

PULLING THE PLUG ON MONEY LAUNDERING IN BRITISH COLUMBIA, CANADA: LESSONS LEARNED AND ACTIONS REQUIRED

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Pulling the Plug on Money Laundering in British Columbia, Canada: Lessons Learned and Actions Required

How BIG is the Problem?

British Columbia is a province within the federal parliamentary democracy of Canada. Although Canada covers a vast area - making it the second largest country by area in the world - its population is just under thirty-eight million people, made up of ten provinces and three territories. The population of the province of British Columbia is just over five million.

Canada has prided itself on being a jurisdiction that money launderers avoided. In 2000, The Government of Canada enacted the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*. Delays in bringing in this legislation were largely the result of the focus in the mid 1990's of the Canadian federal government on its fiscal problems. Because of this, Canada was the last of the G-7 countries to enact anti-money laundering legislation. This legislation resulted in the creation of FINTRAC (Financial Transactions and Reports Analysis Centre of Canada) - Canada's FIU (Financial Intelligence Unit). Certainly, Canada has never been immune to money laundering, but something different began to surface in Canada's western-most province, British Columbia (BC), beginning around 2015 with dirty money surfacing in casinos.

In fact, the money laundering situation is viewed by the British Columbia (BC) Provincial Government as being in such disarray that in May 2019 the BC Government called for a public inquiry into money laundering in the province. BC Supreme Court Justice Austin F. Cullen was appointed to head the Inquiry, which will examine the full scope of money laundering in British Columbia, including real estate, gaming, financial institutions and the corporate and professional sectors. Commissioner Cullen is also examining regulatory authorities and barriers to effective law enforcement of money laundering activities. Commissioner Cullen has the ability to compel witnesses and order the production of documents and records.

The mandate of the Commission is broad. Its terms of reference require the Commission to make findings with respect to:

- *“the extent, growth, evolution and methods of money laundering in British Columbia, with regard to specific economic sectors;*
- *the acts or omissions of responsible regulatory agencies and individuals, and whether those have contributed to money laundering in the province or amount to corruption;*
- *the scope and effectiveness of the anti-money laundering powers, duties and functions of these regulatory agencies and individuals; and*
- *the barriers to effective law enforcement in relation to money laundering.*

In addition, this Commission has the responsibility to make recommendations to address the conditions which have enabled money laundering to flourish.”ⁱ

The Commission is required to submit an Interim report before the end of 2020; and a Final Report by mid 2021. The approach of the Commission will be interesting to follow, as anti-money laundering largely falls under federal government jurisdiction by virtue of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* which is federal legislation. FINTRAC (Financial Transactions and Reports Analysis Centre of Canada), a federal agency, is Canada's FIU (Financial Intelligence Unit). In addition, the Royal Canadian Mounted Police (RCMP) is the federal law enforcement agency tasked with proceeds of crime responsibilities. This is not to say that the Province and municipalities do not have a key role to play in the fight against money laundering, but there are jurisdictional delineations that will need to be addressed.

In 2016 the International Monetary Fund (IMF) conducted a detailed assessment of Canada's Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) framework, and the resulting report was adopted by the Financial Action Task Force (FATF). The report was somewhat positive towards Canada's anti-money laundering regime, but critical of certain aspects.

According to the IMF, Canada's AML/CFT regime covers most high-risk areas, but it lacks coverage of lawyers, as a result of a legal ruling. This, according to the IMF and FATF, is a significant loophole in Canada's AML/CFT framework and raises serious concerns. Legal persons are at high risk of misuse for money laundering or terrorist financing purposes, and that risk is not satisfactorily mitigated by Canada according to the IMF. When Canada's anti-money laundering regime was formally launched in 2000, lawyers were designated as reporting entities and were required to report suspicious transactions to FINTRAC. This provision, however, did not stand up to a legal challenge in the Supreme Court of Canada in 2015 brought on by Canada's 95,000 lawyers on the grounds of solicitor/client privilege.

RECOMMENDATION # 1:

- 1. Canada's federal Government must find a way to include the legal profession in its anti-money laundering/anti-terrorist financing regime. This needs to be done in a way that complies with the Canadian Constitution, and the Canadian Charter of Rights and Freedoms. One way to achieve this is to require lawyers to report suspicious transactions to their provincial law societies. The law societies in turn would be subject to review by an independent body that would ensure that law societies are complying with the legislated reporting requirements.**

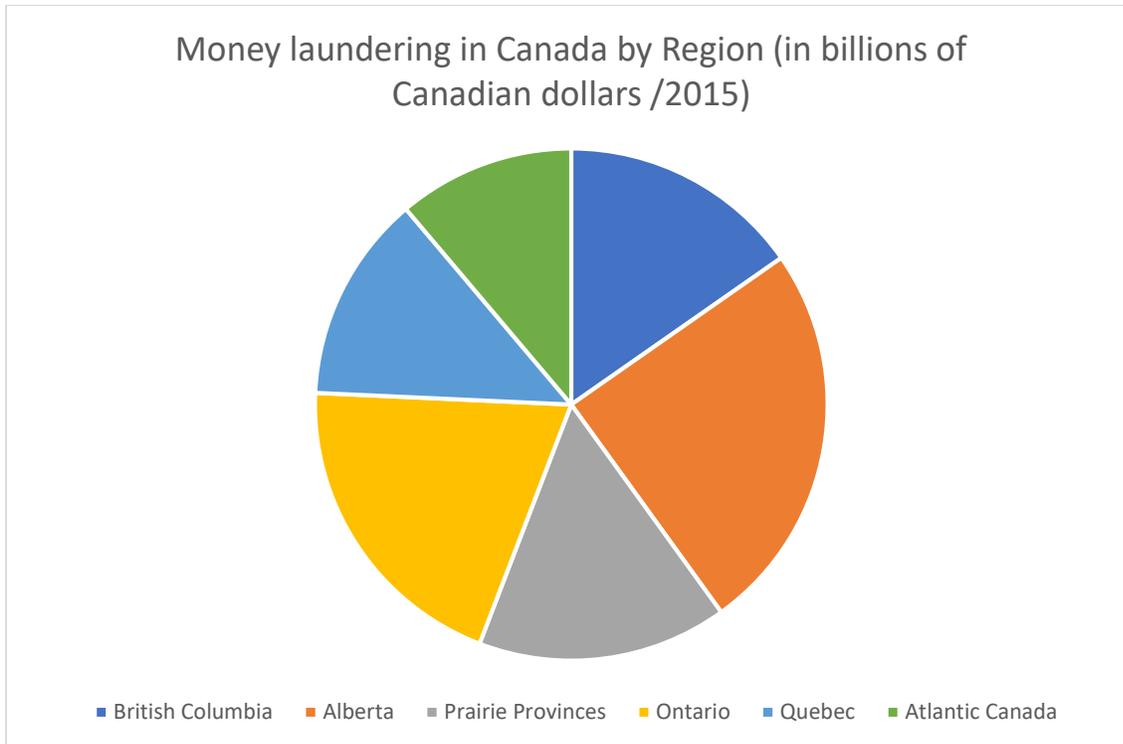
Certainly, the FATF will be aware of the well-publicised more recent money laundering problems in British Columbia and elsewhere in Canada, and that could lead to another evaluation sooner rather than later. While there is no need to panic at this stage, the designation of Canada as non-compliant, or to be featured on the FATF *greylist* or *blacklist*, would be a significant blow to Canada's international reputation and would negatively affect the flow of legitimate investment capital into this country.

