

Commission of Inquiry into Money Laundering in British Columbia

Applications for Standing – Ruling #1

Ruling of the Honourable Austin Cullen, Commissioner, issued 24 September 2019

A. Background

1. This ruling addresses 20 applications for leave to participate in the Commission of Inquiry into Money Laundering in British Columbia (“**Commission**” or “**Inquiry**”) under section 11(4) of the *Public Inquiry Act*, SBC 2007, c. 9 (“**Act**”) brought by the British Columbia Ministry of Finance (“**Ministry of Finance**”); the Gaming Policy Enforcement Branch of the British Columbia Ministry of Attorney General (“**GPEB**”); the Government of Canada (“**Canada**”); the Society of Notaries Public of BC (“**SNPBC**”); the Law Society of British Columbia (“**LSBC**”); the British Columbia Lottery Corporation (“**BCLC**”); Great Canadian Gaming Corporation (“**GCGC**”); Gateway Casinos & Entertainment Limited (“**Gateway**”); Canadian Gaming Association (“**CGA**”); British Columbia Government and Service Employees’ Union (“**BCGEU**”); Robert Kroeker; Ross Alderson; Brad Desmarais; James Lightbody; Fred Pinnock; BMW Canada Inc. and BMW Financial Services, a division of BMW Canada Inc. (collectively, “**BMW**”); British Columbia Civil Liberties Association (“**BCCLA**”); Canadian Bar Association, British Columbia Branch (“**CBABC**”); Criminal Defence Advocacy Society (“**CDAS**”); and a coalition comprising of Transparency International Canada (“**TI Canada**”), Canadians for Tax Fairness (“**C4TF**”) and Publish what you Pay Canada (“**PWYP**”) (collectively, the “**Coalition**”).

2. The mandate of the Commission is broad. Its terms of reference (“**TOR**”) require the Commission to make findings of fact with respect to:

- the extent, growth, evolution and methods of money laundering in British Columbia, with regard to the following economic sectors:

(i) gaming and horse racing;

(ii) real estate;

(iii) financial institution and money service, including unregulated entities and persons who provide banking-like services;

(iv) corporate, in relation to the use of shell companies, trusts, securities and financial instruments for the purposes of money laundering;

(v) luxury goods;

(vi) professional service, including legal and accounting;

- 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.

3. In addition, the Commission has the responsibility to make recommendations to address the conditions that have enabled money laundering to flourish.

4. Within the Commission's mandate is the review and consideration of four reports on money laundering recently received by the Province:

Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia, Peter M. German, Q.C., March 31, 2018 ("**First German Report**");

Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing, Peter M. German, Q.C., March 31, 2019 ("**Second German Report**");

Real Estate Regulatory Structure Review, Dan Perrin, 2018 ("**Perrin Report**"); and

Combatting Money Laundering in BC Real Estate, Maureen Maloney, Tsur Somerville and Brigitte Unger, March 31, 2019 (“**Maloney Report**”).

B. The Relevant Law

5. The Act provides in relevant part:

Who may participate

11 (1) A person may act as a participant if the person

(a) is provided with notice under subsection (2), or

(b) is accepted as a participant under subsection (4).

(2) If a hearing commission intends to make a finding of misconduct against a person, or intends to make a report that alleges misconduct by a person, the hearing commission must first provide the person with

(a) reasonable notice of the allegations against that person, and

(b) notice of how that person may respond to the allegations.

(3) A person other than one described in subsection (2) may apply to be a participant by applying to a commission in the manner and form it requires.

(4) On receiving an application under subsection (3), a commission may accept the applicant as a participant after considering all of the following:

(a) whether, and to what extent, the person's interests may be affected by the findings of the commission;

(b) whether the person's participation would further the conduct of the inquiry;

(c) whether the person's participation would contribute to the fairness of the inquiry.

6. Formal involvement in the Commission’s public hearings is restricted to participants. A participant (other than as described in s. 11(2)) is a person who makes an application for standing and who has satisfied the Commission that they meet the criteria set out in s. 11(4) of the Act.

7. The Commission's rules of procedure have not yet been finalized. Participants will have the opportunity to offer input and provide submissions on the proposed rules of procedure, before they are formally adopted. At this time, it is anticipated that the rules of procedure will provide participants a number of procedural rights (to the extent of their grant of standing). These may include: being self-represented or represented by counsel at the public hearings; making an opening statement; proposing witnesses to be called by commission counsel; applying to participate in the evidentiary hearings; reviewing documents; and making submissions. Participants will also have obligations to the Commission, such as disclosure requirements.

8. Persons who do not receive a grant of standing may become involved in several ways; for example, by submitting written comments to the Commission about any matter relevant to the TOR, participating as a witness, and attending the formal public hearings. Witnesses will be entitled to be represented by counsel when they testify.

9. This is an inquiry, not an adversarial process with traditional parties or litigants. The Commission relies on commission counsel to assist throughout the Inquiry. Commission counsel have the primary role in representing the public interest and ensuring that matters that bear upon the public interest are brought to the Commission's attention.

10. No precedent or single authority exists in this country to determine with precision what constitutes a sufficient interest to require a grant of standing at a commission of inquiry. Professor Ed Ratushny writes: "Obviously, the interest must be measured against the terms of reference, which represent the 'subject matter'." He also notes the "many diverse rulings on standing left by past commissions", and comments: "Beyond all of these approaches is an overarching discretion on the part of a commissioner to grant standing or participation in a variety of ways." (Ed Ratushny, *The Conduct of Public Inquiries: Law, Policy and Practice* (Toronto: Irwin Law Inc., 2009) at pp. 187-191.)

