

**MINISTRY OF ATTORNEY GENERAL
GAMING POLICY AND ENFORCEMENT BRANCH
AND MINISTRY OF FINANCE**

JOINT DECISION NOTE

PURPOSE: For information and decision for the Honourable David Eby, QC, Attorney General and the Honourable Carole James, Deputy Premier and Minister of Finance

ISSUE: To provide information and suggest a strategic approach to addressing money laundering and tax evasion in British Columbia's real estate sector.

SUMMARY:

- The establishment of a task force to address money laundering and tax evasion in the real estate sector was an NDP election platform commitment. In November 2017, a Cabinet Submission was put forward to seek approval to implement this commitment.
- Upon review, the Priorities and Accountabilities Committee requested further work to s.12
- The Gaming Policy and Enforcement Branch (GPEB) was assigned to develop a work plan for a multi-agency response to the issue. GPEB has identified areas within government that are currently working on matters related to tax evasion and money laundering in the real estate sector, and has considered how existing work may be coordinated to address these specific issues.
- The Ministry of Finance has been participating in a federal, provincial and municipal housing working group. Core members of the working group are Canada, BC, Ontario, Vancouver, and Toronto – federal and provincial regulators have also participated in the group. Discussion has centered on a wide range of housing issues including money laundering, tax evasion, and other compliance issues. The Ministry of Finance is now working on potential legislative amendments to address challenges faced by the Royal Canadian Mounted Police (RCMP) and the Canada Revenue Agency (CRA) in fulfilling their compliance mandate.
- There is also ongoing intra and inter-governmental policy work underway to address certain vulnerabilities in the real estate sector; however, these may be tangentially related to money laundering and tax evasion. There is currently no strategic and coordinated approach addressing these issues across government. s.16

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BACKGROUND:

- The 2017 NDP election platform included a commitment to “...establish a multi-agency task force to fight fraud and money laundering in the BC real estate marketplace.”¹ Ministerial mandate letters outline accountabilities linked to this commitment:
 - The Minister of Finance was directed to “...*reduce tax fraud and money laundering in the B.C. real estate marketplace.*”²
 - The Minister of Municipal Affairs and Housing was directed to assist in “*address[ing] speculation, tax fraud and money laundering in the housing market.*”³

¹ See p. 6 at <https://action.bcndp.ca/page/-/bcndp/docs/BC-NDP-Platform-2017.pdf>

² See p. 2 at <https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/james-mandate.pdf>

³ See p. 3 at <https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/robinson-mandate.pdf>

- In November 2017, the Ministry of Attorney General prepared a Cabinet Submission s.12
- The Priorities and Accountabilities (P & A) Committee reviewed the proposal on November 2nd 2017 s.12
- The Deputy Attorney General requested GPEB to propose an approach and work plan for a multi-agency response to money laundering and tax evasion⁴ in the real estate sector.

DISCUSSION:

- There are three indicators of indicate jurisdiction's vulnerability to money laundering and tax evasion in the real estate sector, all of which are at play in the BC's real estate market: (1) opaque beneficial-ownership structures; (2) low compliance with reporting accountabilities, and; (3) opportunities to create complex, layered, and high-value transactions. Opaque beneficial ownership structures and opportunities to create complex, layered and high-value transactions are applicable to Canada as a whole and to each province in Canada (although the latter is accentuated in speculative and inflated housing markets). Low compliance with reporting accountabilities is likely much more prevalent in BC (and other provinces like Ontario). This is because significant housing price growth in those provinces has led to potentially large financial gains, which leads to speculative purchasing behaviour and can incent non-compliance with federal and BC reporting and tax obligations.

