This is Affidavit No. 1 of Marko Goluza
made in this matter on March 25th, 2021

COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA

The Honourable Mr. Austin F. Cullen, Commissioner

AFFIDAVIT NO. 1 of MARKO GOLUZA

I, Marko Goluza, of 300-1040 West Georgia Street, Vancouver, British Columbia, SWEAR THAT:

1. I am the Director, Professional Conduct of the Insurance Council of British Columbia ("ICOBC") and, as such, I have personal knowledge of the facts and matters deposed to in this Affidavit, save and except where based on information and belief, and where so stated, I believe the same to be true.

Affiant Experience and Responsibilities

2. In January 2020, I assumed the role of Director, Professional Conduct with the ICOBC.

3. In this role, I am responsible for managing all aspects of ICOBC's complaints, investigation and discipline functions. I also oversee ICOBC's freedom of information and privacy responsibilities.

4. Prior to joining ICOBC, I held positions with the Canada Border Services Agency and Environment and Climate Change Canada.

Insurance Council of British Columbia

5. The ICOBC is a regulatory body established pursuant to s. 220 of the *Financial Institutions Act*, R.S.B.C. 1996, c. 141 (the "*Act*").

6. The ICOBC is responsible for assessing the suitability of applicants for the purpose of issuing licences, as well as regulating the conduct of licensees and former licensees. Licensees include insurance agents, insurance salespersons, insurance adjusters, and employed insurance adjusters ("Licensees").

7. The *Act* authorizes the ICOBC to make rules for the purpose of licensing and regulating the conduct of Licensees with the consent of the responsible Minister.

8. Attached to this Affidavit and marked as **Exhibit '1' (ICOBC000056)** is a true copy of the current ICOBC Council Rules (**"Council Rules"**) dated March 19, 2020.

9. Rule 7 of Council Rules sets out licence conditions applicable to all classes of licences. Rule 7(8) requires Licensees to "comply with the Code of Conduct, as amended from time to time."

10. Attached to this Affidavit and marked as **Exhibit '2' (ICOBC000057)** is a true copy of the current ICOBC Code of Conduct (the **"Code of Conduct"**) dated May 15, 2020. The Code of Conduct sets out the ICOBC mission statement: to serve the public by ensuring Licensees act within a professional framework which promotes ethical conduct, integrity and competence.

11. In keeping with this mandate, the purpose of the Code of Conduct is to set out the minimum standards of acceptable conduct and to define and communicate standards of conduct for use by Licensees in their practice of the business of insurance. The Code of Conduct is also used as a guide by the ICOBC in its deliberations on proper and usual practice in particular circumstances.

Money Laundering and the ICOBC 2020-2023 Strategic Plan

12. The *Act* does not expressly identify anti-money laundering efforts ("AML") as part of the ICOBC's mandate or responsibilities.

13. Neither Council Rules nor the Code of Conduct expressly addresses money laundering. However, the underlying principle of all insurance business necessitates that Licensees act with integrity, competence and in good faith in all their dealings with insurers and members of the public, which implicitly prohibits Licensees from engaging in money laundering activities.

14. The *Act*, Council Rules and the Code of Conduct are effective tools for targeting and deterring conduct that is not in keeping with the standards expected of Licensees in the insurance industry.

15. In addition, the ICOBC has identified AML as a priority in the ICOBC 2020-2023 Strategic Plan. Attached hereto and marked as **Exhibit '3' (ICOBC000003)** to this my Affidavit is a true copy of the ICOBC's Strategic Plan 2020-2023.

16. The ICOBC's 2020-2023 Strategic Plan came into effect in June 2020 and identifies the following four goals:

    a. Goal 1: Effective regulatory practices and support systems that meet current and emerging international standards.

    b. Goal 2: Regulatory oversight that protects consumers and enables industry innovation.

    c. Goal 3: Enhanced ability to support insurance consumers, Licensees and government.

d. Goal 4: Efficient and effective access to ICOBC's services.

17. The following priority is associated with Goal 2:

> Modernize regulatory oversight to keep pace with changes in the insurance marketplace and support/enable industry transformation.

18. The following is one of three strategies associated with Goal 2:

> Assess regulatory processes and modify as needed to detect and counter money laundering activities in the insurance industry.

19. The key performance indicators associated with the priorities and strategies identified in the 2020-2023 Strategic Plan are set out in the ICOBC Strategic Implementation Plan 2020-2023, which is attached to this Affidavit and marked as **Exhibit '4' (ICOBC000002).**

20. The key performance indicators for countering money laundering are:

a. to ensure staff are trained on AML detection techniques;

b. to complete random practice audits to review Licensee compliance with Financial Transaction and Reports Analysis of Canada "(FINTRAC") money laundering and terrorist finance guidelines; and

c. to ensure applicants for licensure are screened for money laundering and terrorist finance activities per FINTRAC guidelines.

ICOBC's AML Activities

21. Since the 2020-2023 Strategic Plan came into effect, ICOBC has:

a. increased organizational competency, including via staff training;

b. reviewed processes to ensure alignment with FINTRAC guidelines;

c. identified activity that may be associated with money laundering in practice audits and investigations; and

d. actively participated in the Counter Illicit Finance Alliance ("CIFA").

Increased Organizational Competency in this Area, including Staff Training

22. The ICOBC has introduced training exercises that educate staff on money laundering indicators in the insurance industry. Examples of this training include:

a. A 2019 session by About Business Crime Solutions also known as ABC Solutions Inc., marked as **Exhibits '5' (ICOBC000020), '6' (ICOBC000019), and '7' (ICOBC000023)** to this my Affidavit that focused on money laundering

in the life insurance and the general (property and casualty) insurance parts of the industry.

b. Distributing AML articles such as *Professional Money Launderers in Canada* to ICOBC staff. A copy of this article is attached to this my Affidavit and marked as **Exhibit '8' (ICOBC000052)**.

c. Internal sessions about the use of experts in investigations, including identifying and articulating what money laundering is and the impact it has on the public, and ensuring that money laundering activities are considered in sanctions at disciplinary proceedings. A copy of a report produced to support one of our investigations in this area is marked as **Exhibit '9' (ICOBC000054)** and attached to my Affidavit.

d. A 2021 session by MNP LLP, titled "Detecting and Investigating Money Laundering." Attached to this my Affidavit and marked as **Exhibit '10' (ICOBC000050)** is a true copy of MNP LLP's presentation dated February 19, 2021.

23. In addition, in the summer of 2020 and in tandem with the Justice Institute of British Columbia, the ICOBC trained staff and ICOBC members in administrative law. Part of the training related to how the Insurance Council may consider aggravating factors in sentencing in at a disciplinary proceeding.

Reviewing Processes to Ensure Alignment with FINTRAC Guidelines

24. The ICOBC has undertaken a number of initiatives to ensure the ICOBC and its staff are aligned with the FINTRAC guidelines so that suspected money laundering is reported as required to FINTRAC and other regulators.

25. ICOBC has instructed its internal counsel to undertake a review of the FINTRAC reporting guidelines related to money laundering and terrorist financing offences so that the ICOBC is equipped to report them.

26. The ICOBC undertakes proactive investigations to ensure all Licensees are diligent in their risk assessments of suspicious monetary transactions and meet their reporting obligations pursuant to FINTRAC guidelines.

Participation in the Counter Illicit Finance Alliance

27. The ICOBC is an Associate Partner in the CIFA. Through the CIFA, the ICOBC has gained knowledge about money laundering and ways to identify money laundering activity in its audits and investigations.

28. Through the CIFA, the ICOBC connected with other regulators, private partners, such as the Ministry of Finance and the Canada Revenue Agency, and industry experts. ICOBC has consulted with its CIFA associates for advice about money laundering activities.

29. The ICOBC has also provided input to the CIFA regarding the need for information sharing to support the ICOBC's AML efforts.

Risks of Money Laundering and Life Insurance

30. While the ICOBC has not confirmed money laundering activities in the life insurance industry, it has identified a risk of money laundering associated with individuals purchasing a life insurance policy using suspicious funds and cashing the policy out a short time later, thereby obscuring the origin of the funds used to purchase the policy.

31. Therefore, the ICOBC's analysis of money-laundering risk associated with life insurance is focused on conversions of lump-sum deposits in higher risk products such as annuities and segregated funds.

Money Laundering and Vehicle Insurance

32. Indicators of money laundering observed by the ICOBC have predominantly related to motor vehicle insurance, particularly insurance issued for vehicles that are reported to be exported shortly after purchase. In these cases, indicators include: certain types of vehicles (i.e. predominantly late model, luxury vehicles), the quick transfer of ownership from a straw buyer to an exporter, a pre-determined and timely cancelation of a one-year insurance policy, a contact known by a Licensee at a dealership, a common payment process, and a common exporter across multiple transactions.

33. The ICOBC has recently concluded two investigations associated with insurance issued for vehicles exported shortly after the insurance was issued. Attached to this my Affidavit and marked as **Exhibits '11' (ICOBC000038) and '12' (ICOBC000039)** are a true copies of an Order and Intended Decision of the ICOBC dated January 20th, 2021 regarding licensee Ting En (Brian) Lin.

34. Attached to this my Affidavit and marked as **Exhibits '13' (ICOBC000040) and '14' (ICOBC000041)** are true copies of an Order and Intended Decision of the ICOBC dated January 20th, 2021 regarding licensee Anthony Bryan Chua Cua.

35. In these two investigations, the ICOBC concluded the vehicles are export grey market transactions. ICOBC believes that with additional information related to the source of the funds used by the purchaser/exporter, further conclusions related to trade-based money laundering could have been made.

Enhancing ICOBC's Efforts to Address Money Laundering in the Insurance Industry

36. The ICOBC is in a unique position to detect and deter money laundering while regulating the insurance industry and its Licensees.

37. As set out above, Licensees are required to comply with the *Act,* Council Rules and the Code of Conduct, which require that they stay current on industry standards and

requirements. As a condition of holding a licence, upon request, Licensees must submit any information determined by ICOBC to be relevant to an investigation.

38. Specific to Council Rules and the Code of Conduct, Licensees are required to be knowledgeable of and adhere to, *inter alia*, the principles of trustworthiness, good faith, competence, financial reliability, the usual practice of the business of insurance. Where the ICOBC obtains evidence that a Licensee has contravened the *Act,* Council Rules or the Code of Conduct, a Licensee may be subject to sanctions including loss or suspension of licences, licensing conditions, fines and remedial education.