11. To guide the determination of whether an applicant has a sufficient interest in the subject matter of the Inquiry to be granted standing, the applications have been reviewed in the context of certain relevant considerations, including:

- a. the nature and extent of the applicant's rights or interest;
- b. why standing is necessary to protect or advance the applicant's rights or interest;
- c. whether the applicant faces the possibility of adverse comment or criticism with respect to its conduct;
- d. how the applicant intends to participate, and how this approach will assist the Commission in fulfilling its mandate;
- e. whether and how the applicant's participation will contribute to the thoroughness and fairness of the process;
- f. whether the applicant has expertise and experience relevant to the Commission's work;
- g. whether and to what extent the applicant's perspective or interest overlaps or duplicates other applicants'; and
- h. whether the applicant may more appropriately participate in another capacity — for example, as a witness who may testify — instead of being granted formal standing.

12. At this early stage, the Commission has made no finding on whether or how any applicant's rights or interests may be affected by the findings of the Commission. Instead, the Commission relies on the submissions of the applicants to understand whether it is possible that those rights or interests may be affected over the course of the Commission process.

13. As noted above, in this Inquiry, the TOR task the Commission with considering a broad array of issues addressing multiple economic sectors of concern to many agencies, organizations, and members of the public. As a result, it is appropriate, and necessary, for this Commission to hear from a wide range of voices.

14. Consideration of whether the applicants' participation will contribute to the fairness of the process is informed by principles of procedural fairness. Procedural fairness is a basic value underpinning our constitutional order, and the factors affecting the procedural fairness required in a particular context have been developed in administrative law. In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 23-27, the Supreme Court of Canada listed five factors relevant to determining the requirements of procedural fairness in a particular context, specifically:

- the nature of the decision being made and the process followed in making it;
- the nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
- the importance of the decision to the individual or individuals affected;
- the legitimate expectations of the person challenging the decision;
- the choices of procedure made by the agency itself.

15. The *Baker* factors are not exhaustive. See *Baker v. Canada*, at para. 28.

16. In addition to the statutory criteria, the Commission has established rules for standing which refer to s. 11(4) of the *Act* and also include, *inter alia*, the following:

The Commissioner will determine on what terms and in which parts of the inquiry a participant may participate, and the nature and extent of such participation. The Commissioner retains the discretion to vary a participant's participation or rescind standing.

The Commissioner may direct that a number of applicants share in a single grant of standing.

17. These rules ensure that the issues of significant and widespread concern raised by the TOR will receive the consideration they require and that participants, through their experience and expertise, are able to provide appropriate insight into the issues raised. The rules nevertheless recognize that it will not be helpful to the Commission to permit contributions that are duplicative of one another. In this way, the rules ensure the Commission remains in control of its process. Participants must not create an undue burden on the process by, for example, subjecting witnesses to multiple repetitive lines of questioning or raising repetitive arguments.

C. The Applicants

Regulatory Authorities

i. British Columbia Ministry of Finance (“Ministry of Finance”)

18. The Ministry of Finance submits that it plays a central role in the management of the provincial government's fiscal, financial, and taxation policies. It is governed by the provisions of the *Financial Administration Act*, RSBC 1996, c. 138. The Ministry of Finance submits that it holds responsibilities with respect to the real estate, corporate and financial sectors in British Columbia. As a result, it submits, its interests (and those of the regulators who directly report to the Ministry of Finance) may be affected by the Commission's findings of fact and recommendations.

19. As well, the Ministry of Finance submits that a number of recommendations in the German Reports, Perrin Report and Maloney Report affect the regulation of sectors for which the Ministry of Finance has responsibility. It submits that it provided support in preparation of the Maloney Report such that its participation would further the conduct of the Inquiry and enhance the fairness of the Inquiry. The Ministry of Finance has taken and continues to take steps to restructure regulation in the real estate and financial sectors so that its participation would further the conduct of the Inquiry.

20. The Ministry of Finance submits that it has documents and information to provide the Commission in respect of the real estate, corporate and financial sectors in the province.

Conclusion

21. The Commission grants the Ministry of Finance a broad grant of standing in respect of all matters set out in the TOR, in anticipation that the Ministry of Finance's participation will be helpful and important to the Commission in fulfilling its mandate.

22. Given the Ministry of Finance's role, its interests may be affected by the findings of the Commission, and its participation would therefore contribute to the fairness of the Inquiry.

ii. The Gaming Policy Enforcement Branch of the BC Ministry of Attorney General ("GPEB")

23. GPEB is an office of the provincial government, continued under the *Gaming Control Act*, SBC 2002, c. 14. GPEB is responsible for the overall integrity of gaming and horseracing in the province and carries out its activities under the *Gaming Control Act* and *Regulations*, and the *Criminal Code*, RSC 1985, c. C-46. GPEB submits that it has regulatory oversight of the BCLC, gambling services providers and workers, the provincial horse racing industry, and licensed gambling events. It also manages provincial responsible gambling programs.

24. GPEB submits that as the government entity responsible for the overall integrity of gaming and horse racing in the province, its interests are engaged by the Commission's TOR. GPEB submits that its regulatory regime is likely to be both the subject of, and affected by, the Commission's findings of fact and recommendations.

25. GPEB further submits that its role as regulator of gaming and horse racing was referenced in the German Reports, and some recommendations made by Dr. German affect GPEB. It submits that it has taken and continues to take steps to address those recommendations and has information to provide to the Commission in respect of such initiatives.

26. GPEB submits that it has documents and information to provide in respect of regulation of gaming and horse racing in the Province that will enhance the efficiency and fairness of the Commission process.

