as an alternative. Opting for GTOs in the place of broad-based reporting fails to consider that all parts of the country are affected by tax evasion through the underground economy, as well as the displacement factor which can occur if only a defined geographic area is made subject to reporting. For example, a GTO on luxury car sales in Greater Vancouver could result in a displacement of sales to other locations, such as the Okanagan Valley or Alberta.

PART 6

COMPLIANCE & ENFORCEMENT

TERMS OF REFERENCE

The TOR for this Review include the following:

The ability to identify and seize real property bought with proceeds of crime

Evaluate the ability of the Province to proactively detect and seize real property which is more likely than not purchased with the proceeds of, specifically, international or domestic white-collar crime including money laundering, tax evasion and fraud.

This shall include data and analysis related to evidence of purchases of real property using the proceeds of crime or for the purposes of criminal activity, particularly by individuals from international jurisdictions where Canada does not have extradition agreements (e.g. Iran, China).

OVERVIEW

This Part is divided into the following chapters:

Chapter 6-1 – Financial Compliance

Chapter 6-2 – Criminal & Civil Forfeiture

Chapter 6-3 - Case Studies

Chapter 6-4 – Criminal Investigation

Chapter 6-5 – Criminal Prosecution

CHAPTER 6-1

FINANCIAL COMPLIANCE

FINDINGS

- Over the course of 30 years, the federal government has created an AML bureaucracy which is focused on compliance. It has not infused equivalent resources into enforcement and prosecution.
- FinTRAC is an outlier among international FIUs because it is not a law enforcement agency and does not permit police to work in its offices, due to privacy concerns.
- Many reporting entities are critical of FinTRAC due to the absence of tangible results for the hundreds of thousands of reports which are submitted annually.
- Unless the intelligence in FinTRAC's data banks is readily available to law enforcement and security agencies, it becomes simply a collector of information.

THE 'FIRST' MONEY LAUNDERING LEGISLATION

Canada's first foray into money laundering compliance occurred with the passage of the *Proceeds of Crime (money laundering) Act* in 1991, which came into force in 1993.⁷⁰⁹ The impetus for the legislation arose out of Canada's participation in the FATF and from pressure exerted by the United States. In fact, the Kerry Commission in the U.S. named Canada as one of the "highest priority countries" in terms of money laundering and threatened to deny it access to the U.S. currency exchange clearing system if it did not introduce a system of currency reporting.

The Act was designed to complement the proceeds of crime amendments to the *Criminal Code* and related statutes. Parliament chose not to impose reporting or disclosure requirements on financial institutions, as had the U.S. and Australia. Instead it sought to improve the audit trail or ability of investigators to investigate a case of money laundering. The legislation was designed in such a way that it did "not impose an undue burden upon industry".⁷¹⁰ From an enforcement perspective, it was failure as it provided no new tools for law enforcement. It simply required financial institutions, such as banks, to maintain records, which most financial institutions did in any event.

⁷⁰⁹ S.C. 1991, c. 26.

⁷¹⁰ Canada, "Tabling of Legislation to Combat Money Laundering", News release No. 90-139, Oct. 25, 1990.

THE ‘SECOND’ POCMLTFA

Partly as a result of continuing criticism from the FATF, Parliament adopted a new proceeds of crime statute in 2000. It included a mandatory reporting regime for designated financial institutions, cross-border currency reporting, and the creation of a national FIU. Financial intelligence units had become commonplace around the world and Canada was urged to fall in line. This was the birth of FinTRAC.

THE FEDERAL AML TAPESTRY

Since the advent of the first money laundering statute, the responsible federal department has been Finance Canada. This is explained by Finance being responsible for Canada’s economic prosperity and the integrity of its financial institutions. Unfortunately, Finance is not a law enforcement body and is reliant on partner agencies to educate it with respect to the criminal environment and the needs of law enforcement. Its emphasis has been on developing compliance measures which balance *Charter* and privacy rights, with public safety. Almost invariably, we see a tendency to go only as far as the international community demands and to not act in a demonstrative manner with industry. Finance is also Canada’s representative to the FATF, OECD, and other international organizations, with other federal departments playing support roles.

The *POCMLTFA* is one of 59 federal statutes for which the Minister of Finance is responsible.⁷¹¹ The unit within Finance Canada that shapes and leads Canada’s AML program is buried deep within the labyrinth of the Ministry. Reporting up to the Minister are a Deputy Minister and two Associate Deputy Ministers. They oversee nine Branches, run by Assistant Deputy Ministers (ADM). One of those nine branches is the Financial Sector Policy Branch, which itself has four Divisions reporting to it.⁷¹² One of those is the Financial Sector Division. Within it are units dealing with Pensions Policy, Financial Stability, Payments Policy, and Financial Crimes – International and Domestic. AML is included in the mandate of the latter unit.⁷¹³

The Associate Assistant Deputy Minister responsible for Financial Crimes has a broad mandate, which includes being head of Canada’s delegation to FATF; chairing an ADM table of federal agencies involved in the AML regime; co-chairing with FinTRAC the Advisory Committee on Money Laundering and Terrorist Financing (ACMLTF);⁷¹⁴ chairing an industry table with bankers and Chief Anti-Money Laundering Officers (CAMLO); co-chairing a table with B.C., intended to focus on AML gaps; and co-ordinating federal AML legislative and regulatory efforts. She also

⁷¹¹ <https://www.fin.gc.ca/legislation/act-loi-eng.asp>.

⁷¹² <https://www.fin.gc.ca/afc/org-eng.asp>.

⁷¹³ <https://www.fin.gc.ca/branches-directions/fsp-eng.asp#>.

⁷¹⁴ A national risk assessment working group including 19 agencies. Summary notes of meetings are taken and made available to members, who are expected to keep confidential both information and discussions within the ACMLTF and its working groups.

has responsibility for a myriad of other matters including governance of the Integrated Market Enforcement Teams and a cybercrime centre.⁷¹⁵

The net result is that the federal government has created an AML bureaucracy which has spent most of its time on developing compliance measures in concert with FinTRAC and very little spearheading enforcement efforts. This has been left for agencies, such as the RCMP and CBSA, who are marginalized players in a multi-pronged, cross-government effort that has yielded very few tangible results in the provinces where the issue of money laundering is not only topical but responsible for the procurement of illegal commodities, most notable hard drugs.

Historically, improvements to Canada's AML regime have only occurred after international pressure has been applied to Canada.

The FATF (like the OECD for anti-corruption) conducts peer assessments of national compliance with its AML / TF standards. Canada regularly lags behind the world standard for compliance. The absence of reporting by the legal profession has been the most obvious, recurring example of this non-compliance. In its 2016 Mutual Evaluation Report on Canada, the FATF was critical on a number of fronts.

Industry has lobbied Finance Canada very effectively over the years to reduce the compliance burden on its shoulders, and FinTRAC generally supports any moves which will streamline reporting. For example, after almost two decades and despite FATF criticism, the *POCMLTFA* has allowed reporting entities to submit STRs within a 30-day window. This has permitted financial institutions the luxury to review the work of their front-line staff for consistency and compliance, allowing FinTRAC to presumably obtain a more refined product, but failing to appreciate that immediate reporting to law enforcement is preferable.

FINTRAC

FinTRAC is an independent agency of the federal government designed to collect information that will assist in the detection, prevention and deterrence of money laundering and the financing of terrorism.

The *POCMLTFA*, through the vehicle of FinTRAC, requires that reporting entities maintain a compliance regime, which embraces the principles of Know Your Customer by obtaining identification, keeping records, assessing risk, and training. A compliance regime must include a compliance officer, a formal compliance plan, documented risk assessments, written compliance education programs, as well as audits and reviews.

Most importantly, the *POCMLTFA* requires the submission of reports to FinTRAC. These include STRs, LCTRs, TPRs and Electronic Funds Transfer Reports (EFTR). What constitutes a suspicious transaction is described in subordinate legislation. A large cash transaction is not necessarily suspicious, but simply exceeds a reporting threshold. EFTRs are required for incoming or

⁷¹⁵ Interview at Finance Canada.

outgoing international EFTs, in the amount of \$10,000 or more, that result from a patron request. The casino industry is also required to submit Casino Disbursement Reports (CDR).

The number of reports received by FinTRAC is staggering. In 2016, it received over 27 million financial transaction reports across all sectors. With respect to casinos, it received 172,289 CDRs alone. FinTRAC utilizes sophisticated software to analyze submissions from reporting entities and ultimately disseminates the information in vetted form to designated law enforcement and security agencies.

On a national level, FinTRAC's dissemination of intelligence is roughly 70% reactive, or in response to Voluntary Information Reports (VIR) submitted by police, and 30% proactive, in which it disseminates leads on new cases.⁷¹⁶ FinTRAC attempts to align its proactive disclosures with police priorities in different parts of the country. In recent years, these have included terrorist financing, human trafficking, child sexual exploitation and fentanyl.

It is widely believed that FinTRAC is in the business of 'catching financial criminals'. This is not quite correct. FinTRAC is not a law enforcement body. In fact, law enforcement officers are not permitted to work in its premises due to *Charter* and privacy concerns. It is a regulatory agency of the federal government, tasked with ensuring that specified industries and financial entities report in accordance with the provisions of the *POCMLTFA*.

Due to a dearth of successful financial crime cases, a belief has developed among many reporting entities that their compliance dollars are being wasted. It has resulted in calls for less reporting. In some cases, there is actual disdain for the work of FinTRAC. None of this should come as a surprise as the FATF has also been critical of FinTRAC's shortcomings.

If reporting entities were permitted to stop reporting to FinTRAC, the complaints would become a self-fulfilling prophecy. Rather than allowing this to occur, we must ask why the results are relatively poor. It is due in part to the fact that FinTRAC, unlike most of the world's FIUs, is not a law enforcement body and simply does not have a window on what law enforcement wants and needs, without the police asking. Likewise, the police have little idea what actionable intelligence may be contained in FinTRAC's data banks.

ENFORCEMENT

Ironically, B.C.'s Crown Corporation charged with operating gaming in the province received the largest fine issued by FinTRAC in the first decade of its existence. On June 15, 2010, FinTRAC issued a Notice of Violation alleging that BCCLC was non-compliant with the *POCMLTFA* because of filing delays, inadequate information and other deficiencies identified in more than 1,285 reports. According to FinTRAC, BCCLC's systems had been reporting incorrectly for years. The

⁷¹⁶ This estimate changes to 80/20 per cent in the case of casinos, with less proactive disclosures that are specific to gaming.

difficulties were exacerbated when CDRs were added to the list of reportable items in September 2009. The penalty was fixed at \$670,000.

BCLC maintained a legal challenge to its 2010 fine for six years. The challenge incurred considerable expense to the public, due to federal counsel exchanging blows with BCLC lawyers. In the end, the result was a draw, with no winners. BCLC did, however, avoid paying a fine.

Ironically, the Federal Court challenge ended after FinTRAC's entire scheme of Administrative Monetary Penalties (AMP) was struck down by the Federal Court of Canada.

REGULATORY AMENDMENTS

As a result of amendments made to the *POCMLTFA* in both 2014⁷¹⁷ and 2017,⁷¹⁸ and to the FATF's 2016 mutual evaluation report on Canada, new regulatory amendments came into force in June 2016, June 2017, and January 2018. A second package is due to come into force. It will amend aspects of the following:

- STR and TPR timelines;
- PEP and Head of International Organization obligations;
- measures to verify client identity;
- EFTRs;
- 24-hour rule aggregation;
- prepaid payment products;
- foreign MSBs;
- virtual currency;
- life insurance obligations; and
- record keeping obligations.

The most relevant for our purposes are the following.

STR and TPR Timelines

After a two decade wait to reduce timeframes for the submission of STRs, the amendments require that they be submitted within three, rather than 30 days. A representative of a financial

⁷¹⁷ *Economic Action Plan 2014 Act, No. 1.*

⁷¹⁸ *Budget Implementation Act, 2017, No. 1.*

institution who we consulted, noted that there is still considerable leeway in the ‘fine print’ which allows for ‘business as usual’. The proposed amendment reads:

“The person or entity shall send the report [STR and TPR] to the Centre [FinTRAC] within three days after the day on which measures taken by them enable them to establish that there are reasonable grounds to suspect that the transaction or attempted transaction is related to the commission of a money laundering offence or a terrorist activity offence.”

This wording allows an institution to commence an investigation into a client interaction, but only report within three days of concluding that there are reasonable grounds to suspect an offence. This determination *after* an investigation, could occur well past the existing 30-day requirement. Such an interpretation is particularly shocking as the provision also applies to the submission of terrorist property reports. Few would disagree that time is of the essence when dealing with terrorism.

[24-Hour Rule Aggregation](#)

This proposed amendment extends reporting to multiple transactions that total \$10,000 or more within a 24-hour period. This is intended to capture the smurfing of money below the \$10,000 limit through multiple small deposits, by one or more persons. It does not give rise to a criminal offence of structuring, however.⁷¹⁹ It simply requires that financial institutions report the conduct. Unfortunately, as with other reports, law enforcement will never become aware of the reports unless FinTRAC were to send an unsolicited disclosure to law enforcement, or a law enforcement agency happens to be investigating the same individual and makes a request of FinTRAC.⁷²⁰

[Prepaid payment products](#)

The proposed regulations attempt to bring prepaid payment cards within FinTRAC’s compliance umbrella. However desirable this may be, the international payment system is developing at an exponential rate and new challenges are presenting daily.

In a matter of two decades, China catapulted from a cash-based society to an internet-based financial system, bypassing English common law instruments such as the cheque. This move to a cashless society is evidenced through internet transfers of money, ‘chip and PIN’ plastic cards, and contactless transfers. In its survey of the world in 2019, *The Economist* notes that “Chinese methods of payment will spread remorselessly round the world.”⁷²¹ The two largest payment

⁷¹⁹ See Chapter 6-2.

⁷²⁰ See the discussion of a Structuring offence in Chapter 6-2.

⁷²¹ Simon Long, “The Chinese are coming”, *The World in 2019, Economist*, London, 2019 at p. 120.

systems, Alipay⁷²² and WeChat Pay,⁷²³ are linked to Alibaba and the Ten-cent, respectively. Both are expanding their reach around the globe, while also investing in local payment systems. They are based on QR codes,⁷²⁴ allowing for easy use by smartphones. What makes these payment systems so attractive is their link to state controlled, Union Pay, whose payment cards are accepted in over 170 countries.

7-Eleven became the first convenience retailer in Canada to accept Mainland Chinese mobile payment systems. The company noted that over one billion consumers are actively using one of the systems and that 65% of Mainland Chinese travellers use mobile payment platforms. In the span of two decades, the Mainland Chinese have become “the most digitized shoppers in the world”.

Foreign MSBs

The proposed regulations impose the same obligations on Foreign MSBs⁷²⁵ as on domestic MSBs. This includes having a designated representative in Canada, criminal record checks, and the prompt payment of fines. This amendment fills a gap but it still does nothing to strengthen the enforcement regime for exiting MSBs, domestic and foreign, which do not register. We have been told that FinTRAC will notify law enforcement if they become aware of an unregistered MSB, however the RCMP have told us that if they become aware of an unregistered MSB, they will refer the matter to FinTRAC. Both entities indicate that very few reports have been made regarding unregistered MSBs. Without a provincial licensing scheme, such as in Quebec and as recommended for B.C., little progress can be expected.

INDUSTRY ENGAGEMENT

There appears to be a disconnect between certain reporting sectors and FinTRAC. This was identified in the report by the Standing Committee on Finance and was a comment which we repeatedly heard during interviews. During the Finance Committee hearings, a broad consensus emerged among industry stakeholders that FinTRAC is a poor communicator and could be much more effective if it provided intelligence to reporting entities and clear guidance on the regulations. In essence, the complaints from industry appear to coalesce around the absence of tangible results for the many reports that are submitted to FinTRAC, and the consequent expense to industry.