The first money laundering problems that surfaced in the media, and to the attention of the BC Provincial Government, related to significant amounts of money being laundered through casinos in British Columbia. The problem was apparently not a new one, but previous governments of the day in BC had swept the reported irregularities under the carpet.

It was later estimated by BC's gaming regulator that over Cdn\$600 million in suspected dirty money was laundered through BC casinos and the BC Lottery Corporation from 2010 to 2016. This estimate was upgraded later by regulators to \$1.7 billion.

By way of context, under the *Canadian Constitution*, the federal government has exclusive jurisdiction to enact criminal law. For many years gaming, and in particular commercial gaming, was, with certain important exceptions, prohibited under the *Criminal Code of Canada*. In 1969 the *Criminal Code* was amended allowing Provinces to run approved lottery schemes, including casinos. In 1985 the *Criminal Code* was amended further - leaving gaming to the provinces. In British Columbia gaming is currently structured with two key public institutions responsible for policy, management, and oversight of gaming. The British Columbia Lottery Corporation (BCLC) has exclusive responsibility for the conduct and management of gaming, including casinos, on behalf of the Province of British Columbia. BCLC is a crown corporation, otherwise known as a wholly-owned state enterprise, and in fiscal 2018/19 the corporation generated a net income of \$1.4 billion for the Province of BC. The Gaming Policy and Enforcement Branch (GPEB) of the British Columbia Government regulates all gaming operations, including all gaming conducted, managed and operated by the British Columbia Lottery Corporation - with a specific mandate to ensure the overall integrity of gaming.

Money laundering in Canada, however, is certainly not limited to British Columbia. In 2015, it is estimated that Cdn\$41.2 billion of dirty money was laundered in Canada. These numbers are very conservative and likely underestimated. The Cdn\$6.3 billion in BC represents 2.5% of Provincial GDP.



Source: Money laundering in Canada by regionⁱⁱ (in billions of Canadian dollars / 2015) - British Columbia \$ 6.3 / Alberta \$10.2 / Prairie provinces \$6.5 / Ontario \$8.2 / Quebec \$5.4 / Atlantic Canada \$4.6

Where is this dirty money coming from, and how is it laundered?

First of all, there is the usual unfortunate flow of funds from transnational organized crime, local drug dealers, biker gangs, and youth gangs. However, one also needs to understand British Columbia's geo-political positioning. As Canada's western-most province, and with its proximity to Asia, more specifically to Hong Kong and the Peoples Republic of China, BC is a natural attraction for capital flows from these areas. Chinese roots to Canada go back many years to a time around the middle of the nineteenth century when large numbers of Chinese workers emigrated to Canada and helped build a railway across the country. BC, and the city of Vancouver in particular, has a large Chinese population (11.84% people of Chinese origin in BC in 2016ⁱⁱⁱ), and these percentages are projected to increase (20.8% people of Chinese origin in Vancouver projected in 2036^{iv}). The mix of people entering Canada from China has changed over time with lately a preponderance of Mandarin-speaking individuals (mainland China) compared with Cantonese-speaking immigrants from Hong Kong.

The Peoples Republic of China (PRC) has enacted significant foreign exchange controls which limit the amount of money (US\$50k) that a Chinese citizen can legally take out of China. Needless to say, these limits are circumvented often with the help of financial intermediaries, Chinese companies doing business abroad, or underground banking systems. Corruption is rampant in China (estimated at 10%-15% of China's annual GDP), so moving this dirty money offshore becomes a strong motivating force. In addition, there are those in Hong Kong and the PRC who wish to hedge their bets and keep a mix of their capital in both Asia and Canada. Canada has a reputation for political stability and the Chinese-Canada cultural ties reinforce this diversification thinking.

The capital flowing from China into North American cities is significant, as the FACT Coalition outlines –

“The purchase of expensive real estate is another example where there are rising concerns of international money laundering. For example,in 2016 the Chinese spent almost \$30 billion on residential property in the United States. The Chinese are also purchasing properties in major western cities such as London, Sydney, Vancouver, Toronto, and Auckland. Most of the purchases are made in cash. The flight of private wealth and tainted money leaving China appears to be due to worries about the economic outlook and the clampdown on corruption. As one former ambassador to China said, the country could very well be ‘the number one exporter of hot money in the world.’ Yet China has strict capital controls that limit its citizens to only transferring the equivalent of approximately \$50,000 a year out of the country. Despite the restrictions, the torrent of money continues^v. Anonymous shell companies are a prime method for evading these safeguards, and their use in real estate transactions are widespread and rising.”^{vi}

Between 2007 and 2017, Chinese foreign direct investments (FDI) in Canada grew in total value from less than \$4.2 billion in 2007 to more \$16.4 billion in 2017^{vii}. While the stock of FDI from the Peoples Republic of China in Canada is relatively small, the growth from 2007 to 2017 was an increase of \$12.2 billion - a simple average annual growth rate of 19% - or 14.5% compound annual growth rate.

Drugs and drug money, however, are also significantly in play.

One of the significant negative impacts of drug money being laundered with relative ease arises because it makes drug dealing and drug use easier. This de-stabilizes society and inflicts a heavy social and fiscal cost on citizens and the state. In recent times BC has experienced the extreme hardships that the sale of fentanyl, and other drugs, have brought upon the thousands of people who have died of overdoses, and the impact on their families and friends which will last forever.

On April 14, 2016, British Columbia's Provincial Health Officer, Dr. Perry Kendall, declared the opioid crisis a public health emergency in BC. In 2016 alone, 931 British Columbians died from

overdoses – 216 of these overdose deaths were in Vancouver. Fentanyl was detected in approximately 60% of those deaths (BC Coroners Service, 2017).^{viii}

Evidence suggests that overdoses are under-reported. Illegal shipments of fentanyl from Chinese factories and fentanyl overdose deaths in North America are multiplying at an alarming rate.

According to the US Drug Enforcement Administration, illicit fentanyl, fentanyl analogues, and their immediate precursors are often produced in China. From China, these substances are shipped primarily through express consignment carriers or international mail directly to the United States, or, alternatively, shipped directly to transnational criminal organizations in Mexico, Canada, and the Caribbean.

A professor in Australia, John Langdale, has coined the expression the *Vancouver Model* to describe how Chinese citizens move assets to Canada. Guangdong Province in Southern China is largely unregulated and is cited as the most notorious location in China for the production and trafficking of illegal goods and services.