Conclusion

27. GPEB's participation will likely further the conduct of the Inquiry and contribute to the fairness of the Inquiry.

28. Given GPEB's role as regulator of gaming and horse racing in British Columbia, and its oversight responsibilities, GPEB's interests may be affected by the findings of the Commission and its participation would therefore contribute to the fairness of the Inquiry.

29. It will also further the conduct of the Inquiry and contribute to the fairness of the Inquiry to provide GPEB the opportunity to participate in accordance with the Commission's rules of procedure in respect of the First and Second German Reports, to the extent those reports make recommendations that affect GPEB's interests and/or touch upon GPEB's role.

30. I am prepared to grant standing to GPEB standing with respect to the gaming and horse racing sectors.

iii. The Government of Canada ("Canada")

31. Canada submits that it is supportive of the Commission and seeks participant standing at the Inquiry.

32. Canada submits that three federal agencies may have information relevant to the TOR: the Royal Canadian Mounted Police ("**RCMP**"), the Office of the Superintendent of Financial Institutions ("**OSFI**") and the Financial Transactions and Reports Analysis Centre of Canada ("**FINTRAC**"). Canada submits that each of these agencies has a role in combatting money laundering activities. The RCMP has a law enforcement role in respect of money laundering. OSFI plays a regulatory role by promoting the adoption of policies and procedures designed to reduce the susceptibility of federally regulated

financial institutions to being used to launder the proceeds of crime. FINTRAC plays a financial intelligence gathering and analysis role to help facilitate the detection, prevention and deterrence of money laundering activities.

33. Further, Canada submits that because federal government employees may be asked to testify at the Inquiry, it is likely that their interests and those of Canada in its capacity as their employer will be affected by the findings of the Commission.

34. Through its voluntary participation, Canada submits, it will provide documents that are helpful and relevant and facilitate the attendance of witnesses in a manner consistent with the law.

Conclusion

35. The Commission is heartened that Canada seeks to participate fully in this Inquiry. Canada's application for participation confirms a significant level of support and engagement in the Inquiry process, and I am confident that this participation will meaningfully contribute to the Commission's work. The Commission grants Canada a broad grant of standing in respect of all matters set out in the TOR in anticipation that Canada's participation will be helpful and important to the Commission in fulfilling its mandate.

36. There are at least three federal agencies that may have information relevant to all parts of the TOR. Canada's broad ranging participation will likely further the conduct of the Inquiry and contribute to the fairness of the Inquiry.

37. Given the role played by Canada and its employees in combatting money laundering activities in British Columbia, Canada's interests may be affected by the findings of the Commission and its participation would therefore contribute to the fairness of the Inquiry.

iv. Society of Notaries Public of BC (“SNPBC”)

38. SNPBC submits that it is the statutory regulatory body for non-lawyer Notaries Public in British Columbia. Notaries in BC have professional practices that include real estate transactions.

39. SNPBC submits that its interests may be affected by the findings of the Commission insofar as the TOR direct the Commission to conduct inquiries into real estate transactions, professional services, and the role of regulatory bodies, as these matters are the concern and responsibility of the SNPBC. As well, SNPBC submits that it may have a role to play in implementing recommendations made by the Commission.

Conclusion

40. The participation of the SNPBC is likely to further the conduct of the Inquiry and contribute to the fairness of the Inquiry insofar as the TOR require the Commission to examine the real estate and professional service sectors. SNPBC is granted standing with respect to the real estate and professional service sectors.

v. Law Society of BC (“LSBC”)

41. The LSBC is the statutory regulatory authority for lawyers practicing in BC.

42. It submits that its work and the services that its members provide fall within the scope of the Commission’s TOR. LSBC submits that its interests are engaged by the TOR requirement to examine "the extent, growth, evolution and methods of money laundering" in the professional service sector, including legal services. The Commission will examine the work of regulatory authorities who deal with the professional services sector and make recommendations as required. The LSBC submits that in light of its powers, duties and functions regarding the regulation of lawyers and their services, it is potentially affected by findings of fact made by the Commission and any resulting recommendations. In respect of the LSBC members, they may, in the course of their work, interact with certain other sectors (such as real estate, financial and corporate) listed in the TOR.

43. The LSBC submits that it also brings relevant background, insight and commitment to this issue as reflected in its rules and activities.

44. As well, the LSBC seeks to ensure the duties that lawyers owe their clients, including in respect of solicitor-client privilege are taken into account.

Conclusion

45. The participation of the LSBC is likely to further the conduct of the Inquiry and contribute to the fairness of the Inquiry insofar as the TOR require the Commission to examine the professional service, real estate, financial and corporate sectors.

46. The LSBC may also further the conduct of the Inquiry by ensuring the duties that lawyers owe to their clients, including in respect of solicitor-client privilege are fully and fairly taken into account in any recommendations made. Given that the involvement of lawyers and legal privilege may relate to a variety of topics that will be addressed by the Commission, I consider it appropriate to grant standing to the LSBC on the real estate, financial institution and money service, corporate, luxury goods, and professional service sectors (the last category including legal and accounting as noted in the TOR).

Gaming and Horse Racing Sector

i. British Columbia Lottery Corporation (“BCLC”)

47. BCLC submits that it has an interest in the matters before the Commission. It is a Crown corporation, controlled by the Province, involved in the conduct and management of gaming throughout the Province. BCLC submits that it works closely with regulators and law enforcement to enable statutory and regulatory compliance.

48. BCLC notes that the First and Second German Reports commented upon BCLC’s role with respect to the prevention of money laundering in the gaming and horse racing sector and set out recommendations that relate directly or indirectly to BCLC. BCLC submits that it is working with the Province and other stakeholders to address those recommendations.