The Finance Committee danced around the fundamental issues facing FinTRAC by recommending that the POCMLTFA “allow for two-way information sharing”, better communication with reporting entities (including a mandate to publish aggregate data on

⁷²² Alipay is the mobile payment system of Alibaba, an online retail giant. It has in excess of 500 million active users.

⁷²³ We Chat is “a Chinese multi-purpose messaging, social media and mobile payment system that has more than a billion users”.

⁷²⁴ Quick Response codes now found on virtually all consumer goods.

⁷²⁵ FMSBs are described as those entities which provide services to clients in Canada and direct services to persons or entities in Canada.

sectors and groups of reporting entities), and the ability to request information from reporting entities without involving law enforcement. It also recommended that FinTRAC explore technology-focused solutions to better analyze STRs and money laundering typologies and that legislation should allow money laundering intelligence sharing between financial institutions.

For its part, FinTRAC highlights cases in which its contribution to an investigation has been acknowledged by law enforcement. The Finance Committee's recommendation for two-way information sharing is potentially a 'slippery slope' recommendation which attempts to find a solution to industry complaints. A better result would be for FinTRAC to become an integral part of law enforcement, in which it can make a real contribution to dealing with crime and not be perceived as simply a compliance tool and a data bank for queries.

SUMMARY

The great preponderance of stakeholders that we met during the Review were critical of FinTRAC. Despite its specialist resources and technical systems, FinTRAC is wrapped in a legal framework that resembles a straitjacket. The result is that its effectiveness is blunted and criticism results.

The inability of law enforcement officials to work within FinTRAC is a huge disconnect and sets FinTRAC apart from most FIUs. Unless the intelligence in its data banks is readily available to law enforcement and other security agencies, FinTRAC is simply a collector of information.

CHAPTER 6-2

CRIMINAL & CIVIL FORFEITURE

FINDINGS

- Until disclosure is codified and becomes manageable for police and prosecutors, it will continue to be a huge disincentive to investigating and prosecuting financial crimes. This issue is exacerbated by the requirement that a trial occur within a defined time period.
- Amendments should be considered to Canada's criminal law to provide police and prosecutors with enhanced legal tools and new offences which target money laundering; including a structuring offence, a recklessness offence, consecutive sentences for laundering and possession of proceeds of crime, unidentified wealth orders, a lying to police offence, an expansion of the presumption related to forfeiture, a presumption related to income tax filings, and increased penalties under the *POCMLTFA*.
- The undertaking in Part XII.2 of the *Criminal Code* should be removed from the *Code* or, in the alternative, be managed in B.C. through a form of graduated delegations, based upon the quantum involved.
- Civil forfeiture is not a replacement for criminal forfeiture. Both must co-exist in order to ensure that police follow the money and dismantle organized crime through arrests and forfeiture.

CRIMINAL FORFEITURE

Confiscation of property by the state is not a new concept. Its pedigree, which legal historians trace to early Biblical times, is inextricably tied to criminal law and the law of negligence, of which it was a precursor.

On January 1, 1989, Canada added its name to a growing list of countries intent on stemming the tide of illegal drug trafficking through the use of statutory confiscation schemes. On that day, Bill C-61, referred to as the proceeds of crime amendments, came into force. It was a necessary follow-up to Canada's ratification of the *Vienna Convention* in 1988.⁷²⁶

⁷²⁶ *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, U.N. Economic and Social Council Doc. E/Conf. 82/15 (1988).

The new Part XII.2 of the *Criminal Code* provided law enforcement with investigative tools that permit the pre-trial seizure or restraint of property derived from various offences (now virtually all serious offences), by means of special search warrants and restraint orders. New offences of laundering proceeds of crime and possession of the proceeds of crime were created. The legislation provided for a conviction-based scheme, which allowed for the confiscation of the proceeds of criminal activity once an individual has been convicted (or where the person has died or absconded).

The proceeds of crime amendments have consistently withstood constitutional and other court challenges and have been endorsed by the Supreme Court of Canada. In *Quebec (Attorney General) v. Laroche*, the SCC remarked:⁷²⁷

“The legislative objective of Part XII.2 plainly goes beyond mere punishment of crime: an analysis of the provisions of that Part shows that Parliament intended to neutralize criminal organizations by taking the proceeds of their illegal activities away from them. Part XII.2 intends to give effect to the old adage that crime does not pay [cites omitted]. As German, *supra*, has observed, Part XII.2 organizes the fight against organized crime around a strategy that focuses on the proceeds of crime, as opposed to the offender. As well, the effectiveness of that struggle depends largely on the speed with which proceeds of crime can be identified, located, seized and ultimately, forfeited.”

The amendments to Part XII.2 were replicated in other federal legislation, most notably the *Controlled Drugs and Substances Act (CDSA)*. In that statute, we find the concept of Offence-Related Property. Most offence-related property can be legally owned and/or possessed. Its possession becomes unlawful when used in connection with an offence. In this manner, it differs from proceeds of crime, which are *ab initio* illegal to possess. Prosecutors often prefer to use the offence-related provisions of the *CDSA* to Part XII.2 of the *Criminal Code*, as the former do not require tracing the proceeds of a particular crime.

CRIMINAL OFFENCES

Prior to 1989, law enforcement was forced to use common law and extraordinary remedies to seize money that was clearly the proceeds of crime. These attempts were few and far between.

Now there are two serious offences in the *Criminal Code* with direct relevance: possession of the proceeds of crime and laundering. The offences read as follows:

“Possession of property obtained by crime

354.(1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from (a) the commission in Canada of an offence punishable on indictment; or (b) an act or omission

⁷²⁷ [2002] 3 S.C.R. 708 at para. 25. Also, see *R. v. Lavigne* [2006] 1 S.C.R. 392.

that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

Laundering proceeds of crime

462.31(1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of
(a) the commission in Canada of a designated offence; or
(b) an act or omission that, if it had occurred in Canada, would have constituted a designated offence."

The easiest way to distinguish these offences is to understand that possession is a noun and laundering is a verb. The possession offence occurs when a person is found in possession of the proceeds of a criminal offence, such as cash from illegal drug sales. Laundering occurs when a person moves those proceeds by one of a number of methods.

Both offences require that the proceeds of crime be derived from an indictable offence, although laundering is slightly more restrictive as it refers to designated offences (in fact, most indictable offences are also designated offences). These source offences are often referred to as predicate offences; in other words, the possession and laundering offences are reliant on a criminal offence having been committed, which gave rise to the proceeds of crime. This is of importance as there was a considerable difference of opinion for many years concerning the source of the cash that flooded into Lower Mainland casinos.

It should also be noted that the laundering offence can be committed in a multiplicity of ways (sends, delivers, transmits, transports, etc.). Both offences are serious, with possible maximum sentences of 10 years in prison.⁷²⁸ It is also an offence to attempt to commit, assist in the commission, or counsel another person to commit either of the offences.

In its 2016 mutual evaluation of Canada, the FATF noted that "[l]aw enforcement results are not commensurate with the [money laundering] risk and asset recovery is low."⁷²⁹ Consistent with this finding, statistics show that Canada has not been particularly successful in prosecuting money laundering offences.

In 2009/2010, approximately one third of money laundering cases resulted in a conviction, compared to an overall conviction rate for criminal offences of 65%, and almost two thirds of laundering cases were stayed or withdrawn.⁷³⁰ This is a clear indication that laundering

⁷²⁸ Section 355 and s. 462.31(2).

⁷²⁹ FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada*, *supra* at p. 3.

⁷³⁰ Shannon Brennan and Roxan Vaillancourt, "Money laundering in Canada, 2009", *Juristat*, Ottawa: Statistics Canada, June 21, 2011.

offences were being used for leverage in plea bargaining. In many of those cases, proceeds of crime may have been forfeited as part of the agreement.

The *Wall Street Journal* reported Statistics Canada figures showing that from 2000 to 2016, there were only 316 convictions related to money laundering. In comparison, it was noted that in 2017 alone, there had been 1,435 convictions in the United Kingdom.⁷³¹

How then can these dismal results be turned around? We know that money laundering is widespread. It is the flip side of drug and other crimes which injure and kill, and the term itself has become part of the public discourse in British Columbia.

One area to examine is the *Criminal Code* itself and to consider provisions used in other common law countries which could help to ameliorate the situation and provide both law enforcement and prosecutors with the essential tools that they require in order to undertake effective criminal investigations and prosecutions.

CRIMINAL CODE AND POCMLTFA AMENDMENTS

Disclosure in Criminal Cases

Until disclosure is codified and becomes manageable for police and prosecutors, it will continue to be a huge disincentive for police investigating white collar crime. In many financial crime cases, police officers literally spend years dealing only with disclosure. Few are interested in this work and it tends to be shifted to new members of a unit. Although police forces are increasingly hiring civilian staff to help shoulder this burden, and that comes at a cost as there may be a lack of understanding of many of the niceties of informant security and evidence.

*R. v. Stinchcombe*⁷³² represented the beginning of the end to large financial crime prosecutions. Despite the importance of providing an accused with disclosure of the case which he or she must face, disclosure has become so onerous in large investigations that it becomes almost impossible to take a financial crime investigation to prosecution within a reasonable period of time. Law enforcement now attempts to deal with disclosure before a charge is laid, to prevent the ‘clock starting’ with respect to *R. v. Jordan*.⁷³³ And there is more. *R. v. Jarvis*⁷³⁴ has impacted on the ability of criminal and regulatory investigators to effectively partner on an investigation.

⁷³¹ Alistair MacDonald, Paul Vieira and Vipal Monga, “The Money Laundering Hub On the U.S. Border? It’s Canada”, *Wall Street Journal*, Aug. 8, 2018. Accessed at <https://www.wsj.com/articles/canada-comes-under-fire-for-money-laundering-lapses-1533729600?ns=prod/accounts-wsj>.

⁷³² [1991] 3 SCR 326.

⁷³³ [2016] 1 SCR 631. *Jordan* established guidelines for what constitutes unreasonable delay. The presumptive ceiling is 18 months for cases tried in the provincial court, and 30 months for cases tried in a superior court.

⁷³⁴ [2002] 3 SCR 757. *Jarvis* considered the interrelationship between police and regulators.

The *Vancouver Sun* interviewed VPD Superintendent Mike Porteous, who has extensive experience leading large, complex investigations. The article read:⁷³⁵

“[G]etting charges in complex cases such as money laundering is not a policing issue but a prosecution issue.

As a result of precedent-setting decisions at the Supreme Court of Canada — on full disclosure of evidence and new deadlines for prosecutions — there is additional pressure on the entire criminal justice system in bringing these cases to court, said Porteous.

The volume of material that has to be disclosed has become so huge in major investigations involving dozens of officers that even after a suspect is arrested, said Porteous, “we would still have to maintain up to 20 people for another year just to service the case for secondary disclosure.”

Added Porteous: “Cases now have to be airtight, perfect cases. ... There is no accident you keep seeing the big cases not going forward.”

PPSC prosecutors observed that money laundering investigations are typically highly complex and can last months or years. The cases can generate a massive amount of material – terabytes of data; thousands of documents; financial records that must be carefully analyzed and distilled into a meaningful report; intercepted communications that are often in a foreign language and require translation; and voluminous additional investigative materials.

The PPSC prosecutors agreed with Superintendent Porteous. Just as the police must devote enormous resources to compile their file in a manner that complies with Major Case Management principles and meets the standards set out in PPSC’s Report to Crown Counsel Guidelines, the Crown assigned to conduct the charge assessment must devote a significant amount of time to reviewing the disclosure package. That review must ensure that all relevant information has been included in the disclosure materials and that any required vetting to protect privilege (including confidential informant privilege) has been completed properly.

Depending on the scale of the investigation, the assigned Crown counsel may spend weeks if not months reviewing this material in close consultation with the investigators to ensure Crown is in full compliance with *Stinchcombe* disclosure obligations. The complexity and importance of this process cannot be overstated. The PPSC prosecutors expressed the view that onerous and sometimes, overwhelming disclosure requirements create inherent limitations on just how many investigations and hence prosecutions can be conducted.

⁷³⁵ Gordon Hoekstra and Kim Bolan, “Investigation: Few Convictions for Money Laundering in B.C. Since 2002”, *Vancouver Sun*, Feb. 12, 2019. Accessed at <https://vancouversun.com/news/local-news/investigation-only-10-convictions-for-money-laundering-in-b-c-since-2002>; and public records.

The recent collapse before trial of E-Pirate, described as “the largest money laundering case in Canadian history – by a long shot,”⁷³⁶ speaks volumes about the challenge of bringing these complex cases to trial.⁷³⁷ In that case, police alleged that almost \$220 million a year was being laundered through an MSB.⁷³⁸ The stated reason for the collapse was the inadvertent disclosure of a source’s identity.

The extent of disclosure has made U.S. law enforcement agencies very reluctant to share information with Canadian law enforcement for the purpose of a prosecution in Canada. This has led to an outsourcing of Canadian prosecutions to the U.S. In B.C., this is a reality. U.S. authorities, with the support of Canadian police agencies, have arguably prosecuted more high-profile Canadian money launderers in recent years than have the authorities in British Columbia.⁷³⁹

The solution to the disclosure issue described above would appear to be the development of carefully balanced requirements in the *Criminal Code*, not unlike the disclosure requirements which all lawyers are familiar with in the rules of civil courts.

Undertaking

During its consideration of the new proceeds of crime law in 1988, the House of Commons Justice and Legal Affairs Committee proposed certain amendments. One of those placed a damper on Part XII.2 from its inception. The amendment, accepted by the Committee and later, Parliament, requires that an undertaking for damages or costs be given by the Attorney General when a special search warrant or a restraint order is requested.⁷⁴⁰ Despite an early interest in Part XII.2, for the past two decades the Provincial Crown in B.C. has avoided these investigative tools, largely due to the need for an undertaking and the approval process required to obtain one.

Interestingly, in Ontario, provincial and federal prosecutors are actively prosecuting proceeds of crime and laundering offences. When asked how they deal with the undertaking, a senior provincial prosecutor explained that authority to give an undertaking has been delegated by the Attorney General to prosecutors in a graduated manner, based upon the quantum involved.

⁷³⁶ “The Laundromat,” CTV - W5, Feb. 9, 2019. Accessed at <https://www.ctvnews.ca/w5/>.

⁷³⁷ Mike Hager, “B.C. operation laundered massive amounts of cash, court documents say”, *Globe and Mail*, Jan. 4, 2019. Accessed at <https://www.theglobeandmail.com/canada/british-columbia/article-bc-operation-laundered-massive-amounts-of-cash-court-documents-say/>.

⁷³⁸ Also, see Kim Bolan, “Charges stayed in another major B.C. international crime case”, *Vancouver Sun*, Dec. 28, 2018. Accessed at <https://vancouversun.com/news/crime/charges-stayed-in-another-major-b-c-case>.

⁷³⁹ Kim Bolan and Gord Hoekstra, “More money laundering justice in the U.S. Convictions more likely south of border than in B.C.”, *Vancouver Sun*, Feb. 11, 2019 at p. A4. Accessed at <https://vancouversun.com/news/crime/b-c-money-launderers-more-likely-to-be-convicted-in-the-u-s-than-at-home>.

⁷⁴⁰ See s. 462.32(6) and s. 462.33(7).

Structuring Offence

The Standing Committee on Finance recommended that the federal government make it a criminal offence to structure transactions in a manner that avoids financial compliance reporting requirements. This recommendation is modeled after a clause in U.S. federal law, which sets penalties for up to 5, or 10 years imprisonment for structuring, depending on the severity of the offence.⁷⁴¹ These rules apply to financial institutions, designated non-financial businesses and professionals, and their clients. As noted in the previous chapter, amendments to FinTRAC regulations incorporate a structuring provision for reporting purposes.

Recklessness Offence

Professional money launderers know that their conduct must be linked to a predicate offence in order to be convicted of laundering. As a result, they attempt to insulate themselves from the predicate offences, such as drug trafficking. The RCMP has recommended lowering the legal standard for money laundering in the *Criminal Code* from intention or willful blindness, to recklessness, not unlike certain driving and firearms offences.⁷⁴² This suggestion appears to have resonated in Budget 2019.