39. Evidence of money laundering discovered during an ICOBC investigation can be an aggravating factor to be considered during discipline proceedings and may warrant severe sanctioning.

40. As set out in **Exhibit '3' (ICOBC000003)** to this my Affidavit, the ICOBC's vision statement is to ensure, "British Columbians have confidence in an insurance industry that meets international standards of public protection." This means the ICOBC's disciplinary process must be implemented in a timely manner. Where the ICOBC determines that the public may be at risk, the ICOBC has authority to take immediate steps to suspend a licence pursuant section 238 of the *Act*.

41. The ICOBC often works with other regulators or law enforcement personnel to advance matters of public interest. For example, in accordance with the *Freedom of Information and Protection of Privacy Act*, the ICOBC may also refer for prosecution, offences under legislation including the *Act* or refer matters to other regulators or law enforcement.

Additional Statutory Powers and Rules

42. In the ICOBC's view, additional statutory powers and rules could be enacted to assist the ICOBC in its AML efforts within the insurance industry in British Columbia.

43. For example, obligations are currently placed on Life Insurance Licensees under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Similar reporting provisions could also exist on the general insurance side of the industry to assist in AML efforts.

44. Currently, if a Licensee hinders an investigation (e.g. by obstructing access to records or a premise), the ICOBC's only practical remedy is to leave the area and refer the matter for prosecution, which is unhelpful particularly where there is a pressing concern about preserving evidence. The ICOBC believes there should be a provision in the *Act* to enable law enforcement officers to effectively preserve evidence where money laundering activities are suspected in the insurance industry. This could include adding an arrest provision to the *Act*, for the sections which enable the ICOBC to conduct investigations.

45. A "duty to report" provision in the *Act* related to Licensees, the Insurance Corporation of British Columbia and all insurers for egregious conduct or suspicious transactions would ensure the ICOBC has timely access to suspected participation in money laundering and terrorist finance activities reporting and would assist in ICOBC's investigations of the same.

Amendments to Existing Statutory Provisions

46. Currently, the ICOBC has authority under the *Act* to levy fines against a Licensee for misconduct. Section 231(1)(b) of the *Act* provides that if the ICOBC determines a Licensee "has breached or is in breach of a term, condition or restriction of the licence of the licensee", the ICOBC may fine that person, "not more than $50 000 in the case of a corporation or a partnership, or not more than $25 000 in the case of an individual".

47. In the ICOBC's view, the language of this section is ambiguous as to whether the fine pertains to each individual contravention or a Licensee's conduct as a whole. It would be helpful if the language in the *Act* specified that the ICOBC may administer fines per individual offence, as is the case in the *Real Estate Services Act,* which provides that "A discipline penalty imposed under subsection (2)(i) may be imposed for each contravention" (s. 43(2.1)).

48. The ability to fine for each contravention would enhance the ICOBC's ability to combat money laundering activities from the standpoint of both specific and general deterrence in the insurance industry as well as enhance public protection.

49. The maximum fines available to the ICOBC in some circumstances are also well below those of other regulators who deal with similar subject matter such as those available to the British Columbia Securities Commission. Efforts should be made to bring the various fine regimes across financial services industries in line so one industry does not become more attractive to individuals seeking to engage in money laundering activities.

50. The ICOBC expends significant resources investigating minor and technical breaches of the *Act*, Council Rules and the Code of Conduct. The volume of these investigations detracts from Council's ability to devote investigative resources to more complex matters such as those breaches involving indicia of money laundering. The ICOBC would benefit from an administrative penalty regime similar to the one in section 253.1(1) of the *Act* for minor and technical breaches by Licensees so they can be dealt with in a cost-effective and expeditious manner. This would allow the ICOBC to direct its investigative resources toward more complex matters, including AML efforts.

51. Currently, section 227(c) of the *Act* limits how the ICOBC may publish discipline records in ways other than online. The ICOBC would benefit from a provision which allows it to implement 'Creative Sentencing Orders' in the *Act*. Such a provision

would allow the ICOBC to consider additional disciplinary remedies such as directing agencies to publish an article regarding corrective measures taken, implementing a policy or training related to combating money laundering, implementing a self-reporting regime whereby Licensees have to report suspicious transactions to the ICOBC, or, performing awareness activities regarding money laundering issues in the industry.

Additional Resources

52. To the ICOBC's knowledge, there is no centralized open-source intelligence database relating to assets or persons involved in money laundering activities. The ICOBC does not have the resources to develop and maintain its own database for this purpose and would benefit from access to sophisticated intelligence so to better identify Licensees who are placing insurance policies for assets or persons linked to money laundering activities. As an example, the ICOBC could benefit from access to open source information from law enforcement agencies regarding records, relationships and assets of Licensees believed to be involved in money laundering activities.

53. The ICOBC would also benefit from hiring individuals with expertise directly from the industry it regulates. In contrast to other professional regulatory bodies, the ICOBC is currently governed by the Public Sector Employees' Council Guidelines which do not allow the ICOBC to remunerate staff relative to parts of the profession it regulates. As a self-regulating organization, the ICOBC needs the expertise of insurance professionals in the industry who know and understand the business of insurance and who are able to detect activities related to money laundering in the industry. The ICOBC is currently challenged in its hiring due to the levels of remuneration it can offer pursuant to the Public Sector Employees' Council Guidelines.

SWORN BEFORE ME at the City of Vancouver, British Columbia, this 25th day of March, 2021.

A commissioner for taking affidavits for British Columbia

Marko Gøluza, Director Professional Conduct, Insurance Council of British Columbia

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This is Exhibit " 1 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25 day of MARCH, 2021.

A Commissioner for taking Affidavits for British Columbia

Insurance Council
BRITISH COLUMBIA

COUNCIL RULES

Version: March 19, 2020

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DEFINITIONS

In these Rules:

"A&S" means Accident and Sickness.

"A&S agent supervisor" means an individual who holds and has held an active life insurance agent or an active A&S insurance agent licence for at least 5 of the previous 7 years or as approved by Council and who undertakes to supervise a new A&S agent.

"Act" means the *Financial Institutions Act* and its Regulations.

"adjusting firm" means a licensed corporation or partnership, or an individual sole-proprietor insurance adjuster that meets the nominee requirements set out in Council Rules.

"application date" is the date a fully completed application is received at Council's office.

"authorized representative" means a licensee who has the approval of the nominee to act on behalf of an insurance agency, adjusting firm or general insurance direct writer and is registered with Council in the required form.

"client" means a person who may reasonably be expected to rely on a licensee's advice or actions in relation to insurance.

"Council" means the Insurance Council of British Columbia.

"Council Rules Course" means a course established by Council under its continuing education program for new licensees.

"E&O" means errors and omissions.

"general insurance direct writer" means an insurer authorized to conduct general insurance business in British Columbia, that distributes insurance directly through individuals licensed as insurance agents and salespersons who represent only that insurer.

"insurance agency" means a licensed corporation or partnership, or an individual sole-proprietor agent that meets the nominee requirements set out in Council Rules.

"jurisdiction" means any Canadian province or territory, or any other country.

"LLQP course" means the Life Licence Qualification Program course based on the LLQP Design Document adopted by the Canadian Insurance Self-Regulatory Organization and approved by Council.

"LLQP qualifying exam" means the exam(s) set by Council based on the LLQP Design Document.

DEFINITIONS – *continued*

"life agent supervisor" means an individual who holds and has held an active life insurance agent licence for at least 5 of the previous 7 years or as approved by Council and who undertakes to supervise a new life agent.

"life insurance agent licence" means a licence authorizing the licensee to act as an insurance agent in respect of both life and A&S insurance.

"new A&S agent" means an individual who obtains an A&S insurance agent licence on or after September 1, 2012 and has not been licensed as an active A&S insurance agent for a minimum of 24 months.

"new life agent" means an individual who obtains a life insurance agent licence on or after September 1, 2012 and has not been licensed as an active life insurance agent for a minimum of 24 months.

"restricted travel insurance licence" means a licence issued to a travel agent or travel wholesaler registered under the *Business Practices and Consumer Protection Act*, authorizing the licensee to act as an insurance agent in connection with travel insurance as defined in the Insurance Licensing Exemption Regulation to the Act, sold incidentally to the ordinary business of a travel agent or travel wholesaler.

The definitions set out in the Act are also applicable for the purposes of Council Rules.

RULE 1 LICENCE CLASSES

(1) Subject to all other provisions of the Act and Council Rules, the following are the defined classes of licences issued by Council:

- (a) General Insurance:
  - (i) Level 1 Salesperson
  - (ii) Level 2 Agent
  - (iii) Level 3 Agent
  - (iv) Corporate or Partnership Agent
- (b) Life and Accident & Sickness Insurance:
  - (i) Agent
  - (ii) Corporate or Partnership Agent
- (c) Accident and Sickness Insurance:
  - (i) Agent
  - (ii) Corporate or Partnership Agent
- (d) Insurance Adjuster:
  - (i) Level 1
  - (ii) Level 2
  - (iii) Level 3
  - (iv) Corporate or Partnership
- (e) Restricted Travel Insurance:
  - (i) Corporate, Partnership or Sole-Proprietor Agent

RULE 2 INDIVIDUAL AND BUSINESS QUALIFICATIONS

INDIVIDUAL LIFE INSURANCE LICENCES

(1) An individual applying for a life insurance agent licence must:

(a) successfully complete:

(i) the LLQP course; and

(ii) within 1 year of completing the LLQP course and within the 1 year preceding the application date, have successfully completed Council's LLQP qualifying exam; or

(b) within the 1 year preceding the application date have successfully completed the qualification exam(s) established by Council, if any.

INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE LICENCES

(2) An individual applying for an A&S insurance agent licence must:

(a) successfully complete:

(i) the A&S LLQP course; and

(ii) within 1 year of completing the A&S LLQP course and within the 1 year preceding the application date, have successfully completed Council's A&S LLQP qualifying exam; or

(b) within the 1 year preceding the application date have successfully completed the qualification exam(s) established by Council, if any.

INDIVIDUAL GENERAL INSURANCE LICENCES

(3) An individual applying for a level 1 general insurance salesperson licence must:

(a) within the 1 year preceding the application date have successfully completed:

(i) the courses approved by Council and administered by:

(A) the Insurance Brokers Association of British Columbia; or

(B) the Insurance Institute of Canada; or

(ii) the qualification exam(s) established by Council, if any.

(4) An individual applying for a level 2 general insurance agent licence must:

(a) within the 1 year preceding the application date have successfully completed:

(i) the courses approved by Council and administered by:

(A) the Insurance Brokers Association of British Columbia; or

(B) the Insurance Institute of Canada; or

(ii) the qualification exam(s) established by Council, if any.

