

# An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia

## INTERIM RECOMMENDATION

1. I recommend that the Province of British Columbia make representations to the House of Commons Standing Committee on Finance with respect to the ongoing public consultation regarding amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (POCMLTFA)*.

## ISSUE

2. On February 7, 2018, the Minister of Finance released a public consultation paper with respect to the *POCMLTFA*. Parliamentary Committee hearings on the statute are taking place this month in Ottawa.

## BACKGROUND

3. Since 1989, Canada's *Criminal Code* has contained the offence of laundering, as well as possession of the proceeds of crime. In 1993, Parliament enacted a federal statute which required financial institutions to keep records of certain transactions. That legislation was replaced in 2000 by the *POCMLTFA*, which has been amended many times since.

4. The *POCMLTFA* moved Canada from a recording to a reporting regime and created Canada's financial intelligence unit, FinTRAC. The legislation was a response to international commitments made by Canada. Although the *Criminal Code* falls under the purview of the Attorney General of Canada, the Minister of Finance is accountable for the *POCMLTFA*.

5. Approximately 100,000 businesses and financial institutions are now required to report Large Cash Transaction Reports (LCTRs) and Suspicious Transaction Reports (STRs) to FinTRAC. Some industries have additional reporting requirements. In this regard, casinos must also report Cash Disbursement Reports (CDRs).

6. FinTRAC performs audits on reporting entities and does so every two years at B.C.'s casinos. It has the power to impose Administrative Monetary Penalties (AMP). The largest

penalty every imposed with respect to casinos was meted out to BCLC in 2010. BCLC appealed the AMP to the Federal Court. The case was resolved in 2016, in what is best described as a draw. By this time, FinTRAC was satisfied with the quality of BCLC reporting. In addition, its entire AMP structure had been called into question because of unrelated cases which questioned the lack of objective criteria being used to determine the quantum of a penalty.

7. FinTRAC analyzes the millions of reports which it receives annually and will either proactively disclose intelligence gleaned from these reports to the police and other agencies or will respond to requests from information from the same entities. At present, police agencies appear content with the level of co-operation which they receive from FinTRAC. The following hyperlink provides a summary of FinTRAC's most recent annual report: <http://www.fintrac-canafe.gc.ca/publications/ar/2017/1-eng.asp> .

8. Nevertheless, FinTRAC is an outlier among the world's FIUs, as law enforcement is not permitted to work within its offices. This is largely due to privacy and *Charter* concerns. By contract, Fincen, the FIU in the United States, is staffed by law enforcement and other specialists. To a certain extent, Canadian police and FinTRAC work with blinders on, not knowing who has or needs what information until a proactive disclosure or a request for information is made.

9. FinTRAC is headquartered in downtown Ottawa, however has a regional office in Vancouver, on West Georgia Street. During this Review, I met with the senior executive of FinTRAC in Ottawa and twice with the Regional Director in Vancouver and members of his staff. All persons contacted were most cooperative.

10. The House of Commons' Standing Committee on Finance is currently conducting a Parliamentary Review of the *POCMLTFA*. The review is in anticipation of numerous potential amendments to the statute, which will allow Canada to respond adequately to a Financial Action Task Force (FATF) audit of Canada's legislation. The consultation document is comprehensive and found at <https://www.fin.gc.ca/activty/consult/amlatfr-rpcfat-eng.asp> . In the following section, I review some of the proposals which impact on B.C. and have arisen during my Review.

11. It is also beneficial to review the latest FATF mutual evaluation of Canada's legislation, which points to various deficiencies in Canada's existing scheme. In the past, it has almost always been through this form of international peer pressure that substantive changes have been made to Canada's various criminal and other federal legislation related to proceeds of crime, money laundering and corruption. The FATF review can be found at <http://www.fatf->

[gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf](http://gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf) . There are numerous references to casinos in the FATF report.<sup>1</sup>

12. I will not comment on the issues of beneficial ownership and whistleblowers, of which the Minister is already very familiar and are covered in some depth in the consultation document (Ch. 1 – Corporate Transparency, Ch. 4 – Whistleblowers).

## CONSULTATION PAPER PROPOSALS

### The Legal Profession

13. The consultation paper makes the following statement:

“We would seek to engage Canada's law societies and bar associations to work with the Government to find solutions. Furthermore, it is the Department's intention to develop constitutionally compliant legislative and regulatory provisions that would subject legal counsel and legal firms to the PCMLTFA.”

14. Without question, the absence of reporting by lawyers is a significant gap in Canada and is a significant impediment to police investigations involving the movement of money through real estate and other financial sectors. Canada is an outlier here as well. Other common law jurisdictions, including the United Kingdom, have robust provisions in place which require financial reporting by lawyers. Quite frankly, consultation has occurred for years. There is a real need for legislation which can withstand a *Charter* challenge and requires the reporting of monies held in lawyer trust accounts.

15. The irony is that in British Columbia, most personal real estate transactions are handled by notaries, who do report to FinTRAC. It is hard to rationalize why their handling of money should be treated differently than that of lawyers.

## HIGH RISK SECTORS

16. The consultation paper lists several businesses and persons to which the legislation could be extended, through amendments to the *POCMLTFA*. It is something akin to ‘whack a

---

<sup>1</sup> See also the following contemporaneous *Globe and Mail* article: <https://www.theglobeandmail.com/report-on-business/canada-given-lukewarm-grade-on-anti-money-laundering-efforts/article31892936/>

mole’, as FinTRAC attempts to close gaps with vulnerable sectors that do not currently report. Of interest are the following:

### **Par-mutuel or horse racing sector**

17. GPEB currently regulates this industry. I am not aware that B.C. has ever examined the prevalence of money laundering in the horse racing sector. Reporting requirements would certainly shed light on what is occurring.