Consecutive Sentences

At present, many, if not most laundering and proceeds of crime charges are bargained away in return for a plea arrangement, or are withdrawn, stayed or dismissed at trial in favour of the predicate offence. By making the sentence for laundering, or possession of proceeds consecutive to the sentence for the predicate offence would recognize that these offences represent a separate transaction from the offence which gave rise to the proceeds. This is similar to the consecutive sentences found elsewhere in the *Criminal Code*, such as for carrying out an offence as part of a criminal organization in section 467.14.

Unidentified Wealth Order

Unidentified Wealth Orders (UWO) are a recent innovation on the international scene, which the FATF has encouraged nations to include in their criminal law. They are based on a presumption that large, unexplained sums of cash or other liquid assets should be restrained, unless the person in possession is able to satisfy the court that he or she is in lawful possession. As an offence, UWOs remedy the common inability of prosecutors to link proceeds of crime to a predicate offence.⁷⁴³

⁷⁴¹ U.S. Code, Title 31, s. 5324 - Structuring transactions to evade reporting requirement prohibited.

⁷⁴² House of Commons, Standing Committee on Finance [Evidence], *supra*.

⁷⁴³ Booz Allen Hamilton, *Comparative Evaluation of Unexplained Wealth Orders*, Final Report, Oct. 31, 2011.

Accessed at <https://www.ncjrs.gov/pdffiles1/nij/grants/237163.pdf>.

In the U.K., the UWO is a civil tool, as follows:⁷⁴⁴

"A UWO requires a person who is reasonably suspected of involvement in, or of being connected to a person involved in, serious crime to explain the nature and extent of their interest in particular property, and to explain how the property was obtained, where there are reasonable grounds to suspect that the respondent's known lawfully obtained income would be insufficient to allow the respondent to obtain the property. The test for involvement with serious crime is by reference to Part 1 of the Serious Crime Act 2007...."

A UWO is a civil power and an investigation tool. It requires the respondent to provide information on certain matters (their lawful ownership of a property, and the means by which it was obtained). It is important to note that, as an investigation power, a UWO is not (by itself) a power to recover assets. It is an addition to a number of powers already available in POCA to investigate and recover the proceeds of crime and should therefore not be viewed in isolation."

The first UWO case in the U.K. attracted considerable attention.⁷⁴⁵ The incorporation of UWOs in Canada's criminal or civil law would allow for a remedy in cases of egregious, unexplained wealth. In the Canadian criminal context, a criminal offence based upon an UWOs may be problematic, depending on whether the presumption is considered a reverse onus or not. Most offences in the *Criminal Code* which contained reverse onus provisions were struck down by the courts after the *Charter of Rights and Freedoms* was embedded in Canada's Constitution.⁷⁴⁶ As an investigative tool, the characterization becomes less significant. The alternative is that UWOs be incorporated in civil forfeiture legislation.

[Lying to a Police Officer](#)

Making false statements is a crime under U.S. federal law.⁷⁴⁷ It prohibits knowingly and willfully making false or fraudulent statements, or concealing information, in "any matter within the jurisdiction" of the federal government. A number of notable individuals have been convicted under the section; including Governor Rod Blagojevich, Michael T. Flynn, Rick Gates, 'Scooter' Libby, Bernard Madoff, and Jeffrey Skilling. It is tool used by prosecutors to reach the heads of criminal organizations and the powerful. There is no comparable offence in Canada, as lying to a police officer, absent a judicial component, is generally not considered to be Obstruction of Justice.

⁷⁴⁴ Gov. UK, "Circular 003/2018: Criminal Finances Act: unexplained wealth orders", Feb. 1, 2018. Accessed at <https://www.gov.uk/government/publications/circular-0032018-criminal-finances-act-unexplained-wealth-orders/circular-0032018-unexplained-wealth-orders>.

⁷⁴⁵ Dominic Casciani, "Woman who spent £16m in Harrods revealed", BBC, Oct. 10, 2018. Accessed at <https://www.bbc.com/news/uk-45812210>.

⁷⁴⁶ The federal government could presumably invoke the 'notwithstanding clause' in the *Charter* to allow for such an offence.

⁷⁴⁷ U.S. Code, Title 18, s. 1001 – Statements or entries generally.

Forfeiture Presumption

In 2005, section 462.37 of the *Criminal Code*, which provides for the forfeiture of proceeds of crime, was amended by including subsections (2.01) through (2.07). The first two of these subsections read as follows:

“Order of forfeiture — particular circumstances

(2.01) A court imposing sentence on an offender convicted of an offence described in subsection (2.02) shall, on application of the Attorney General and subject to this section and sections 462.4 and 462.41, order that any property of the offender that is identified by the Attorney General in the application be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law if the court is satisfied, on a balance of probabilities, that

- (a) within 10 years before the proceedings were commenced in respect of the offence for which the offender is being sentenced, the offender engaged in a pattern of criminal activity for the purpose of directly or indirectly receiving a material benefit, including a financial benefit; or
- (b) the income of the offender from sources unrelated to designated offences cannot reasonably account for the value of all the property of the offender.

Offences

(2.02) The offences are the following:

- (a) a criminal organization offence punishable by five or more years of imprisonment;
- (b) an offence under section 5, 6 or 7 of the *Controlled Drugs and Substances Act* — or a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to an offence under those sections — prosecuted by indictment; and
- (c) an offence under subsection 9(1) or (2), 10(1) or (2), 11(1) or (2), 12(1), (4), (5), (6) or (7), 13(1) or 14(1) of the *Cannabis Act* — or a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to an offence under any of those subsections — prosecuted by indictment.”

The intent of these provisions is to reverse the onus of proof from the Crown to an offender when the individual has been convicted of a criminal organization offence or certain offences under the *CDSA*. In these circumstances, the court shall order forfeiture of property if it is satisfied that the offender has engaged in a pattern of criminal activity or does not have sufficient legitimate income to reasonably account for all of his or her property.

The offender has an opportunity to demonstrate on a balance of probabilities that any property is not the proceeds of crime. The court also possesses a residual ability to refuse forfeiture, if it is not in the interests of justice.

The resemblance of these provisions to UWOs and to U.S. racketeering laws is striking.⁷⁴⁸ Unfortunately, they are very restrictive in the offences to which they apply, and therefore seldom used. Prosecutors interviewed for this Review recommended that section 462.37(2.02) of the *Code* be amended to include other offences, such as fraud, which will trigger the presumption in section 462.37(2.01) and give rise to more broad-based forfeiture.

Income Tax Evidence

Prosecutors also recommended that section 462.48 of the *Code* be amended to make an accused's tax return determinative of income with a reverse onus, and further, that non-filing be deemed a declaration of zero income.

MSB Penalties

Prosecutors also recommended that penalties in the *POCMLTFA* be increased to a maximum of 10 years imprisonment, from the current maximum of five years. A higher maximum may provide an increased deterrent and incentivize increased police enforcement to deal with unregistered MSBs and underground bankers. It would also align with the laundering and proceeds of crime offences in the *Criminal Code*.

Foreign Currency Controls

Prosecutors also recommended that the failure to declare foreign currency over a certain amount, entering Canada be made a criminal offence, and that the offence be a predicate offence for laundering, and possession of proceeds of crime. Foreign nationals should be permitted to bring money into Canada, provided that it is declared upon entry. This is precisely the situation with the capital flight which flooded the Vancouver real estate market in recent years. Such an offence would overcome the inability of police and prosecutors to demonstrate the source of funds which gives rise to a laundering or possession of proceeds offence. As one prosecutor noted, "violating currency laws, dirty money, underground banking money, i.e., black money, they all look the same."

CIVIL FORFEITURE

The inability of the criminal justice system to combat organized crime effectively has inspired most provincial legislatures to enact statutes intended to strip wrongdoers of the proceeds of their unlawful activity. The concept of civil forfeiture is quite old and derives from the same parentage in English law as criminal forfeiture. In B.C., the *Civil Forfeiture Act* (CFA) serves as

⁷⁴⁸ *Racketeer Influenced and Corrupt Organizations Act*, Pub. L. 91-452, 84 Stat. 922.

the framework for these proceedings, following the Ontario lead into this area of law.⁷⁴⁹

While criminal law is focused on individuals, civil forfeiture focusses on property. The advantage of civil forfeiture is that it can go where criminal forfeiture cannot, and it can get there much faster. The suspect property becomes the respondent in a civil action. Under the CFA, the provincial director of civil forfeiture may apply to a court for an order forfeiting property.⁷⁵⁰ There is no requirement for a criminal conviction. The province must simply demonstrate on the civil standard of a balance of probabilities, that property, such as cash, is more likely than not the proceeds of unlawful activity or an instrument of unlawful activity.

Police now refer cases to civil forfeiture if, for some reason they cannot, or choose not to proceed with criminal charges. As a result, civil forfeiture has become a valuable tool in the arsenal of the government when dealing with suspicious cash. Recently, B.C.'s Public Safety Minister announced amendments to the CFA which would further strengthen the legislation.

In recent years, however, certain contested civil forfeiture cases have encountered problems in the courts. An attempt to forfeit the HA Clubhouse in Nanaimo is in its twelfth year within the B.C. Supreme Court. In addition to the delay factor, the courts have become increasingly concerned by civil forfeiture cases which would clearly not be viable in a criminal court, as a result of *Charter* violations, such as warrantless searches. The BCSC has adopted a bifurcated process for these cases, in which the court will examine *Charter* and other objections prior to proceeding with a trial on the main cause of action. The B.C. Court of Appeal has endorsed the bifurcation of proceedings as part of the court's discretion to manage its trial process. In the words of Justice Saunders:⁷⁵¹

"Given [the] very high stakes for the individual and the power difference between the parties, it is not surprising that there has been an assortment of applications seeking to challenge the legitimacy of the evidence gathering process of the police..."

Understandably the civil courts are reluctant to venture too far down the road normally travelled in the criminal courts, recognizing that the action is *in rem* and not *in personam*, but also not wishing to see the civil courts asked to endorse inappropriate conduct by law enforcement.

As we shall see in the following chapters, the fact that police and prosecutors in B.C. have essentially abandoned laundering and proceeds of crime charges, has meant that virtually all forfeiture cases are now being referred to the CFO. There is a certain logic to this approach, however it fails to recognize that criminal forfeiture exists to serve a purpose: following the money and punishing those who launder the proceeds of crime. It also has the potential of promoting an attitude among some police officers that the *Charter* does not apply to cases involving seized and restrained property, as the property will never reach a criminal court, but

⁷⁴⁹ S.B.C. 2005, c. 29.

⁷⁵⁰ *Ibid.* at s. 3.

⁷⁵¹ *British Columbia (Director of Civil Forfeiture) v. Lloydsmit*, 2014 BCCA 72 at para. 13.

rather will become the responsibility of an external agency and subject to an administrative process that will likely not involve the police officer.

SUMMARY

For our law to effectively deal with money laundering there must be a balance between criminal and civil forfeiture. Both have their place. Civil forfeiture cannot be a dumping ground for ‘bad’ criminal cases. Nevertheless, for criminal forfeiture to be successful, it must also be possible to successfully prosecute laundering and proceeds of crime cases.

There are many challenges to pursuing financial crime cases in the criminal courts, however other countries do so in a very effective manner and simply abandoning this sphere of criminality to the civil courts, professional disciplinary bodies, or self-help remedies is unacceptable in a country that lives by the Rule of Law.

As noted above, there are various amendments which could be made to the *Criminal Code*, if there is a political will to make the changes which will allow police and prosecutors to once again successfully investigate and prosecute financial crime cases. An efficient and effective criminal justice system is a bulwark against organized crime.

CHAPTER 6-3

CASE STUDIES

TERMS OF REFERENCE

The TOR for this Review include the following:

Lessons from specific case studies of large-scale international money laundering

In detail, consider already identified cases of alleged large-scale international money laundering, for example:

- a. *PacNet (United States);*
- b. *China Critic [sic] Bank litigation against Shibiao Yan (China);*

PACNET

The following is an extract from an interlocutory judgment by Madam Justice Fitzpatrick of the BCSC in a civil forfeiture action commenced by the Director of Civil Forfeiture.⁷⁵² It outlines the background to this case.

"4. [... PacNet] was originally incorporated in 1994 as Pacific Network Services Ltd. The name was changed to PacNet in 2008. PacNet operates in conjunction with several other affiliated companies around the world (known as the "PacNet Group") in its payment processing business. PacNet is headquartered at 595 Howe Street in downtown Vancouver, B.C. Until recently, PacNet had been actively operating at that address.

[5] PacNet's founder, director and president is the defendant Rosanne Day. Ms. Day is married to the defendant Gordon Day, who runs Deep Cove Labs Ltd. Deep Cove Labs Ltd. developed the "RAVEN" software that is used by PacNet for scanning and processing cheques through its payment databases.

[6] The defendant 672944 B.C. Ltd. ("944") is a shareholder of PacNet. 944 is Ms. Day's private holding company and she is its sole director and officer.

[7] The defendant Ruth Ferlow is Ms. Day's sister and PacNet's secretary. The defendant Peter Ferlow is Ms. Ferlow's spouse.

⁷⁵² British Columbia (Director of Civil Forfeiture) v. PacNet Services Ltd., 2019 BCSC 70.

[8] The evidence indicates that the defendant James Ripplinger is an indirect owner of PacNet, through a trust owning 30% of PacNet. Mr. Ripplinger is a beneficiary of that trust. The defendant Ivana Ripplinger is Mr. Ripplinger's spouse.

[9] In October 2016, the Vancouver Police Department ("VPD") began an investigation of PacNet and its involvement in fraudulent "direct mail" schemes targeting Canadian residents.

[10] One member of the VPD investigative team is Detective/Constable Dwain Mah of the Organized Crime Section. As a result of Det. Mah's investigation, he believes that since at least 1997, PacNet has provided cheque processing services for companies acting as fronts for individuals and organizations perpetrating massmail fraudulent solicitations. Det. Mah indicates that various websites describe PacNet as a leading international payment processing company that specializes in providing payment solutions to merchants. These include credit card processing, cheque processing and electronic payment processing.

[11] Det. Mah's affidavit was the prime source of evidence on this application. He indicated that he reviewed a variety of information received in the course of VPD's investigation, including from the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"), a branch of the federal government established by the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 (the "PCML Act").

[12] FINTRAC receives financial transaction reports and voluntary information in accordance with the PCML Act and its regulations, and produces financial intelligence relevant to investigations of money laundering. Under the PCML Act, PacNet comes within the definition of a "money services business" which mandates certain registration and reporting requirements for the authorities.

[13] The phrase "direct mail" is used to refer to unsolicited communications sent to potential customers via the postal service and other delivery services. Often, the promoters of these schemes refine their activities into targeted mailings, by which the communications are sent to certain recipients seen as more receptive to these mailings. Operators can also rent or purchase mailing lists containing names of people who are similarly seen as potential customers. When I say "customers", I mean people who the promoters consider can be more easily convinced or duped into sending money in response to the solicitation.

[14] Det. Mah describes the participants in mail fraud operations as being grouped in several categories, including: a) "copywriters" or "coordinators" who create the content of the fraudulent solicitations; b) "list brokers" who assemble lists of addresses to which the solicitations will be sent; c) "printers" who produce the paper solicitations; d) "caging services" who open envelopes and remove cash, cheques, and other forms of payment, and who then forward them to "payment processors"; and e) "payment

processors” or “third party payment processors” who are responsible for processing payments (including personal cheques, cashier cheques and money orders) sent by customers (i.e., victims) in response to solicitations. Payment processors earn a fee which is deducted before the proceeds are sent to the “coordinators”.

[15] It is alleged that PacNet falls into the category of a “payment processor” given its activities as a payment processor for large numbers of direct mail solicitation schemes.

[16] The solicitation schemes investigated by the VPD are generally of two types:

- a) “prize” schemes which falsely represent that a customer has won a prize and will receive their winnings upon paying a processing fee; and
- b) “Maria Duval”-type schemes which falsely represent that a person has psychic or other supernatural powers and will use those abilities to improve a customer/victim’s financial or emotional situation.

