

Reply Attention of: Catherine E. George
Direct Dial Number: [REDACTED]
Email Address: [REDACTED]

FARRIS

File No: 01590-82

September 24, 2020

BY EMAIL

Cullen Commission of Inquiry into Money Laundering in BC
Suite 601 – 700 W. Georgia St.
Vancouver, BC V7Y 1B6

Attention: Nicholas Isaac and Steven Davis

Dear Sirs:

Re: Question to the Law Society of British Columbia (the “Law Society”) regarding information-sharing with law enforcement entities

We write in response to your request for information the status of information sharing between the Law Society and law enforcement entities. The summary set out below encapsulates the current state of affairs with respect to information flowing in to the Law Society from law enforcement, and out of the Law Society to law enforcement. Please feel free to contact the undersigned if you have any questions or wish to clarify anything set out below.

Information available to the Law Society

The Law Society is required to investigate information from any source that indicates a lawyer may have committed a discipline violation. Agencies with information of a lawyer’s involvement in any crime, dishonesty or fraud, including money laundering, are encouraged to report such information to the Law Society for investigation.

The Law Society has developed relationships with staff from law enforcement and other agencies over time, through numerous meetings, outreach activities, and educational presentations. For example, Law Society staff participate in the Counter Illicit Finance Alliance of BC (CIFA-BC), a permanent, national, public-private partnership led by RCMP National Headquarters and the Combined Forces Special Enforcement Unit (BC), and joined by all major Canadian banks and credit unions, FINTRAC, the CRA, and others, to combat money laundering in BC. Law Society staff gave a presentation to CIFA-BC (then known as “Project Athena”) in July 2019. Also, in recent years, Law Society staff have met with the RCMP “E” Division’s Financial Integrity Unit, the Vancouver Police Department’s Financial Integrity Unit, and with other law enforcement personnel, both directly and through networking opportunities such as meetings of the Association of Certified Fraud Examiners and the Association of Certified Anti-Money Laundering Specialists. In addition to police forces, Law Society staff have developed working relationships with agencies such as the BC Securities Commission, the US Securities and Exchange Commission and others.

FARRIS LLP

25th Floor – 700 W Georgia Street Vancouver, BC Canada V7Y 1B3

[REDACTED] farris.com

September 24, 2020

- 2 -

FARRIS

In the past several years, members of the Law Society's senior leadership team have met repeatedly with the heads of various government agencies and law enforcement to develop inter-agency coordination and to encourage them to refer matters to the Law Society for investigation. These include meetings with the RCMP, the Attorney General and his staff, and the Minister of Public Safety and Solicitor General, among others. All of these provide opportunities for the Law Society to work with and further develop relationships with these entities.

The Law Society also has protocols in place to request information from police. Starting in the early 2000s, the Law Society has entered into memoranda of understanding with all 11 municipal police forces in British Columbia and with the RCMP "E" Division. These MOUs establish procedures for the Law Society to request information from the police, as well as the terms and conditions for the use and dissemination of such information. Pursuant to these MOUs, the Law Society has received information that has initiated new investigations, as well as information that has supported ongoing investigations.

Currently, Law Society staff are working with representatives of the RCMP to update the LSBC-RCMP MOU. A revised draft has been prepared by the Law Society and is under RCMP review.

The Law Society has also established procedures to request information from the Criminal Justice Branch in matters involving provincial criminal prosecutions. A formal protocol to request information from the Criminal Justice Branch has been in place since April 2016.¹ Although there is no formal information sharing agreement in place with the Public Prosecution Service of Canada, the Law Society engages with the PPSC on a case by case basis through an informal process in circumstances where a lawyer may be charged with a federal crime.

The Law Society has effective processes in place to request and receive information from the BC Securities Commission and the US Securities and Exchange Commission, among other regulators.

Information available to law enforcement

There are several ways in which law enforcement agencies may obtain information from lawyers or the Law Society.