49. BCLC submits that it is uniquely positioned to provide information and documents to the Commission in respect of gaming in British Columbia and that its participation would therefore enhance fairness of the Inquiry.

Conclusion

50. BCLC's interests may be affected by the findings of the Commission in respect of the gaming and horse racing sector, its participation on that issue will likely further the conduct of the Inquiry and contribute to the fairness of the Inquiry.

51. BCLC's role in the conduct and management of gaming and horse racing throughout the Province is likely to be the subject of evidence and submissions before the Commission. BCLC's participation in respect of that issue will further the conduct of the Inquiry. BCLC's interests may be affected by findings of the Commission on this issue and its participation would also contribute to the fairness of the Inquiry.

52. It will further the conduct of the Inquiry and contribute to the fairness of the Inquiry to provide BCLC the opportunity to participate in accordance with the Commission's rules of procedure and to address issues arising from the First and Second German Reports to the extent those reports make recommendations that affect BCLC's interests and/or touch upon BCLC's role with respect to prevention of money laundering in the gaming and horse racing sector. I am prepared to grant standing to BCLC with respect to the gaming and horse racing sectors.

ii. Great Canadian Gaming Corporation ("GCGC") and Gateway Casinos & Entertainment Limited ("Gateway")

53. GCGC and Gateway are two of the main gaming service providers in British Columbia. Because of the overlap in some of their interests, I set out a compendious conclusion after discussing their individual proposed contributions.

GCGC

54. GCGC submits that, through its wholly-owned subsidiaries, it operates more than one quarter of the gaming facilities in BC, including two of the largest casinos in the

Province and the only two racetracks in the province that continue to host live horse racing.

55. GCGC submits that its interests may be affected by the findings of the Commission insofar as each of the four lines of inquiry set out in the TOR relate to gaming and horse racing.

56. GCGC submits that the TOR require consideration of the First and Second German Reports. The First German Report refers to an earlier report prepared by MNP that focused on the River Rock Casino, a gaming facility operated by GCGC. The Second German Report includes consideration of GCGC's two racetracks. GCGC submits that it has also been the subject of audits and investigations and that it granted Mr. German access to its facilities and answered his requests for information.

57. GCGC submits that it is possible that it may be the subject of an adverse finding notice under s. 11(2) of the *Public Inquiry Act*.

Gateway

58. Gateway submits that it is one of the three main gaming service providers to BCLC. It operates three of the largest gaming and entertainment facilities in the Lower Mainland and 11 additional gaming sites across metro Vancouver, Vancouver Island and the Okanagan. Outside of British Columbia, Gateway operates facilities in Alberta and Ontario.

59. Gateway submits that the Commission will be required to examine the regulatory environment within which Gateway operates. Gateway submits that its legal and practical interests may be affected by findings of fact and recommendations made by the Commission, which may have a direct impact on the regulation of gaming service providers' operations in British Columbia, and perhaps elsewhere in Canada.

60. Gateway further submits that it has vital information to give the Inquiry and notes that it provided Dr. German complete access to the information and materials required by him for his study of money laundering in the First German Report. Gateway commits

to providing the Commission with the same access to and quality of information that was available to Dr. German and to supplement, explain and contextualize that evidence as necessary to assist the Commission in fulfilling its mandate.

61. Gateway anticipates that its conduct may be the subject of evidence and fact finding at the Commission such that its participation will contribute to the full and fair fulfillment of the Commission's mandate.

62. Gateway says that it has and will continue to work with GPEB and BCLC to implement recommendations arising from the First German Report and is committed to providing the necessary feedback to GPEB and to BCLC about the effect of those recommendations, including through input into the recommendations that may be made by the Commissioner.

Conclusion in respect of GCGC and Gateway

63. GCGC's interests may be affected by the findings of the Commission in respect of the gaming and horse racing sector, its participation on that issue will likely further the conduct of the Inquiry and contribute to the fairness of the Inquiry.

64. GCGC's gaming and horse racing operations are likely to be the subject of evidence and submissions before the Commission. GCGC provides operational services to BCLC which are likely to be the subject of evidence before the Commission. GCGC's interest may be affected by findings on these issues, and its participation on these issues will thus further the conduct of the Inquiry and contribute to the fairness of the Inquiry.

65. It will further the conduct of the Inquiry and contribute to the fairness of the Inquiry to provide GCGC with the opportunity to participate in accordance with the Commission's rules of procedure to address issues arising from the First and Second German Reports, to the extent those reports make recommendations that affect GCGC's interests and/or touch upon GCGC's role with respect to prevention of money laundering in the gaming and horse racing sector. GCGC may also have documentation

and information that will further the conduct of the Inquiry including information that post-dates the German Reports.

66. Gateway's interests may be affected by the findings of the Commission in respect of the gaming sector, its participation will likely further the conduct of the Inquiry, and contribute to the fairness of the Inquiry.

67. Gateway's gaming operations are likely to be the subject of evidence and submissions before the Commission. Gateway's participation will further the conduct of the Inquiry. Gateway's interests may be affected by the findings of the Commission on these issues and its participation would therefore contribute to the fairness of the Inquiry.

68. Like GCGC, Gateway should also be provided the opportunity to participate in accordance with the Commission's rules of procedure to address issues arising from the First and Second German Reports, to the extent those reports make recommendations that affect Gateway's interests and/or touch upon Gateway's role with respect to prevention of money laundering in the gaming sector. Gateway may also have documentation and information that will further the conduct of the Inquiry including information that post-dates the German Reports.