1. Opaque ownership structures

- Individuals seeking to engage in money laundering or tax evasion can obscure beneficial-ownership over their assets. The beneficial owner is the individual or entity that actually owns the asset or is otherwise the primary beneficiary of the interest.
- Beneficial-owners may establish corporate entities or nominate other individuals to hold title over real estate assets in trust, obscuring the nature of their residential ties. This can mitigate liability for some domestic taxes or relevant tax liabilities in countries that

⁴ It is important to distinguish between tax avoidance (the legal use of the tax system to modify financial position to mitigate tax liability) and evasion (the illegal use of the tax system to avoid tax liability).
s.12

have entered a tax treaty with Canada. Opportunities to obscure beneficial-ownership are also relevant to money laundering operations, as illicit funds may be channeled through corporate entities or nominees before being invested in the real estate sector.

- A recent decision of the Supreme Court of British Columbia (*Fu v. Zhu*, 2018 BCSC 9) considered a civil dispute related to several real estate transactions in British Columbia. The case highlighted the willingness of various parties to use opaque beneficial-ownership structures to gain an economic advantage, including the evasion of capital restrictions in China, mitigation of domestic tax liability, and retention of favourable mortgage terms. The decision generated wide publicity for issues related to beneficial-ownership in British Columbia's real estate sector.
- Without robust beneficial-ownership disclosure requirements, government has limited means to collect and monitor beneficial-ownership information related to the real estate sector to assist in anti-money laundering and tax compliance initiatives.

2. Non-compliance with reporting requirements

- Under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLFTA), certain "reporting entities" (which include real estate developers, brokers, and sales representatives) must file large cash transaction reports with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) in some circumstances.
- There is evidence that the real estate sector has low compliance with this reporting requirement. Between 2012 and June 2016, FINTRAC found "significant" deficiencies in the practices at 468 of 823 Canadian real estate firms surveyed (57%) and "very significant" deficiencies at 28 (3.4%).
- Low compliance diminishes FINTRAC's ability to pursue cases of potential money laundering, and may signal that Canada's real estate sector is a low-risk vehicle for money laundering operations

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3. Complex, layered, and high-value transactions

- Real estate transactions are often complex and require specialized intermediaries for services such as real estate brokerage, conveyance, and financial services. The use of various intermediaries increases vulnerability to money laundering and tax evasion.
- This vulnerability is accentuated in speculative and inflated markets – the potential to structure complex transactions in high-value assets make the sector an attractive site for money laundering and tax evasion.
- A review of money laundering investigations found that 50 percent of cases involved lawyers, and 38 percent involved real estate agents.⁵
- Real estate agents and brokers are required to report large cash transactions to FINTRAC. It is generally the case that lawyers (and mortgage brokers) handle money transactions and are therefore more likely to encounter the types of situations that FINTRAC is concerned about under its reporting framework.
- However, there is evidence of low compliance with this requirement across Canada. While lawyers were once designated as a reporting entity under the PCMLTFA, a 2015 decision at the Supreme Court of Canada struck down the reporting requirement for the profession on the grounds that it may compromise solicitor-client privilege.⁶

Relevant policy initiatives

- Ministry of Finance has been participating in a cross-government working group on a range of housing issues. The core membership includes the governments of Canada, British Columbia, Ontario, and the cities of Vancouver and Toronto. Topics have included money laundering, tax policy, information sharing, and the national housing strategy.
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⁵ The investigations were conducted by the Royal Canadian Mounted Police (RCMP). See: Schneider, S. (2004). *Money Laundering in Canada: An Analysis of RCMP Cases*. Nathanson Centre for the Study of Organization Crime and Corruption.