RULE 2 INDIVIDUAL AND BUSINESS QUALIFICATIONS – *continued*

INDIVIDUAL GENERAL INSURANCE LICENCES – *continued*

(5) An individual applying for a level 3 general insurance agent licence must:

(a) be an officer, director or partner of, or hold management responsibilities within, the general insurance agency;

(b) have been consecutively licensed as a general insurance agent or salesperson for 5 of the 7 years preceding the application date, with at least 3 of those years as a level 2 general insurance agent; and

(c) have successfully completed:

(i) the courses approved by Council and administered by:

(A) the Insurance Brokers Association of British Columbia; or

(B) the Insurance Institute of Canada; or

(ii) the qualification exam(s) established by Council, if any.

INDIVIDUAL INSURANCE ADJUSTER LICENCES

(6) An individual applying for a level 1 insurance adjuster licence must:

(a) within the 1 year preceding the application date, have successfully completed:

(i) the courses approved by Council and administered by the Insurance Institute of Canada; or

(ii) the qualification exam(s) established by Council, if any.

(7) An individual applying for a level 2 insurance adjuster licence must:

(a) have 2 years licensed adjusting experience; and

(b) within the 1 year preceding the application date, have successfully completed:

(i) the courses approved by Council and administered by the Insurance Institute of Canada; or

(ii) the qualification exam(s) established by Council, if any.

RULE 2 INDIVIDUAL AND BUSINESS QUALIFICATIONS – *continued*

INDIVIDUAL INSURANCE ADJUSTER LICENCES – *continued*

(8) An individual applying for a level 3 insurance adjuster licence must:

(a) be an officer, director or partner of, or hold management responsibilities within, the adjusting firm;

(b) have been consecutively licensed as an insurance adjuster for 5 of the 7 years preceding the application date, with at least 3 of those years as a licensed level 2 insurance adjuster;

(c) have successfully completed:

(i) the courses approved by Council and administered by the Insurance Institute of Canada; or

(ii) the qualification exam(s) established by Council, if any.

(9) In the event of a catastrophe or disaster Council may issue a temporary insurance adjuster licence to an individual to adjust a specific loss on behalf of an insurer.

RESTRICTED TRAVEL INSURANCE SOLE-PROPRIETOR AGENT LICENCES AND COURSE FOR EXEMPT INDIVIDUALS

(10) An individual applying for a sole-proprietor restricted travel insurance agent licence and employees of restricted travel insurance agencies exempt from licensing under the Insurance Licensing Exemption Regulation to the Act must successfully complete the restricted travel insurance course approved by Council.

RULE 2 INDIVIDUAL AND BUSINESS QUALIFICATIONS – *continued*

NOMINEE REQUIREMENTS

(11) Every insurance agency or adjusting firm must designate an individual who meets the following criteria to act as a nominee:

(a) An individual applying to act as a nominee for an insurance agency or adjusting firm must be:

(i) an officer, director or partner of the insurance agency or adjusting firm;

(ii) a senior manager in the Province; or

(iii) approved by Council.

(b) An individual applying to act as a nominee for a life or A&S insurance agency must have worked as a licensed life or A&S insurance agent for 5 of the last 7 years, unless the insurance agency will not have any authorized representatives other than the nominee.

(c) An individual applying to act as a nominee for a general insurance agency must be qualified to hold a level 3 general insurance agent licence.

(d) An individual applying to act as a nominee for an adjusting firm must be qualified to hold a level 3 insurance adjuster licence.

(12) An individual applying to act as an agent or salesperson for a general insurance direct writer must identify an individual licensee to act as a nominee that is qualified to hold a level 3 general insurance agent licence and have the approval of the general insurance direct writer.

(13) Where a sole-proprietor acts as an insurance agency or adjusting firm, the individual:

(a) must meet the requirements to be a nominee under subsection (11); or

(b) may apply to Council to nominate another qualified individual to act as a nominee.

ADDITIONAL EDUCATION

(14) Council may determine that additional education or training relating to a specific area of knowledge may be necessary for a specific class of licence. Where such a determination is made Council can require completion of a specific course within a reasonable period of time.

AGE REQUIREMENTS

(15) An applicant for an insurance agent or adjuster licence must have attained the age of 19 years.

(16) An applicant for a general insurance salesperson licence must have attained the age of 16 years.

RULE 2 INDIVIDUAL AND BUSINESS QUALIFICATIONS – *continued*

BUSINESS REGISTRATION AND NAME REQUIREMENTS

(17) An applicant or licensee that is a corporation or partnership must be registered with the British Columbia Corporate Registry.

(18) All names under which insurance business is conducted, other than an individual's own name, must be:

- (a) registered with the British Columbia Corporate Registry;
- (b) a name that will not likely be confused with the name of another licensed insurance agent or adjuster; and
- (c) be registered with Council in the form approved by Council.

REACTIVATION PROVISION

(19) An applicant who previously held a licence:

- (a) within the 2 years preceding the application date, may apply for the same licence subject to:
  - (i) the class of licence being issued under Council Rules;
  - (ii) the applicant having held a licence of the same class:
    - (A) for 5 of the 7 years preceding the application date; or
    - (B) for the 2 years preceding the termination date of the licence and being able to demonstrate that the applicant was actively engaged in the business of insurance authorized under the licence for that 2 year period; and
  - (iii) any other provision of the Act and Council Rules; or
- (b) within 1 year preceding the application date, may apply for the same licence subject to:
  - (i) the class of licence being issued under Council Rules;
  - (ii) the applicant having held a licence continuously for the 1 year preceding the termination date of the licence and being able to demonstrate that the applicant was actively engaged in the business of insurance authorized under the licence for that 1 year period; and
  - (iii) any other provision of the Act and Council Rules.

RULE 2 INDIVIDUAL AND BUSINESS QUALIFICATIONS – *continued*

EQUIVALENCY PROVISION

(20) Where an applicant does not meet the education and experience requirements under Council Rules, a licence application will be considered where the applicant:

(a) submits a completed licence application;

(b) submits a completed equivalency proposal in the form required by Council; and

(c) can demonstrate that alternate education and/or experience obtained is equivalent to the requirements set out in Council Rules.

NON-RESIDENT REQUIREMENTS

(21) Where an applicant is a resident of a jurisdiction other than the province of British Columbia, the applicant must:

(a) be licensed for the same class of insurance in the applicant's home jurisdiction;

(b) provide evidence that activities authorized under the class of licence being applied for are exempt from licensing in the applicant's home jurisdiction; or

(c) be approved by Council.

RULE 3 LICENCE APPLICATIONS

COMPLETE LICENCE APPLICATION

(1) An applicant must deliver to Council an application that is:

(a) in the form, including supporting documentation, required by Council; and

(b) accompanied by the fee as published in Council's Fee Schedule.

APPLICANTS TO SATISFY COUNCIL

(2) If an applicant satisfies Council that the applicant:

(a) has met all of the requirements set out in the Act and Council Rules;

(b) is trustworthy, competent and financially reliable;

(c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;

(d) has not in any jurisdiction:

(i) been refused, or had suspended or cancelled, an insurance licence or registration;

(ii) been convicted of an offence; or

(iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional field;

for a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster; and

(e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.

then the Council may consent to issuing a licence.

RULE 4 LICENCE PERIOD

(1) Licences issued by Council may be continuous or for a term determined by Council.

(2) Licences issued for a specific term are subject to a minimum period of 1 year except:

(a) in the case of a temporary insurance adjuster licence; or

(b) for transition purposes as stated under Rule 9.

(3) Where a licence subject to an expiry date is issued:

(a) the expiry date will be contained on the licence;

(b) the licensee must submit to Council a completed renewal application on or before the expiry date of the licence; and

(c) where the licensee fails to meet the requirements of subsection (b), the licence is terminated on the expiry date shown on the licence.

(4) Where a continuous licence is issued:

(a) Council will publish a mandatory filing schedule;

(b) a licensee must submit to Council a filing, including supporting documentation, in the form required by Council;

(c) a licensee who fails to meet a filing deadline will be required to pay a late filing fee, in accordance with Council's Fee Schedule; and

(d) the licence of a licensee who has not met the filing requirements within 60 calendar days of the filing date is automatically terminated, without Council taking any action.

RULE 5 COUNCIL FEES

(1) Council will collect and retain fees from licensees and applicants for the following:

(a) an application fee not to exceed $200.00 per year for a licence;

(b) a filing fee for continuous licences not to exceed $200.00 per year;

(c) an application fee not to exceed $50.00 to reinstate, amend or transfer a licence;

(d) an exam fee not to exceed $125.00 per sitting;

(e) a non-resident endorsement fee not to exceed $50.00 for each original;

(f) a fee for amendment of information not to exceed $50.00 per each amendment;

(g) a fee for each request for licence information not to exceed $25.00;

(h) a late filing fee not to exceed $200.00 ;

(i) a photocopy fee not to exceed $1.00 per page;

(j) a fee for licence information lists not to exceed $300.00 per list;

(k) a fee for a certificate of a true exact copy of any document not to exceed $25.00 per page; and

(l) a fee for each replacement licence certificate not to exceed $50.00.

RULE 6 LICENCE RESTRICTIONS

LEVEL 1 GENERAL INSURANCE SALESPERSONS

(1) The following restrictions are imposed on every general insurance salesperson licence:

(a) the licensee must not sign contracts of insurance on behalf of an insurer;

(b) the licensee must not carry on general insurance business in any place other than on the premises of the insurance agency the licensee is authorized to represent, except where the licensee has completed the Council Rules Course and held an active general insurance salesperson licence for 6 of the preceding 9 months;

(c) the licensee must only conduct general insurance business under the direct supervision of a general insurance agent; and

(d) the licensee's compensation must consist of a salary, whereby a minimum of 60% of the annual income is based on an hourly, daily, monthly, or other regular rate.

LEVEL 1 GENERAL INSURANCE (GRANDFATHERED) SALESPERSONS

(2) The following restrictions are imposed on every (grandfathered) general insurance salesperson licence:

(a) the licensee must not sign contracts of insurance on behalf of an insurer; and

(b) the licensee must only conduct general insurance business under the direct supervision of a general insurance agent.

LEVEL 1 INSURANCE ADJUSTERS

(3) The following restrictions are imposed on every level 1 insurance adjuster licence:

(a) the licensee must not make any adjustment or settlement of loss except under the direct supervision of a level 2 or level 3 insurance adjuster licensee; and

(b) the licensee must not report in relation to the adjustment of claims except by a report approved and countersigned by a level 2 or level 3 insurance adjuster licensee.

