



December 13, 2019

Sent via mail/email

Brock Martland, QC
Senior Commission Counsel
Cullen Commission of Inquiry into Money Laundering in BC
PO Box 10073 601 – 700 West Georgia Street
Vancouver, BC V7Y 1B6

Donald J. Avison
Executive Director/Chief Executive Officer

Dear Mr. Martland:

Re: Law Society of British Columbia Views and Activities re: Prior Reports

I write further to your letter dated November 7, 2019, in which you invited each participant to share its views on, and responses to, the prior reports identified in the Cullen Commission's terms of reference. The Law Society of British Columbia (the "**Law Society**") appreciates this opportunity to share with you our efforts to combat money laundering, and intends to continue providing further information on the activities discussed below as the Commission proceeds.

Our analysis of the prior reports has identified that findings and recommendations relevant to the Law Society's work fall within several broad themes:

1. The Law Society's Mandate;
2. Education;
3. Recognizing and Addressing Risks;
4. Collaboration with Other Agencies;
5. Information Access and Sharing; and
6. Standards and Accountability.

We discuss the findings and recommendations within these themes below. Although this letter focuses on the recommendations that pertain specifically to the Law Society, it is evident that in working to combat money laundering, the Law Society shares a common purpose with government, law enforcement and other

professional regulators. We are committed to working collaboratively with these other agencies and groups as our anti-money laundering efforts continue.

1. The Law Society's Mandate

The Law Society's object and duty is to uphold and protect the public interest in the administration of justice. This mandate has been confirmed by the Provincial legislature through its enactment of the *Legal Profession Act*. Given the importance of anti-money laundering, Professor Maloney has recommended that the provincial government specifically add anti-money laundering to the mandates of relevant BC regulators. However, in regulating the legal profession and carrying out our obligation to protect the public interest, we already consider anti-money laundering to be part of the Law Society's mandate.

The Law Society recognizes the vital role that we must play in light of the Supreme Court of Canada's decision in *Canada (Attorney General) v. Federation of Law Societies of Canada* (2015 SCC 7). In the *Federation* case, the Supreme Court of Canada recognized, as a principle of fundamental justice, that the state cannot impose duties on lawyers that undermines their duty of commitment to their clients' causes. The Court also recognized that such duty of commitment is essential to maintaining confidence in the integrity of the administration of justice, and that there is overwhelming evidence of the fundamental importance in democratic states of protection against state interference with a lawyer's commitment to their client's cause. The necessary restrictions against the state, however, do not apply in the same way to the Law Society and we recognize that this means our work must fill a role that government cannot. The Law Society's ability to audit and investigate a lawyer's conduct is not restricted by claims of client confidences or privilege, and lawyers must comply with Law Society requirements or face serious discipline, which may include suspension or disbarment.

As the professional regulator of lawyers in the province, our obligation is to ensure that lawyers do not facilitate money laundering or any other illegal activities. We take this responsibility seriously, and conduct investigations where there is evidence to substantiate a concern that a lawyer may have engaged in misconduct regarding money laundering. The expected standards of conduct for lawyers include not assisting or encouraging any dishonesty, crime or fraud, and obligate lawyers to make reasonable inquiries where there are suspicious circumstances.

In proceeding with our work, we are encouraged by Dr. German's description of the Law Society as a "best practice among Canadian law societies with respect to AML initiatives" and appreciate his recognition that the Law Society "takes the issue seriously and is willing to work on solutions." We have been, and will remain, committed to doing our part to address this important area of concern.

2. Education

The work of Dr. German, Professor Maloney, and Mr. Perrin, has rightfully elevated public awareness of money laundering risks in British Columbia. The resultant increase in education and attention has served all of us who welcome public support in combatting this difficult issue. Education in many ways sits at the foundation of the Law Society's anti-money laundering efforts: lawyers need to understand how to identify money laundering typologies and red flags, and to understand their trust account obligations in order to guard against being used to facilitate this activity.

Dr. German recommended that Law Society auditors and investigators be required to obtain anti-money laundering training, possibly including a form of certification. We recognize that education about money laundering necessarily begins at "home" and agree that Law Society staff must be educated about money laundering to ensure that our regulatory actions identify and respond to potential signs of money laundering and that appropriate prevention strategies are established. We have actively educated our staff on money laundering issues for some time through a combination of internal training, attendance at workshops and seminars, and formal training and certification. Currently, six accountants engaged in trust account regulation have obtained certification from the Association of Certified Anti-Money Laundering Specialists ("ACAMS"), with 14 more auditors and forensic accountants expected to achieve this certification by Spring 2020. Similarly, our investigations group includes five lawyers currently engaged in training towards the ACAMS certification.