Professor Langdale describes it as follows:

“The Model consists of two interrelated transfers of illicit money by Chinese underground banks. Firstly, Chinese underground banks transfer money from the sales of illegal drugs (Chinese and Latin American criminal groups) back to Hong Kong offshore financial markets, earning a commission on the transfers. Some of the illegal drug money was laundered through British Columbia’s casinos. Secondly, Chinese underground banks transfer money from wealthy Chinese in China to Canada (capital flight) and provide them with money for gambling and/or investment in the Vancouver property market, again earning commission on the transfers (German, 2018). The underground banks are generally able to net these transfers out, so as to minimise actual international transfers of funds (German, 2019).”^{ix}

The so-called *Vancouver model* is characterized by organized crime profiting from services at both ends of the transaction - referred to often as ‘clipping the ticket both ways’. As Professor Langdale notes, *“The ‘genius’ of the scheme is the ability to achieve two objectives and be paid for both in the same transaction.”^x*

According to former Royal Canadian Mounted Police (RCMP) superintendent Garry Clement, Chinese Triads and Tongs have used *quasi-legitimate* real estate development, construction, and financial companies to launder drug cash into Vancouver real estate. In one method, he notes that Triad companies send drug funds to offshore bank accounts, and use these deposits to secure mortgages for purchasing and developing BC land. A lack of beneficial ownership transparency and accountability allow this to happen without much difficulty. In one reported case, a Chinese national who in 2013 was on INTERPOL’s Notice List, was the lead in a multi-million property development

scheme in Vancouver. While Interpol Notice advisories are often used inappropriately by countries like Russia and China for blatant political purposes, this individual who was the subject of an Interpol Notice had all of the hallmarks of committing serious fraud in the Peoples Republic of China. This Interpol Notice was subsequently dropped without any obvious explanation. It begs the question - if he can make significant investments in the Vancouver real estate market, who can't! Interestingly, and probably coincidentally, in June 2019 the former head of Interpol, Meng Hongwei, pleaded guilty to accepting bribes.

In less sophisticated transactions involving banknotes for real estate, it would appear that real estate agents are not reporting, or under reporting, certain sales. Efforts to *Know Your Customer* are minimal as are the associated due diligence measures that are required. To avoid questions from a financial institution, deposits may be staggered or combined together with other receipts. Alternative avoidance techniques are undoubtedly employed.

Federal government anti-money laundering methods and techniques and enforcement in BC have been weakened over the years. When money launderers realize that their money laundering can go ahead undetected and with relative impunity, it is not difficult to understand how the volume of dirty money laundered in BC is growing.

With respect to BC casinos, retired Deputy RCMP Commissioner Dr. Peter German points out in his March 2018 report commissioned by BC's Attorney General David Eby, that many mistakes were made by the British Columbia Lottery Corporation, and by the Gaming Policy & Enforcement Branch of the BC Government. In fact, it is evident that between these two organizations there were many problems, miscommunications, overlapping responsibilities, roles that were unclear, and a failure to report all suspicious transactions to FINTRAC. Indeed, the BC Lottery Corporation was the subject of the largest fine ever levied in the casino industry and was the subject of many non-compliance reports by FINTRAC. Unfortunately, for whatever reason, the fine was subsequently withdrawn.

Recently, videos of casino customers arriving at a casino with millions of dollars in duffle bags, loaded with \$20 bills wrapped in elastic bands, were displayed on local television news programs. These individuals would be escorted to the VIP lounge with staff later stating that the money could have been 'clean' - reflecting a clean money bias. There was no evidence of due diligence or *Know Your Customer* routines at this point. Of course, once these casino customers cash out after gambling for a while, the reimbursement cheque from the casino magically converts dirty money to clean money. Regulators were on site only during normal business hours so it is not surprising that money launderers chose off-hours to visit the casinos. This specific problem of a lack of an around-the-clock regulatory presence has since been corrected.

There is evidence to suggest that BC Government Cabinet Ministers were briefed on the dirty money problems in the Province's casinos, but no action was taken. While not seeking to impugn the motives of BC members of Cabinet, it is possible that 'turning a blind eye' was driven by a desire to maximize profits in the casinos – with clean or dirty money. There have also been recent instances of significant federal criminal cases against alleged money launderers in BC being dropped or stayed by crown prosecutors and the RCMP. It is difficult to establish whether this a result of insufficient evidence, or a lack of enough resources within the Royal Canadian Mounted Police (RCMP) and/or Justice Canada to proceed with these benchmark cases.

These problems are not limited to casinos, or to British Columbia - but more on this later. In fact, BC's Attorney General has taken some immediate steps to respond to the March 31, 2018 report - *DIRTY MONEY – in Lower Mainland Casinos; An Independent Review of Money Laundering* – the review commissioned by BC's Attorney General Eby and prepared by retired Deputy RCMP Commissioner Dr. Peter German. The BC Government has agreed with all of the 48 recommendations in this report, and has committed to allocate the necessary resources to implement all of them. The province has indicated that it will introduce legislation in 2021 to set up a new independent gambling control office. Changes that BC has already made include improving gambling oversight; extending funding for an integrated policing team; creating a team to review suspicious transactions at casinos; and ensuring that gambling regulators now have a 24/7 presence in major Lower Mainland casinos.

RECOMMENDATION # 2:

2. **Implement, on an urgent basis, all 48 recommendations contained in the March 31, 2018 report - *DIRTY MONEY – in Lower Mainland Casinos; An Independent Review of Money Laundering* – the review commissioned by BC's Attorney General Eby and prepared by Deputy RCMP Commissioner Dr. Peter German.^{xi} Key recommendations include the following –**
 - a. **That a new, independent gaming Regulator, at arms-length to the British Columbia Government, be established with governance accountability to a Board of Directors;**
 - b. **That the *Gaming Control Act (B.C.)* clearly delineate the roles and responsibilities of the British Columbia Lottery Corporation and the Regulator referred to in (a.) above;**
 - c. **That Gaming Service Providers be responsible for completing all necessary reports to FINTRAC, including STR's (Suspicious Transaction Reports);**
 - d. **That Gaming Service Providers be designated as direct reports to FINTRAC, failing which that reports from Gaming Service Providers be sent in an unaltered form to FINTRAC by the British Columbia Lottery Corporation; and,**
 - e. **That a Designated Policing Unit {police force} be created to specialize in criminal and regulatory investigations arising from the legal gaming industry.....and that this unit have specific responsibility for anti-money laundering.**

To the extent that money laundered in British Columbia and Canada is derived from corrupt activities abroad, it is clear that government funds that are misappropriated in foreign countries – be they developing countries, failed states, or so-called ‘first-world’ jurisdictions - are opportunities lost. In addition to impeding many serious crimes like drug dealing, human trafficking, tax evasion and terrorism, effective anti-money laundering regimes are designed to act as a deterrent to corrupt leaders and other criminals. If they cannot launder their ill-gotten gains, the motivation to commit these crimes should be diminished. Some of the most corrupt leaders are noted below where the amounts embezzled are in the millions and billions of dollars. And let's not forget the billions embezzled by some of the more contemporary leaders like Libya's Muammar al-Gaddafi (est. US\$20 billion), and Egypt's Hosni Mubarak (est. US\$70 billion).