⁶ Canada (Attorney General) v. Federation of Law Societies of Canada. 2015 SCC 7

- The Ministry of Finance is also currently engaged in work related to beneficial-ownership disclosure rules in BC, which includes:
 - Leading work with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) and the Land Title and Survey Authority (LTSA) regarding options to amend the *Land Title Act* to require disclosure of beneficial interest in land;
 - Leading work with the Ministry of Citizen's Services regarding proposals for improved transparency rules in the corporate registry, and;
 - Participating in the federal-provincial-territorial (FPT) "Working Group on Improving Beneficial Ownership Transparency in Canada," convened to develop proposals to improve the availability of beneficial-ownership information across Canada through coordinated legislative changes to business incorporation acts (federally and in all provinces). In December, 2017, federal/provincial/territorial Ministers of Finance reached an agreement and announced they each intend to table legislative changes by July 1, 2019 to ensure corporations hold accurate and up to date information on beneficial owners that will be available to law enforcement, tax and other authorities.⁷ This is an interim step until a complete set of coordinated legislative amendments can be developed and tabled by all governments in Canada to require the disclosure of beneficial ownership with corporate registries.
- The Government of British Columbia has limited options to unilaterally address tax evasion concerns, as the Canada Revenue Agency (CRA) has the bulk of auditing authority. However, the Ministry of Finance has developed a list of amendments to British Columbia's statutes designed to help address tax evasion and improve tax compliance.
- Real estate licensees and brokerages are licensed under the *Real Estate Services Act* (RESA). Under RESA, the Superintendent of Real Estate has the power to establish rules of professional conduct which are administered by the Real Estate Council of BC (RECBC).
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- GPEB also identified that the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) and the Ministry of Citizen's Services are each engaged in policy work relevant to vulnerabilities to money laundering and tax evasion in the real estate sector.

⁷ See the news release, backgrounder and agreement at the following links: <https://www.fin.gc.ca/n17/17-122-eng.asp>; https://www.fin.gc.ca/n17/data/17-122_3-eng.asp; https://www.fin.gc.ca/n17/data/17-122_4-eng.asp

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NEXT STEPS

- While Ministry of Finance has been participating in a cross-government working group on housing issues and there is a range of ongoing intra and inter-governmental policy work currently being pursued to address certain vulnerabilities, government currently does not have the ability to provide strategic oversight to achieve coordination across ministries and relevant policy areas.

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APPENDIX D: Contact information for Key Business Areas within the BC Government

Ministry/ Agency	Branch	Task/ area	Contact
Ministry of Attorney General	Gaming Policy and Enforcement Branch	Money laundering in the gaming sector.	Michele Jaggi-Smith Executive Director, Strategic Policy and Projects Division Michele.JaggiSmith@gov.bc.ca
Ministry of Public Safety and Solicitor General	Policing and Security Branch	Providing information on law enforcement resources and implications with respect to anti-money laundering	Wayne Rideout Executive Director, Serious & Organized Crime Initiatives Wayne.Rideout@gov.bc.ca
Ministry of Finance	Financial and Corporate Sector Policy Branch	<p>Pursuing transparency in corporate governance (beneficial-ownership disclosure rules) with respect to the real estate sector.</p> <p>Participation in the FPT Working Group on Improving Beneficial Ownership Transparency in Canada</p> <p>Amendments to REDMA to add transparency to the market for assignment of pre-construction condominium purchase and sale agreements</p>	Joseph Primeau A/Executive Director Policy and Legislation Division Joseph.Primeau@gov.bc.ca
Ministry of Finance	Tax Policy Branch	<p>Participation in FPT Working Group on Improving Beneficial Ownership Transparency in Canada</p> <p>Participation in cross-government working group on a wide ranging set of housing issues</p>	Andrew Avis Strategic Advisor, Policy and Legislation Division andrew.avis@gov.bc.ca
Ministry of Municipal Affairs and Housing	Housing Policy Branch	Leading in the development of a provincial housing affordability strategy	Doug Page Director of Policy and Legislation Doug.Page@gov.bc.ca
Office of the Superintendent of Real Estate	N/A		Thomas Taller Managing Director, Policy and Oversight Office of the Superintendent of Real Estate thomas.taller@gov.bc.ca

**MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
BRIEFING NOTE**

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PURPOSE: For DECISION of Richard J. M. Fyfe, QC
Deputy Attorney General

ISSUE:

The Attorney General has committed to asking Dr. Peter German to investigate the use of Builders Liens to launder money.

RECOMMENDATION:

Make Dr. German aware that the British Columbia Law Institute (BCLI) will be publishing a consultation paper proposing amendments to the *Builders Lien Act* (the "Act") that will address concerns that the Act could be used to facilitate money laundering.