The Law Society is also committed to taking a proactive approach to regulation, including educating the legal profession to prevent lawyer misconduct. A key focus of our educational efforts is ensuring that lawyers are aware of money laundering risks associated with the legal services they provide and the expectations they must meet in respect of their anti-money laundering obligations. Our publications and presentations to educate lawyers cover a broad range of anti-money laundering-related topics. In his report, Dr. German specifically recommended that lawyers be made aware of sanctions legislation and requirements related to politically exposed persons in the exercise of their due diligence and client verification activities. These subjects have arisen in several of our prior publications, and were re-canvassed in the practice advice column of the Law Society's Summer 2019 Benchers' Bulletin.

We remain committed to educating lawyers on their risks and responsibilities regarding money laundering, and look forward to providing the Commission with significantly more information about our educational initiatives in due course.

3. Recognizing and Addressing Risks

We recognize that the inclusion of professional services, including legal services, as a sector for examination by the Cullen Commission is a reflection of the growing concern among British

Columbians that lawyers may be, knowingly or unknowingly, involved in money laundering activities. Dr. German found that lawyers may be at risk of being targeted by money launderers, in part due to their roles in the formation of corporations and trusts, in dealing with real estate transactions, and in operating trust accounts. Our responsibility as a professional regulator is to recognize the inherent risks that the legal profession faces, and to address those risks in a proactive manner. We do so through the enforcement of ethical conduct rules, the implementation of enhanced rules to address emerging risks, the conduct of compliance audits and investigations, and the education of lawyers.

Dr. German discussed three particular areas of risk faced by lawyers: (1) the completion of real estate transactions where funds may be deposited into trust from foreign jurisdictions; (2) the use of a trust account for purposes unrelated to the provision of legal services; (3) and the receipt of cash for the payment of bail or legal fees and expenses. The Law Society recognizes these areas of risk and is working to address them as follows:

- 1) The Law Society has worked closely with the Federation of Law Societies of Canada to develop model rules that require lawyers to obtain and record the source of money received from their clients. Such rules were recently adopted in British Columbia and will come into effect on January 1, 2020. As a result, BC lawyers will be required to obtain and record source of money information for all clients whenever there is a financial transaction – a requirement that extends beyond the scope of real estate and the deposit of funds from foreign jurisdictions as identified by Dr. German. It should be noted that the new rules enhance existing due diligence and information requirements already in place.
- 2) With regard to concerns about the potential use of a lawyer’s trust account in the absence of legal services, the Law Society imposes significant restrictions against the improper use of trust accounts. The Law Society Rules explicitly state that lawyers must not accept funds into trust unless such funds are directly related to the legal services being provided. We also require lawyers to identify suspicious circumstances and, in such cases, to not permit the use of their trust accounts unless those suspicions have been addressed through reasonable inquiries. Failure to abide by these obligations is taken seriously and, if proven, will result in disciplinary action. The Law Society is currently engaged in a number of disciplinary proceedings on this subject, following the issuance of several citations against lawyers alleged to have missed or ignored “red flags” regarding funds deposited into trust. We have also broadly disseminated the hearing panel decision in *LSBC v. Gurney* (2017 LSBC 15), to caution and educate lawyers on the repercussions they may face for failing to meet their obligations as gatekeepers of their trust accounts.
- 3) With regard to concerns about a lawyer’s receipt of cash for the payment of professional fees, disbursements or expenses in connection with the provision of legal services, we recognize that large cash payments, whether for the payment of fees or for any other type

of transaction, may give rise to suspicious circumstances. As noted above, where there are suspicious circumstances, the Law Society expects lawyers to make reasonable inquiries, and under no circumstance is a lawyer permitted to engage in any conduct that the lawyer knows, or ought to know, assists in any crime, dishonesty or fraud, including money laundering.