69. The Commission has asked commission counsel to speak with GCGC and Gateway with a view to encouraging coordination between these two organizations. While separate grants of standing are made to each of GCGC and Gateway in light of fairness concerns, to the extent that their interests are aligned, the Commission expects that they will coordinate and conduct themselves through a single counsel. For example, to the extent that these organizations seek and are granted leave to cross-examine witnesses, the Commission expects these participants to operate jointly. If necessary, the Commission will make further rulings in order to ensure there is no unnecessary duplication between these participants. On that basis I grant GCGC and Gateway standing with respect to the gaming and horse racing sectors.

iii. Canadian Gaming Association (“CGA”)

70. The CGA submits that it is the only national gaming industry trade association in Canada. The CGA submits that it is a not-for profit organization that works to advance the evolution of Canada's gaming industry; promote the economic value of gaming in Canada; and use research, innovation and best practices to help the industry advance and to create productive dialogue among stakeholders.

71. The CGA submits that its participation will further the conduct of the Inquiry because it is a primary source of information and expertise on gaming in Canada, providing accurate industry data and assisting in the development of industry-wide programs and approaches for relevant and critical issues. In addition, the CGA's extensive relationships with gaming industry stakeholders, including casino operators, regulators, Crown corporations, elected officials, and host communities, provide the CGA with perspectives that will assist the Commission to further the conduct of the Inquiry.

72. The CGA seeks to participate in the Commission on the basis that the interests of its members and all gaming industry stakeholders will be affected by the findings of the Commission. It submits that its participation will further the conduct of the Inquiry and contribute to the openness, fairness and completeness of the process. As well, the CGA submits that the Commission's recommendations will have implications beyond this Province and it has a vested interest in participating and promoting productive dialogues among all industry stakeholders across the country.

Conclusion

73. The Commission's TOR are focused on British Columbia. Gaming industry stakeholders in this Province either have sought, or could seek, standing in their own right. The CGA has not identified how or why it is better positioned to represent the interests of those parties than they themselves can.

74. Nevertheless, to the extent that these parties have not elected to apply for standing, CGA may fill that gap. CGA's participation will also likely further the conduct of

the Inquiry to the extent that it can assist the Commission to acquire and understand industry data, programs, approaches and best practices in the gaming industry that exist in provinces outside of British Columbia.

75. I am prepared to grant CGA standing on the gaming and horse racing sectors, provided that CGA must ensure its contribution is not duplicative of GPEB, BCLC, GCGC and Gateway. To the extent CGA's interests are aligned with other organizations that have been granted standing at the Inquiry, it must work together with those participants to avoid duplication.

Current and Former Employees in Relevant Sectors

i. B.C. Government and Service Employees' Union ("BCGEU")

76. The BCGEU submits that it represents over 79,000 members across British Columbia who work in every sector of the economy, including sectors engaged by the TOR such as workers in the financial services industry, workers in direct government (e.g. Attorney General and Ministry of Municipal Affairs and Housing) and workers in the casino sector.

77. The BCGEU submits that the interests and collective bargaining rights of its members working in these sectors may be affected by the findings of the Commission that may impact policy, process and conduct of such workers.

78. The BCGEU submits that it will further the conduct of the Inquiry by assisting the Commission in reaching front-line workers in these sectors who will provide information about what they have witnessed in their worksites, what concerns they have attempted to raise, and how those concerns were ultimately handled by their employers. This testimony, the BCGEU submits, will inform the Commission as to what sorts of legislative and regulatory changes would give workers the tools and supports they need to be an effective line of defence against illegal activity in their worksites.

Conclusion

79. The participation of the BCGEU is likely to further the conduct of the Inquiry in respect of the experience of workers in the financial services, regulatory and gaming sectors and by assisting in the formulation of recommendations informed by the interests of these workers. Given the potential that BCGEU members are engaged in numerous sectors, I am prepared to grant standing on these topics: gaming and horse racing; real estate; financial institutions and money services; the corporate sector; luxury goods; and professional services.

ii. Robert Kroeker

80. From September 8, 2015 to July 2, 2019, Mr. Kroeker was Chief Compliance Officer & Vice President (Legal, Compliance, Security) at BCLC. In this capacity, Mr. Kroeker oversaw and monitored compliance including money laundering in BC's casinos. He directed BCLC's compliance department and worked alongside provincial and federal regulatory agencies, other Crown agencies, provincial and municipal governments, as well as private sector service providers.

81. From November 2012 to September 2015, Mr. Kroeker was Vice President in charge of compliance and regulatory affairs at GCGC. He was also the Chief Privacy Officer and Compliance Officer designated by GCGC's Board, overseeing compliance with statutory and regulatory requirements including criminal law, gaming laws, anti-money laundering (“**AML**”) laws, and privacy laws. Mr. Kroeker oversaw, monitored and directed corporate operations in relation to legal, regulatory, risk management, privacy and security matters, and in this capacity also had relationships with Crown agencies, provincial and federal regulatory agencies, and provincial and municipal governments.

82. In 2011, while employed by BC's Ministry of Justice as Executive Director of the Civil Forfeiture Office, Mr. Kroeker was tasked by the Province with a review of AML and other gaming integrity strategies and policies in place at gaming facilities across the province. He produced a summary report which was the subject of study and comments by Dr. German in the First German Report. Mr. Kroeker submits that there are errors

and inaccuracies in the German Reports that must be addressed and corrected and that he has information and knowledge to provide in respect of that issue.

83. Mr. Kroeker submits that he has been the subject of reproaches and complaints in the media and has information to provide in response including some that contradicts assertions made.

Conclusion

84. Mr. Kroeker's legal, reputational and privacy interests may be affected by the findings of the Commission in respect of his acts and omissions in the gaming and horse racing industry between 2012-2019 and in respect of the scope and effectiveness of the AML powers, duties and functions at his disposal, his participation will further the conduct of the Inquiry and contribute to the fairness of the Inquiry on those topics.