SUMMARY:

- In response to a story about unregulated private lenders using mortgages and builders' lien registrations to launder drug money through Vancouver real estate (Appendix A), the Attorney General pledged to broaden the scope of Dr. German's ongoing independent investigation into money laundering in British Columbia casinos to include the use of land charges to launder money.
- The BCLI has established a Builders Lien Act Reform Project Committee (the "BCLI Committee") to consider and propose amendments to the *Builders Lien Act*. This committee has developed a proposal that addresses the concern raised in the news story regarding how the *Builders Lien Act* could be used to launder money.
- The BCLI contacted the Ministry of Attorney General asking that Dr. German be made aware of their proposals, to prevent duplication of effort.

BACKGROUND:

- On February 16, the Globe and Mail published a story about unregulated private lenders using mortgages and builders' lien registrations to launder drug money through Vancouver real estate.
- On February 17, in a follow-up article in the Globe and Mail (Appendix B), it was reported that the Attorney General "pledged to use The Globe's data to broaden the scope of an ongoing independent investigation into money laundering in B.C. casinos."
- On February 19, during an interview on CBC Radio One, the Attorney General reiterated his commitment to refer the matter of private lending and use of land charges to launder money to Dr. German to investigate.
- A point made by Kathy Tomlinson, writer of the Globe and Mail articles, in the CBC interview was that borrowers would not necessarily know that a builder's lien had been filed against the property, and that claims of lien are often not disputed.
- The issue of notice of liens relates to a private member's bill from 2015, introduced by independent MLA Vicki Huntington, proposing that owners be notified by a person who intends to file a lien, before that person would be permitted to file the lien (the *Builders Lien Notice to Owners Act*).
- The BCLI Committee analyzed the proposed *Builders Lien Notice to Owners Act* and concluded that the *Builders Lien Notice to Owners Act* contemplated something that was unworkable, because it required a lienholder to personally serve anyone coming within the definition of "owner" before filing a lien.
 - In the proposed legislation "owner" would include individuals with unregistered equitable interests, wherever they happen to be in the world.
 - Moreover, even if all owners were registered and located in British Columbia, requiring personal service would allow a dishonest landowner to avoid the filing of a lien in proper circumstances, simply by avoiding service.
- The BCLI Committee came up with an alternative for notification. The BCLI Committee will be proposing that the Land Title Office be required to notify registered owners when a lien is registered. The Land Title Office currently informs registered owners of any charges registered against their land, if they file a specific request and pay an additional fee. The proposed amendment would require this existing service be provided for all builders liens without the requirement for a specific request (or fee).
 - This alternative will be one of the recommendations on changes to the *Builders Lien Act* in an upcoming consultation document currently being prepared by the BCLI.
- Essentially, the BCLI Committee has developed a proposal that addresses the particular issue with the *Builders Lien Act* identified in the Globe and Mail article,

namely the fact that a claim of lien may appear on a title without the owner's knowledge.

- The BCLI Committee will also recommend making the procedure for removing liens from titles more efficient. This should also help prevent misuse of the *Builder's Lien Act* to launder money, provided that the owner isn't complicit or acquiescing in the scheme.
- The BCLI contacted the Ministry of Attorney General asking that Dr. German be made aware of their BCLI Committee and, currently unpublished proposals that may address the money laundering issues that have been raised.
- The BCLI offered to contact Dr. German directly and has indicated that they are willing to discuss their proposal with Dr. German, should he contact them.

DISCUSSION:

The BCLI is concerned that if the matter of Builders Liens is referred to Dr. German, without information about the BCLI Committee's recommendations, he may propose amendments that reproduce the *Builders Lien Notice to Owners Act*.

OPTIONS:

1. Make Dr. German aware of the BCLI Committee and suggest that he contacts the BCLI to inquire about their proposed amendments that may address concerns that the *Builders Lien Act* may be used to facilitate money laundering. -

RECOMMENDED

Advantages:

- Prevents duplication of effort;
- Prevents Dr. German from making recommendations contrary to the BCLI proposals.