The Law Society's efforts to address the risks of money laundering are further supported by our audit and investigation activities. The *Legal Profession Act* and the Law Society Rules provide us with significant audit and investigative powers. We require lawyers to respond to our requests for information, to disclose client files, banking records and other materials. We may order a person to answer questions under oath or affirmation, conduct a forensic audit of a lawyer's practice, or seek an interim order imposing a suspension, restrictions or other conditions on a lawyer where it is reasonable to believe the public is at risk. Lawyers must provide client files and information to us, regardless of any objection or claim of privilege from their client. Failure to comply with our requests may result in the suspension of a lawyer's ability to practice law.

We look forward to providing further information to the Commission regarding the Law Society's powers, duties and functions in recognizing and addressing the risks of money laundering as the Commission's process continues.

4. Collaboration with Other Agencies

The Commission's terms of reference make clear that concerns about money laundering pervade a broad cross-section of British Columbia. As such, we recognize that appropriate collaboration among professional regulators, government agencies, and law enforcement is essential to effectively combating money laundering.

Professor Maloney recommended that the BC Ministry of Finance create institutional coordination mechanisms among the financial investigation unit and various federal and provincial regulators and other agencies involved in the regulatory/anti-money laundering system. The Law Society is supportive of such institutional coordination mechanisms and has actively engaged with numerous other agencies and groups to foster a collaborative approach to anti-money laundering efforts. For example, the Law Society is participating in a new working group announced in June 2019 by the Hon. Bill Morneau, Minister of Finance, and the Hon. Bill Blair, Minister of Border Security and Organized Crime Reduction, with the Federation of Law Societies of Canada. This working group is tasked with exploring issues related to money laundering and terrorist financing that may arise in the practice of law and to strengthen information sharing between the regulators of the legal profession and the Government of Canada. We are joined at the working group by representatives of the Departments of Finance and Justice, FINTRAC, other federal agencies and the law societies of Newfoundland and Labrador, Ontario and Quebec. This working group has also benefited from participation by the RCMP.

As another example, the Law Society is a participant in the RCMP's "Project Athena" which is a national level public-private initiative led by the RCMP National Headquarters and the Combined Forces Special Enforcement Unit (BC). This partnership was initially aimed at greater information sharing between public and private stakeholders tasked with combatting money laundering in BC casinos, but has now evolved to a national level partnership with a broader scope that includes real estate, high value goods and luxury vehicles. The Law Society is joined in this initiative by all major banks and credit unions in Canada, FINTRAC, the CRA, the RCMP and others.

A common theme arising from discussions of inter-agency collaboration is the appropriate role that each organization should fill and how those roles should fit together. Dr. German and Professor Maloney both recognized that the roles that different agencies play in the collective fight against money laundering are not and should not be uniform. As Dr. German observed, "law societies are not police forces and should not become police forces." Similarly, Professor Maloney identified that "coordination mechanisms should adopt the principle that investigations be referred to the agency best able to apply its own proprietary information and investigative powers to the case." We agree that careful consideration is required to ensure that inter-agency collaboration is advanced in a manner that appropriately reflects the distinct powers, expertise and jurisdiction of each party involved. The Law Society regulates the legal profession, and we agree that we are not, and cannot be, a police force. We agree with Dr. German's observation that law enforcement bodies are the appropriate agency for pursuing investigations of criminal conduct by anyone, including lawyers. We also encourage the public, law enforcement and other agencies to report any concerns that they may have about a lawyer's conduct to us for investigation.

The Law Society looks forward to providing the Commission with further information regarding our ongoing efforts to collaborate with government, other professional regulators and law enforcement as the Commission's process continues.

5. Information Access and Sharing

As Commissioner Cullen observed in his introductory statement, money laundering is secretive in nature. We recognize that money laundering by its nature occurs in the shadows and that in order to cast light on this activity, information access and the appropriate sharing of information is critical. Several findings and recommendations in the prior reports speak of the need to ensure adequate access to and sharing of information. These recommendations touch upon the Law Society's work in two ways: the Law Society's ability to obtain information held by other agencies and, where appropriate, the sharing of Law Society information with law enforcement.

With regard to the Law Society's ability to obtain relevant information from other agencies, we encourage other entities, including government and law enforcement, to refer concerns about lawyers to us for investigation. We are required to investigate any information that we receive indicating that a lawyer may have engaged in professional misconduct or other discipline violation.