RULE 7 LICENCE CONDITIONS

APPLICABLE TO ALL CLASSES OF LICENCES

(1) A licensee must hold in strict confidence all information acquired in the course of the professional relationship concerning the personal and business affairs of a client, and must not divulge or use any such information other than for the purpose of that transaction or of a similar subsequent transaction between the licensee and the same client unless expressly authorized by the client or as required by law to do so.

(2) Where a licensee collects or receives funds on behalf of an insurer, the licensee must:

- (a) not encumber the funds without the prior written consent of the insurer;
- (b) not use or apply the funds for purposes other than as described in the agreement with the insurer; and
- (c) pay to the insurer all funds collected or received less any deductions authorized by the insurer, including commissions.

(3) A licensee must notify Council within 5 business days:

- (a) where the licensee or any business the licensee owns or has participated in as a director, officer or partner:
  - (i) is disciplined by any financial sector regulator, or any professional or occupational body;
  - (ii) has any judgment rendered in relation to any insurance activities, fraud or breach of trust;
  - (iii) declares bankruptcy; or
  - (iv) is charged or convicted of any criminal offence or any offence under any law of any jurisdiction, excluding traffic offences resulting in monetary fines only;
- (b) when a licensee's authorization to represent an insurance agency, adjusting firm or general insurance direct writer is withdrawn;
- (c) in the case of subsection (b) if the reason for withdrawing the authorization relates to the individual's suitability or conduct as a licensee, of the reasons for the action taken; and
- (d) of any change in name, including trade names.

(4) A licensee must notify Council within 30 calendar days:

- (a) of any change in residential or business address and telephone numbers; or
- (b) in the case of an insurance agency, adjusting firm or the nominee of a direct writer:
  - (i) of the opening or closing of branch offices; and
  - (ii) of a material change in the ownership of an insurance agency or adjusting firm.

RULE 7 LICENCE CONDITIONS – *continued*

APPLICABLE TO ALL CLASSES OF LICENCES – *continued*

(5) A licensee must meet the requirements of the continuing education program established by Council, as amended from time to time.

(6) A licensee that is a nominee of, or a sole-proprietor acting as an insurance agency or adjusting firm, is responsible to Council for all activities of the insurance agency or adjusting firm.

(7) A licensee that is a nominee for authorized representatives of a general insurance direct writer is responsible to Council for all activities of the authorized representatives.

(8) A licensee must comply with the Council's Code of Conduct, as amended from time to time.

(9) A licensee shall keep books, records and other documents necessary for the proper recording of insurance transactions and related financial affairs.

(10) Where an insurance agency, adjusting firm or an authorized representative of a general insurance direct writer no longer has a licensed nominee, the licence of the insurance agency, adjusting firm and/or the authorized representatives is automatically suspended, unless otherwise approved by Council.

RULE 7 LICENCE CONDITIONS – *continued*

APPLICABLE TO ALL CLASSES OF LICENCES – *continued*

(11) Effective January 1, 2006, unless otherwise determined by Council a licensee:

(a) must maintain or be covered by E&O insurance, which extends to all activities as a licensed insurance agent, salesperson or adjuster, with:

(i) a minimum limit of $1,000,000.00 per claim; and

(ii) a minimum aggregate limit of $2,000,000.00;

(b) who is a direct employee of an insurer is exempt from subsection (a) where:

(i) the licensee only sells the products of that insurer; and

(ii) the licensee provides certification from the insurer that:

(A) the licensee is an employee of the insurer;

(B) the company accepts responsibility for the licensee's activities as a licensee; and

(C) the company will respond to E&O claims against the licensee on the same basis as set out in subsection (a);

(c) that is no longer insured as required under subsection (a) or (b) must:

(i) notify Council within 5 business days; and

(ii) immediately stop conducting any insurance activities;

(d) will have the licence automatically suspended without Council taking any action, where the licensee remains uninsured for a period exceeding 30 calendar days; and

(e) will have the licence suspended under subsection (d) automatically reinstated where:

(i) the licensee obtains the required E&O insurance within 30 calendar days from the date of the suspension; and

(ii) the licensee delivers to Council the required verification;

otherwise the licence is terminated.

RULE 7 LICENCE CONDITIONS – *continued*

APPLICABLE TO ALL CLASSES OF LICENCES – *continued*

(11.1) A licensee that intends to conduct insurance transactions with an unauthorized insurer pursuant to section 76(1)(c) of the Act:

(a) must, in advance of conducting any transaction, provide Council written notification in the form approved by Council;

(b) that is acting as an authorized representative of an insurance agency that has already met the requirement outlined in subsection (a) is exempt from subsection (a);

(c) must for each transaction conducted:

(i) take all reasonable steps to ensure that the insurance coverage is not available from an authorized insurer;

(ii) obtain written consent of the client, prior to the insurance transaction, to negotiate or procure insurance coverage with an unauthorized insurer;

(iii) prior to completing the insurance transaction, provide written disclosure to the client of the responsibilities and risks involved in dealing with an unauthorized insurer, including but not limited to:

(A) the financial strength or creditworthiness of the unauthorized insurer;

(B) course of action available or consequences to the client if a claim is not paid or the unauthorized insurer ceases to do business;

(C) that the client must pay the insurance premium tax; and

(iv) hold all premiums collected in a trust account established with a Canadian financial institution.

CONDITIONS APPLICABLE TO INSURANCE ADJUSTER AND GENERAL INSURANCE LICENCES

(12) Where an insurance adjuster or general insurance salesperson or agent is no longer an authorized representative of an insurance agency, adjusting firm or general insurance direct writer:

(a) the licence of the individual is automatically suspended without Council taking any action; and

(b) the licence suspended under subsection (a) is automatically reinstated, where the licensee obtains the required authorization within 90 calendar days of the date of the suspension and the licensee:

(i) meets all licence conditions; and

(ii) delivers to Council the required verification in the form approved;

otherwise the licence is terminated.

RULE 7 LICENCE CONDITIONS – *continued*

CONDITIONS APPLICABLE TO GENERAL INSURANCE LICENCES

(13) Every general insurance agency:

(a) must have a written agreement to represent and collect premiums on behalf of at least 1 insurer authorized to do general insurance business in British Columbia, other than the Insurance Corporation of British Columbia, except where approved by Council;

(b) will have its licence and all licences of its authorized representatives automatically suspended without Council taking any action, where the insurance agency no longer meets the requirements of subsection (a) for a period exceeding 21 calendar days;

(c) must notify Council of the automatic suspension under subsection (b) within 5 business days of the suspension; and

(d) will have the licences suspended under subsection (b) automatically reinstated where:

(i) the deficiency is corrected within 30 calendar days of the date of suspension; and

(ii) the licensee delivers to Council the required verification;

otherwise the licences are terminated.

(14) Every general insurance nominee and general insurance agency must ensure that all insurance activities are actively supervised by a licensed level 3 general insurance agent.

(15) A general insurance salesperson or general insurance agent must only conduct insurance activities as an authorized representative of:

(a) a general insurance agency; or

(b) a general insurance direct writer.

RULE 7 LICENCE CONDITIONS – *continued*

CONDITIONS APPLICABLE TO LIFE INSURANCE LICENCES

(16) A life insurance agent:

(a) must have written authorization to represent at least one insurer authorized to do life insurance business in British Columbia;

(b) will have the licence automatically suspended without Council taking any action, where the agent no longer meets the requirements of subsection (a) for a period exceeding 21 calendar days;

(c) must notify Council of the automatic suspension under subsection (b) within 5 business days of the suspension; and

(d) will have the licence suspended under subsection (b) automatically reinstated where:

(i) the deficiency is corrected within 30 calendar days of the date of suspension; and

(ii) the licensee delivers to Council the required verification;

otherwise the licence is terminated.

(16.1) Unless otherwise approved by Council, a new life agent must only conduct insurance activities under the supervision of a life agent supervisor.

(16.2) A life agent supervisor must notify Council within 5 business days, if:

(a) a life agent supervisor ceases to supervise a new life agent before a new life agent's period of mandatory supervision is complete; and

(b) in the case of subsection (a), provide the reason for ceasing to supervise a new life agent if the reason for ceasing to supervise relates to a new life agent's suitability or conduct as a licensee.

RULE 7 LICENCE CONDITIONS – *continued*

CONDITIONS APPLICABLE TO A&S LICENCES

(17) An A&S agent:

(a) must have written authorization to represent at least one insurer authorized to do A&S business in British Columbia;

(b) will have the licence automatically suspended without Council taking any action, where the agent no longer meets the requirements of subsection (a) for a period exceeding 21 calendar days;

(c) must notify Council of the automatic suspension under subsection (b) within 5 business days of the suspension; and

(d) will have the licence suspended under subsection (b) automatically reinstated where:

(i) the deficiency is corrected within 30 calendar days of the date of suspension; and

(ii) the licensee delivers to Council the required verification;

otherwise the licence is terminated.

(17.1) Unless otherwise approved by Council, a new A&S agent must only conduct insurance activities under the supervision of an A&S agent supervisor.

(17.2) An A&S agent supervisor must notify Council within 5 business days if:

(a) an A&S agent supervisor ceases to supervise a new A&S agent before a new A&S agent's period of mandatory supervision is complete; and

(b) in the case of subsection (a), provide the reason for ceasing to supervise an A&S agent if the reason for ceasing to supervise relates to a new A&S agent's suitability or conduct as a licensee.

CONDITIONS APPLICABLE TO INSURANCE ADJUSTER LICENCES

(18) An individual insurance adjuster must only conduct insurance activities as an authorized representative of a licensed adjusting firm.

CONDITIONS APPLICABLE TO RESTRICTED TRAVEL INSURANCE LICENCES

(19) A restricted travel insurance agent must notify Council within 5 business days where the licensee is not registered as a travel agent or wholesaler under the *Business Practices and Consumer Protection Act* for a period of 30 days.

RULE 8 GRANDFATHERING PROVISIONS

(1) An applicant who previously held a general insurance salesperson (grandfathered) licence within the 2 years preceding the application date may apply for the same licence, subject to meeting the requirements of Rule 2 subsection (19).

(2) An individual who within the 2 years preceding the application date previously held a level 2 insurance adjuster licence as a sole-proprietor is qualified to apply for the same licence, without being subject to Rule 2 subsection (13), where the applicant:

(a) held the licence without meeting the nominee requirements;

(b) held the licence without being an authorized representative of a licensed adjusting firm; and

(c) meets the requirements of Rule 2 subsection (19).