Transparency International's Report of the Ten most Corrupt Leaders		
Despot	Country	Embezzled (est.) in U.S. dollars
President Suharto 1967-98	Indonesia	\$15 - \$35 billion
Ferdinand Marcos 1972-86	Philippines	\$5 - \$10 billion
Mobuto Sese Seko 1965-97	Zaire	\$5 billion
Sani Abacha 1993-98	Nigeria	\$5 billion
Slobodan Milosevic 1989-2000	Yugoslavia	\$1 billion
J.-C. Duvalier 1971-86	Haiti	\$300-\$800 million
Alberto Fujimori 1990-2000	Peru	\$600 million
Pavlo Lazarenko 1996-97	Ukraine	\$114-\$200 million
Arnoldo Aleman 1997-2002	Nicaragua	\$100 million
Joseph Estrada 1998-2001	Philippines	\$78-\$80 million
Average	n/a	\$33-\$58 billion

Source: These figures were reported in Transparency International's 2004 Global Corruption Report. http://issuu.com/transparencyinternational/docs/2004_gcr_politicalcorruption_en?e=2496456/2106435

How many schools, hospitals, immunizations and kilometers of roads could have been put into place if these billions had not been lost to corruption? If we take the mean in the range of the amounts stolen by these leaders of \$32-\$58 billion (i.e. \$45 billion), and use World Bank and United Nations program cost estimates, one can calculate that this money could have been used in the developing world, for example, to –

- provide 112 million households with water; or to
- build 108,000 kilometres of road (this would circumnavigate the world almost 3 times!); or to
- treat 270 million people living with HIV/AIDS.

Estimating what portion of money laundered in British Columbia and Canada is derived from corruption, as opposed to other criminal activity is a challenging task. On a global scale, the

International Monetary Fund (IMF), and the United Nations Office on Drugs and Crime (UNODC), estimate global money laundering at between two to five percent of global gross domestic product or approximately \$1.5 trillion to \$3.7 trillion. Raymond Baker, founding President of Global Financial Integrity, in his book, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System*, estimates dirty corrupt money crossing international borders annually at between US\$30 billion to US\$50 billion.^{xii} The balance comprises drug money, counterfeit goods, smuggling, human trafficking – to name a few according to Mr. Baker's estimates.

What are the Challenges and Opportunities associated with more transparent and accountable beneficial ownership regimes?

One of the ways in which dirty money is laundered in the real estate sector, or indeed in the economy as a whole, is through the use of companies and trusts that hide the true identity of the beneficial owner of the asset. Beneficial owners are persons/groups that enjoy the economic benefits of ownership of a property, fund, or asset, even though another person appears as the registered owner. Money launderers have developed various schemes – which have become sophisticated and creative over time - to launder illicit funds. These individuals use nominee shareholders and directors (lawyers, accountants, family or friends), some taking a fee for the use of their name, to distance themselves from transactions by concealing the true source of the dirty money. Often companies/trusts are ‘layered’ with multiple companies through holding and subsidiary ownerships and/or in different tax havens or unregulated jurisdictions. Nominees can be used at each stage of the money laundering cycle. These complex arrangements make it very difficult for government authorities and anti-money laundering enforcement agencies to trace the real origin of the dirty money.

Requirements by governments for declarations of Beneficial Ownership make it harder for criminals to mask their identities and their connection to illicit funds.

In response to the money laundering problems in British Columbia, the BC Government brought in legislation establishing a public registry of beneficial owners of property in the province. Effective May 1, 2020, the BC *Land Owner Transparency Act*, requires corporations, trusts and partnerships that buy land to disclose their beneficial owners in the registry, with significant fines for the failure to disclose.

By requiring a Declaration of Beneficial Ownership, financial intermediaries and the state create one more mechanism to track the source, movement, and destination of illicit funds. To be truly effective, however, a government, or otherwise independent authority, must perform comprehensive due diligence to ensure that the beneficial ownership declaration is valid.

In 2016, to their credit, the United Kingdom introduced the world’s first fully open register of the real owners of its companies. Greater company ownership transparency marked a very important first step. According to Global Witness, however, with inadequate checking of the substance of the beneficial owner information, various important and disturbing anomalies surfaced. In their July, 2018 report, *The Companies We Keep; What the UK’s Open Data Register Actually Tells Us About Company Ownership*, they highlighted the following:

“For most companies registering their beneficial owners – known as Persons of Significant Control (PSC) in the UK – is straightforward, with an average of 1.13 beneficial owners for each UK company. In fact, after two years, 87% – almost 3.6 million companies – of companies are filing at least one beneficial owner. However, our analysis also reveals that thousands of companies are filing highly suspicious entries or not complying with the rules – problems we

never would have found were it not for the open data nature of the register. Common methods for avoiding disclosure of a company's real owners include filing a statement that the company has none, disclosing an ineligible foreign company as the beneficial owner, using nominees or creating circular ownership structures.”^{xiii}

To share the burden of beneficial ownership declarations, a strong case can be made to make declarers aware, by signing a legal form or affidavit, and by acknowledging that should their declaration prove ultimately to be false, they would face tough sanctions. This would include the freezing of accounts and the ultimate forfeiture of account balances, funds, properties, or assets. While such a measure would not eliminate false declarations, it would act as a deterrent for many would-be dishonest people.

The requirement to *Know Your Customer (KYC)*, and the need to perform comprehensive due diligence to achieve this, can be very demanding for financial intermediaries. The reason for this is the often very complex layering of companies and the use of nominee shareholders and directors. Bearer shares can also be employed to hide the true beneficial owner. There are many reputable financial institutions and other financial intermediaries who have very robust business ethics policies and who are committed to the KYC principles. Such organizations can also be motivated in their own self-interest to avoid heavy fines and mitigate reputational risk. For example, nine major international banks paid a total of \$20 billion in fines from 2012 through 2015 for lax anti-money laundering controls and incidences. In the case of the Hong Kong and Shanghai Banking Corporation (HSBC), it hired 4,000 employees to better monitor suspicious transactions following a US\$1.9 billion fine it incurred in 2012. These fines are becoming more significant and not easily justified by companies as necessary business expenses – as was the case not many years ago. A recent report in *The Economist* confirms this trend when it says that *“African kleptocrats are finding it tougher to stash their cash in the West. The days of brazen looting and laundering have passed.”^{xiv}* Let's hope so.