85. Further, given Mr. Kroeker's preparation of a report that was the subject of study and comment by Dr. German in the German Reports, his participation on the topics referred to just above would likely further the conduct of the Inquiry and contribute to the fairness of the Inquiry. I grant standing to Mr. Kroeker on the gaming and horse racing sector.

86. Mr. Kroeker must ensure that his contribution does not duplicate that of other participants, including BCLC, and GCGC. Mr. Kroeker's status as a participant is limited to matters involving consideration of his personal conduct and with respect to which his position diverges from those of BCLC and GCGC.

iii. Ross Alderson, Brad Desmarais, James Lightbody, Fred Pinnock

87. The Commission has received individual applications from each of Messrs. Alderson, Desmarais, Lightbody and Pinnock. Those applications are described in greater detail below. On the basis of the written materials submitted, it is not yet apparent that these individuals meet the test for participant standing. Each purports to have evidence that may be of interest to the Commission and an interest in being represented by counsel. Both of those concerns may be addressed by being presented

as a witness (or interviewed by the Commission), rather than being granted standing as a participant, at the Inquiry.

88. The Commission has concluded that an oral hearing is required to further consider the applications of Messrs. Alderson, Desmarais, Lightbody and Pinnock. Commission counsel will be in touch with each of these applicants to discuss the matters that may be addressed at the hearing.

Mr. Alderson

89. It is unclear from Mr. Alderson's materials the nature and extent of participation he seeks at this Inquiry. However, Mr. Alderson has requested a meeting with the Commission to discuss his proposed participation. Commission counsel will meet with Mr. Alderson to that end.

90. Mr. Alderson submits that he worked in the gaming industry from 2008-2017 as a former employee of BCLC. Mr. Alderson submits that he was an investigator stationed at River Rock Casino from 2011-2012. His last role was as the Director for AML and Investigations. In this role he submits he was responsible for overseeing and directing BCLC's Investigative, AML and Intelligence departments and was the law enforcement liaison.

91. Mr. Alderson submits that it was his conversation with Inspector Cal Chrustie of Federal Serious and Organized Crime in 2015 regarding a particular investigation that prompted an industry change, although he does not say what that change was. He submits that he also authored a number of reports and directives regarding the casino industry, many of which have now been made public through freedom of information requests.

92. Mr. Alderson submits that in 2019 he has spoken publicly on the issue of money laundering in gaming in the media. He submits that he has additional evidence to give and would like to deliver sensitive documents and information to the Commission.

Brad Desmarais

93. Mr. Desmarais is currently the Vice President of Casino and Community Gaming and the interim Vice President of Legal Compliance and Security of BCLC. He has held other positions at BCLC since February 2013.

94. Prior to joining BCLC, he had 34 years policing experience with the Vancouver Police Department and RCMP.

95. Mr. Desmarais submits that he has been responsible for many major money laundering and organized crime investigations, has been qualified as an expert in related matters by the court, and has also taught on related subjects. He submits that he has considerable expertise in money laundering investigations and has played a significant role in the regulation of gaming and casinos for several years.

96. Mr. Desmarais submits that he can assist the Commission with:

- a. evidence of the growth, evaluation, and methods of money laundering generally;
- b. the barriers to effective law enforcement respecting money laundering in BC; and
- c. the acts or omissions of regulatory authorities or individuals and the police with powers and duties respecting gaming and casinos.

97. Mr. Desmarais submits that he has a personal interest in the mandate of the Commission to determine whether the acts or omissions of regulatory authorities or individuals have amounted to corruption, and whether any information gathered in the Inquiry may be useful in an investigation or prosecution of an offence.

James Lightbody

98. Mr. Lightbody is the President and CEO of BCLC. BCLC's daily operations are run by Mr. Lightbody, who reports to the BCLC Board.

99. Mr. Lightbody submits that as the President and CEO of BCLC, he is an individual with powers, duties or functions in respect of the sectors under review by the Commission. Pursuant to its TOR, the Commission has the power to determine whether acts or omissions of individual with powers, duties or functions in respect of the sectors under review by the Commission have contributed to money laundering in British Columbia, and whether those acts or omissions have amounted to corruption. Additionally, the Commission may make findings and recommendations respecting the scope and effectiveness of the powers, duties and functions exercised or carried out by individuals such as Mr. Lightbody.

100. Thus, Mr. Lightbody submits that his personal interests may be affected by findings of the Commission. Mr. Lightbody submits that he may assist the Commission in regards to his knowledge of BCLC's operations and its AML efforts. He further submits that he is owed procedural fairness by the Commission in light of the possibility that the Commission may make findings of fact and recommendations with respect to the exercise of his powers, duties and functions as President and CEO of BCLC, including whether his acts or omissions may have contributed to money laundering. He says that because his privacy interests, legal interests, and reputational interests are engaged, because there is no right of appeal or review of the Commission's findings, and as he holds the legitimate expectation that the Commission will be conducted in a fair manner, a high degree of fairness is required.

Fred Pinnock

101. Mr. Pinnock was the RCMP Unit Commander of the Integrated Illegal Gaming Enforcement Team (IIGET) for British Columbia from September 2005 until 2008, the year of his retirement.

102. He submits that in this role, he made certain observations that led him to conclude that the public was being misled as to the nature and degree of money laundering and other criminal activity taking place in the casinos.

103. Between 2006 and 2019, Mr. Pinnock made a number of public statements in the media and online which reflected his concerns that legal gaming facilities within British Columbia were havens for organized criminal activity. He further emphasized that this criminal activity could not have achieved the levels it had without government and law enforcement agencies engaging in wilful blindness and worse.