RULE 9 TRANSITIONAL PROVISIONS

(1) For the one year period preceding June 1, 2008, Council may issue a licence for a term of less than one year.

This is Exhibit " 2 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25th day of MARCH, 2021.

A Commissioner for taking Affidavits for British Columbia

Insurance Council
BRITISH COLUMBIA

CODE OF CONDUCT

Version r7
Version Date: 15MAY2020

IMPORTANT INFORMATION REGARDING THE CONTENTS OF THIS CODE

Unless otherwise qualified in this Code, read:

"Act" as the *Financial Institutions Act*;

"adjusting firm" as a licensed corporation or partnership, or an individual sole proprietor insurance adjuster, that meets the nominee requirements set out in Council Rules;

"agency" as a licensed corporation or partnership, or an individual sole proprietor agent, that meets the nominee requirements set out in Council Rules;

"client" as a person who may reasonably be expected to rely on a licensee's advice or actions in relation to insurance;

"Code" as the Code of Conduct;

"Council" as the Insurance Council of British Columbia;

"licensee" as a licensed insurance salesperson, agent or adjuster;

"nominee" as a licensee nominated to exercise the rights and privileges of an insurance licence issued to an insurance agency or an insurance adjusting firm;

"principal" as a person on whose behalf a licensee has undertaken to perform adjusting services;

"person" includes a corporation, partnership, society, association or other organization or legal entity;

"Rule" as a rule made by Council pursuant to section 225.1 of the Act; and

"transaction" as a situation in which a licensee provides an insurance product or service to any person.

TABLE OF CONTENTS

1. INTRODUCTION

The strength of the insurance industry is based, in part, on industry members providing advice and services to the public in a competent and professional manner. The underlying principle of all insurance business is utmost good faith. To command the confidence and respect of the public, the insurance industry must maintain a reputation for integrity, competence, and good faith.

The provincial legislature has entrusted Council with the responsibility for maintaining standards of professional conduct in the insurance industry. The Act and Rules empower Council to set standards for insurance salespersons, agents and adjusters and to take remedial action where those standards have not been met. Rule 7(8) requires that licensees comply with this Code.

Council's mission statement is:

> **We serve the public by ensuring licensed insurance agents, salespersons and adjusters act within a professional framework, which promotes ethical conduct, integrity, and competence.**

In keeping with Council's mandate, the purpose of the Code is to define and communicate standards of conduct for use by licensees in their practice of the business of insurance. The Code is also used as a guide by Council in its deliberations on proper and usual practice in particular circumstances.

The Code sets out minimum standards of conduct. The extent to which each licensee rises above these standards is a personal decision. However, by striving to maintain the highest possible standards of ethical conduct, a licensee will enjoy the respect and confidence of the public and other members of the industry.

Licensees have a responsibility to assist in the regulatory process and act as gatekeepers for the industry by discouraging misconduct and reporting it where identified.

2. INTERPRETATION

The Code is divided into a number of subsections, each of which addresses a specific principle. Each Principle is defined and then further clarified with a stated Requirement. To provide licensees with additional guidance, each subsection also includes Guidelines and Examples of Misconduct taken from past Council decisions.

The Code provides a framework for a licensee to measure his or her conduct in particular circumstances. It is not possible to foresee every possible situation and describe the proper conduct. When reading the Code, keep in mind that although presented separately, all principles and requirements are interconnected. For example, the principle of Trustworthiness is fundamental to all activities of a licensee and to each of the principles outlined.

The Code applies to all licensees and should be read and interpreted in the context of a licensee's area of insurance practice and Council's primary concern, which is protection of the public interest. For clarity the Code refers to licensees by the first person "you".

The Code is written in plain language to be clear and concise and should be read in conjunction with governing legislation and the Rules. Council has additional resources available which expand on many of the principles and requirements detailed in the Code. These include our Notices and Bulletins which are available on our website at insurancecouncilofbc.com, as well as appendixes to the Code. Throughout the Code, when a published article or appendix was identified as addressing a particular subject, the Notice, Bulletin, or appendix is referenced.

3. TRUSTWORTHINESS

3.1 PRINCIPLE

In an industry where trust is the foundation for all dealings, you must meet rigorous standards of personal integrity and professional competence. These characteristics speak to the essence of what a licensee does. Failure to adhere to these standards reflects not only on you, but also on the profession. Trustworthiness is a fundamental element of each requirement in the Code.

3.2 REQUIREMENT

You must be trustworthy, conducting all professional activities with integrity, reliability and honesty. The principle of trustworthiness extends beyond insurance business activities. Your conduct in other areas may reflect on your trustworthiness and call into question your suitability to hold an insurance licence.

3.3 GUIDELINES

3.3.1 Conduct that would reflect adversely on your trustworthiness includes:

a) dishonestly dealing with money or property;
b) improper use of your position or knowledge as a licensee for personal benefit; (Bulletin – April 2003)
c) intentionally misleading clients, insurers or Council through false statements or by withholding material information;
d) knowingly prejudicing the interests of a client or principal for personal gain; and
e) conduct in the nature of theft or fraud.

3.3.2 Acts of dishonesty outside your professional life may reflect on your trustworthiness to hold an insurance licence.

3.4 EXAMPLES OF MISCONDUCT

3.4.1 A chartered accountant accepted unsecured loans from clients, breached terms of a suspension order, swore a false affidavit and mishandled trust funds.

3.4.2 While acting in a position of trust for a volunteer organization, misappropriated funds from the organization.

3.4.3 Used confidential client information provided by an insurer for a purpose other than intended. (Appendix B)

3.4 EXAMPLES OF MISCONDUCT – *continued*

3.4.4 Made or assisted in making a false insurance claim.

3.4.5 Materially misrepresented odometer readings and previous vehicle damage in the private sale and registration of a licensee's motor vehicles.

3.4.6 Signed and submitted segregated fund applications solicited and completed by another agent, to help the other agent circumvent the insurer's internal policy that prohibited life agents from selling segregated funds unless they were also licensed to sell mutual funds.

3.4.7 Improperly rated a motor vehicle to circumvent AirCare.

3.4.8 Made false declarations to an insurer.

3.4.9 "Witnessed" a signature known to be a forgery.

3.4.10 Made false or misleading statements to Council.

3.4.11 Raised capital from clients of an insurance agency of which the licensee was owner and principal, without disclosing to the clients that they were investing in the agency and without providing material information to them about the investment, such as agency financial statements and disclosure on how the investments would be used.

4. GOOD FAITH

4.1 PRINCIPLE

The insurance industry is based on fiduciary relationships. Accordingly, the exercise of good faith by licensees in the practice of the business of insurance is essential to public confidence in the industry. Good faith is a fundamental aspect of your conduct and a key element in each of the Code's requirements.

4.2 REQUIREMENT

You must carry on the business of insurance in good faith. Good faith is honesty and decency of purpose and a sincere intention on your part to act in a manner which is consistent with your client's or principal's best interests, remaining faithful to your duties and obligations as an insurance licensee.

You also owe a duty of good faith to insurers, insureds, fellow licensees, regulatory bodies and the public.

4.3 GUIDELINES

4.3.1 Conduct that would reflect adversely on your intention to practice in good faith includes:

a) wilful disregard of duties and obligations under the Act, Rules and Code;
b) misrepresentation or failure to disclose material information where required; (Bulletin – November 2002)
c) unauthorized access, use or disclosure of confidential information; (Appendix B)
d) making improper use of your position as a salesperson, agent or adjuster;
e) employing or remunerating unlicensed persons to conduct insurance business; and
f) taking advantage of a client's or insured's inexperience, ill health or lack of sophistication.

4.4 EXAMPLES OF MISCONDUCT

4.4.1 Signed as witness to applications, but had not in fact seen them signed.

4.4.2 Directed an employee to sign a document as agent of record, when the employee had not completed the form or met the policyowner.

4.4.3 Directed an unlicensed employee to take an insurance application.

4.4 EXAMPLES OF MISCONDUCT – *continued*

4.4.4 Submitted applications that were known to have been completed by an unlicensed person.

4.4.5 Used premium money for personal use.

4.4.6 Backdated a client's automobile insurance and subsequently lied to an ICBC adjuster about when and how the transaction was processed.

4.4.7 Counseled a client to misrepresent material information to an insurance company.

4.4.8 Accessed confidential client information from an insurer's computer database without authority and subsequently communicated that information to another person. (Appendix B)

4.4.9 Drafted and signed a false certificate of insurance for a family member who required evidence of insurance coverage.

5. COMPETENCE

5.1 PRINCIPLE

Clients rely on the knowledge and advice of licensees. Accordingly, competence on the part of licensees is an essential requirement of the practice of the business of insurance. Incompetent conduct can result in significant prejudice to clients and insurers. It follows that you should not undertake to perform any insurance services beyond your level of competence.

5.2 REQUIREMENT

You must conduct all insurance activities in a competent manner. Competent conduct is characterized by the application of knowledge and skill in a manner consistent with the usual practice of the business of insurance in the circumstances.

You must continue your education in insurance to remain current in your skills and knowledge.

5.3 GUIDELINES

5.3.1 Your practice and level of service to clients should be consistent with that which a reasonable and prudent licensee in similar circumstances would exercise. Honest mistakes do not necessarily constitute a failure to adhere to the Code.

5.3.2 Conduct that would reflect on your competence includes:

a) failing to properly place insurance coverage as instructed;
b) failing to provide evidence of insurance coverage when required;
c) failing to advise a client of a lapse or change in insurance coverage;
d) failing to conduct an adequate fact finding and assessment of a client's insurance needs;
e) failing to properly handle and account for money or property;
f) failing to maintain proper and adequate books and records of insurance transactions and related financial affairs;
g) failing to provide for the safekeeping and confidentiality of records (Appendix B);
h) failing to advise an insurer/principal of a risk or claim;
i) failing to properly document communications and instructions from a client to ensure mutual understanding and provide a record of the transaction; and
j) practicing in an area where you lack sufficient expertise, training or experience.

5.3.3 Nominees are responsible to Council for all activities of the insurance agency or adjusting firm and must ensure the agency or firm and its employees are properly supervised and operate in accordance with the conditions and restrictions on their licences.

5.3 GUIDELINES – *continued*

5.3.4 Licensees who have supervisory duties must fulfil those duties competently. Improper practice by supervised employees may bring a supervisor's competence into question if the conduct occurred due to inadequate supervision, including lack of policies, procedures and training.