Law enforcement agencies may obtain documents and information from a lawyer's office by following established procedures for a law office search. A criminal investigation of a lawyer or a lawyer's client may result in the authorization of a warrant to search the lawyer's office, or, alternatively (if appropriate), a production order. In light of the constitutional requirement to safeguard client confidences and privilege, and at the request of the Associate Chief Justice of British Columbia, the Law Society worked together with the Public Prosecution Service of Canada, the Ministry of Justice (Criminal Justice Branch) and the BC Association of Chiefs of Police to develop guidelines for the procedures associated with the execution of warrants to search a law office, and the terms to be

¹ Protocol Letter re: "Undertakings and Criminal Charge Disclosure" from Michael Lucas, to Richard de Boer and Lori McMorran, Criminal Justice Branch, Ministry of Attorney General dated April 20, 2016: **Document LSB007061**

September 24, 2020

- 3 -

FARRIS

contained in such a warrant. In 2013, the Law Society published recommended guidelines for law office search warrants and procedures.²

The intent of the guidelines is to clearly set out the steps that need to be in place in advance of the search, to ensure that the search may be conducted in a constitutionally compliant manner. Not all information or documents in the possession of a lawyer will be privileged. For example, where communications between a lawyer and client are themselves criminal, or relate to obtaining advice with respect to facilitating a crime, client privilege protections either never applied or are lost. Law enforcement agencies planning to conduct a search of a law firm may contact the Law Society to receive guidance on the processes available to them, and a list of persons that can facilitate the search as “referees” (who will be tasked with executing the search warrant and providing documents to the Court as part of the process for resolving privilege claims). During the law office search, Law Society staff are also available to answer questions, and to liaise with the parties as necessary.

Law enforcement agencies may also obtain information directly from the person who has made a complaint to the Law Society. Where a complaint involves allegations of criminal conduct by a lawyer, Law Society staff encourage the complainant to bring their concerns to the police. To reduce the possibility that a police investigation may be tainted with an alleged breach of client privilege, the Law Society encourages complainants to provide their materials to police directly. For example, a complainant who is a client or former client is free to provide the police with a copy of their own client file and their communications with their lawyer.

The Law Society is required by section 88 of the *Legal Profession Act* not to disclose information, files or records that are confidential or subject to solicitor-client privilege, except as permitted by that Act. However, law enforcement agencies may obtain information from the Law Society through the use of a warrant or production order. Subject to its legal obligations, the Law Society cooperates fully with all search warrants and production orders it receives, provided that protocols are in place to protect information subject to client confidences and privilege, as applicable.

Law enforcement agencies may request and obtain “Personal Information” held by the Law Society, in accordance with section 33.1(2) of the *Freedom of Information and Protection of Privacy Act*. The Law Society’s memoranda of understanding with municipal police forces contain a provision that states the police force may request access to Personal Information in the possession of the Law Society and the Law Society may supply such information to the police force under *FOIPPA*, provided it is entitled to do so under the *Legal Profession Act*.

As part of the Law Society’s mandate to protect the public interest, the Executive Director may deliver to a law enforcement agency any information or documents that may be evidence of an offence. Rules 2-53(4), 3-3(5), 3-23(3), 3-46(5)(c) and 4-8(5) of the Law Society Rules require that the Discipline Committee consent prior to the Executive Director making a disclosure to law enforcement. In March

² https://www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_2013-02-Summer.pdf and <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-practice/law-office-search-warrants/>

September 24, 2020

- 4 -

FARRIS

2020, Law Society staff developed guidelines to assist the Discipline Committee when considering a request from the Executive Director to disclose information or documents to law enforcement.³

The guidelines include the following considerations:

1. The Discipline Committee should be satisfied that there are reasonable grounds to believe the information or documents in the Law Society's possession are likely evidence of an offence.
2. Absent exceptional circumstances, it will be in the public interest for the Executive Director to disclose information about a criminal offence to law enforcement.
3. Disclosure to law enforcement will not be necessary if the conduct is already known to them.
4. If there are reasonable grounds to believe that disclosure to law enforcement is necessary to prevent an imminent risk of death or serious bodily harm, which may include serious psychological harm, to any person then disclosure to law enforcement will generally be in the public interest.

The Law Society also publishes some information about lawyers publicly: allegations against lawyers are published on the Law Society's website in the form of a citation, and public notice is provided for upcoming citation hearings. Hearings are open to the public. After a hearing has concluded, the Law Society publishes the hearing decision, and will often prepare a summary of the decision and disciplinary outcome. The Law Society also publishes the names, practising status and discipline hearing decisions (since 1989) of all members of the Law Society in its Lawyer Directory webpage.⁴

Yours truly,

FARRIS LLP

Per:


Catherine E. George

CEG/jw
Enclosure
c.c.: client

³ *Guidelines for Disclosing Information to Law Enforcement*, March 2020 [attached]

⁴ <https://www.lawsociety.bc.ca/labc/apps/lkup/mbr-search.cfm>