

**COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA**

**The Honourable Mr. Austin F. Cullen, Commissioner**

**AFFIDAVIT**

I, Sherri-Lynn Foran, with a business address of 333 North River Road (Vanier Tower A), Ottawa, Ontario, **AFFIRM THAT:**

1. I am the Director of the Appeals & Enforcement Litigation Division of the Recourse Directorate, in the Finance and Corporate Management Branch of the Canada Border Services Agency (CBSA).
2. I have personal knowledge of the facts and matters herein deposed to, save and except where such facts and matters are stated to be made upon information and belief, and as to such facts and matters I do believe them to be true.

***Currency or Monetary Instrument Seizures & Reviews***

3. A traveller whose currency or monetary instrument was seized by a CBSA officer pursuant to the CBSA's powers under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, may request a decision of the Minister regarding the appropriateness of the seizure. If dissatisfied with the ministerial decision, an action and/or judicial review may be pursued before the Federal Court.
4. Additionally, any person or entity who has an interest as owner of the currency or monetary instrument seized, may bring a third party application to the Provincial Court for relief.

***The CBSA Recourse Directorate***

5. The Recourse Program provides travellers and businesses with an accessible mechanism to seek an impartial review of CBSA decisions, as well as to voice any feedback or complaints in accordance with policies and legislation administered by the agency. It also manages civil litigation before various courts and tribunals, and provides a harmonized national litigation management function for the CBSA.
6. A person from whom currency or monetary instruments were seized, or the lawful owner of the currency or monetary instruments may request a decision of the Minister pursuant to section 25 of the *PCMLTFA*. In a ministerial review, the Minister of Public Safety and Emergency Preparedness, through the Minister's

delegated authorities, impartially reviews and decides on the appropriateness of the enforcement action. This review is conducted within the Enforcement Appeals Unit of the Recourse Directorate.

7. The ministerial decision may be challenged by way of a judicial review pursuant to section 18.1(1) of the *Federal Courts Act*, or an action to the Federal Court in accordance with section 30(1) of the *PCMLTFA*. In addition, provisions exist for third party applications directly to the Provincial Court, in accordance with section 32 of the *PCMLTFA*. The Enforcement Litigation Unit (ELU) of the Recourse Directorate Program is responsible for providing support to the Department of Justice in defending the CBSA's position before the courts.

***CBSA Recourse Directorate Program Data***

8. The following two tables provide data relating to ministerial reviews of *PCMLTFA* currency or monetary instrument seizures and challenges of ministerial decisions to the Federal Court, as well as any third party applications brought in the Provincial Court. Both tables provide data for each of the past five fiscal years and, for each year, indicate the total number of ministerial reviews or appeals/applications to the courts and the number of those reviews or appeals/applications that succeeded in overturning the underlying decision. The data is disaggregated to show the number of reviews relating to each of the four *PCMLTFA* seizure levels, and to show the number of reviews relating to *PCMLTFA* seizures in BC and Canada-wide.
9. Table 1 presents data relating to ministerial reviews of *PCMLTFA* currency or monetary instrument seizures within the Enforcement Appeals Unit. I am informed and do verily believe that the data in Table 1 was collected from the Recourse Information Management System on February 5, 2021:

***Table 1: Ministerial Review Data***

	FY 2016-17		FY 2017-18		FY 2018-19		FY 2019-20		FY 2020-21	
PCMLTFA Level	Total	Overtuned	Total	Overtuned	Total	Overtuned	Total	Overtuned	Total	Overtuned
Level 1	126	6	99	6	101	16	112	11	48	9
<i>Level 1 issued in BC</i>	26	1	29	0	15	1	13	1	3	0
Level 2	45	4	40	4	41	4	31	2	15	1
<i>Level 2 issued in BC</i>	15	1	9	1	8	0	4	0	1	0
Level 3	0	0	0	0	0	0	0	0	1	0
<i>Level 3 issued in BC</i>	0	0	0	0	0	0	0	0	0	0
Level 4	74	9	58	9	69	14	97	11	50	6
<i>Level 4 issued in BC</i>	27	2	25	2	31	3	46	3	13	3
<b>Total issued in BC (all levels)</b>	<b>68</b>	<b>4</b>	<b>63</b>	<b>3</b>	<b>54</b>	<b>4</b>	<b>63</b>	<b>4</b>	<b>17</b>	<b>3</b>
<b>National total (BC included)</b>	<b>245</b>	<b>19</b>	<b>197</b>	<b>19</b>	<b>211</b>	<b>34</b>	<b>240</b>	<b>24</b>	<b>114</b>	<b>16</b>

10. Table 2 presents data relating to appeals from decisions of the Minister to the Federal Court by way of judicial reviews or actions, as well as any third party applications to the Provincial Court. I am informed and do verily believe that the data in Table 2 has been collected from the ELU records and logs, as well as from the ELU shared drive, over the course of several days, between February 4 and February 9, 2021:

**Table 2: Federal and Provincial Court Data**

	FY 2016-17		FY 2017-18		FY 2018-19		FY 2019-20		FY 2020-21	
PCMLTFA Level	Total	Overtumed	Total	Overtumed	Total	Overtumed	Total	Overtumed	Total	Overtumed
Level 1	1	0	3	0	1	0	5	2	2	0
<i>Level 1 issued in BC</i>	1	0	0	0	0	0	1	0	0	0
Level 2	2	1	1	1	0	0	1	0	0	0
<i>Level 2 issued in BC</i>	0	0	0	0	0	0	1	0	0	0
Level 3	0	0	0	0	0	0	0	0	0	0
<i>Level 3 issued in BC</i>	0	0	0	0	0	0	0	0	0	0
Level 4	10	0	3	2	5	1	6	0	2	0
<i>Level 4 issued in BC</i>	2	0	0	0	0	0	2	0	0	0
<b>Total issued in BC (all levels)</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>National total (BC included)</b>	<b>13</b>	<b>1</b>	<b>7</b>	<b>3</b>	<b>6</b>	<b>1</b>	<b>12</b>	<b>2</b>	<b>4</b>	<b>0</b>

### **Remote Commissioning**

11. I am not physically present before the commissioner taking my affidavit. I am linked with the commissioner by video technology and am adhering to the following process for commissioning the affidavit:

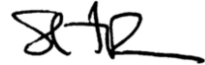
- a. I have shown the commissioner the front and back of my government-issued photo identification;
- b. The commissioner has compared the video image of myself and the information on my government-issued photo identification and has confirmed to me that they are reasonably satisfied that it is the same person and that my identification is valid and current; and
- c. The commissioner has confirmed to me that a screenshot of the front and back of my government-issued photo identification was taken and that they will retain a copy of those screenshots.

12. I **affirm** this affidavit to provide evidence to the Commission of Inquiry into Money Laundering in British Columbia and for no other purpose.

AFFIRMED BEFORE ME at )  
Ottawa, ON on April 6, 2020 )

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A commissioner for taking affidavits for )  
Ontario )

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\_\_\_\_\_)  
Sherri-Lynn Foran )

**Nicole Leigh Lackey-Ruwald,**  
a Commissioner, etc., Province of Ontario,  
for the Government of Canada,  
Canada Border Services Agency.  
Expires April 17, 2022.