[17] In both schemes, the solicitations appear to be personalized through the repeated use of a customer’s name when, in reality, the customer’s name was obtained from a commercially-available mailing list. The recipients are generally asked to pay between \$10 and \$50 to obtain their “prize” or “psychic service”. As I stated earlier, the customers are better described as victims. They receive nothing in return for their payment, other than an increased number of similar solicitations and/or a worthless trinket.

[18] A large number of individuals receiving such communications might simply dismiss them as nonsense and throw it away. Therein lies the catch – the Director alleges that these types of mail fraud schemes are usually targeted to people who are seen as vulnerable. Unfortunately, this usually includes elderly people who are perhaps mentally challenged or who are more gullible and more easily duped by such “offers”.

[19] Det. Mah states that he has learned that solicitations of this type entering Canada typically contain pre-addressed reply envelopes and the documents instruct recipients to send their payments in these envelopes. A large percentage of the solicitation responses he reviewed are addressed to postal box addresses in the Lower Mainland of British Columbia.

[20] The Director alleges that PacNet has processed payments relating to millions of such fraudulent and deceptive multi-page solicitations sent to hundreds of thousands of victims and potential victims throughout Canada, the United States and the world. Further, it is alleged that these victims sent money to PacNet. Det. Mah states that, based on his investigations and knowledge of other investigations, on average PacNet charged approximately 2–5% commission on payments it processed for these solicitations. After deducting its fees and commissions, PacNet would then forward the net amounts to its clients, amounting to hundreds of millions of dollars.

[21] In this action, the Director alleges that the amounts paid to PacNet through this scheme were proceeds of unlawful activities, namely fraud/mail fraud or being a party to the commission of fraud/mail fraud. The Director further alleges that such proceeds were then used by the defendants to purchase and maintain the Properties. The Director also alleges that the Properties were used as instruments of unlawful activities, namely the laundering of the proceeds of crime.”

PacNet and its principals have denied all allegations.

PacNet came to international attention in September 2016 when the U.S. government identified it as a “significant criminal organization”, for allegedly laundering millions of dollars defrauded from vulnerable victims, by “direct mailer” scammers. This designation placed PacNet on a list that included drug cartels and mobsters. Its world-wide business collapsed as a result.⁷⁵³

At the time that PacNet surfaced as a potential criminal case, discussions took place between local and national RCMP representatives, the U.S. Postal Service, and Consumer Protection B.C. The RCMP were aware, from past experience, that there was a significant problem with international mass marketing fraud in B.C., which targeted people living outside Canada, as well as the subsequent laundering of the proceeds.

Due to the RCMP’s re-engineering of its financial crime program in 2013, which we discuss in Chapter 6-4, there was no longer a unit in B.C. tasked with the investigation of major fraud cases. With the abolition of the Commercial Crime Section and very few provincial resources, fraud complaints, however large, were left to municipal police and detachments to investigate or decline. Divisional investigations were prioritized according to a “tier” system, with each potential file receiving a score based on factors, none of which involved financial crime or money laundering. As a result, financial investigations never hit the scores that would be high enough to be ‘Tier 1’, which was both the high and low threshold for investigations.

In addition, the RCMP simply did not have sufficient specialized resources to undertake a complex financial crime. As one interviewee indicated, “It was a file that we should have investigated but that we could not investigate. This was one of very many cases that we had to turn down.”

There was also a belief within the RCMP that the Provincial Crown would not support the prosecution of a complex white-collar file, due to its own resourcing issues, particularly in the absence of B.C. victims. For this reason, the file was turned over to the VPD and investigated by a detective. Eventually, Provincial Crown declined to prosecute the case due to insufficient evidence and it was referred to the Director of Civil Forfeiture.

⁷⁵³ Gordon Hoekstra, “Vancouver-based PacNet fights legal action to confiscate \$15.5 million in properties, bank accounts”, *Vancouver Sun*, Nov. 15, 2018.

CHINA CITIC BANK V. SHIBIAO YAN

China CITIC Bank International (China CITIC) is a Hong Kong-based, full-service commercial bank and subsidiary of the CITIC Group Corporation Ltd., a state-owned investment company of the PRC.⁷⁵⁴ CITIC Group, the parent company, is one of China's largest conglomerates, controlling one of the largest pools of foreign assets in the world. China CITIC is one of its 44 subsidiaries and aspires to be "the best overseas integrated financial services institution". Its goal is to "define and exceed both the wealth management and international business objectives of [its] Greater China and overseas customers." Its private banking service leverages its parent company and seeks to provide service to "high net worth clients from Mainland China and Hong Kong". It has 30 branches in Hong Kong, as well as in Macau, Singapore, and the U.S.

Tanyuan Wood Business Co. Ltd. (Tanyuan) obtained a \$50 million RMB line of credit from the China CITIC in June 2014. Shibiao Yan has been described as the founder, an executive director, chairman of the board of directors and general manager of the furniture manufacturing company. He allegedly guaranteed the line of credit. The China CITIC alleges that Tanyuan withdrew the full amount of the line of credit in a single transaction.⁷⁵⁵

When Tanyuan defaulted on its obligation to repay the loan a year later, the China CITIC brought action against the company and Yan on his guarantee. As the loan provided for an arbitration of disputes, the Bank took the matter to the Shijiazhuang Arbitration Committee, resulting in an award in excess of \$52 million being issued on March 17, 2016.

After Tanyuan obtained the full amount of its line of credit, the China CITIC alleged that Yan and his spouse "disappeared" from China and were found living in Vancouver. Yan disputed this allegation, stating in an affidavit that his wife and daughter lived in Vancouver, although he remained in China and only visited Vancouver.

On June 16, 2016, an arrest warrant was issued for Yan by the Economic Crime Investigation Department in Hebei, China. As there is no extradition treaty between the PRC and Canada, no action was apparently taken on the warrant in Canada.

China CITIC engaged counsel in Vancouver. At an *ex parte* and *in camera* hearing, a Mareva injunction was issued on June 24, 2016.⁷⁵⁶ The injunction was directed at four properties and four bank accounts of the defendant in B.C. The assessed value of the properties approached that of the money owed to China CITIC.

⁷⁵⁴ <https://www.cncbinternational.com/about-us/about-citic-bank-international/en/index.jsp>.

⁷⁵⁵ It was also alleged that the bank was directed to and did pay the funds to another company that was in the business of providing raw material to Tanyuan.

⁷⁵⁶ Bowden J., June 24, 2016.

On June 27, 2016, the *Vancouver Sun* published an article titled, “Chinese bank claims fugitive bought luxury B.C. real estate”. Numerous other articles followed.⁷⁵⁷

China CITIC filed a Petition against Shibiao Yan in the BCSC on August 31, 2016.⁷⁵⁸ It sought reciprocal enforcement of the arbitral award from China. British Columbia is required to recognize arbitral awards pursuant to the *Foreign Arbitral Awards Act*.⁷⁵⁹ On February 21, 2017, Justice Fitzpatrick ordered that the Chinese arbitration award be recognized in B.C. Yan was ordered to pay an amount in Canadian currency which equated with a total of RMB 52,402,850, plus costs. This equates with a sum in excess of \$10 million. Yan was unrepresented and did not appear at the hearing.

Before this recognition of the arbitral award, on September 9, 2016, the Mareva injunction was varied by consent, removing the four real properties, when counsel for a third party informed the court that Yan was holding the properties as a trustee for other persons.⁷⁶⁰ Yan later applied to have the entire injunction set aside. After two days of hearings in the Fall, the court denied the application.⁷⁶¹

The judgment has apparently not been satisfied. The case highlights the absence of an extradition treaty with China, which allows persons under investigation or who have been convicted of offences in China to live in Canada, subject only to Canadian immigration requirements. It also highlights the use of a trust agreement to defeat what otherwise appears to be a legal claim to property, even where there is no indication on the land registration documents that a trust is in existence. Lastly, there is no indication of any Canadian law enforcement involvement in this case.

⁷⁵⁷ <https://ca.reuters.com/article/domesticNews/idCAKCN0ZE00T> (June 27, 2016); <https://www.bnnbloomberg.ca/china-s-citic-bank-tries-to-seize-about-7-3m-in-canadian-real-estate-assets-1.516850>; https://www.huffingtonpost.ca/2016/06/28/chinese-bank-seize-vancouver-homes_n_10722392.html; <https://nationalpost.com/news/canada/chinese-bank-claims-fugitive-who-owes-10m-bought-four-homes-in-b-c-worth-7-2m> (June 28, 2016); <https://www.cbc.ca/news/canada/british-columbia/chinese-real-estate-investor-to-repay-millions-1.3998380> (Feb. 24, 2017); <https://vancouversun.com/news/local-news/landmark-ruling-for-chinese-bank-in-b-c-cant-be-collected-against-vancouver-luxury-homes> (Mar. 7, 2017); <https://www.scmp.com/news/world/united-states-canada/article/2073272/landmark-ruling-vancouver-homebuyer-ordered-repay>; <https://www.spglobal.com/marketintelligence/en/news-insights/trending/i1jx32mzk2puvh5kw2abq2> (Feb. 23, 2017); and <https://www.mingtiandi.com/real-estate/outbound-investment/citic-bank-sues-to-seize-5-6m-in-vancouver-luxury-homes-from-chinese-fugitive/> (July 5, 2017).

⁷⁵⁸ BCSC – Vancouver Registry S-165830.

⁷⁵⁹ R.S.B.C. 1996, c. 154.

⁷⁶⁰ Affleck, J., Sept. 9, 2016.

⁷⁶¹ Smith, J., Dec. 13, 2016.

CHAPTER 6-4

CRIMINAL INVESTIGATION

FINDINGS

- There are no RCMP members within its federal business line in B.C. who are currently dedicated to criminal money laundering investigations.
- The only dedicated money laundering resources in the RCMP within B.C. are provincial resources in the JIGIT, formed to deal with laundering in casinos.
- The RCMP resources engaged on asset forfeiture work are focussed on referring cases out of the criminal justice system, to the Civil Forfeiture Office.

LAW ENFORCEMENT IN BRITISH COLUMBIA

Policing in Canada mirrors its three levels of government. There are federal, provincial and municipal police departments.

The RCMP is Canada's principal federal police force, sometimes referred to as its national police force.

Each province may create a provincial police force, however only Ontario and Quebec have their own forces, as the remaining provinces contract with the RCMP. That has been the situation in B.C. since 1950, when the B.C. Provincial Police Force was disbanded.

In B.C., municipalities have the ability, with the consent of the province, to form their own police force or to contract with the RCMP. In the Lower Mainland, municipalities are roughly split in this respect, with several independent police departments and a number of contract RCMP detachments.

The Lower Mainland also contains integrated police units, the best known being CFSEU – BC and the Integrated Homicide Investigation Team (IHIT). The former is a provincial unit and the latter is an integrated provincial and municipal unit.

THE RCMP

In the course of this Review, we learned that there are currently no federal (RCMP) resources in B.C. dedicated to criminal money laundering investigations. This is particularly alarming when one considers that the issue of money laundering has been front page news in B.C. for almost two years.

As Canada's national police force, the RCMP has a responsibility to enforce federal criminal law, such as the *Controlled Drugs and Substances Act* and the criminal provisions of other federal statutes. In B.C. however, as it is also both the provincial police force and a contract municipal police force, the RCMP's complement of over 6,000 police officers is engaged on a variety of duties. The Lower Mainland contains the greatest concentration of operational RCMP officers in the country, currently numbering more than 3,000. Most are engaged on contract duties. They function, for all intents and purposes, like municipal police officers. The largest RCMP detachments in the country are Surrey, Burnaby and Richmond.

The RCMP's federal enforcement resources were traditionally divided by commodity or enforcement specialty, including sections dedicated to Drug Enforcement, Commercial Crime, Customs and Excise, Proceeds of Crime, and General Enforcement. The Commercial Crime Sections, regarded as elite white-collar crime sections during the 1970s and 1980s, were further divided into units dedicated to securities, bankruptcy, counterfeit, taxation, enterprise crime (proceeds of crime), and more.

With passage of the proceeds of crime amendments to the *Criminal Code*, anti-drug profiteering units within the Drug Sections merged with the enterprise crime sections in Commercial Crime. These Sections later became integrated units, composed of police, federal prosecutors, forensic accountants, and asset management specialists. They were then referred to as Integrated Proceeds of Crime Sections (IPOC). The program was national in scope with large units in Montreal, Toronto, and Vancouver; and smaller units in other cities. The result was a cadre of enforcement experts at the federal level designed to deal with proceeds of crime and money laundering.

Post-2012, the RCMP realigned its priorities to deal with present and emerging threats, most notably terrorism. A re-engineering of its federal resources saw the pre-existing specialist units merged into integrated teams, under the umbrella of Federal and Serious Organized Crime (FSOC). Money laundering is one of the priority mandates for FSOC, however a complex threat-stream matrix determines what cases will be investigated. Factors include the ease to obtain evidence and the number of personnel required. A small Financial Integrity team, currently focussed on corruption cases, and the Integrated Market Enforcement Team (IMET) remained intact and separate from the task force structure. This task force approach to organized crime had previously been adopted in other countries, with varying degrees of success.

We asked the RCMP the following questions:⁷⁶²

- 1) "the number of positions within 1) "E" Division and 2) CFSEU that are dedicated to money laundering / proceeds of crime investigations in each of the provincial and federal business lines;"
- (2) "of the foregoing positions, how many are currently staffed"

⁷⁶² E-mail, Feb. 11, 2019.

We deal with the provincial resources in the following section. The response in terms of federal resources was as follows:⁷⁶³

- 1) "The E Division FSOC Money Laundering Team within Financial Integrity consists of 25 Regular Member (RM) and 1 Civilian Member (CM) positions (total: 26 positions). All of these are federally-funded."
- 2) "Of the 25 positions, 11 are staffed; the CM is also staffed."

When we met with the RCMP and reviewed its response, the RCMP noted that only five of the 11 officers were currently working as investigators. The other six were absent from duty due to training and other reasons.

We then asked what the five police officers were currently investigating and were advised that they were responsible for referring files to the provincial civil forfeiture office. In other words, there are no RCMP members from its federal business line who are currently dedicated to criminal money laundering investigations. It was pointed out that the RCMP hoped to reassign one of its other FSOC teams to a money laundering file and that other federal resources may deal with money laundering in the course of their investigations.

The foregoing is symptomatic of a greater problem. The increased resources focussed on organized crime and terrorism after 2012 led to a dramatic decrease in commercial crime and proceeds of crime enforcement within B.C. Many financial crime specialists became generalists on the organized crime teams and many others retired or moved on to other roles within the RCMP.

Prior to being disbanded in 2013, IPOC was the logical first response unit for allegations of money laundering. A unit within IPOC, referred to as C-22, was tasked with reviewing copies of STRs from financial institutions and with enforcement that stemmed from violations of the *POCMLTFA*. After the federal restructure within the RCMP, the IPOC unit became a lonely place, populated by the officer in charge and two other persons, who were tasked with closing the unit and then moving over to the new FSOC.⁷⁶⁴

Other factors impacted the RCMP nationally and provincially during the past decade. For most of that time and certainly after federal austerity measures aimed at reducing the budget deficit, many positions in the RCMP's A-base (permanent positions) went unfunded. Pay and benefit increases to employees were often funded from within existing budgets, further exacerbating the situation. The cost of investigations also increased while funding for operations did not. Other issues include attrition of members from the RCMP and the ability to train sufficient replacement officers.

In B.C., the large number of contract positions placed pressure on the Force to keep them staffed, often to the detriment of the federal business line. Temporary measures also impacted

⁷⁶³ RCMP memo, Feb. 15, 2019. See Appendix "F".

⁷⁶⁴ *Dirty Money*, *supra* at p. 126.

the federal business line. Visits by foreign dignitaries, international summits, and even fighting forest fires, often resulted in federal resources being temporarily deployed to other duties.