5.3.5 You must comply with the continuing education requirements under the Rules. However, these are minimum requirements and may not be sufficient to maintain appropriate standards, particularly if you work in specialized areas.

5.3.6 You must refrain from giving advice in areas beyond your expertise as an insurance licensee. For example, you should refer matters that would be more properly dealt with by a lawyer or accountant.

5.4 EXAMPLES OF MISCONDUCT

5.4.1 Sold an insurance policy that was inappropriate given the client's stated objectives and circumstances and that a prudent and competent agent would not have recommended.

5.4.2 Counseled a client to conduct an assignment of a life insurance policy in a manner that failed to meet the client's stated objective.

5.4.3 Failed to properly manage the business and financial aspects of an agency, including the proper handling and remittance of premium money to insurers.

5.4.4 Altered the effective date of an insurance contract.

5.4.5 Permitted a Level 1 salesperson to conduct general insurance business without the direct supervision of a Level 2 or Level 3 agent.

5.4.6 Employed an unlicensed individual in a licensed capacity for a period of five months because procedures were inadequate to ensure employees were properly licensed before they commenced insurance activities.

5.4.7 Provided written notice to clients that their insurance coverage had been renewed, prior to receiving confirmation from the insurance company that renewal terms would be offered.

6. FINANCIAL RELIABILITY

6.1 PRINCIPLE

As an insurance licensee, clients and insurers entrust money, property and financial instruments to you to facilitate transactions or claims on their behalf. Accordingly, your reliability in handling these funds is essential to your practice as a licensee.

6.2 REQUIREMENT

You must be financially reliable. This means you can be relied upon to properly safeguard and account for money and property entrusted to you and to promptly deliver them in accordance with the circumstances.

6.3 GUIDELINES

6.3.1 Conduct outside your professional life may reflect on your financial reliability.

6.3.2 Outstanding judgements, pending legal proceedings and/or bankruptcies can reflect on your financial reliability.

6.3.3 Where you collect or receive funds on behalf of an insurer, you must:

a) not encumber the funds without the prior written consent of the insurer;
b) not use or apply the funds for purposes other than as described in the agreement with the insurer; and
c) pay to the insurer all funds collected or received less any deductions authorized by the insurer.

6.4 EXAMPLES OF MISCONDUCT

6.4.1 Failed to account for or repay unauthorized withdrawals from a bank account over which the licensee held a power of attorney.

6.4.2 Failed to invest a client's money in mutual funds as instructed.

6.4.3 Contrary to his clients' interests and for personal gain, solicited clients to invest the cash value of their life insurance policies in a company he had a vested interest in, without disclosing his inherent conflict of interest and the true risks involved.

6.4 EXAMPLES OF MISCONDUCT – *continued*

6.4.4 Personal debts and questionable financial involvement with a number of companies that solicited investors for offshore investments.

6.4.5 Legal proceedings by a group of former clients alleging misappropriation of funds and by a bank seeking payment for personal credit line agreements and two promissory notes.

7. USUAL PRACTICE: DEALING WITH CLIENTS

7.1 PRINCIPLE

Under the Code, a client includes anyone who might reasonably be expected, in the circumstances, to rely on your professional advice or actions in relation to his or her insurance. You are required to put the best interests of the client as your first concern, as befits the role of a fiduciary.

7.2 REQUIREMENT

When dealing with clients you must:

- protect clients' interests and privacy;
- evaluate clients' needs;
- disclose all material information; and
- act with integrity, competence and the utmost good faith.

7.3 GUIDELINES

Conflict of Interest

A conflict of interest exists when your loyalty to, or representation of, a client or insurance company could be materially or adversely affected by your interest or duty to another party. A conflict of interest may be real, potential or apparent.

Conflict of Interest of Guidelines for Insurance Agents, Adjusters, and Salespersons is included as Appendix A.

Disclosure

7.3.1 What information is material and should be provided to a client depends on the circumstances of the transaction. You should disclose any information relevant to the client's insurance needs that a reasonable and prudent licensee would disclose in the same circumstances.

7.3.2 Prior to arranging an insurance transaction with a client who has been referred to you by an unlicensed third party, you must disclose to the client, in writing, any fee or compensation paid to the third party for the referral.

7.3 GUIDELINES – *continued*

7.3.3 Prior to conducting a transaction, you must disclose any fees you charge in addition to the policy premium. The fee should be disclosed in writing to the client and include separate dollar values for the total insurance premium charged by the insurer, the total additional fee charged by the agent and any premium finance fees charged by the agent.
(Bulletin – October 2001)

7.3.4 You must disclose to the client any arrangement to place the client's insurance through another agent and meet Council's sub-brokering guidelines.
(Notice ICN 98-003 *Sub-Brokering*)

7.3.5 You must fully inform clients about all aspects of the insurance products they purchase, including any changes that occur during the term of the policy.

7.3.6 You must make full and fair disclosure of all material facts to enable clients to make informed decisions regarding their insurance.

7.3.7 You must not use sales materials or illustrations that are misleading or unnecessarily confusing.

7.3.8 You must not use terms such as "guaranteed" without appropriate qualification or evidence to support the statement.

Duty of Care

7.3.9 The client's interests take priority over your interests and should not be sacrificed to the interests of others. You must not engage in practices that place the interests of others ahead of the client's interests.

Confidentiality

7.3.10 You must hold in strict confidence all information acquired in the course of your professional relationship concerning the personal and business affairs of a client, and must not divulge or use such information other than for the purpose of that transaction or of a similar subsequent transaction between you and the same client unless expressly authorized by the client or as required by law. (Appendix B)

Withdrawal of Services

7.3.11 If you choose to terminate your business relationship with a client you must do so in a manner that avoids prejudice and allows for the orderly transfer of the client's insurance business elsewhere. You must provide the client with adequate notice of your intent to withdraw your services, as well as comply with any applicable statutory and professional obligations.

Withdrawal of Services - *continued*

7.3.12 Clients should be notified at least 60 days prior to the expiration of their existing insurance if you are unable to renew their insurance at the same terms and conditions.

Protecting Clients' Interests

7.3.13 You must report all claims promptly.

7.3.14 You must deliver insurance policies or evidence of insurance coverage within a reasonable time and, in any event, in accordance with the terms of your agreement with the insurance company.

7.3.15 You must deal with all formal and informal complaints or disputes in good faith and in a timely and forthright manner, including, when necessary, referring the complainant to other more appropriate people, processes and/or organizations.

7.4 EXAMPLES OF MISCONDUCT

7.4.1 Failed to fully assess a client's needs and objectives and neglected to advise the client of changes to the insurance plan as a consequence of a medical rating.

7.4.2 Provided a copy of a client's insurance policy to two other customers as an example of the product being offered. (Appendix B)

7.4.3 Failed to refund all money due to a client in accordance with the cancellation provisions set out in the client's insurance contract and as agreed to in the licensee's contract with the insurer.

7.4.4 Requested an insurer cancel a client's insurance policy for non-payment of premium, when the premium had been paid, in order to apply the pro-rata return premium against an outstanding debt owed by the client.

8. USUAL PRACTICE: DEALING WITH INSURERS

8.1 PRINCIPLE

Licensees act as intermediaries between clients, insureds and insurers in a contractual relationship. The insurers' ability to meet their contractual duties is based on your honesty and competence in providing advice and information.

8.2 REQUIREMENT

You have a duty to insurers with whom you are transacting business to:

- make reasonable inquiries into the risk;
- provide full and accurate information;
- promptly deliver all insurance documents and monies due;
- represent the insurer's products fairly and accurately;
- adhere to the authority granted by the insurer; and
- promptly report all potential claims.

You must not defame or discredit insurers.

8.3 GUIDELINES

Conflict of Interest

A conflict of interest exists when your loyalty to, or representation of, a client or insurance company could be materially or adversely affected by your interest or duty to another party. You have a responsibility to avoid a conflict of interest with an insurer. A conflict of interest may be real, potential or apparent.

Council's *Conflict of Interest of Guidelines for Insurance Agents, Adjusters, and Salespersons* is included as Appendix A.

Disclosure

8.3.1 You have a duty to fully and accurately disclose any information material to the insurer's decision to issue a contract of insurance.

8.3.2 Where you are placing insurance on behalf of another agent who is acting for the insured, you should disclose this to the insurer.

8.3 GUIDELINES – *continued*

Duty of Care

Insurers rely on licensees for information to make underwriting decisions. Therefore, you must make reasonable inquiries into a risk. This means making inquiries that a reasonable and prudent licensee would make in the same circumstances.

8.3.3 In accordance with the Rules, it is a condition of every licence issued that, where the licensee collects or receives insurance premiums on behalf of an insurer, the licensee must:

a) not encumber the funds without the prior written consent of the insurer;
b) not use or apply the funds for purposes other than as described in the agreement with the insurer; and
c) pay to the insurer all funds collected or received less any deductions authorized by the insurer.

8.3.4 Insurance should be sold or conserved based on the merits of the particular policy as it relates to the needs of the client. Attempts to discredit insurance companies are not the proper practice of the business of insurance. This requirement is not meant to prevent licensees from providing information that is relevant to the client's ability to make an informed decision about his or her insurance. However, information offered solely for the purpose of undermining the reputation of an insurer is inappropriate.

8.4 EXAMPLES OF MISCONDUCT

8.4.1 Failed to remit to the insurer all premiums collected or received in accordance with the terms of the agency's agreement with the insurer.

8.4.2 Offered and bound terms under a policy that were not authorized by the insurer.

8.4.3 Issued a cover note purporting to bind an insurer the agency did not represent.

9. USUAL PRACTICE: DEALING WITH LICENSEES

9.1 PRINCIPLE

Along with your fellow licensees, you represent the insurance industry to the public. The public views the industry as a single entity, so by maligning a fellow licensee you are bringing your own reputation and that of the industry into public disrepute. Treating your colleagues with courtesy and respect enhances your own reputation and the public's confidence in the insurance industry.

9.2 REQUIREMENT

You must not defame or discredit other licensees.

9.3 GUIDELINES

9.3.1 Insurance should be sold or conserved based on the merits of the particular policy as it relates to the needs of the client. Attempts to discredit another licensee are not the proper practice of the business of insurance. This rule is not meant to prevent licensees from providing information that is relevant to the client's ability to make an informed decision about his or her insurance. However, information offered solely for the purpose of undermining the reputation of another licensee is inappropriate.