104. Mr. Pinnock is concerned that the acts or omissions of individuals he and his colleagues observed allowed criminal organizations to flourish in British Columbia and beyond, contributing to the opioid crisis and untold numbers of overdose deaths in recent years.

105. In September 2018, Mr. Pinnock submits that he provided detailed evidence to counsel for the Attorney General of British Columbia in an interview and named a number of individuals who he concluded were connected in various ways with money laundering taking place in legal gaming venues. Mr. Pinnock believes that the conduct of some of these people constituted corruption and/or gross indifference regarding matters before the Commission.

Luxury Goods and Financial Institutions

i. BMW Canada Inc. and BMW Financial Services, a division of BMW Canada Inc. (collectively, “BMW”)

106. BMW Canada Inc. is the Canadian subsidiary of BMW AG, a German multinational company that manufactures and sells luxury vehicles and mobility services. BMW's vehicles are marketed under three brands: BMW (both automobiles and motorcycles), MINI, and Rolls-Royce. BMW sells its vehicles in British Columbia through authorized retailers. BMW submits that BMW vehicles are also heavily traded on the Canadian used car market by both authorized and unauthorized dealers. BMW Financial Services provides financial services, such as leasing and financing of vehicles, and sales of related financial services products.

107. BMW submits that it has a substantial and direct interest in any findings of fact or recommendations made in relation to luxury goods and financial services which have potential to impact numerous aspects of BMW's core business.

108. With respect to luxury goods, BMW notes that the Second German Report reviewed the luxury vehicle market and its use in money laundering. BMW submits that the findings and comments in the Second German Report may influence the conduct of the Inquiry. BMW submits that it has a substantial interest in any findings and recommendations made in relation to any of the areas of inquiry addressed in the Second German Report. Additionally, BMW says it has vital information to present to the Commission relating to the unlawful export of its vehicles, the use of straw buyers and nominees to affect those exports, and BMW's various attempts to combat those exports.

109. With respect to financial services, BMW submits that it regularly finances the purchase of its vehicles through its own financial services operation. That operation is currently unregulated. Given that the TOR direct the Commission to address unregulated entities that provide banking-like services, the Commission's exploration of this subject may directly impact BMW's interests. BMW submits that it is likely that the financing of those sales will be a matter of evidence at the Commission.

110. Any recommendations made by the Commission in respect of the regulation of luxury goods and financial services and respecting acts and omissions of regulatory authorities or other individuals and the barriers to effective law enforcement, BMW submits, may result in BMW being required to modify its practices.

Conclusion

111. BMW's interests may be affected by the findings of the Commission in respect of the luxury goods and financial and money service sectors. Its participation will likely further the conduct of the Inquiry on those topics and contribute to the fairness of the Inquiry on those topics.

112. BMW has evidence to provide relating to the unlawful export of its vehicles, the use of straw buyers and nominees to conduct those exports, and BMW's various attempts to combat those exports. BMW's participation in accordance with the rules of procedure adopted by the Commission will further the conduct of the Inquiry and contribute to the fairness of the Inquiry on those issues.

113. BMW's participation in addressing the findings in the Second German Report would likely contribute to the fairness of the Inquiry.

114. Finally, BMW has evidence to give about the unregulated financial services operations that form part of its business. BMW's participation in accordance with the rules of procedure adopted by the Commission on these issues may further the conduct of the Inquiry and inform recommendations made by the Commission. BMW is granted participant status with respect to the luxury goods and financial and money service sectors.

115. At this time BMW is the only luxury vehicle manufacturer, seller and financier who has applied for standing as a participant at this Inquiry. If additional luxury vehicle manufacturers, sellers and financiers apply to participate at a later date, it may be advisable that they do so as a single participant with BMW.

Non-profit Groups

i. British Columbia Civil Liberties Association ("BCCLA")

116. The BCCLA is a non-profit, non-partisan, unaffiliated advocacy group with a mandate to defend, maintain, and extend civil liberties in Canada including the impact of investigative and enforcement mechanisms on privacy, police accountability, access to justice, and due process, including the presumption of innocence.

117. The BCCLA seeks to contribute a rights-centered perspective to the work of the Commission, especially as it considers recommendations regarding effective criminal justice and regulatory responses.

118. The BCCLA submits that it has a history of critiquing the expansion of government's ability to obtain sensitive information without a warrant or judicial process. The BCCLA submits that it has spoken out against regulatory measures that restrict rights and freedoms. For example, the BCCLA submits it has been an outspoken opponent of civil asset forfeiture laws, including by intervening in a number of cases and has highlighted the incentives the legislation creates for government abuse and the barriers ordinary people face with respect to effectively representing themselves in such cases. Recently, the BCCLA submits, it publicly announced its opposition to the use of unexplained wealth orders and their negative impact on the presumption of innocence and the right to be free against unreasonable search and seizure. As well, the BCCLA submits it has experience making submissions to government regarding policies and legislation that negatively impact privacy and due process rights including, for example, regarding FINTRAC. The BCCLA focused its submission on the over-collection and retention of personal information and advocated for a review of FINTRAC's efficacy in combatting money laundering and terrorist financing.

Conclusion

119. The Commission is satisfied that the BCCLA should have a broad grant of standing. The participation of the BCCLA is likely to further the conduct of the Inquiry on all matters raised in the TOR as those matters raise policies concerning criminal and administrative responses to money laundering many if not all of which may impact civil liberties.

ii. Canadian Bar Association, British Columbia Branch (“CBABC”) and the Criminal Defence Advocacy Society (“CDAS”)

120. As there is considerable overlap between the proposed contributions of the CBABC and CDAS, I set out a compendious conclusion after discussing each of their proposed contributions.