Budget 2019 has offered some hope of additional funding for the RCMP. There is no indication how the new funding will be allocated, although federal Minister Bill Blair has provided B.C.'s Attorney General with assurances that funding will reach B.C.⁷⁶⁵

In terms of the loss of specialization, it can be said that what took only the stroke of a pen to abolish will take many years to redevelop. Some critics, including former members of the RCMP, simply do not feel that the Force's current structural and staffing model will allow for a revitalization of financial crime investigations.

As noted by Garry Clement, a former senior RCMP officer who headed the RCMP's Proceeds of Crime program and is a frequent expert witness at money laundering trials, "it comes down to a tremendous weakness in our investigative and prosecutorial forces... On paper, Canada has built a Rolls-Royce when it comes to fighting money laundering. But we forgot to put in the engine – an effective law enforcement [capacity] that can take on these complicated cases."⁷⁶⁶

For there to be greater success addressing money laundering in B.C., PPSC, BCPS and other stakeholders have expressed the belief that it is vital that the RCMP rebuild its expertise and capacity to conduct such investigations. Because of the complexity, the investigators need to be specialists. This would require a very significant commitment by the police community in B.C., particularly in the RCMP.

PROVINCIAL MONEY LAUNDERING RESOURCES

The only dedicated money laundering resources in the RCMP within B.C. are found in the JIGIT, formed to deal with the widespread laundering that was occurring within B.C.'s legal and illegal casinos. JIGIT is funded by the province and is located within CFSEU-BC.

Since the 1970's, British Columbia has had a combined enforcement unit, composed of members of both the RCMP and municipal police forces. What began as the Combined Law Enforcement Unit evolved into the Organized Crime Agency of B.C. (OCA) and then into CFSEU-BC, an integrated enforcement model also employed elsewhere in Canada.

CFSEU-BC is focussed on organized crime, which generally involves major drug investigations and violent gang activity. In its earlier iteration as OCA, it created a small but highly specialized proceeds of crime unit. Unfortunately, that unit no longer exists.

During 2015, it became apparent to most observers that the absence of a police presence to deal with organized crime and money laundering at casinos, and the emergence of large illegal

⁷⁶⁵ Mike Hager, "Ottawa to crack down on money laundering", *Globe and Mail*, Mar. 28, 2019 at p. A7.

⁷⁶⁶ Julien Sher, "Money laundering going largely unpunished in Canada", *Globe and Mail*, May 1, 2018. Accessed at <https://www.theglobeandmail.com/news/politics/money-laundering-going-largely-unpunished-in-canada/article584747/>.

casinos was presenting public safety issues that required a law enforcement response. On April 11, 2016, the Minister of Finance, the Minister of PS&SG, and the Chief Officer of CFSEU-BC publicly announced the formation of the Joint Illegal Gaming Investigation Team.

JIGIT has three key strategic objectives plus an education function for the public and other police. The key objectives are (1) “targeting and disruption of organized crime and gang involvement in illegal gaming”, (2) “criminal investigation of illegal gambling activities”, and (3) “prevention of criminal attempts to legalize the proceeds of crime through gaming facilities.”⁷⁶⁷

JIGIT consists of two operational teams, consisting of 16 RCMP officers, two CFSEU-BC (OCA) members, four Civilian RCMP members and five GPEB investigators.⁷⁶⁸ There are currently three vacancies. One team was stood up in fiscal 2016/17 and the other in fiscal 2017/18. The GPEB investigators function as subject matter experts, utilizing their special constable status.

The first JIGIT team is a project team. It spearheaded the E-National file, widely reported in the media, supplemented by additional resources due to the size of that project. The second team is primarily focussed on illegal gaming and is complaint driven.

JIGIT was created for a five-year period, from April 1, 2016 to March 31, 2021. A review is to be conducted in year four to determine if the team should continue beyond five years.

Governance is the responsibility of the existing CFSEU-BC Board of Governance. The Ministry of Public Safety is the lead Ministry and the RCMP is the lead agency responsible for JIGIT.

In March 2016, the Minister of Finance directed BCLC to pay 70% of the cost for JIGIT, with the balance to be paid by the federal government under the terms of the Provincial Policing Agreement. JIGIT’s budget is ring-fenced to avoid dispersion, with the provincial (BCLC) share capped at \$3 million per year.

JIGIT does have limitations. Although it is admirable that it is cutting its teeth on a major organized crime file, this inevitably means that JIGIT resources will be tied to that case for a substantial period. After charges, comes the need for copious disclosure and court appearances.

To date, JIGIT’s results in terms of charges are fairly dismal having laid only one illegal gaming charge, three in relation to a cheat at play investigation, and no proceeds of crime or laundering charges. There are currently files with Crown counsel for charge assessment, however.⁷⁶⁹ That said, the E-National file is likely all-consuming for JIGIT and much rests on its outcome.

⁷⁶⁷ *Dirty Money*, *supra* at pp. 130-31.

⁷⁶⁸ Due to CFSEU-BC being a joint forces operation between the RCMP and municipal police, the RCMP component of JIGIT can include one or more municipal police officers.

⁷⁶⁹ RCMP e-mail, Mar. 29, 2019.

SUMMARY

In its 2016 evaluation of Canada's response to money laundering and counter-terrorist financing measures, the FATF provided a generally positive assessment, but a key finding was that "Law enforcement results are not commensurate with the [money laundering] risk and asset recovery is low."⁷⁷⁰ Our interviews and research support this statement in the context of British Columbia.

The absence of dedicated federal resources undertaking criminal money laundering and proceeds of crime cases is of great concern, particularly since money laundering has been at the top of the news cycle in the province for almost two years. In fact, the only dedicated federal or provincial resources engaged in these investigations are within JIGIT, which is fully deployed on gaming-related issues.

The resources at the federal, provincial, and municipal level which are dedicated to asset forfeiture are focussed on referring cases out of the criminal justice system and to the civil courts.

⁷⁷⁰ FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, supra*.

CHAPTER 6-5

CRIMINAL PROSECUTION

FINDINGS

- There has been a noticeable decline in proceeds of crime and money laundering investigations and prosecutions within B.C.
- Law enforcement's capacity and expertise to investigate proceeds of crime and money laundering has been greatly reduced.
- A system-wide reset is required, involving *Criminal Code* amendments, dedicated and specialist investigative units, and close collaboration with prosecutors.
- Increasingly police are referring proceeds of crime cases to provincial civil forfeiture and are not enquiring into the circumstances by which an accused acquired property.
- RCMP file prioritization is based on factors which do not give sufficient focus to financial crimes or money laundering. Large financial crime files are now being referred to municipal police and detachments to investigate or decline.

PROSECUTION SERVICES IN BRITISH COLUMBIA

There are two criminal prosecution services in B.C. The first is the Public Prosecution Service of Canada and the second is the B.C. Prosecution Service (BCPS or Provincial Crown) within the Ministry of Attorney General. Prosecutors from both levels of government represent the Crown. At a practical level, most *Criminal Code* prosecutions are undertaken by the BCPS and most other federal criminal statutes are prosecuted by the PPSC, including drug offences.

MONEY LAUNDERING PROSECUTIONS IN B.C.

According to the BCPS, since 2002, 50 laundering cases were forwarded to it for charge approval, resulting in 28 charges and 10 convictions.⁷⁷¹ PPSC does not keep statistics on the number of laundering prosecutions.⁷⁷²

Whether a laundering offence is prosecuted by the BCPS or by PPSC is generally determined by s. 462.3(3) of the *Criminal Code*. It provides concurrent jurisdiction for the Attorney General of Canada to conduct criminal prosecutions where the offence arises in whole or in part from a federal statute or regulation other than the *Criminal Code*, usually the *CDSA*.

Investigators from several police agencies voiced a belief that PPSC preferred to proceed on the primary offence alleged, generally drug trafficking, rather than with a proceeds of crime or laundering charge. It was acknowledged, however, that obtaining evidence sufficient to meet the burden of proof to obtain a conviction of laundering was onerous; that the return on investment of scarce police resources was low; that a case can typically take two years to conclude in court; and that storage costs will continue to accumulate for seized and restrained assets throughout the court process. As a result, a referral to the CFO was often viewed as a more efficient and effective strategy than to pursue criminal forfeiture.

We interviewed senior PPSC prosecutors for this Review and their views were generally consistent with that of police, although they disagreed with the police perception that they were not interested in proceeding with laundering cases or seeking forfeiture of proceeds of crime. They noted that they had received very few laundering files from police in B.C. in the last 15 years and believe that there are several reasons why.

First, with passage of the *CFA* and the creation of the CFO in 2006, police appear to find it more efficient to refer cases there, resulting in far less focus on criminal laundering and proceeds of crime investigations.⁷⁷³

Second, a consequence of this trend is that the capacity and expertise needed for proceeds of crime and money laundering investigations has been greatly reduced, to the point that PPSC

⁷⁷¹ Gordon Hoekstra and Kim Bolan, "Investigation: Only 10 convictions for money laundering in B.C. since 2002", *Vancouver Sun*, Feb. 8, 2019. Accessed at <https://vancouversun.com/news/local-news/investigation-only-10-convictions-for-money-laundering-in-b-c-since-2002>. BCPS provided the information reported in the *Vancouver Sun* story, which included that 34 charges were approved out of 50 cases submitted to Crown. After further consultation with BCPS, we determined that there had been a miscount in the information provided to the *Sun*. According to BCPS spokesperson Daniel McLaughlin, the actual number of persons charged was 28. Of those 28 persons, 10 were convicted of at least one count of laundering under s. 462.31, seven were found guilty of some charge other than money laundering, and the remaining 11 were either acquitted, had their charges stayed, or their cases had not been concluded as of March 1, 2019.

⁷⁷² *Ibid.*

⁷⁷³ This is certainly borne out by CFO statistics: "From 2006 until mid-2017, the Civil Forfeiture Office (CFO) has received over 4900 file referrals from law enforcement agencies. These have resulted in the forfeiture of \$73 million..." (<https://www2.gov.bc.ca/gov/content/safety/crime-prevention/civil-forfeiture-office/facts-figures>).

has been asked by police for advice on how to conduct these investigations and on legal issues such as the elements of the offence that need to be proven.

Third, police are not presenting detailed evidence regarding the circumstances by which the accused acquired the seized and restrained property. This information is necessary for a successful laundering or proceeds of crime prosecution. Police investigators interviewed agreed that they virtually never investigate the circumstances by which property was acquired; as they are able to seize property, such as vehicles, as offence-related property or instruments of crime without having to prove how the property was acquired. Accordingly, they see little value in conducting further investigation.

Fourth, laundering cases that do proceed to trial can be very complex and the criminal burden of proof can be daunting. One example provided was the case of *R. v. Nguyen et al.*⁷⁷⁴ In it, three accused were charged with laundering over \$22 million in proceeds from a marihuana operation, through an MSB in Vancouver. It was alleged that they exchanged approximately US\$18 million into C\$24,104,021 between July 2003 and May 2005, through 178 separate transactions.⁷⁷⁵ None of the accused had significant reported income, yet one owned a BMW and a house and another was found in possession of \$168,000 in \$100 dollar bills. One accused operated an MSB but had failed to submit reports to FinTRAC. All of these facts are typical indicia of money laundering.

The accused persons were acquitted at trial on the basis that the evidence did not prove that they knowingly laundered the proceeds of crime.⁷⁷⁶

Acquittals such as in *R. v. Nguyen* and the other challenges summarized above and in previous chapters, reinforce a belief among investigators and prosecutors that it is better to proceed with the predicate drug charge than to delay matters by conducting a complex money laundering investigation that will likely require search warrants, wiretaps, production orders and other resource-intensive investigative techniques.

PPSC prosecutors also note that the sentences for drug trafficking are significant and a money laundering conviction, even if it could be obtained, may not materially increase an offender's sentence. An example given was the case of *R. v. Rathor*⁷⁷⁷ in which the accused pleaded guilty to laundering US\$560,000, and received a conditional sentence (i.e., to be served in the community) of two years less a day.

⁷⁷⁴ *R. v. Nguyen et al.*, 2014 BCPC 95.

⁷⁷⁵ *Ibid.* at para 5.

⁷⁷⁶ For a commentary on the case, see Christine Duhaime, "Canadian court dismisses charges against 3 jobless people over \$24 million in unexplained cash they exchanged at MSB", May 29, 2014. Accessed at "<http://www.antimoneylaunderinglaw.com/2014/05/canadian-court-decides-that-24-million-exchanged-at-msb-unreported-to-fintrac-by-3-jobless-people-is-ok.html>".

⁷⁷⁷ *R. v. Rathor*, 2011 BCPC 338.

During most of the time that the IPOC units existed, PPSC prosecutors were embedded within the units and were funded accordingly.⁷⁷⁸ Their role was detailed in a 1997 MOU between the RCMP and the Department of Justice. It included to provide legal advice; make various court applications, such as for wiretaps; assist the unit in preparing court briefs; and assist the trial prosecutor.⁷⁷⁹ Prosecutors remained embedded in B.C.'s IPOC unit until 2009, at which time PPSC determined that there were not enough ongoing investigations to justify keeping full-time prosecutors at IPOC.

We also interviewed several senior prosecutors from the BCPS. They provided similar comments to those of PPSC regarding the impact of the *Civil Forfeiture Act* on police practices, as well as the impact of *R. v. Jordan*.⁷⁸⁰ They noted that although they have the capacity to prosecute more money laundering cases, they are seeing fewer and fewer referrals from police that have been sufficiently investigated to be prosecutable. They also note that police prefer to refer such cases to the CFO rather than undertaking the onerous investigations necessary to support a criminal prosecution.

RESOURCES AND EXPERTISE

In addition to the police, both provincial and federal Crown must be provided with sufficient resources to maintain the expertise necessary to successfully prosecute those laundering and proceeds cases which meet their charge approval threshold. They also require resources to engage with the police and provide appropriate legal advice when the police are contemplating such investigations.⁷⁸¹

The loss of resources and expertise in terms of money laundering investigations is symptomatic of what is seen with respect to financial crime generally. This view was re-enforced by BCPS prosecutors. They expressed concern for the deterioration of expertise in the RCMP, noting that those officers who demonstrated an interest and talent in such investigations have “nowhere to go” without a Commercial Crime Section:

“Capacity and expertise in the police is a serious concern. Commercial Crime in the RCMP in B.C. closed at the end of 2012/beginning of 2013, and then had over 100 members. FSOC was created merging specialized and integrated teams. Commercial/financial crime resources have been drawn away into other complex investigations involving surveillance, etc. So that has put pressure on financial crime resources, and that has had a dramatic impact on the number of financial crime files from FSOC (as opposed to Commercial Crime). The point is we think investigations that

⁷⁷⁸ Interestingly, despite the abolition of IPOC in 2013, web pages have not been updated, leaving the impression that the program continues. See <http://www.rcmp-grc.gc.ca/on/prog-serv/ipoc-umpc-eng.htm> and <http://saskatoonpolice.ca/criminalintel/>.

⁷⁷⁹ See archived PPSC policy re proceeds of crime at section 24.3.1. Accessed at <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpq/fps-sfp/fpd/ch24.html>.

⁷⁸⁰ *Supra*.

⁷⁸¹ See, for example; BCPS, “Legal Advice to Police”. Accessed at <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/leg-1.pdf>.

would previously have been done by Commercial Crime are now being done at the detachment level, or not at all.”

It was noted by both police and prosecutors that the FSOC mandate requires that its teams will only undertake files that reach a high threshold, sometimes referred to as ‘tier one’ files, or files with serious or national implications. As a result, victims of large and small financial crimes are generally referred to municipal police or detachments, which tend to have small fraud units and are not adequately resourced to take on complex files. This leads to an overall decrease in the quality of files submitted to Crown. As noted by Crown:

“These cases are complicated [to investigate]. They are multi-jurisdictional, with complicated evidence gathering mechanisms, warrants, MLATs, and operating in closed communities. Wiretaps, translation issues have huge resource issues because there can be more than one interpretation of a conversation. You need money laundering and accounting experts which is a resource draw. Oftentimes money laundering involves numerous players each with a small role, especially in organized crime cases. Trying to find out who is the coordinating person is not easy....”