Disadvantages:

- None known.

2. Do not inform Dr. German of the BCLI project.

Advantages:

- Does not fetter Dr. German's discretion;
- May result in an innovative solution not considered by the BCLI.

Disadvantages:

- Duplicates effort.

RECOMMENDED OPTION APPROVED

DATE:



Richard J. M. Fyfe, QC
Deputy Attorney General

March 9, 2018

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Approved by:

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Approved by:

Kurt Sandstrom, QC
Assistant Deputy Minister
Justice Services Branch
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Attachments:

Globe and Mail article 1
Globe and Mail article 2

APPENDIX A

B.C. vows crackdown after Globe investigation reveals money-laundering scheme

Copyright

KATHY TOMLINSON AND XIAO XU

PUBLISHED FEBRUARY 16, 2018 UPDATED 2 DAYS AGO

Kathy Tomlinson is a reporter on The Globe's national investigative team. In 2016, she won a National Newspaper Award, and earned a Michener Award nomination, for her investigation into questionable conduct in Vancouver's real-estate market.

Page 21 to/à Page 33

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APPENDIX B

B.C. attorney-general decries fentanyl link in Globe's money-laundering investigation

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BEN NELMS/THE GLOBE AND MAIL

KATHY TOMLINSON

VANCOUVER

PUBLISHED FEBRUARY 17, 2018 UPDATED FEBRUARY 17, 2018

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Page 35 to/à Page 36

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June 6, 2018

s.22

Attention: s.22

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

Further to my letter dated June 1, 2018, I confirm I have received your confidentiality undertaking regarding the excerpts from Dr. Peter German's independent review of money laundering in Lower Mainland Casinos.

In accordance with the terms set out in your signed confidentiality undertaking, a copy of which is enclosed for your ease of reference, please find enclosed the excerpts relevant to you. If you wish to provide a response with respect to any matters contained within the enclosed excerpts, your written representations must arrive by Wednesday, June 13, 2018 by 3:00 pm (PST).

Any response you provide will be sent to Dr. German for his consideration, and in keeping with the independent nature of his review, it will be entirely in his discretion as to whether any changes to his review are made. As I mentioned in my June 1, 2018 letter, your responses may be, in whole or in part, disclosed in response to a request made under the *Freedom of Information and Protection of Privacy Act*, or may be disclosed with any release of Dr. German's review.

Kindly deliver any representations to my office via email to Maya Engelbrecht at maya.engelbrecht@gov.bc.ca, or by mail, courier or by hand to:

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11th Floor, 1001 Douglas Street
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9J7

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Further to my letter dated June 1, 2018, I confirm I have received your confidentiality undertaking regarding the excerpts from Dr. Peter German's independent review of money laundering in Lower Mainland Casinos.

In accordance with the terms set out in your signed confidentiality undertaking, a copy of which is enclosed for your ease of reference, please find enclosed the excerpts relevant to you. If you wish to provide a response with respect to any matters contained within the enclosed excerpts, your written representations must arrive by Wednesday, June 13, 2018 by 3:00 pm (PST).

Any response you provide will be sent to Dr. German for his consideration, and in keeping with the independent nature of his review, it will be entirely in his discretion as to whether any changes to his review are made. As I mentioned in my June 1, 2018 letter, your responses may be, in whole or in part, disclosed in response to a request made under the *Freedom of Information and Protection of Privacy Act*, or may be disclosed with any release of Dr. German's review.

Kindly deliver any representations to my office via email to Maya Engelbrecht at maya.engelbrecht@gov.bc.ca, or by mail, courier or by hand to:

ATTN: Maya Engelbrecht
11th Floor, 1001 Douglas Street
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9J7

Sincerely,

Richard J.M. Fyfe, QC
Deputy Attorney General

Enclosures



June 6, 2018

s.22

Attention: s.22

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