9.4 EXAMPLE OF MISCONDUCT

9.4.1 Used the Discipline section of the Bulletin to discredit another licensee.

10. USUAL PRACTICE: DEALING WITH THE PUBLIC

10.1 PRINCIPLE

The insurance industry provides services upon which the well-being of individuals and businesses will often depend. Therefore, it is incumbent upon all licensees to take their duty of care to the public seriously. Your forthrightness and conduct in representing yourself and your services reflects on other licensees and the industry as a whole. Accordingly, it is in the interest of all licensees to conduct themselves in a manner that promotes public confidence in the integrity and reliability of the industry.

10.2 REQUIREMENT

You must honestly represent yourself and the services and products you provide so as not to mislead the public.

10.3 GUIDELINES

Holding Out

10.3.1 You must hold yourself out in the manner in which you are licensed.

10.3.2 You must disclose you are an insurance agent prior to conducting insurance activities with the public.

10.3.3 You must not use the term "and Associates", or similar phrase, as part of a business or trade name when there are not two or more licensees in the business.

10.3.4 You must not represent yourself as having specific expertise in a given area of practice or industry designations unless you are suitably qualified by virtue of your experience, training or both.

10.3.5 You must not purport to be a financial planner or provide financial planning advice, unless you meet the qualifications and disclosure requirements set by Council.
(Notice ICN 02-001 *Financial Planning*)

10.3.6 You must not make any false or misleading statements in the solicitation of or negotiation for insurance.

Advertising

10.3.7 You must not engage in misleading advertising by offering prices, rates of return, products or services you cannot reasonably provide or that are subject to undisclosed qualifications.

11. USUAL PRACTICE: CONDUCT SPECIFIC TO INSURANCE ADJUSTERS

11.1 PRINCIPLE

Each requirement under the Code applies equally to all licensees. However, insurance adjusters play a unique role in the business of insurance, particularly in their relationships with insureds and insurers. Accordingly, the following sets out additional, specific duties applicable to licensees engaged in the role of insurance adjusting. This does not limit applicable duties under the other requirements of the Code. Adjusters must also refer to and comply with each requirement identified in the Code in the course of their practice.

11.2 REQUIREMENT

Duties to Principals

You must:

- protect your principal's interests;
- protect your principal's confidential information;
- disclose all information material to the loss or claim;
- decline to act where you have an undisclosed conflict of interest or financial interest in a loss or claim; and
- act within the authority and instructions of your principal.

Duties to Insureds

You must:

- properly identify yourself, your principal and your role as an adjuster;
- adjust claims promptly and fairly;
- protect the insured's confidential information; and
- fully disclose information material to the insured's policy coverage, rights and obligations.

11.3 GUIDELINES

Conflict of Interest

A conflict of interest exists when your loyalty to, or representation of, a client, insurance company, or principal could be materially or adversely affected by your interest or duty to another party. You have a responsibility to avoid a conflict of interest with an insurer. A conflict of interest may be real, potential, or apparent.

11.3 GUIDELINES - *continued*

Council's *Conflict of Interest of Guidelines for Insurance Agents, Adjusters, and Salespersons* is included as Appendix A.

11.3.1 You must take reasonable steps to keep the insured informed of the status of a claim and respond promptly to the insured's communications.

11.3.2 You must not attempt to influence a claim through coercion, false or misleading statements or other improper means.

11.3.3 You must not seek to discourage legitimate claims or cause undue delay in adjusting a claim.

11.3.4 You must fully and promptly inform insureds of material information regarding policy coverage, limitation periods, claim denials and their rights and obligations in the claims process, as required in the circumstances.

11.3.5 You must not mislead anyone as to your role in adjusting a claim. This includes who is your principal. For example, when acting on behalf of an insurance company, you should advise the insured in your first meeting that you act for the insurance company in the claim and that the insured is responsible for the hiring and work of contractors, even if facilitated by you.

11.3.6 You must refrain from giving legal advice or discouraging insureds from seeking legal advice.

11.3.7 You must not deal directly with an insured represented by legal counsel without consent.

11.3.8 You must only act on an adjustment when you have authority from your principal, and then according to your principal's instructions.

11.3.9 You must not obtain medical information about an individual without the consent of that person. (Appendix B)

11.4 EXAMPLES OF MISCONDUCT

11.4.1 Failed to identify a provision in a policy which required the insured to repair or replace damaged property within 180 days from the date of the loss in order to receive replacement cost.

11.4.2 Entered a restricted fire scene for the purpose of adjusting the property loss without authorization from the local fire department.

11.4.3 Disclosed confidential information in promotional material, including testimonials from claim files, claimant names, file numbers, negotiated settlements and liability decisions. (Appendix B)

12. DEALING WITH THE INSURANCE COUNCIL OF BRITISH COLUMBIA

12.1 PRINCIPLE

Licensees benefit from a degree of self-regulation under the Act, in that they are able to participate in the regulation of their industry. This privilege requires the co-operation and support of licensees.

12.2 REQUIREMENT

You must respond promptly and honestly to inquiries from Council.

12.3 GUIDELINES

12.3.1 Section 231(1)(d) of the Act requires licensees to make a prompt reply to an inquiry from Council.

12.3.2 It is a breach of the Act under section 231(1)(c) to make a material misstatement in an application for a licence or in response to an inquiry from Council.

12.4 EXAMPLES OF MISCONDUCT

12.4.1 Failed to reply over several months to a number of inquiries from Council during the course of a Council investigation.

12.4.2 Swore a false affidavit advising Council that insurance activities had not been conducted while unlicensed.

12.4.3 Provided false and misleading information on licensing applications to conceal not having sufficient credits to meet the continuing education licence condition.

12.4.4 Made material misstatements in reply to an inquiry from Council.

12.4.5 Refused to reply to an inquiry from Council.

13. COMPLIANCE WITH GOVERNING LEGISLATION AND COUNCIL RULES

13.1 PRINCIPLE

Licensees are expected to adhere to all regulatory requirements. In terms of professional practice, as a licensee you come under the direct regulation of the Financial Institutions Commission and Council. Violation of the regulatory requirements administered by these bodies not only contravenes the Code, it can also subject you to prescribed disciplinary action under the Act.

13.2 REQUIREMENT

You must be aware of and comply with your duties and obligations under the Act, the *Insurance Act*, the Rules and the Code.

13.3 GUIDELINES

13.3.1 You are required to read, understand and remain current on the applicable regulatory requirements that apply to you under the Act and Rules. This information is readily available from a variety of sources. As necessary, Council publishes guidelines and directives to licensees on specific issues through its Notices, Bulletins and website. To assist you, the following is a list of specific resources that should be particularly noted. Legislation is available online at bclaws.ca or at your local library. All other information is available on Council's website at insurancecouncilofbc.com or may be obtained by contacting Council's office.

13.3.2 You should also be aware of any other legislation, such as the *Income Tax Act, Motor Vehicle Act, or Personal Information Protection Act* which may impact your particular practice.

Publications

- *Financial Institutions Act*
- *Insurance Act*
- Council Rules
- Notices
- Bulletins
- Council Decisions
- Licence Conditions

CONFLICT OF INTEREST GUIDELINES FOR INSURANCE AGENTS, ADJUSTERS, AND SALESPERSONS ("Guidelines")

Insurance agents, adjusters, and salespersons ("licensees") have a responsibility to avoid conflicts of interest arising between themselves and their clients or insurance companies. When a conflict of interest arises, or has the potential to arise, a licensee needs to take appropriate action before acting, or continuing to act, on behalf of a client, an insurance company, or other principal.

The purpose of these Guidelines is to identify situations, actions, or conduct that could lead to, or result in, a conflict of interest and to assist licensees in understanding the issues relating to conflicts of interest. In addition, these guidelines provide direction on how to plan for and address situations when a conflict of interest arises, which licensees may use to manage, or avoid, such conflicts. By doing so, it may reduce the risk of harm to all parties, including potential harm that could result to a licensee's reputation and insurance practice.

1. DEFINITION OF CONFLICT OF INTEREST

A conflict of interest exists when there is a risk that a licensee's loyalty to, or representation of, a client, an insurance company, or other principal could be materially or adversely affected by a licensee's own interests or by a licensee's duty to another client, former client, insurance company, or other third party.

Conflicts of interest include, but are not limited to:

a) A **real** conflict of interest denotes a situation in which a licensee has knowledge of a personal, private, financial, or professional interest that is sufficient to influence the exercise of his or her duties and responsibilities.

b) A **potential** conflict of interest incorporates the concept of foreseeability, such as when a licensee can foresee that a personal, private, financial, or professional interest may someday be sufficient to influence the exercise of his or her duties.

c) An **apparent or perceived** conflict of interest exists when a reasonable person has an apprehension that a conflict of interest exists. An apparent conflict of interest can exist where it could be perceived, or where it appears, that a licensee's personal, private, financial, or professional interest or access to information could improperly influence the exercise of his or her duties, whether or not this is, in fact, the case.

Transparency and full disclosure are factors in the consideration of the existence of a conflict of interest.

2. MONITORING/MANAGING CONFLICTS OF INTEREST

A licensee should examine whether a conflict of interest exists, not only at the outset of a relationship with a client, insurance company, or other principal, but throughout the duration of the relationship, as new circumstances or information may establish themselves during that period which could reveal or lead to a conflict of interest.

Where there is a conflict of interest, or the potential for one, a licensee has a responsibility to address the conflict with the client, insurance company, or other principal before the transaction is completed, or, if the conflict is not identified until after the transaction, as soon as reasonably possible.

3. DISCLOSURE OF CONFLICTS OR POTENTIAL CONFLICTS OF INTEREST

A licensee has an obligation to provide appropriate disclosure to a client, in sufficient detail, of all real, potential, or apparent conflicts of interest to ensure a client can make an informed decision regarding an insurance transaction. The standard of disclosure should be reasonable and prudent for the circumstances. Disclosure should include an explanation of the conflict of interest, its relevance to the insurance transaction, and be provided to the client prior to the client making a decision whether to proceed with the insurance transaction. In all cases, when disclosure is required, it should be made in writing.

When there is an irreconcilable conflict between a licensee's duty to a client, an insurance company, or other principal and other duties or responsibilities the licensee may have, the licensee should decline to act, even with consent.