### **Auto dealers**

18. It is well documented that the criminal lifestyle is often attracted to expensive consumer goods; such as luxury cars and pleasure craft. Due to their high value, these items are also excellent places in which illegal cash can be reintroduced to the legitimate economy during the integration phase of the laundering process.

19. Luxury items are of interest because there is no tracking by government of cash purchases. They are not reportable transactions to FinTRAC.

20. Vancouver has been described as the number one super car city in North America. Also, auto dealers in Greater Vancouver are among the highest new and used luxury car dealers in Canada, by sales volume.

21. In essence, an individual can walk into a luxury auto dealership and purchase a high-end vehicle with \$400,000 cash. The only obstacle will be dealership policies.

22. An incredibly large number of ‘curbers’, unregulated intermediaries, are believed to be operating in B.C. and a vigorous awareness campaign is underway to alert British Columbians of the dangers inherent in dealing with curbers. The fact that these are all cash-based activities make them extremely vulnerable to the introduction of dirty money.<sup>2</sup>

### **Company service providers**

23. This high-risk sector is relevant to the issue of beneficial ownership.

---

<sup>2</sup> This is not to say that there is not regulation of car dealers. In fact, the Vehicle Sales Authority of B.C. has been created under the authority of the *Motor Dealer Act*, to act as a regulator with a mandate for consumer protection. It oversees registered dealers.

## Mortgage insurers, land registries and title insurance companies

### Non-federally regulated mortgage lenders

24. These two sectors are relevant to real estate transactions. As with other sectors, if there are gaps in who must report, those who seek to launder money will gravitate in those directions.

25. The real estate industry is of concern as it is estimated that one third of British Columbia's GDP revolves around real estate. It has been said that, "everything in B.C. comes back to real estate." It has also been suggested that you can see a "rat move through all of it", meaning the real estate market, mortgages, insurance, and so forth.

26. On September 29, 2017, a newspaper reported that an RCMP Inspector familiar with money laundering in relation to casinos had expressed the belief that VIP gamblers, funded by an illegal money service business "own many luxury properties in the Lower Mainland". According to the officer, "We are finding now not only one layer of nominees, but two, three and four. And some of these nominees live in China, and they are either related to you, or they don't know they are owners. So for many of the properties, we just had to walk away."

27. On October 1, 2017, Post Media reported that whale gamblers were also involved in the purchase of real estate. Citing cross-reference research which it had conducted between filings in civil actions, land title documents and BCLC records obtained through FOI Act requests; it noted that in 2014, one high roller, who obtained \$645,000 in small bills through a drop off outside a casino, owns a \$14 M house near Point Grey Country Club. It also alleged that loans from an unregistered MSB had been used to fund real estate development, and make mortgage payments. Large short-term loans were allegedly secured to real property.

28. Recent reporting by Kathy Tomlinson of the *Globe and Mail* has shed light on the extent of the problem in B.C. real estate and the ripple effects felt throughout the economy. The AGBC has indicated an interested in pursuing the issue of criminality in the real estate sector now that the current review of money laundering in casinos is near completion.

### INFORMATION EXCHANGE

29. As indicated above, law enforcement officials do not work within FinTRAC, due to privacy concerns. Any opportunity to broaden the use of the intelligence housed within FinTRAC would be a benefit. Unless that intelligence is used by law enforcement and other agencies, FinTRAC is simply a collector of information.

## RESOURCES

30. Most leads provided by FinTRAC disclosures are sent to police. Unless police have adequate resources to deal with these leads, nothing will occur. In 2012, the RCMP eliminated its national Proceeds of Crime and Commercial Crime Sections, in favour of a new task force orientation to investigations. Although indications are that the RCMP is now rebuilding its financial crime expertise, the gap in federal policing in this important area between 2012 and 2017, displaced responsibility for ‘white collar’ crime to provincial and municipal police, who generally did not have the resources or expertise to take on these complex files.

## GEOGRAPHIC TARGETING ORDERS

31. Geographic targeting orders may be an asset if a high-risk sector is only high risk in one or more parts of the country. As Canada’s luxury car capital, a geographic targeting order could require the submission of STRs and LCTRs by motor vehicle dealers in Greater Vancouver, but not in other parts of the country. The problem, however, with these orders may be displacement, with local buyers travelling to Alberta and beyond to buy a car. The better avenue may be to provide a higher reporting threshold for these industries, than \$10,000.

## MONEY SERVICE BUSINESSES

32. 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. Licensing is common in the United States.

33. The volatility of the MSB industry has been apparent in the United States with many financial institutions ending their relationship with MSBs as part of a de-risking process to avoid the anti-money laundering hurdles which MSBs can pose.

34. Many MSBs are unregistered and exist as a fixture within the underground economy. They tend to be the modern embodiment of underground banking and serve to move money around the world without the need for actual transmission. In place of electronic transfer, they rely on a settling of accounts at both ends of a transaction, or “app to app” as it is sometimes called.

35. Needless to say, illegal MSBs do not submit LCTs 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”. We know that the largest money laundering / casino file to date in Canada revolves around an illegal MSB.

36. When asked what FinTRAC does when it becomes aware of an unregistered MSBs, we were advised that it is a serious offence under the *POCMLTFA*. Any cases would be reported to the police. In B.C., however, the RCMP has received very few reports of unregistered MSBs. I was 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.”<sup>3</sup>

## **SUMMARY**

37. The Standing Committee’s hearings into the *POCMLTFA* is an important step in the process of enriching the statutory framework within that statute. British Columbia’s perspective on various pressing issues, will allow the Committee to better understand the unique challenges which we face in this Province.

**Respectfully submitted,**

**Peter German, QC, PhD**

---

<sup>3</sup> RCMP memo dated Jan. 30, 2018.