Prosecutors also observed that at the detachment level, “every time they have a murder or something, it’s tools down. So when you’re already resource stressed and you have a choice to investigate the predicate offence or money laundering, what are you going to do?” In past years, the Proceeds of Crime and Commercial Crime had dedicated, specialist resources in place. The impact of less experienced officers investigating large cases at the detachment level, was noted by Crown: “Now we have to spend a lot of time answering basic questions from police about white collar crime including money laundering because the expertise isn’t there.”

SUMMARY

Police and prosecutors were candid in their description of the challenges which they face in terms of investigating and prosecuting proceeds of crime and money laundering cases. A system-wide reset is required, involving *Criminal Code* amendments, dedicated and specialist investigative units, and close collaboration with prosecutors.

APPENDICES

APPENDIX “A”

STAGES OF MONEY LAUNDERING

For definitional purposes, the money laundering process is usually divided into three stages: *placement* of the dirty money in a financial vehicle, *layering* the money by moving it through other vehicles, and *integration* into the legitimate economy. Each stage can manifest itself in many ways.

Placement, the ‘wash cycle’, has traditionally been the most vulnerable stage for money launderers because cash is a bulky commodity in large amounts.⁷⁸² It generally occurs by making deposits at a bank, or other financial institution. If this process is structured, by using low-level members of criminal organizations to deposit relatively small amounts of money at several institutions, it is referred to as ‘smurfing’. Placement may also occur through co-opting an employee of a legitimate financial institution, such as a bank official who permits back door deposits; or by establishing a business for this specific purpose.

Companies which handle cash, such as travel agencies, foreign exchange dealers, bars, and restaurants, are ideally suited because they allow for the mixing of illegal money with legitimate income, and also provide employment to members of crime syndicates, affording them an air of legitimacy. Another common method is to smuggle money out of a country, sometimes as commercial cargo, for placement abroad, oftentimes but not always in a country which shrouds its financial institutions with secrecy. Lotteries and casinos offer still other opportunities, with the further benefit of mixing the business of crime with the timeless passion of humans for games of chance. Even whole life insurance presents possibilities. The antithesis of placement is to hoard cash, which tends to be a temporary solution.

Layering, the ‘spin cycle’, includes purchasing precious metals and automobiles; investing in securities (including bearer bonds); wiring money overseas and between offshore jurisdictions; using offshore trusts, or ‘brass plate’ banks;⁷⁸³ using front or shell companies and other ‘pass-through’ investments; making private investments or acquiring companies near bankruptcy; trade-based laundering or transfer pricing; purchasing real estate; or purchasing bank drafts, money orders or travellers’ cheques. Co-mingling proceeds with legitimate revenue will further obstruct tracing efforts. Intermediaries, including lawyers, wittingly or not, may be used as conduits for many of the foregoing schemes. The intent at this stage is to pass the money through layers of transactions, in an attempt to obfuscate the paper trail.

⁷⁸² Daniel P. Murphy, *Bank Secrecy in Canada and the Need for a General Search Warrant*, paper presented to the *Canada-United States International Money Laundering Conference*, Windsor, Ont., May 1-3, 1996, p.1. The weight and volume of cash generated by the sale of a kilo of cocaine is greater than that of the drug itself. Malarek notes that a suitcase containing \$1 million in \$20 bills weighs fifty kilograms, a fact not lost on large drug cartels, which reportedly weigh rather than count their proceeds (Victor Malarek, *Merchants of Misery* (Toronto: Macmillan of Canada, 1989 at p.162)).

⁷⁸³ Banks with little or no physical presence.

Integration, the ‘dry cycle’, can also range from the simple to the very complex. Wire transfers and the physical transport of monetary instruments back to their country of origin are examples of the former. The creation of sham companies, fraudulent accounting practices, and loan-back schemes are at the other end. Oftentimes money is exported via one conduit and repatriated through another. Here the intent is to reintegrate the money into the legitimate economy. Once back in the country, the proceeds can be used to purchase consumer goods, real estate, high end investments, luxury cars and boats, or any number of other items. In addition, ongoing criminal enterprises require working capital. Therefore, some laundered money must be reinvested in the illegal business to purchase additional stock, pay bribes, pay lawyers and accountants, provide personal security, and to support those members of an organization who are arrested.

Through the process of placement, layering and integration, the money launderer will effectively accomplish three objectives: conversion of bulk proceeds of crime into another form, concealment of its origin and ownership, and creation of an ‘alibi’ for the funds.⁷⁸⁴ Once the cycle is complete, the criminal typically uses most of the proceeds to continue the enterprise, generally by purchasing more product. Other uses include the purchase of personal assets, for infrastructure building, or as cash on hand.

⁷⁸⁴ Schneider, “The Incorporation and Operation of Criminally Controlled Companies”, *supra*, p.126. Schneider provides numerous examples of money laundering vehicles and schemes.

APPENDIX “B”

STAKEHOLDERS INTERVIEWED

The following is a partial list of stakeholders and other entities contacted during this Review. It also includes some contacted during Phase One, whose contribution was also of assistance in Phase Two. In addition to the stakeholders listed below, we met, spoke, or corresponded with over 200 persons from all walks of life, too many to enumerate and many who did not wish to be acknowledged.

- B.C. Assessment Authority
- B.C. Court Services
- B.C. Prosecution Service
- Canada Border Security Agency
- Canada Mortgage and Housing Corporation
- Canadian Home Builders' Association British Columbia
- Deloitte's
- Director of Civil Forfeiture
- FICOM
- Finance Canada
- FinTRAC
- LandSure
- Law Society of British Columbia
- Ministry of Finance (B.C.)
- Ministry of the Attorney General (B.C.)
- Ministry of Border Security and Organized Crime Reduction (Canada)
- Motor Vehicle Sales Authority
- New Car Dealers Association
- Public Prosecution Service Canada
- Real Estate Council of B.C.
- Royal Canadian Mounted Police
- Superintendent of Real Estate
- Urban Development Institute – Pacific Region
- Vancouver Police Department
- West Vancouver Police Department

APPENDIX "C"

PRESS RELEASE

For Immediate Release
2018FIN0072-001884
Sept. 27, 2018

Ministry of Finance
Ministry of Attorney General

NEWS RELEASE

Province launches probe into dirty money in real estate

VICTORIA - Following widespread concern about British Columbia's reputation as a haven for money laundering, the Province is launching a two-pronged review aimed at shutting down avenues for money laundering in real estate and other sectors.

The first component, led by the Ministry of Finance, will identify systemic risks that leave the real estate and financial services sectors open to money laundering. The other, led by the Attorney General, will investigate specific case examples of problematic activity in real estate and other vulnerable sectors to uncover the ways that money launderers have operated in the province.

"The last government allowed the real estate market to turn into the Wild West with rampant speculation and out-of-control prices," said Carole James, Minister of Finance. "Our overheated housing market can attract criminals and people wanting to abuse the system. When these people exploit loopholes, they drive up housing prices and help organized crime and drug dealers. That kind of activity has no place in our province, and we are taking action."

The probe announced today responds to concerns raised in previous reviews conducted separately for the Ministry of Finance and the Attorney General's office. Analysis by independent consultant Dan Perrin on B.C.'s real estate regulatory structure found the current system put in place by the former government in 2016 is dysfunctional, inefficient and vulnerable to market manipulation and abuse, such as money laundering. Peter German's report into money laundering in Lower Mainland casinos also raised concerns that dirty money was infiltrating the real estate sector.

"Our examination of money laundering in casinos uncovered troubling evidence suggesting strongly that dirty money is circulating in other places in our communities," said David Eby, Attorney General. "The multi-faceted approach announced today is an attempt to move quickly to anticipate and shut down new avenues for money laundering, and to follow up on specific cases that Dr. German and the media have drawn to the public and government's attention."

The Ministry of Finance has appointed Maureen Maloney to chair the Expert Panel on Money Laundering in Real Estate. The panel will look at gaps in compliance and enforcement of existing laws, consumer protection, financial services regulations, regulation of real estate professionals, and jurisdictional gaps between B.C. and the federal government. It will provide recommendations to prevent market manipulation and abuse, create world-class regulatory standards and drive illegal activity out of the province. A final report is due to the government by March 2019.

The Attorney General is asking German to conduct a second review following up on his initial finding that the real estate sector is vulnerable to abuse by organized crime. It will focus on identifying the scale and scope of verifiable illicit activity in the real estate market. It will also examine whether money laundering is linked to horse racing and luxury cars. A final report with German's findings is due to the government by March 2019.

Taking action to combat money laundering, tax evasion and tax avoidance is part of the government's 30-point Plan for Housing Affordability. The government has already taken several actions to address tax fraud and close loopholes in the real estate market, including:

- * Introducing a new law to track pre-sale condominium contract assignments and prevent tax evasion.
- * Consulting on legislation to establish a new, publicly accessible registry of beneficial owners of real estate in B.C.
- * Updating the property transfer tax return to uncover beneficial owners behind corporations and trusts.
- * Sharing information on the homeowner grant with federal tax officials to improve tax enforcement.
- * Strengthening property transfer tax auditors' ability to take action on tax evasion.
- * Establishing a federal-provincial working group on tax fraud and money laundering.

Learn More:

German report, part one: https://news.gov.bc.ca/files/Gaming_Final_Report.pdf

Real Estate Regulatory Structure Review:

https://news.gov.bc.ca/files/Real_Estate_Regulatory_Structure_Review_Report_2018.pdf

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BACKGROUNDER 1

Ministry of Finance's terms of reference: Expert Panel on Money Laundering in Real Estate

The Government of British Columbia is committed to tackling speculation, fraud and money laundering in real estate to ensure the housing market works for people.

A fair, secure and affordable real estate market is dependent on government acting to regulate the industry and boldly taking on issues of speculation, fraud and money laundering.

The Minister of Finance has announced the appointment of an independent chair and expert panel to lead a review of systemic money laundering risks in the real estate market.

This review is designed to uncover the nature, and if possible, the extent of money laundering in real estate and make improvements to market manipulation and abuse policies, procedures and practices within the broader real estate industry in British Columbia.

The experts will:

- * Consider B.C.'s existing legislative framework and financial oversight;
- * Identify gaps in B.C. legislation with respect to the impact of foreign investment and money laundering in B.C. real estate;
- * Review the compliance regime, with a focus on integrity of the system and public confidence; and
- * Evaluate work underway or completed by the provincial government that may address some of these systemic challenges.
- * Review best practices adopted by other jurisdictions.
- * Provide recommendations on:
- * Prevention of market manipulation and abuse;
- * Monitoring and reporting on activities of the real estate market and regulators;
- * Aligning federal policy and enforcement with B.C.'s regime; and
- * Improving standards in financial services.

In order to complete this review, the independent panel may meet with any individual or organization that will assist in addressing the areas of review.

The outcome the Province expects from the work of the expert panel is next steps to ensure a world-class standard in the oversight and compliance of anti-money laundering policy in general.

The Minister of Finance is responsible for regulating the province's financial and real estate sectors (including overseeing the Office of the Superintendent of Real Estate) and representing

the Province in negotiations with the federal Minister of Finance, who is responsible for Canada's anti-money laundering/anti-terrorist financing regime.

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BACKGROUNDER 2

Part two of Attorney General's money laundering review

The Attorney General is taking action to further investigate money laundering in British Columbia.

Peter German's first report, *Dirty Money*, was released in July 2018 and focused on money laundering in Lower Mainland casinos.

Among its 48 recommendations were:

R45 - That the Province undertake research into allegations of organized crime penetration of the real estate industry

R47 - That the Province consider researching the vulnerability of the luxury car sector and the horse racing sector to organized crime

Responding to these recommendations, German will conduct a second review to examine whether there is evidence of money laundering in the real estate, horse racing and luxury car sectors.

The independent review will examine and deliver findings about:

- * Links between real estate activity and money laundering in B.C. casinos, including the scale and patterns of real estate activity with potentially fraudulent or illegal transactions by casino patrons;
- * Money laundering in the real estate sector connected to criminal enterprises in B.C. or elsewhere, including analysis of the extent of the problem;
- * The use of lawyers' trust accounts to mask sources of funds in real estate transactions;
- * Money laundering in the construction industry, including abuse of builders' liens;
- * Any other conduct in which there is an identifiable link between organized crime and real estate transactions in B.C.; and
- * Connections between organized crime and money laundering in the horse racing and luxury car industries.

German will also report on lessons learned from case studies of large-scale international money laundering to highlight elements that could be relevant in British Columbia. He will analyze evidence of real estate bought using the proceeds of illicit activity and evaluate the Province's ability to identify and seize real estate purchased through money laundering, tax evasion or fraud.

The report will present findings to the Attorney General. The review will be conducted in parallel with the establishment of an expert panel by the Ministry of Finance that will examine gaps in the real estate system that may allow money laundering to occur.

German's final report is to be complete by March 29, 2019. It will be released to the public after it has been submitted to government.

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APPENDIX “D”

COMMENTS BY MINISTERS⁷⁸⁵

Press Theatre
Eby/James - housing & money laundering
27-Sep-2018 13:06

Quoted: Reporter, David Eby, Carole James

David Eby: As you know, one of the first actions I took as attorney general was to raise the alarm about what we know was large-scale organized transnational money laundering in BC casinos.

To assist us in quickly shutting the door on this activity, we engaged Dr Peter German to conduct an independent review. Dr German delivered his report on casinos earlier this year, and we have been working hard on implementing his recommendations since then.

But as part of his report, he also warned British Columbians about red flags he identified in other vulnerable areas of our economy. Today our government is taking the next step.

We are launching a review into potential money laundering in real estate, horse racing and luxury car sales. We aim to find if, and how, organized crime may be using our housing market, our racetracks, our luxury car market to launder the proceeds of crime.

By taking swift action on several of Dr German's recommendations, we've already seen a dramatic decrease in suspicious cash transactions in casinos. However, we do not believe that this is the end of the story. We know the money has gone somewhere, and there is good reason to believe the bulk cash we saw at casinos is a fraction of the cash generated through illicit activities that may be circulating in BC's economy.

In short, we cannot ignore the red flags that came out of the casino review of a connection between individuals bringing bulk cash to casinos and our real estate market. That's why we're taking a cross-government approach to tackling this problem. As you'll hear shortly from Minister James, the Ministry of Finance has a major role to play in protecting our real estate market from vulnerabilities to money laundering.

For my part, I have asked Dr German to conduct a fact-finding follow-up on the red flags of money laundering activity he identified in his original review, in relation to illicit activity in the real estate, horse racing and luxury car sectors.

This second independent review corresponds to two of Dr German's recommendations -- recommendation 45, that the province undertake research into allegations of organized crime

⁷⁸⁵ Unofficial transcript.

penetration of the real estate industry, and recommendation 47, that the province consider researching the vulnerability of the luxury car sector and the horse racing sector to organized crime.

The independent review will examine and deliver findings about links between real estate activity and money laundering in BC casinos, including the scale and patterns of real estate activity with potentially fraudulent or illegal transactions involving individuals identified during the casino review; money laundering in the real estate sector connected to criminal enterprises in BC or elsewhere, including analysis of the extent of the problem; the potential use of lawyers' trust accounts to mask sources of funds in real estate transactions; money laundering in the construction industry, including the use of builders' liens; any other conduct in which there is an identifiable link between organized crime and real estate transactions in BC; as well as connections between organized crime and money laundering in the horse racing and luxury car sectors.

He will analyze known examples, case studies of real estate bought using the proceeds of illicit activity, and evaluate the province's ability to identify and seize real estate purchased through money laundering, tax evasion or fraud.

I would like to clarify that this will be a fact-finding report focused on finding, if it exists, real world examples of the kinds of activity we are concerned about. We have directed Dr German to follow up on cases that have been profiled by foreign governments and by local media as a means of digging into this problem.