CBABC

121. The CBABC is a branch of the Canadian Bar Association, the national member organization representing the interests of over 36,000 members of the legal profession in Canada with a particular mandate to improve and promote the administration of justice in Canada. The CBABC, representing 7,200 members, advances this mission in British Columbia. It submits that its function is to speak for and represent the interests of the legal profession itself.

122. The CBABC submits that the findings of fact and recommendations of the Commission will, to the extent that they affect the work of lawyers or the lawyer/client relationship, have a direct impact on lawyers who are the front line of the client relationship and service. The CBABC submits that lawyers carry the responsibility of preserving the foundational principles of the lawyer-client relationship including the independence of the legal profession, solicitor-client privilege and the duty of confidentiality.

123. The CBABC submits that it has a history of action on issues relating to money laundering. Specifically, it has acted to improve and promote the law, the administration of justice, and access to justice including the right of all persons to contact, retain and instruct counsel, and the preservation of the independence of the judiciary and the legal profession. The CBABC submits that it has participated in consultation, review and discussion with federal government and law societies in respect of AML legislation since 1998. The CBABC intervened in two previous constitutional challenges to federal AML legislation.

CDAS

124. CDAS is engaged in advocacy, law reform and education in matters relating to criminal defence work in the justice system. The work of CDAS is focused upon the importance of the rule of law, the independence of the bar, and the constitutional rights of accused individuals.

125. CDAS submits that the work of the Commission raises important legal principles and practice issues that will affect both members of the bar and the private citizens that CDAS members typically serve.

126. CDAS seeks to contribute to the Commission's evaluation of traditional measures designed to combat money laundering including criminal investigation and enforcement techniques, criminal prosecutions, regulatory prosecutions, forfeiture mechanisms found within the *Criminal Code*, civil forfeiture proceedings and legislative reporting requirements.

127. As well, CDAS seeks to highlight what it submits are dangers associated with some suggested innovations for targeting money laundering, such as unexplained wealth orders. Such measures, CDAS submits, implicate the privacy rights of private citizens and may circumvent or contravene the presumption of innocence.

128. CDAS is also concerned that members of the bar may be encumbered with overreaching financial reporting and transparency requirements that threaten privacy rights, interfere with the solicitor-client communications, and diminish the independence of the bar.

Conclusion in Respect of the CBABC and CDAS

129. The participation of the CBABC is likely to further the conduct of the Inquiry insofar as the TOR require the Commission to examine legal professional services. The CBABC may assist the Commission to ensure the foundational principles of the lawyer-client relationship including the independence of the legal profession, solicitor-client privilege and the duty of confidentiality are fully and fairly taken into account in any recommendations made.

130. The participation of CDAS is likely to further the conduct of the Inquiry insofar as the Commission examines policies concerning criminal and administrative responses to money laundering that may impact lawyers and the solicitor-client relationship.

131. The interests and proposed contributions of the CBABC and CDAS align to such an extent that it is appropriate to direct that they share in a single grant of standing. In so directing, the Commission is mindful that it may come to pass that a particular issue compels one joint participant to seek to participate differently on that topic, whether by way of separate submissions or otherwise; if this occurs a joint participant may apply for directions.

132. Given the relevance of the perspective that CBABC and CDAS will provide, to the issues identified in the TOR, I will make a broad grant of standing, in the expectation that these participants will not address specific topics of little or no importance to their membership.

133. CBABC and CDAS must not duplicate the contributions of the LSBC and the BCCLA.

iii. Transparency International Canada (“TI Canada”), Canadians for Tax Fairness (“C4TF”) and Publish what you Pay Canada (“PWYP”) (collectively, the “Coalition”)

134. TI Canada is the Canadian chapter of Transparency International. It advocates for legal and policy reform on issues such as whistleblower protection, public procurement, and corporate disclosure. It designs tools for Canadian businesses and institutions to manage corruption risks and serves as an anti-corruption resources for organizations across Canada.

135. C4TF is a non-profit organization that advocates for the development and implementation of a tax system, based on ability to pay, to fund the comprehensive, high-quality network of public services and programs required to meet social, economic and environmental needs.

136. PWYP Canada is part of the global Publish What You Pay movement of civil society organizations working to make oil, gas and mineral governance open, accountable, sustainable, equitable and responsive to all people. Launched in 2008, PWYP-Canada today numbers 15 members and realizes its work through advocacy,

research and public outreach to promote and achieve enhanced disclosure of information about extractive industry operations, with an emphasis on revenues and contracts.

137. The Coalition submits that it has a history of research and advocacy on issues relevant to the Commission's mandate including research and related reports in respect of transparency in beneficial ownership, including in real estate, companies and trusts. The Coalition submits that it has further provided testimony and submissions to federal and provincial hearings in respect of related issues.

138. The Coalition submits that it has expertise in respect of AML and beneficial ownership and could provide a national and international view of the problem, the gaps in British Columbia and Canada's legislation, and solutions.

Conclusion

139. The participation of the Coalition in the real estate and corporate sectors is likely to further the conduct of the Inquiry. I am prepared to grant standing to the Coalition on the real estate, financial institution and money service, and corporate sectors.

D. Additional Terms of Participation

140. Those applicants who have been granted participant standing will be subject to the rules of procedure adopted by the Commission. As noted above, it is anticipated that those rules will address, among other things, disclosure and access to documents; participation in evidentiary hearings; identification and attendance of witnesses; opening statements; and closing submissions.

141. The participants must avoid duplication of the contributions of other participants to the Inquiry.

Commissioner Austin Cullen