There are other less ethical entities, however, who will conduct 'pro-forma' due diligence and not undertake full and comprehensive analysis to truly establish the true owner of the depositor or party to a transaction. It must be recognized that there is an inherent conflict-of-interest when, for example, a bank is approached by a potential customer wishing to open an account in the millions of dollars. Of course, turning away business, or turning off new clients, is not something that is attractive to financial institutions. With regard to corruption, data bases chronicling Politically Exposed Persons (PEPS)^{xv} can be an important tool in the KYC arsenal, if taken seriously.

Although perhaps somewhat dated, a study conducted between 2000 and 2003 by Margaret Beare and Stephen Schneider, based on RCMP proceeds of crime case files, concluded that “deposit institutions, the insurance industry, motor vehicles, and real estate are the four most frequent destinations for the proceeds of crime”^{xvi}. Real estate was involved in 55.7% of the documented cases.

When the Canadian government brought in its anti-money laundering regime in 2000, those involved in the real estate sector, excluding property management businesses, were deemed to be reporting entities under the legislation and regulations. Reporting entities must report certain defined (suspicious) transactions to FINTRAC. The real estate industry lobbied strenuously, as did many other sectors, to be excluded as a reporting entity on the grounds that this reporting process could potentially damage client/real estate agent relationships. The federal government resisted these overtures, quite rightly, as they did with many other exclusion requests, but the government did agree to some additional minor 'user-friendly' reporting requirements for the real estate sector. Finance Canada, the federal Finance Department, took the position that at the launch of the anti-money laundering regime the suite of reporting entities would be very broadly defined, with the notion that at a subsequent date, based on a few years of experience, modifications to the reporting entities could, if necessary or desirable, could be made.

Disclosures of beneficial ownership cannot be limited to real estate, however, but must include all corporations and trusts. In British Columbia the Provincial Government has promised to introduce legislation in 2020 that will require companies to maintain internal records of shareholders with direct and indirect control. This information, however, will only be accessible to law enforcement agencies and not the public-at-large. Not being a public registry is a weakness in that the more eyes on the information and declarations, the better. Once this legislation is enacted, the BC Government will need to allocate the necessary resources to a unit of government that will perform the necessary due diligence work required to ensure that beneficial ownership disclosures by companies are factual. The debate over whether or not a registry of beneficial owners of companies should be public, or limited to the eyes of government and law enforcement, is an important discussion. In Canada, because of its privacy laws and its Charter of Rights and Freedoms, governments, and the federal government in particular, have been reluctant to make such a register public. Concerns about confidentiality and competitive secrecy are sometimes cited as legislative constraints. Certainly, big business in Canada would lobby against public disclosure. Perhaps governments in Canada should be bolder and test the waters on this issue - and allow the courts to render its judgements.

Greater beneficial ownership transparency and accountability is needed, not only in British Columbia, but in all provinces and territories in Canada, and equally, or more importantly, at the Federal Government level. Nearly 235,000 companies are incorporated under the federal Canada Business Corporations Act (CBSA), and fully fifty percent of Canada's largest publicly traded companies are incorporated under the CBSA – the remainder in Canada's Provinces and Territories. In its initial response to dirty money flowing through the BC real estate sector, the provincial government has announced its intention to create a new regulator for British Columbia's real estate sector by 2021. In parallel with this move, the Real Estate Council of BC is launching a mandatory anti-money laundering course for BC real estate agents and property managers. This is a needed and positive step.

Recommendation # 3:

- 3. Establish a BC transparent and accountable Beneficial Ownership Registry for all BC companies and trusts - beyond and including real estate interests.**

The costs and impacts of money laundering in British Columbia are huge.

Money laundering is very damaging to the public-at-large. It is definitely not a victimless crime. As the Expert Panel on Money Laundering in BC Real Estate so aptly puts it:

“Money laundering significantly damages our society and causes ongoing harm, not limited to the real estate sector or other economic sectors. Money laundering is a contagious, corrupting influence on society, damaging the reputations and stability of professions and institutions needed to enable complex money laundering schemes and spreading that damage throughout civil society. It facilitates other criminal activities, contributing in particular to drug trafficking and the violent crime and opioid deaths that result, as is sadly so evident in BC. It deprives the public and public services of the benefit of taxation revenue. It affects real estate markets and contributes to the housing affordability problem.”^{xvii}

The BC real estate sector is a key player in money laundering in that Province, and the result of this participation is reflected in higher than expected housing costs. This often results in young families, or individuals at the start of their career, being kept out of the housing market. Housing affordability in BC is a significant problem.

At the Cullen Commission Public Meeting in Victoria BC on November 4, 2019, one participant told the story of how her young adult children were not able to buy a home or condominium in BC:

“In Victoria...(one participant).....addressed the Commission on the issue of how ML affects ordinary Victorians. In her submission, ML has affected affordability on Vancouver Island. She is angry that ML in Vancouver has not been sufficiently addressed and that people are now moving illicit wealth to Vancouver Island. She says that she is aware of businesses and joint ventures that are set up to launder money.”^{xviii}

In the report, *Combatting Money Laundering in BC Real Estate*, the Expert Panel concluded that:

“Money laundering investment in BC real estate is sufficient to have raised housing prices and contributed to BC’s housing affordability issue. The data limitations that make it difficult to estimate the level of money laundering make it even more challenging to estimate the allocation of money laundering to specific economic sectors, such as real estate and the impact of that investment on house prices. The Panel cautiously estimates that almost 5 percent of the value of real estate transactions in the province result from money laundering investment. The estimated impact of that would be to increase housing prices by about 5 percent. Successfully reducing money laundering investment in BC real estate should have a modest but observable impact on housing affordability.”^{xix}

According to an August 3, 2017 research report by Zillow Research, based on a study - *Dynamics of homelessness in urban America – by Chris Glynn and Emily B. Fox, (Cornell University)*^{xx}, for most major urban centres in the U.S.A. there is a strong correlation between housing prices and homelessness-

“-Among large metros, New York, Los Angeles, Washington, D.C. and Seattle show the strongest relationship between rising rents and increased homeless population.

-In New York, our model shows that a 5 percent average rent increase would lead to nearly 3,000 more people falling into homelessness.

-A 5 percent increase in Los Angeles rents would lead to roughly 2,000 additional people experiencing homelessness. Rents there rose 4.2 percent over the past year.

-In Washington, D.C., our model shows that a 5 percent average rent increase in 2016 would have translated to 224 additional people experiencing homelessness, for a total of 8,722.