We don't know yet the extent of criminal activity that may be occurring in these sectors, but we have no intention of ignoring the many warning signs that we've seen. That's why we're conducting this review.

Dr German's final report is to be complete by March 29, 2019, and will be released publicly after it has been submitted to government. This multi-faceted approach, combined with what the Finance minister is about to announce, is based on the rationale that we must shut down new avenues for money laundering so that organized crime is less able to find ways to launder money and that we must also identify current examples of money laundering in order to ensure an appropriate response.

I would like to close by reminding everyone that money laundering is not a victimless crime. It's tied to the overdose crisis that has stolen thousands of people from their families. It's linked to gang activity and violence.

For too long those who harm people and communities in BC have been able to operate apparently without consequence. Those who work hard and follow the rules in this province may have wondered if they were at a disadvantage in relation to those who see the law as something to work around. I have a message for those hardworking British Columbians. Change is already underway.

As you know, my office is pursuing companies who we believe have illegitimately profited from the opioid crisis in the province's civil courts. Today's announcement is about pursuing those individuals and groups profiting from selling opiates in the street or profiting by other illegal activities. We are letting them know that we will follow wherever they are attempting to launder their profits, whether it is through casinos, real estate or somewhere else.

I have great confidence that the findings from the probe we are launching today will give us a more complete picture of how criminals may be abusing systems in our province and how we can do our best to eradicate money laundering in British Columbia.

Thank you for your attention. I'd like to hand it over now to my colleague, Minister Carole James.

Carole James: As you've heard from the attorney general, money laundering is an incredibly complex issue. It's one that requires commitments, resources, cross-government collaboration, and international expertise to fully address. That's why I'm announcing today that I'm working with my colleague and why we're also launching two investigations to combat money laundering in our real estate sector.

Minister Eby has shared the steps that his ministry is taking to address illicit activity in real estate. Now I'd like to share how we in the Ministry of Finance are working to protect people from market manipulation.

We released today Dan Perrin's report, which means we now have two independent reports suggesting that our housing market could be used to launder money. You may remember back in April I brought in Dan Perrin to do a review around the regulatory structure of real estate in British Columbia to ensure that it was working in the best interests of the people of British Columbia.

Mr Perrin's report made a number of recommendations that we are considering and actively looking at related to regulatory structure and related to policy development.

But in that report he also pointed out that our hot housing market and regulatory gaps have created opportunities for market manipulation, with the potential for people to profit from questionable real estate activity. As the attorney general pointed out, Peter German's report earlier this year also recommended that the province undertake research into allegations of organized crime penetration in the real estate sector. Both these reports, I think it's important to note, speak to concerns about allegations and gaps in the system that leave it open to potential abuse.

When the real estate market is vulnerable to illicit activity and unethical behavior, people, our communities and our economy suffer. This is something that we have to tackle.

So today I'm announcing the appointment of an expert panel to look at finding the gaps in our system that leave British Columbians vulnerable to money laundering in the real estate sector.

Dr Maureen Maloney from SFU is going to chair this panel. Some of you may know Professor Maloney is a former deputy minister to the attorney general and has worked extensively in international governance and in criminal justice.

We'll announce the other members of the panel shortly.

The expert panel on money laundering and real estate is going to take an in-depth look at the gaps in BC's real estate regulations and policy that could lead to money laundering. We want to understand and close those gaps.

We want to look at the opportunities that money launderers may be exploiting in every area from consumer protection to compliance and enforcement of existing laws, money laundering standards and financial services regulations, regulation of real estate professionals, and the jurisdiction that is often exploited between BC and the federal government and other provinces.

I'm asking the panel for concrete actions we can take to strengthen our real estate sector, and the expert panel is going to provide recommendations on preventing market manipulation and abuse, monitoring and reporting on real estate activities, aligning federal policy and enforcement with BC's regime, and improving standards in our financial services.

I'm confident that they can and they will tackle this troubling and complex problem in our province, and I look forward to their recommendations coming to me in March to match up with the timelines that the attorney mentioned.

Our goal is simple, as you've heard -- get dirty money out of our housing market. People shouldn't be competing for homes with people using the profits of criminal activity. They should have the confidence that the real estate market isn't being abused by money launderers and by others.

Our government is working hard to clean up this mess, and we're working hard to close the loopholes and to increase transparency in real estate ownership. We're going to ensure that BC has world-leading protections against money laundering, and we're doing all of this work to restore fairness in the real estate sector. Thanks.

Q & A

Q & A

Reporter: [inaudible]

Eby: Dr German's first phase report was focused on activity in our casinos. At its peak in July 2015, it was \$20m in suspicious cash transactions. In the period leading up to our review and changing the policy around accepting cash at casinos, it varied between \$3m and \$5m a month. It was certainly not over. It was very active, and in my initial briefing in government, I was told that we had an active, transnational money laundering problem in our casinos. Dr German's

recommendations have addressed, I believe, the bulk cash issue, but I don't believe the bulk cash has disappeared. And I also believe that the red flags identified, namely that there's a significant correlation between when people filled out the anti-money laundering forms, who were bringing in the cash, they listed their occupations as being involved in the real estate sector, that that red flag suggests to us that we should follow up and make sure that that money wasn't also going into the real estate market, and money that we displaced is not going into other sectors. It's essentially a game of whack-a-mole. I said before with money launderers, you see two prongs here. The prong that I'm responsible for is following up on the leads that Dr German identified with his work, and the Finance minister trying to get one step ahead, identifying gaps in regulatory mechanisms to close those before they're exploited. And if they are being exploited, to identify that quickly.

Reporter: Is there any work in the civil forfeiture office that reflects the pervasive money laundering in real estate? I haven't looked at their annual report or stats, but do they seize property of substance from ill gotten gains?

Eby: The one case that is currently underway that I'm aware of is in relation to the [inaudible], where the civil forfeiture office has initiated proceedings in relation to that, and allegations of money laundering. Because it is in front of the courts, I don't want to go any further into it than that. But what I have asked Dr German to do, is to look at whether there is a sufficient closing of the loop between identification of people who are engaged in illegal activity in real estate purchases and whether we shouldn't be more aggressive, and whether there aren't more opportunities to use the office of the forfeiture to ensure that we have an appropriate law enforcement response. And I do that with the support of the Solicitor General as part of his office.

Reporter: One of the most widely-reported numbers from the German report was \$100m over a decade of money laundering, which works out to \$10m a year. Is that really enough to distort a real estate market which in Vancouver is about \$50b a year?

Eby: It's a very good question, and in fact that is exactly the question that we're asking through these two separate reviews. There's a couple ways to think about it. The individuals who came and brought that cash into the casinos, one of the transactions alone, a single transaction, was \$1.2m. If this is the money that these individuals are gambling with -- this is the fun money -- then what is the business money, and where is it coming from? And so that is really what we're asking. We can't draw conclusions, unfortunately, from the casino review alone about what's happening in the real estate market, which is why we're engaging in a second phase in relation to Dr German's work to follow up. Specifically, we have a list of individuals who are walking bulk cash into casinos in the hundreds of thousands of dollars, filling out forms that listed their occupations as being involved in the real estate markets. We can't ignore that red flag. We won't ignore it. And so that's why we're asking Dr German to follow up on that and I'll let the Finance minister explain what she's doing, in terms of her office's analysis.

James: Taking a look at the structure for real estate and the regulatory regime that's in place in real estate, I think it's been a point of discussion since the previous government changed the

structure, that there are problems with the existing structure, that there are disagreements between the Real Estate Council and the Superintendent of Real Estate, that there's a lack of clarity around who's responsible for what. And what was pointed out in the report is that leaves gaps. And when you leave gaps, it's an opportunity for people who may want to use illegal activity, to be able to walk in that door. So I think regardless of the amount of money, it's important for us as government to say we aren't going to accept that illegal activity. We are going to make sure we close those gaps. As the Attorney said, he will look at specific cases. We'll take a look at the gaps, we'll put in place the structure that makes it more difficult, and that once again build trust back. Because I think it's one of the biggest challenges facing BC right now, are the concerns around real estate, around housing, and the issue of illegal activity plays into that.

Reporter: Also on the money laundering file, do you have a list of the cabinet documents that you want the Liberals to approve for you to look at?

Eby: We asked Andrew Wilkinson to agree to allow our government to confidentially access documents that were prepared for the previous government, that are protected by something called cabinet confidence. Cabinet confidence means that between administrations, there are documents that are prepared for advice to ministers and so on, that as a new government, we can't access. What we'd like to do, is be able to access, confidentially, those documents, in order to [inaudible] staff and our response to money laundering. I've heard Mr Wilkinson, through the media, indicate that he's willing to engage in that discussion, that he wants to see the documents first. We're reaching out formally to the contacts that they've designated, through Mike de Jong, to ask for that consent formally, and our staff has begun preparing the documents for their review in anticipation that that consent will actually be granted, given Mr Wilkinson's comments in the media.

Reporter: Great Canadian Gaming, the company at the centre of Dr German's review, is regulated by the BC government, and I'm wondering if you can comment on the comments that Global News was told by Great Canadian board director responsible for compliance in money laundering, Senator Larry Campbell. He said, quote, he has no idea about the money laundering that occurred at River Rock Casino. Could you comment on that? Because that would seem to be a gross failure of his corporate duties and you are the regulator, essentially.

Eby: I can tell you this is the first time that I've heard those comments from Mr Campbell. I know there are many residual concerns about the money laundering that took place in BC casinos, how it happened, what law enforcement's role was, what the role of various oversight mechanisms were. Even following Dr German's report, we've seen people like Fred Pinnock come forward. He was the head of the Integrated Casino Policing Team, making serious allegations that he was interfered with in his policing work in casinos. That he believes there were issues of corruption. These are serious allegations. I can tell you that the Premier has indicated publicly that he is still open to the possibility of a public inquiry on this issue. In order to ensure the Premier has all the information, because that would ultimately be cabinet's decision, ultimately have all the information they would need about making that decision. We

retained a lawyer to interview Mr Pinnock. That interview has taken place. And the lawyer is currently doing due diligence on the information Mr Pinnock has provided before it is provided to government, and so I anticipate receiving that information in the near future. And once we have that information, then any decision about that public inquiry will be made by cabinet. I look forward to learning more about the comments you're referring to, but these are the first I've heard of them.

Reporter: It was reported that Mr German and his team have had previous professional connections with the entities he was reviewing for the casino report. What concerns do you have that this can be perceived as a conflict of interest?

Eby: The reason that I hired Dr German was that he had knowledge of and experience with the gaming sector in BC. We needed someone who was familiar with the rules and regulations with the entities, who could cut through quickly and provide us with constructive advice to close the door on what I was told was an active problem with money laundering in BC casinos on a large scale. He did that. We have reduced suspicious cash transactions, on the last number I have, by 100 times from the peak. There are two active police investigations into what was happening at BC casinos that are ongoing. That is properly the role of the police. And I'm advised that those investigations are continuing. I wouldn't like to comment any further on those investigations.

But for those who are concerned that there may be impunity for people who are involved, that there isn't accountability, there are active police investigations. That wasn't Dr German's role. His role was to help us close the door on these bulk transactions. He helped us do that. He's helped us set up a framework that we are implementing. Many of the recommendations he put forward we've already implemented. I expect to be introducing legislation in the fall to address further recommendations. And some are very big pieces, like setting up a new police force, an entirely new regulator, which will be longer-term projects which we are also doing work on through a deputy minister committee that is tasked with this very important project.

Reporter: Should a review team outside of BC or even Canada be used in future phases to ensure public confidence?

Eby: The challenge with the issue that we faced in the casino was, although we had an active problem that was not being addressed, that there was some sort of a failure of regulation within BC. There was some sort of a failure that was ongoing and that we had an active problem and we needed someone to assist us in acting quickly. So we brought in an expert, not just in money laundering, Dr German, but also in law enforcement, who could talk to the RCMP and who also had familiarity with the structures in BC, including the BCLC and the GPEB. That's exactly why we hired him. It wasn't a conflict. It was why we hired him. We needed that advice from someone who is expert in the systems in BC, as well as international systems.

Reporter: You both said that these are going to be fact-finding missions. But in the course of these investigations, if you find evidence of crimes being committed, are you going to be forwarding that to the RCMP or other police forces to investigation and see possible criminal charges resulting?

Eby: Certainly if any evidence is uncovered during the course of any of these reviews that suggest that there is an issue of criminal activity or ongoing criminal activity, it will be referred to police.

Reporter: What about the casino investigation?

Reporter: Minister Eby, you said money laundering is like a whack-a-mole in BC. Now you're going to look at real estate, horse racing, luxury cars. Are there any other places it might be showing up?

Eby: These are the areas that were identified for us by Dr German in his initial review. I can't predict where Dr German's review will go. I've given him, I believe, terms of reference that will allow him to follow the money and identify any additional areas. And I think at a larger, systemic issue, maybe I'll turn it over to the Finance minister to talk about her intent.

James: We're going to look at regulatory, as I mentioned, the issue of regulations, the issue of structure in real estate, but also financial institutions, BC Securities Commission, other areas where we can, again, look at what measures are put in place to ensure that there aren't the gaps there so that we don't end up with money launderers utilizing the gaps in the system. I think, as the attorney ahs said, it really is an opportunity to do specific cases, to follow the money, to look at those pieces, and then also to look at where the gaps are and to look at the system and closing those gaps in the system.

Another important piece that we're also making sure that we look at, though, is the opportunity for criminals to utilize the differences between provinces and the federal government. We have a common table with the federal government. We've asked for that to be a permanent table to talk about money laundering that may be occurring across the country, because as we close gaps here, we want to make sure that those gaps are closed in other places as well. So we'll be working closely with the federal government to look at how we can coordinate our efforts.

Reporter: You just gave me a nice segue, Minister, because I was going to ask about the federal role, FINTRAC's role as well in all of this. Why are we still looking for cooperation? Can you describe the cooperation now? What role does FINTRAC...?

James: We have the common table, as I mentioned. It was a table that was put in place because of the challenges that were going on across the country. It began with simply Toronto, Vancouver, with the pressures of real estate that were being talked about. We've asked for that table to be extended. Attorney staff and our staff will be at that table as well.

It's often the case, whether it's financial infractions or real estate, where illegal occurs and people leave the country or they move assets somewhere else. That's going to require all of us to work together to determine how we address that, and that's what we plan to do.

Reporter: Mr German had some observations about lawyers being exempt from reporting [inaudible.] Do you see that changing at the end of all this?

Eby: One of the specific pieces that I've asked Dr German to look at.... He did raise the issue of lawyer trust accounts in his report. It's been raised in international reports as well. I would like for someone to sit down with the Law Society and review those materials [inaudible] to follow the money that he identifies. And if it leads in that direction, then he may have findings about that.

What we're looking for are very specific factors and inquiries from Dr German and to look at the specific background that's happening with lawyers' trust accounts, and I'm hopeful that he'll provide information to expose that.

Reporter: Just curious if you're looking to any other jurisdictions in figuring out how to handle this? Or is this [inaudible] in BC and is unique?

James: I'll just add, from our portion of this dual approach, we certainly are going to be looking internationally. We're going to be using research experts who have international experience as well, because we believe that that's critical. Let's learn from what other jurisdictions have done. Let's look at the regulations that are in place in other places. And let's take best practice. That's really the intent here, to make sure that it's a broad look at regulatory structures in the real estate sector and how that coordinates with the financial sector as well.

Reporter: Is there a comparable real estate market to what we have, though?

James: I think that's always the question. I think the structures, though, around regulations can often be common. There can be common structures that ensure that illegal activity doesn't have an opportunity to move in. And those are the kinds of things that we'll be looking at. There will always be a unique piece for each of the provinces, including BC. But I think money launderers don't know borders. They don't take a look at the border of the province or the border of the country. So if we can learn from experts who have looked at money laundering in other jurisdictions and do that they've closed so that didn't happen, the more the better.