Professor Maloney specifically recommended that the BC government implement the principle of a data-sharing framework that provides each anti-money laundering agency with access to public-domain data, including land data. Professor Maloney also recommended that the government ensure the best use is made of government data while respecting privacy and confidentiality principles. The Law Society supports efforts to develop such a data-sharing framework, and we have been a strong supporter of making public-domain data, including land data, and beneficial ownership information more transparently available. In discussions with the Land Title Survey Authority of British Columbia, we have offered assistance from our staff to inform the development of appropriate system design and architecture that considers the analytical and investigation requirements of professional regulators such as the Law Society.

Dr. German and Professor Maloney both suggested that the Law Society be authorized to receive information, such as copies of suspicious transaction reports, from FINTRAC for use in the Law Society's audits and investigations. The Law Society would welcome receiving information that relates to matters under investigation or that indicates potential lawyer misconduct. As noted above, we are participating in a joint working group with the Ministry of Finance and the Federation of Law Societies of Canada, and one of the mandates of this working group is to explore information sharing among FINTRAC, law enforcement and the law societies. Careful consideration is required in developing a process that will be timely, targeted and effective and that will not undermine any investigation by a law enforcement agency.

With regard to the Law Society's ability to provide relevant information to other agencies and law enforcement, we recognize that there is considerable interest in mechanisms for information sharing that appropriately take into account the constitutionally mandated restrictions against disclosure by lawyers of client confidences and privilege.

For example, Dr. German expressed concerns regarding the visibility of lawyers' trust accounts to law enforcement, characterising trust accounts as "black holes". We respectfully disagree with this characterisation as protocols have been developed among the Law Society, law enforcement, Crown Counsel and the courts that deal with the search of a law office, and which may allow law enforcement access to information while properly addressing solicitor-client privilege. The Law Society's collaboration efforts include making law enforcement agencies aware of the protocols established for them to seek access to information.

The Law Society Rules permit us to deliver information that may disclose a criminal offence to law enforcement agencies, with the approval of the Discipline Committee and in a manner that respects solicitor-client privilege. During an investigation, we also encourage complainants and witnesses to directly report their concerns about criminality (including on the part of a lawyer) to law enforcement.

6. Standards and Accountability

We acknowledge that British Columbians expect members of the legal profession to be held to high standards of conduct. A core function of the Law Society is to investigate concerns about lawyer conduct and to impose appropriate disciplinary sanctions. In turn, we recognize that the Law Society's regulation of the legal profession must also be conducted in a manner that achieves appropriate standards and that reflects our mandate of upholding the public interest.

National Discipline Standards have been established by the Federation of Law Societies of Canada to ensure that the work of law societies across the country, including the Law Society of British Columbia, is held to high expectations regarding the handling of investigations and disciplinary actions in a prompt, fair and open manner. The Law Society consistently meets or exceeds most of the National Discipline Standards, and we have publicly reported these outcomes through the Law Society's Annual Report and through detailed implementation reports posted to the Law Society's website. These performance measures are also reported to the Law Society's governors, approximately 20 percent of whom are non-lawyer members of the public appointed by the Lieutenant Governor in Council.

The Law Society is also subject to independent investigation and review by the Office of the Ombudsperson. Through enactment of the *Ombudsperson Act*, the provincial legislature has empowered the Ombudsperson to determine whether the Law Society has acted fairly and reasonably, and whether our actions and decisions are consistent with relevant legislation, policies and procedures.

Professor Maloney recommended that the BC government consider options for setting regulatory practice standards, including for self-regulatory organizations. Although we recognize the importance of high standards for our work, we encourage any consideration of this recommendation to include a careful analysis of the Supreme Court of Canada's recognition of an independent bar, free from influence by public authorities, as an important component of the fundamental framework of Canadian society.

Conclusion

We acknowledge that the Commission has been called upon to investigate a serious issue that raises significant concerns across British Columbia. The Commissioner has called upon all levels of government, public and private agencies, and individuals for cooperation. The Law Society is committed to providing such cooperation and, as the inquiry process continues, we look forward to assisting the Commission's work by sharing our views and providing information regarding the Law Society's ongoing anti-money laundering efforts.

As always, we welcome any questions you may have.

Yours truly,

A handwritten signature in black ink, appearing to read 'Don Avison', with a long horizontal flourish extending to the right.

Don Avison
Executive Director/Chief Executive Officer

DA/jwc

cc: Nancy Merrill, QC
President, Law Society of British Columbia

Craig Ferris, QC
Chair, LSBC Anti-Money Laundering Working Group

Frederica Wilson
Deputy Chief Executive Officer, Federation of Law Societies of Canada