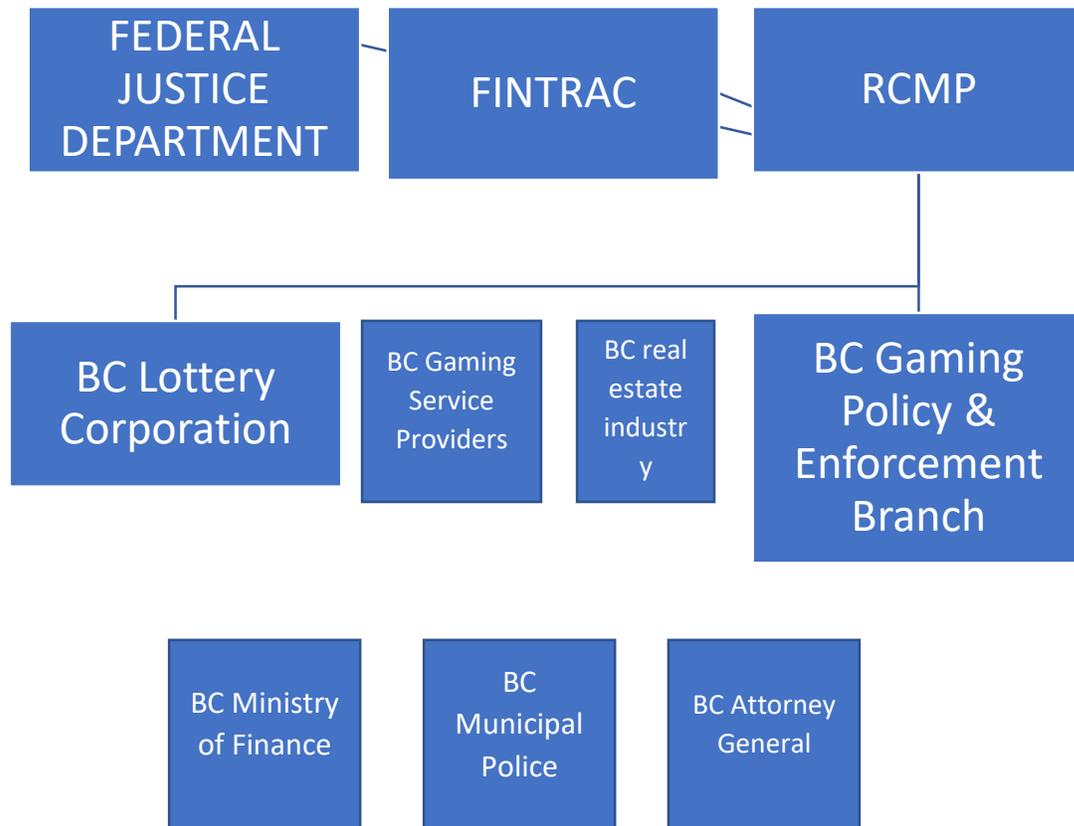
-In Seattle, that increase would add 258 people to the homeless population for a total of 12,498.”

While similar research data is not available for Vancouver, BC, it would be surprising if the results and conclusions would be markedly different.

In addition to the effects of money laundering on housing, one cannot ignore dirty money linked to the opioid crisis, and the fiscal consequences it is having in British Columbia, and indeed across Canada. The tragic human costs of opioid addiction do not lend themselves to metric analysis. However, the 2018 Canadian federal budget committed more than \$230 million over five years to address the opioid crisis – including \$150 million for a cost-shared Emergency Treatment Fund. For British Columbia specifically, in 2018, the governments of Canada and British Columbia signed a bilateral agreement committing more than \$71.7 million for innovative and comprehensive treatment options in the province.

Some of the Federal Government's failures and Issues

In Canada there are a number of players involved in the fight against money laundering and terrorist financing. At the federal level the Federal Justice Department, FINTRAC, and the RCMP play key roles. The Federal Justice Department, working with the federal department of Innovation, Science and Economic Development Canada, would enact legislation to create a beneficial ownership registry for companies incorporated under *the Canada Business Corporations Act*.



Likewise, Province of British Columbia organizations engaged are –

- BC Lottery Corporation;
- BC gaming service providers are corporations that operate casinos and gaming facilities;
- BC Gaming Policy & Enforcement Branch – the ‘Regulator’;
- BC Ministry of Finance - responsible for establishing beneficial ownership registry for corporations and trusts;
- BC municipal police (often contracted to the RCMP) – law enforcement; and,
- BC Attorney General – responsible for establishing beneficial ownership registry for real estate.

In addition to the problems occurring at the provincial level described above, there are also problems at the federal level with respect to the spike in money laundering in British Columbia.

Reporting entities are required to report suspicious and certain other transactions to FINTRAC. These reporting entities are defined as follows:

1. Accountants
2. Agents of the Crown
3. British Columbia notaries
4. Casinos
5. Dealers in precious metals and stones
6. Financial entities
7. Life insurance companies, brokers and agents
8. Money services businesses
9. Real estate; and,
10. Securities dealers

There are sanctions (fines) for failing to report these suspicious transactions via Suspicious Activity Reports (SARS), but these sanctions do not appear to be significant enough to act as an effective deterrent for non-compliance. In addition, FINTRAC does not do an effective job of auditing reporting entities to ensure that suspicious transactions are being reported to FINTRAC as required by law and regulation. Anecdotal evidence surrounding casinos, luxury car sales, and real estate transactions would appear to support this claim. Either FINTRAC needs more resources to monitor the performance of reporting entities, or it needs to manage their resources better. FINTRAC's legislated authority and mandate in this area may also need strengthening.

RECOMMENDATION # 4:

- 4. Ensure that FINTRAC does a much better job of monitoring Reporting Entities for compliance. FINTRAC's legislated authority and mandate in this area may also need strengthening.**

The Royal Canadian Mounted Police (RCMP) is Canada's federal police force. Division E is located in British Columbia and at one time the Division had a Proceeds of Crime unit in Vancouver. Regrettably, this unit no longer exists, and has not been operating for some time. One of the primary responsibilities of this group was to follow-up money laundering leads provided to them by FINTRAC. Recently, a number of very substantial money laundering information packages – solid leads - prepared by FINTRAC and submitted to Division E for follow-up and investigation were never acted upon by the RCMP. This should not be surprising given the fact that the Proceeds of Crime Unit has been wound down! If money laundering activities in British Columbia are to be addressed, this Unit needs to be re-established and re-invigorated with an influx of officers. Obviously, this will require an infusion of new resources,

or a re-priorizing of existing budgets by Division E of the RCMP. Economic crime typically plays 'second fiddle' to property and personal injury crime, but it is a fallacy that white-collar crimes like money laundering are victimless.

Recommendation # 5:

- 5. Re-establish the Proceeds of Crime Unit within RCMP Division E, and indeed across Canada if necessary, so that law enforcement officers can adequately investigate suspicious transaction leads it receives from FINTRAC, Canada's Financial Intelligence Unit.**

In the year 2000 Canada's anti-money legislation was introduced, passed by the House of Commons and Senate, and became law. Canada was the last G-7 country to bring in anti-money laundering legislation. The relevant legislation is named the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*. This legislation resulted in the creation of FINTRAC, Canada's Financial Intelligence Unit, or FIU.

It is often observed that FINTRAC is well financed and mandated and it is well respected worldwide. FINTRAC is very active within the EGMONT Group – the international body of Financial Intelligence Units (FIUs) – and it is evident that Canada plays a leading role in this organization and is often looked to for AML best practices. The Egmont Group, whose Secretariat is in Canada, consists of one hundred and sixty-five Financial Intelligence Units (FIUs) around the world. These FIUs exchange expertise and financial intelligence to combat global money laundering.