APPENDIX “E”

CHBABC SUBMISSION



Leading Advocate of the Residential Construction Industry in BC

Submission to the “Taking Action to Combat Money Laundering” Consultation
Submitted by email on January 8, 2019 to RealEstate.MoneyLaundering@gov.bc.ca

About Canadian Home Builders' Association of BC (CHBA BC)

CHBA BC represents over 2,000 member companies in the residential construction industry including home builders, renovators, tradespeople, service professionals, and others. Members are small and medium-sized businesses creating jobs and economic benefits in all areas of the province. Overall, the residential construction industry in B.C. represents over 200,000 on-site and off-site jobs, \$11.9 billion in wages, and \$25 billion in investment value.

CHBA BC is a not for profit membership association registered under the Societies Act. We require all members to abide by a code of ethics and do not represent all home builders, renovators, and contractors in the industry. CHBA BC and the industry are not self regulated and CHBA BC membership is not a licensing requirement for new home builders in British Columbia under the Homeowner Protection Act with BC Housing.

Introduction

CHBA BC appreciates the opportunity to contribute to this important discussion. As an industry association, we are committed to transparency and professionalism. We support measures that encourage consumers to work only with industry professionals. Professionals follow all safety, regulatory and business operating rules, and are disadvantaged by those who do not respect these rules.

The Canadian Home Builders' Association (made up of 9,000 member companies nation-wide) is actively committed to this issue in several ways. CHBA BC and CHBA National have worked with the Canada Revenue Agency (CRA) on efforts to combat the underground economy. CHBA's *Get It In Writing* program informs consumers about the importance of working with licensed contractors who provide full written contracts and receipts. Lastly, CHBA BC markets new home and renovation contract documents to both industry and consumers to encourage clear, written contracts for all transactions.

It is clear that higher-than-historic home prices and evidence of money-laundering activities in British Columbia's Real Estate sector are concurrent concerns. This submission focuses specifically on money-laundering and underground economic activity in isolation, but we reiterate CHBA BC's view that further provincial discussion on the full range of factors contributing to diminished housing affordability for all British Columbians is needed. We would encourage some caution in arriving at conclusions over the magnitude of any direct causal relationship, and are committed to working with the government to address the many other market fundamentals involved with the aim of improving housing affordability.

Finally, we would caution that instances of money laundering in real estate are not representative of all hard-working men and women engaged in the residential construction industry every day. Ours is a vibrant, entrepreneurial industry that creates and supports good-paying jobs in all regions of the province. As is the case of other sectors, there are 'bad actors.' Our efforts are and should be focused on rooting out those unscrupulous operators while ensuring the professionals can thrive.



Leading Advocate of the Residential Construction Industry in BC

Recommendations

The underground economy

According to Statistics Canada measurements, the underground economy represents approximately \$12 billion in economic activity across Canada. CHBA launched its *RenoMark®* and *Get It In Writing!* programs to provide an improved structure to the renovation industry, and communicate to homeowners the risks of undocumented 'cash deals.' In these cases, while home repairs or renovations are legal services, 'underground' contractors avoid formal business documentation in order to evade taxes. Most often the homeowners involved are enticed by apparently lower prices, and do not realize the considerable financial risks of working without a written contract, required WorkSafe BC coverage or an enforceable warranty. As an industry association, we are frequently contacted by such homeowners after problems have occurred and money has been lost; too late to prevent these situations. This motivates our work and our consumer education campaigns.

Any action by government to reinforce these consumer education efforts would be useful and productive to ongoing efforts to limit money-laundering and cash-only transactions in B.C. The most effective way to combat 'cash' renovations is to require providers to document their work. At least this makes compliance efforts by government somewhat easier and more effective.

One of the challenges in combatting underground economic activity in our sector is that there isn't a clear definition of what constitutes a "renovation". For example, many small tasks can be completed by homeowners themselves without permits - like a new paintjob. However, as more and more homeowners look for construction services to assist them in aging-in-place or in meeting new requirements like energy efficiency, preventative actions by government can be of considerable benefit.

1. Any government program that provides assistance connected to renovations should always include a provision that proper receipts or proof of work (ideally a contract or work order) are required to claim the benefit. If government is providing incentives or financial assistance, it should always ensure the work involved is conducted in a legitimate manner, and that contracts, work orders, and receipts for all payments are in place.
2. Similarly, any such government program or assistance connected to residential construction should require a GST number (and business licence) from the professional doing the work as a condition of government payments.

Successful examples include the federal, temporary Home Renovation Tax Credit that ended in 2011. An estimated 3 million Canadians used the program and worked with professional renovators, with an average tax savings of \$700 per claimant. British Columbia has similar tax credits in place for seniors and those with disabilities that require home modifications.



Leading Advocate of the Residential Construction Industry in BC

Owner-builders

Home builders in B.C. are regulated by B.C. Housing. We were pleased to see that the authorization requirements for owner-builders (those who want to build their own home or directly manage the project as general contractor) have increased in recent years. These efforts, including an exam, ensure owner-builders are fully aware of their responsibilities and liability when building a new home this way, as they are exempt from licensing or third-party home warranty insurance. There are many that use this authorization for legitimate purposes, but these increased measures also make this option less prone to circumvention of regulatory processes that professionals must follow.

1. The government should continue to monitor owner-builder transactions closely and proactively, as these fall outside the scope of regulatory oversight applied to all other new home builders, and the owner-builder process could be more susceptible to cash activity. We are pleased to see B.C. Housing already committed to monitoring these authorizations with its compliance team, through an anonymous tip line, and working with the Land Title Office when a property is sold before it has been occupied for at least one year. We support and encourage these efforts by B.C. Housing to the fullest extent.
2. Both CRA and the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) collect data that can assist in identifying potential money-laundering activity through the owner-builder mechanism. We encourage the Government of BC to ensure that there is effective data sharing and compliance cooperation between provincial authorities and these federal agencies.

Illegal Dumping

We see a clear connection between the underground economy and construction dumping, which has been reported on both agricultural land and other sites across the province. This problem is a potential byproduct of cash transactions where work is performed by non-professionals seeking to save money, circumvent normal business documentation and avoid detection by authorities.

We support the change through Bill 52 to increase the penalties for those who are engaged in such illegal construction dumping on agricultural land. As outlined in CHBA BC's Budget 2019/20 submission, there are also practical ways to incentivize homeowners to dispose of waste materials the proper way, and also to use these mechanisms as an education tool regarding proper renovation contracting procedures.

1. We encourage the provincial government to explore the concept of a small tax credit for proper material disposal for homeowners at an approved construction waste facility. This could also require disclosure by the homeowner of any contractor engagement in the project, including relevant GST numbers and receipts for work performed.

This approach would also benefit communities, who bear much of the cost when material is improperly disposed in their neighbourhoods, especially improperly labelled hazardous material which pose safety concerns for municipal and other workers.



Information Sharing

CHBA BC has previously participated on Western Canada working groups with Canada Revenue Agency to discuss information and initiatives to combat the underground economy. CHBA BC welcomes a continued focus on national and provincial information sharing on a regular basis. This can include industry groups where helpful.

Efficient reporting practices

We would caution that the government will need to consult with CHBA BC prior to initiating any additional regulatory mechanisms aimed at combating money-laundering or underground economic activity. Ideally, any such requirements should not impose a significant reporting burden on legitimate operators, as this would simply widen the cost gap between legitimate businesses and cash operators.

CHBA BC would be happy to work with the provincial government to review regulatory and other measures during their development to identify any concerns on behalf of our home builder and renovator members across the province and to look for ways to achieve regulatory outcomes with minimum impact on compliant businesses.

Conclusion

Our members sign a code of ethics and commit to industry best practices. These professionals are best served when the market is free from any distortions that illegal activity could produce and there is a level playing field. We are pleased to provide any further information to this consultation.

Neil Moody
CEO, Canadian Home Builders' Association of BC

APPENDIX “F”

RCMP MEMO DATED FEBRUARY 15, 2019



RCMP “E” DIVISION CRIMINAL OPERATIONS FEDERAL, INVESTIGATIVE SERVICES & ORGANIZED CRIME

E DIVISION MONEY LAUNDERING REVIEW: PART II

Prepared for: A/COMM KA (Kevin) HACKETT

Date: 2019-02-15

MONEY LAUNDERING & PROCEEDS OF CRIME INVESTIGATIVE CAPACITY AND SPECIALIZED TRAINING IN BC RCMP FEDERAL & SERIOUS ORGANIZED CRIME (E DIVISION FSOC) AND COMBINED FORCES SPECIAL ENFORCEMENT UNIT – BC (CFSEU-BC)

Further of Dr. GERMAN’S Independent Review of Money Laundering, Organized Crime and the Casino, Real Estate, Luxury Vehicle and Horse-Racing sectors, the following pertains to the capacity and specialized training provided for money laundering and proceeds of crime investigations in E Division FSOC and CFSEU-BC:

- 1) The number of positions within E Division FSOC and CFSEU-BC dedicated to money laundering / proceeds of crime investigations:
 - E Division FSOC:
 - The E Division FSOC Money Laundering Team within Financial Integrity consists of 25 Regular Member (RM) and 1 Civilian Member (CM) positions (total: 26 positions). All of these are federally-funded.
 - FSOC does not have a provincially-funded positions for money laundering / proceeds of crime investigations.
 - CFSEU-BC:
 - There are a total of 27 provincially-funded positions, consisting of 16 RCMP RM, 2 Organized Crime Agency (OCA), 4 CM and 5 secondments from Gaming Policy & Enforcement Branch (GPEB).
- 2) Of the foregoing positions, how many are currently staffed:
 - E Division FSOC:
 - Of the 25 RM positions, 11 are staffed; the CM position is also staffed.
 - CFSEU-BC:
 - Of the 27 positions, 24 are staffed.
- 3) Of those that are staffed, how many incumbents have specialized training in proceeds of crime enforcement or a corresponding professional / academic background?
 - E Division FSOC:
 - of the 11 staffed RM positions, 9 have completed the national RCMP or Justice Institute of British Columbia (JIBC)¹ Proceeds of Crime course. The remaining 2 members will be trained by April 2019;

¹ The JIBC course is available to RCMP, municipal law enforcement and CFSEU-BC candidates

APPENDIX “G”

RCMP MEMO DATED MARCH 14, 2019



RCMP “E” DIVISION CRIMINAL OPERATIONS FEDERAL, INVESTIGATIVE SERVICES & ORGANIZED CRIME

E DIVISION MONEY LAUNDERING REVIEW: PART II

Prepared for: A/COMM KA (Kevin) HACKETT

Date: 2019-03-14

MONEY LAUNDERING IN THE REAL ESTATE SECTOR: MEDIA REFERENCE WHICH CITES “SECRET POLICE STUDY”

On 2019-03-07, E Division Criminal Operations, Federal, Investigative Services & Organized Crime (CROPS FISOC) and senior managers from Federal Policing and the Combined Forces Special Enforcement Unit – BC (CFSEU-BC) met with Dr. Peter GERMAN, Mr. Adam ROSS and Mr. Raheel HUMAYUN to provide an explanation of the possible origin and authenticity of the report referenced in the media as a secret police study of Vancouver-area property transactions which exceed \$1B and linked to the money laundering efforts of transnational organized crime.

A copy of media article is appended for your reference.

Following the media report, it was believed, at the time, the police report referenced had been identified. Written in November 2017, the methodology consisted of obtaining data from the Real Estate Board of Greater Vancouver (REBGV) which listed residential properties purchased in the calendar years 2015 and 2016 valued at a threshold exceeding \$3M. Approximately 1200 lines of data were reviewed. The property addresses were then queried through the BC Online Land Titles data base to identify property owners. These owner names were then checked using the PRIME-BC database to determine potential criminality / criminal involvement.

The initial findings revealed that about 10% of the owners who purchased properties during that time frame were linked to some level of criminality, including suspicious currency transactions, drug importation / production / trafficking, gaming intelligence, fraud, extortion and proceeds of crime. A wide range of other criminal offences related to assault, child pornography, immigration, weapons, and others were also identified.

It is imperative to note initial findings were, in no manner, definitive or conclusive. The study did not conduct further or complete analysis, cross-referencing or validation against historical or current investigations, intelligence or other opened or closed data sources. Contrary to its description in media reporting, it does not assert crime networks could have laundered over \$1B through Vancouver homes in 2016, or that 95% of the 10% of transactions are believed to be linked to “Chinese” organized crime.

These discrepancies led to further examination and assessment of the descriptions and referencing to determine whether another BC RCMP report(s) containing sensitive police information could have been the subject of the media reporting.

Nine (9) additional BC RCMP reports were located. It has taken some time to review and compare these in an effort to identify the source of information in the public domain. The first-noted discrepancies as well as additional factors and details in media reports are not contained in or consistent with the other BC RCMP reports. Furthermore, the media cites the use of other agency reports, documents, legal filings and unspecified police intelligence to derive information for the article.

Therefore, the origin and authenticity of the confidential police report cited in the media has not been identified with absolute certainty. Although it bears a close resemblance to that described in the media report, it also presents the study's findings in a manner which is sufficiently misinterpreted and speculative to cause reservation.

/Prepared by: C/M Kelly C RAINBOW, 2019-03-14

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APPENDIX "H"

RCMP MEMO DATED MARCH 19, 2019



RCMP "E" DIVISION CRIMINAL OPERATIONS FEDERAL, INVESTIGATIVE SERVICES & ORGANIZED CRIME

E DIVISION MONEY LAUNDERING REVIEW: PART II

Prepared for: A/COMM KA (Kevin) HACKETT

Date: 2019-03-19

ESTIMATES OF MONEY TRANSFERS IN UNDERGROUND BANKING NETWORK REFERENCED IN FINANCIAL ACTION TASK FORCE REPORT (JULY 2018)

On 2019-03-07, E Division Criminal Operations, Federal, Investigative Services & Organized Crime (CROPS FISOC) and senior managers from Federal Policing and the Combined Forces Special Enforcement Unit – BC (CFSEU-BC) met with Dr. Peter GERMAN, Mr. Adam ROSS and Mr. Raheel HUMAYUN to provide an explanation of the possible origin and authenticity of a figure referenced in a report by the Financial Action Task Force (FATF), entitled *Professional Money Laundering* (July 2018). The Report, which highlights a BC-based criminal organization involved in professional money laundering services, indicates it laundered over \$1B (CDN) annually through an underground banking network.

A copy of the relevant portion of the FATF report is appended for your reference.

The features of this article bear a close resemblance to E Division Federal Serious and Organized Crime (FSOC) *Project E-Pirate*. Attempts were made to ascertain the source of the \$1B money laundering cited.

It was discovered that, during *Project E-Pirate*, a draft report was written which reviewed and estimated the value of transactions facilitated by the subject unlicensed MSB. The data set consisted of and was derived from available information obtained through lawful seizure and / or judicial authorizations of electronic and handwritten corporate financial ledgers, domestic bank accounts, and images from several electronic devices.

Once examined, annualized and aggregated, the estimated yearly value of the transactions which flowed through the MSB approached \$1B. However, the report is substantially caveated, and cites a number of methodological limitations in terms of information gaps and overlaps related to factors of¹:

- incompleteness of the data set caused by the deletion of images from devices prior to seizure, the inability to obtain or cross-reference foreign banking information, and challenges related to handwritten and foreign language translation;
- inconsistent time periods across each data category from which the information was derived;
- inability to resolve discrete incidents, vis a vis, what appears to be distinct occurrences in two (2) or more data categories could refer to the same incident, resulting in "double counting", and
- estimating historical rates of conversion of several different foreign currencies to Canadian funds.

Additionally, time constraints together with the volume and complexity of data set prohibited a fully comprehensive review, analysis and verification of the estimated finding.

This internal report, consisting of a review of *Project E-Pirate* data to estimate that the unlicensed MSB facilitated transactions valued at nearly \$1B, is sufficiently caveated with data integrity concerns to exercise a cautioned and considered approach if using it for reference.

The source of reference in the FATF Report remains unclear.

/Prepared by: C/M Kelly C. RAINBOW, 2019-03-19

¹ The factors related to information gaps can lead to under-estimating the actual value transferred, while duplicates can result in over-estimating.

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