There are those in Canada, particularly in law enforcement, who have suggested that FINTRAC should be repositioned to reside within a law enforcement agency like the RCMP. Independence and privacy matters must be considered before any such re-alignment takes place.

In determining the governance structure of FINTRAC, extensive consultations were undertaken by the Government of Canada and Parliament. In the end, the federal government decided that FINTRAC would come within the purview of the Minister of Finance. It is essential that the Minister responsible for the oversight of an FIU must be completely removed from operations and day-to-day decisions. This is the case in Canada.

Governance models for the FIU in existence at the time of the review that were examined included the following –

11. Administrative (e.g. the FIU located in the Central Bank);
12. Law enforcement type FIU (the FIU located in a law enforcement environment);
13. Judicial or prosecution FIU (the FIU located within the jurisdiction of the prosecution authorities); and,
14. Hybrid FIU (a combination of administrative FIU within a law enforcement authority).

It was a recognition and respect for Canada's strong privacy laws, and a belief that a Financial Intelligence Unit should be just that – a gatherer and synthesizer of financial intelligence to be

forwarded, as required, to the RCMP, the Canadian Security Intelligence Service (CSIS), and the Canada Border Services Agency, for further analysis or action – that led the Canadian Liberal government of the day to conclude that the FIU should be housed in the Finance portfolio. It was the view of the government that the FIU should be independent of law enforcement.

When setting up FINTRAC the government at that time was confident that the resources allocated to FINTRAC, and its legislated mandate, based on relevant benchmarks, were adequate for the task at hand.

RECOMMENDATION # 6:

- 6. Leave the Financial Transactions and Reports Analysis Centre of Canada, (FINTRAC), Canada's Financial Intelligence Unit (FIU), within the purview of the federal Department of Finance.**

Money Launderers are not being effectively prosecuted in British Columbia and across Canada

In addition to lapses in casino regulation, beneficial ownership transparency, and lax suspicious transaction reporting and enforcement, Canada, and British Columbia specifically, has a poor record in prosecuting money laundering offences. From 2000-2016, Canada recorded 321 guilty verdicts in money-laundering cases, according to Statistics Canada data.^{xxi}

As Global News reports - *“Another roughly 809 cases were either stayed, withdrawn or dismissed, according to the data, resulting in a conviction rate of around 27 per cent. That’s far fewer than other crimes, as roughly 63 per cent of all adult criminal court cases in 2017 resulted in a guilty verdict. The U.K. and the U.S. have been far more successful in prosecuting money launderers. Between 1999 and 2007, there were 7,569 money-laundering prosecutions in the U.K., resulting in 3,796 convictions (a roughly 50 per cent conviction rate). The most recent data available from the U.S. Department of Justice show that in 2015, 727 people were prosecuted for money laundering, with 615 being convicted – a rate of 85 per cent.”*^{xxii}

There are undoubtedly a number of reasons for this poor performance in Canada including the following:

- Shortage of both law enforcement and prosecutorial resources to lay charges and follow-through in the courts;
- Law enforcement more comfortable investigating and laying charges for the underlying, or predicate offence, underlying the money laundering activity. These offences would include drug dealing, corruption, human trafficking, etc. In many cases money laundering charges are ‘tagged-onto’ the predicate offence.
- There may well be the erroneous view within law enforcement that prosecuting money laundering offences requires the identification of a predicate offence.

The *Criminal Code of Canada* is quite explicit in stating that charges for money laundering offences may be laid notwithstanding the absence of charges relating to a predicate offence. You need only prove that the money launderer knew or believed that the funds came from illegal activities:

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 anywhere that, if it had occurred in Canada, would have constituted a designated offence.^{xxiii}

It is also the position of the international anti-money laundering standard setter, the Financial Action Task Force (FATF), that countries should have the ability to charge and prosecute money launderers without having to prove the underlying (predicate) offence.

RECOMMENDATION # 7:

- 7. The Attorney General of Canada, and Provincial Attorneys General, should mount training and education programs for federal and provincial crown prosecutors and law enforcement agencies to encourage the laying of charges for money laundering offences notwithstanding the absence of charges being laid for the predicate offence(s).**

Lessons Learned

.....that may be of interest and value to others.

INFORMATION & MONITORING: National and sub-national governments must collect information about financial intermediaries and others, and monitor the extent to which dirty money is permeating their economy. When problems are identified, prompt and decisive remedial action must be taken.

CONTINUOUS IMPROVEMENT: A country's anti-money laundering regime must be subjected to a process of continuous improvement. What worked before may not work today, recognizing that it is a constant challenge to stay ahead of criminal activity. The mandates of, and resources allocated to, anti-money laundering regulatory bodies must be monitored to ensure that these institutions have the tools they need to keep a tight lid on the flow of dirty money.

BUILDING BLOCKS: An anti-money laundering regime, to be effective, must comprise all of the essential elements - including legislation, regulations, and guidelines; and an appropriately mandated and resourced Financial Intelligence Unit with thoroughly trained and motivated staff. Likewise, law enforcement and prosecutorial officials must be thoroughly trained in the application of the money laundering laws, and not be hesitant to bring money launderers to justice.

THE WEAKEST LINK: Money launderers will be motivated to operate in those jurisdictions where the anti-money laundering rules and regulations are weak, and/or where enforcement is lacking or non-existent. In British Columbia this lax environment signaled to the dealers in dirty money that their laundering activities could be ramped-up in that province. Over time this growth became geometric since such behaviour could be conducted with relative impunity.

REPORTING ENTITIES: Identifying the entities that are required by law to report suspicious transactions to a Financial Intelligence Unit should be defined very broadly and inclusively, and include the legal and other professions. In other words, no one that could be a party to these transactions should be excluded!

TIP OF THE ICEBERG: Money laundering in casinos is often the *tip of the iceberg* and symptomatic of deeper problems with dirty money. The laundering, as is the case in British Columbia, will often extend to the real estate sector and to businesses and trusts generally.

HUGE SOCIETAL COSTS: The negative impacts of money laundering are significant. The lack of an effective money laundering deterrent can lead to a spike in transnational criminality, including increased drug trafficking, opioid addiction, and lost and altered lives – not to mention the pressures on social service and health care services and costs. A loss of confidence in the integrity of financial systems discourages legitimate investment. Money laundering in the real estate sector negatively affects housing affordability.

TRANSPARENT AND ACCOUNTABLE BENEFICIAL OWNERSHIP DISCLOSURES: Money launderers must not be permitted to hide the illegal source of their funds by using layered shelf companies, nominee directors, bearer shares and the like. Transparent and accountable beneficial ownership public registries are key to preventing this. Validating beneficial ownership declarations requires the significant application of due diligence, with attendant resources, to minimize false disclosures. These are critical factors for success. Likewise, sanctions, including the freezing and ultimately confiscation of funds, should be in place as penalties to deter false beneficial owner declarations.

PROSECUTE, PROSECUTE, PROSECUTE: Law enforcement officers are generally more at ease pursuing charges for the predicate offences that lead to the laundering of dirty money. Over time this results in less than acceptable levels of prosecution of money launderers, and a more permissive environment for such crimes. Law enforcement agencies need to have the training and the resources needed to confidently lay charges for money laundering offences. Attorneys-General and prosecutors should encourage and support such action.

RELATIONSHIPS & COMMUNICATION: Sharing of information with other jurisdictions, using mechanisms that exist within the EGMONT Group of Financial Intelligence Units, is critical when tracking transnational criminals, and in benchmarking best practices. Senior government elected officials must take money laundering seriously. A coherent communications strategy is essential to constantly deliver the message to the public about the negative impact of money laundering, and the progress being made to hinder and eliminate it.

In brief, a summary of recommendations -

1. **Canada's federal Government must find a way to include the legal profession in its anti-money laundering/anti-terrorist financing regime. This needs to be done in a way that complies with the Canadian Constitution, and the Canadian Charter of Rights and Freedoms. One way to achieve this to require lawyers to report suspicious transactions to their provincial law societies. The law societies in turn would be subject to review by an independent body that would ensure that law societies are complying with the legislated reporting requirements;**
2. **Implement, on an urgent basis, all 48 recommendations contained in the March 31, 2018 report - *DIRTY MONEY – in Lower Mainland Casinos; An Independent Review of Money Laundering* – the review commissioned by BC's Attorney General Eby and prepared by Deputy RCMP Commissioner Dr. Peter German; Key recommendations include the following –**
 - a. **That a new, independent gaming Regulator, at arms-length to the British Columbia Government, be established with governance accountability to a Board of Directors;**
 - b. **That the *Gaming Control Act (B.C.)* clearly delineate the roles and responsibilities of the British Columbia Lottery Corporation and the Regulator referred to in (a.) above;**
 - c. **That Gaming Service Providers be responsible for completing all necessary reports to FINTRAC, including STR's (Suspicious Transaction Reports);**
 - d. **That Gaming Service Providers be designated as direct reports to FINTRAC, failing which that reports from Gaming Service Providers be sent in an unaltered form to FINTRAC by the British Columbia Lottery Corporation; and,**
 - e. **That a Designated Policing Unit {police force} be created to specialize in criminal and regulatory investigations arising from the legal gaming industry.....and that this unit have specific responsibility for anti-money laundering.**
3. **Establish a BC transparent and accountable Beneficial Ownership Registry for all BC companies and trusts - beyond and including real estate interests;**
4. **Ensure that FINTRAC does a much better job of monitoring Reporting Entities for compliance. FINTRAC's legislated authority and mandate in this area may also need strengthening;**
5. **Re-establish the Proceeds of Crime Unit within RCMP Division E, and indeed across Canada if necessary, so that law enforcement officers can adequately investigate suspicious transaction leads it receives from FINTRAC, Canada's Financial Intelligence Unit;**
6. **Leave the Financial Transactions and Reports Analysis Centre of Canada, (FINTRAC), Canada's Financial Intelligence Unit (FIU), within the purview of the federal Department of Finance; and,**
7. **The Attorney General of Canada, and Provincial Attorneys General, should mount a training and education programs for federal and provincial crown prosecutors and law enforcement agencies to encourage the laying of charges for money laundering offences notwithstanding the absence of charges being laid for the predicate offence(s).**

END NOTES

- ⁱ Cullen Commission of Enquiry website - <https://cullencommission.ca/>
- ⁱⁱ Combatting Money Laundering in BC Real Estate; Expert Panel on Money Laundering in BC Real Estate, March 31, 2019; Professor Maureen Maloney Chair; Appendix G: Estimating Money Laundering; Figure G-1: Estimating Money laundering in Canada by region
- ⁱⁱⁱ BC Census 2016
- ^{iv} Statistics Canada, Population by visible minority group, place of residence and projection scenario, Canada, 2011 and 2036
- ^v Bloomberg, China's Money Exodus, Bloomberg, November 2, 2015. Available at <https://www.bloomberg.com/news/features/2015-11-02/china-s-money-exodus>
- ^{vi} Countering International Money Laundering: Total Failure is 'Only a Decimal Point Away', FACT Coalition, by John A. Cassara, August 2017
- ^{vii} Marie Dumont, Parliament of Canada Research Publications, November 2018, *Canada's Foreign Direct Investment with China*; https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/TradeAndInvestment/2018588E
- ^{viii} The Opioid Crisis, The Need for Treatment on Demand; Review and Recommendations, Vancouver Police Department, May, 2017
- ^{ix} Submission to the N.S.W. Casino Inquiry, December, 2019, Dr. John Langdale, Honorary Research Fellow, Department of Security Studies and Criminology, Macquarie University, Australia
- ^x John Langdale, "Impact of Chinese Transnational Crime in Australia: Intelligence Perspectives" unpub., Nov, 2017
- ^{xi} German, P. (2018). Dirty money: An independent review of money laundering in Lower Mainland casinos conducted for the Attorney General of British Columbia. Victoria, Canada. Retrieved from https://news.gov.bc.ca/files/German_Gaming_Final_Report.pdf; pages 13-17
- ^{xii} Raymond Baker, Capitalism's Achilles Heel, Dirty Money and How to Renew the Free-Market System, John Wiley & Sons, Inc., 2005, page 172, Table 4.4
- ^{xiii} Global Witness, The Companies We Keep, July, 2018, Executive Summary
- ^{xiv} The Economist Magazine, October 10, 2019
- ^{xv} According to Financial Action Task Force Guidelines, a "politically exposed person (PEP) is an individual who is or has been entrusted with a prominent function. Many PEPs hold positions that can be abused for the purpose of laundering illicit funds or other predicate offences such as corruption or bribery. Because of the risks associated with PEPs, the FATF Recommendations require the application of additional AML/CFT measures to business relationships with PEPs. These requirements are preventive (not criminal) in nature, and should not be interpreted as meaning that all PEPs are involved in criminal activity". (FATF Guidance: Politically Exposed Persons (Rec 12 and 22).
- ^{xvi} Margaret E. Beare and Stephen Schneider, Money Laundering in Canada: Chasing Dirty and Dangerous Dollars (Toronto: University of Toronto Press, 2007), page 86
- ^{xvii} Combatting Money Laundering in BC Real Estate, March 31, 2019; page 7: <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/combattling-money-laundering-report.pdf>
- ^{xviii} Cullen Commission web site - <https://cullencommission.ca/app/uploads/sites/527/2019/11/VictoriaPublicMeetingSummaries.pdf> (author's bracketed words in italics).
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- ^{xxii} Andrew Russell, Global News, February 10, 2019, Not Just BC: Most provinces in Canada fail to secure convictions in money-laundering cases.
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