Insurance agents are also required to comply with the disclosure requirements contained in the *Marketing of Financial Products Regulation* under the *Financial Institutions Act*. The disclosure requirements apply every time an insurance transaction takes place. The disclosure requirements must include the following:

a) The name of the insurance company whose service or product is being provided.
b) Any relationship (over and above the contractual relationship to represent) between the insurance company and the licensee offering to provide the service or product (e.g., a financial institution has loaned funds to the licensee to finance his or her insurance or other business).
c) Whether a commission or compensation is to be paid by the financial institution to the licensee offering to provide the service or product.
d) Before acting as an insurance agent, disclosure to the public that the licensee is an insurance agent.

4. NEED FOR A CLIENT'S EXPRESS CONSENT

Where there is a conflict of interest, or the potential for one, a licensee should either not act in the transaction; or where the licensee believes he or she is able to properly represent the client, insurance company, or other principal without the conflict having a material or negative effect on the representation of that party, the licensee must act only where express consent to the conflict from the appropriate parties is obtained.

In such cases, Council recommends that the client, insurance company, or other principal's express consent be obtained, in writing, or, in the alternative, that the licensee confirm to the appropriate parties, in writing, the discussion that occurred regarding express consent.

Express consent must be informed, voluntary, and should take place only after all appropriate disclosures have been made. Disclosure is an essential requirement in obtaining consent. A licensee must inform the relevant parties of the circumstances and the reasonably foreseeable ways in which a conflict of interest could adversely affect the relevant parties interests. Such a disclosure would include the licensee's direct or indirect relationship to all parties and any interest or connection with the relevant matter. Only after the appropriate disclosure has been provided should the relevant parties be required to determine whether or not to give consent.

Where it is not possible to provide a client, insurance company, or other principal with adequate disclosure because of reasons such as confidentiality, a licensee should decline to act in the transaction and the relevant parties should not be afforded the opportunity to determine whether or not a conflict exists.

In all cases where a conflict of interest exists, or may exist, a licensee must reasonably believe that he or she is able to represent a client, insurance company, or other principal without the conflict having a material or negative effect on the licensee's representation of, and duty to, the relevant parties. It is recommended that, in such cases, the licensee clearly document why he or she believes that he or she can reasonably represent the relevant parties. This documentation should be provided to the relevant parties and maintained in the licensee's file.

5. EXAMPLES OF CONFLICTS OF INTEREST

While not intended to be an exhaustive list, the following are some examples of conflicts which may arise.

Insurance Council
BRITISH COLUMBIA

APPENDIX A
CONFLICT OF INTEREST GUIDELINES

I. All Licence Classes

Situations may arise where a licensee:

- has a personal, private, financial, or professional interest that will, or could, prevent the licensee from being able to objectively exercise his or her duties and responsibilities to a client, principal, or insurance company. A licensee's personal, private, financial, or professional interest includes, but is not limited to, a direct or indirect financial interest in the outcome of any transaction or subject matter involving a client or the interests of a family member, employee, business partner, or associate.
- is in a position to take advantage of a client or consumer's inexperience, age, lack of sophistication, lack of education, language barrier, or ill health.
- uses misleading, unnecessary, and/or confusing sales material.
- may derive personal or private benefit by placing insurance business with a particular insurer because some form of financial relationship exists between the licensee and the insurance company, such as ownership or a loan.
- is in a position to give or receive an inducement to or from a third party (a third party being a person other than the client or the insurance company involved in the transaction).
- engages in other employment, job, or business activity ("business activity").

While it is acceptable to engage in a business activity while holding licence, there are business activities that may include real or perceived positions of power or trust. Some examples include immigration consultant, priest or pastor, teacher, doctor, and police officer. As an example, should a teacher be permitted to solicit insurance to the parents of his or her students or a priest or pastor be permitted to solicit members of his or her congregation?

Council, as part of its licence application process, requires applicants to disclose any (non-insurance) business activity. Council reviews such disclosures to determine if the business activity represents the potential for a conflict of interest.

Council has identified a number business activities which it has determined have the potential to be, or are, in a conflict of interest with the duties of those holding an insurance licence. In some cases, the conflict has been determined to be so significant that Council has declined to grant a licence, and, in other cases, Council has been able to address the conflict by placing conditions or restrictions on a licence. To assist licence applicants, Council has posted on its website a list of business activities it has determined are, or may result in, a conflict. This information is updated regularly and can be found with the Code of Conduct at http://www.insurancecouncilofbc.com/PublicWeb/CodeofConduct.html.

The purpose of this list is twofold: to ensure licence applicants are aware, before commencing the licence application process, that a business activity may prevent them from obtaining a licence; and to provide life agents with details on employment or business activities that Council views as creating, or having the potential to create, a conflict of interest.

For those who commence a business activity at some point after being granted an insurance licence, the responsibility rests with them to identify if the business activity creates, or has the potential to create, a conflict of interest, and to ensure they govern their insurance practice in accordance with past Council decisions.

II. Life and Accident and Sickness Insurance Agents ("life agent")

i. Membership in an organization where charitable giving is involved

A life agent, who is also an influential member of an organization (e.g., deacon in a church or board member of a charity) and who engages in marketing of insurance as part of a charitable gift giving program for that organization, is in a position to create a conflict of interest. A life agent's position of power or trust within the organization affects his or her ability to provide unbiased advice and a client's ability to make a balanced and informed decision. In such a situation, it would be prudent to use the services of a life agent that is not part of, or associated with, the organization.

ii. Referral arrangements where some form of compensation to or from a third party is involved, including the sale of financial products and the giving of expert advice

Any time a life agent pays a fee to a third party as a result of an insurance transaction, the client must receive written disclosure of this fact before the insurance transaction is completed. The same is also appropriate where a life agent will receive a fee, or other form of compensation, from a third party (over and above the usual compensation received from an insurance company) as a consequence of conducting an insurance transaction. In such circumstances, written disclosure should be provided to the client, and possibly the insurance company, prior to the completion of the insurance transaction.

iii. When representing multiple interested parties

There are many scenarios where this situation can apply, with married couples, families, and business partners being a few examples. While a conflict may not exist at the outset, a divorce or a dissolution of a business partnership can result in a conflict. Acting for all parties in these situations, even if all parties agree, can lead to a conflict. In such cases, a life agent should consider whether he or she should only represent one of the parties and assist the other in obtaining insurance advice from an arm's-length insurance agent.

Conflicts can also arise when a life agent is asked to be the sole executor for an estate, particularly when he or she is also a beneficiary or continues to act as a life agent for the estate. In such cases, a life agent needs to consider whether to continue to act as the life agent or bring in an arm's-length life agent to represent the estate. Similar issues can arise where a life agent has been granted a power of attorney for a client. Should the client no longer be able to manage his or her affairs, continuing to exercise the power of attorney and act as the life agent creates a conflict of interest.

iv. Moving a client from one insurer to another

If the reason for moving a client from one insurance company to another is because a life agent no longer represents the original insurance company, the client needs to be advised of this, even if it is not the primary reason for the change.

v. Involving a client in investing in an insurance agency or other business activity

Any discussions with a client about investing in, or loaning money to, a life agent, a life agent's insurance business, or another business venture is a conflict of interest. Such discussions should only occur when the client is represented by independent legal and financial advisors. If a client refuses to obtain independent legal advice, the investment or loan should not occur.

The same requirements would apply if a life agent were to loan money to, or invest in, a client, a client's business, or a related business venture.

III. General Insurance Agents and Salespersons ("general insurance licensee")

i. Direct or indirect interest in related businesses (e.g., restoration and construction companies, building supply companies, and salvage companies)

Where a general insurance licensee has an interest in a business that may be recommended to a client as a result of a loss, claim, or another insurance transaction, the client and the insurance company on risk should be advised of this interest prior to the transaction occurring.

ii. Any financial interest a general insurance licensee has in an insurer or vice versa.

See Section 3 of this Appendix regarding required disclosure.

iii. Moving a client from one insurer to another

If the reason for moving a client from one insurance company to another is because a general insurance licensee no longer represents the original insurance company, the client needs to be advised of this, even if it is not the primary reason for the change.

iv. Involving a client in investing in an insurance agency or other business activity

Any discussions with a client about investing in, or loaning money to, a general insurance licensee, a general insurance licensee's insurance business, or another business venture, is a conflict of interest. Such discussions should only occur when the client is represented by independent legal and financial advisors. If a client refuses to obtain independent legal advice, the investment or loan should not occur.

The same requirements would apply if a general insurance licensee were to loan money to, or invest in, a client, a client's business, or a related business venture.

IV. INSURANCE ADJUSTERS

i. Direct or indirect interest in related businesses (e.g., restoration and construction companies, building supply companies, and salvage companies)

Where an insurance adjuster has an interest in a business that may be recommended to a client as a result of a loss or claim, the insured and the insurance company should be advised of this interest at the time of the recommendation.

In addition, if an insurance adjuster has a relationship or understanding with a contractor, restoration company, or service or product supplier that may result in some form of compensation, gift, or inducement being paid because of a referral by the insurance adjuster, the insured and the insurance company should be advised of this interest at the time of the recommendation.

ii. Relationship – a proper explanation to an insured that the insurance adjuster "works" for the insurance company

While an insurance adjuster has duties to an insured during the claim process, the insurance adjuster is usually contracted to represent the insurance company. The insured needs to know and understand that the insurance adjuster's primary duty is to the insurance company. This relationship needs to be explained to the insured at the first meeting.

iii. Relationships that may exist between the insured and the insurance adjuster

Where a relationship exists between an insurance adjuster and an insured, the insurance adjuster must disclose this relationship to the insurance company before commencing to adjust the claim.

CLIENT CONFIDENTIALITY GUIDELINES FOR INSURANCE AGENTS, ADJUSTERS, AND SALESPERSONS ("Guidelines")

Maintaining the privacy and confidentiality of client information is one of the cornerstones of the insurance industry. The insurance industry is built on trust and clients expect that when they provide their personal information for the purposes of an insurance transaction, the information will be properly protected and will only be used for the purpose for which the information was provided, unless the client expressly authorizes otherwise.

In 2009, Council issued Notice ICN 09-003 *Penalties for Unauthorized Access of the Insurance Corporation of British Columbia's Database* advising licensees there would be no tolerance for intentional unauthorized access to, or use of, a person's information. Since then, Council has identified situations where licensees failed to appreciate that even seemingly innocuous activities could result in a breach of privacy.

The purpose of the Guidelines is to assist licensees in understanding client confidentiality requirements, which involve a number of factors pertaining to the collection, use, disclosure, storage, and destruction of clients' personal information.

Licensees should make themselves aware of these factors and ensure they are accounted for in their day-to-day operations. Ideally, licensees should have written policies and procedures governing client privacy and take reasonable steps to ensure that all staff are aware of these policies and act accordingly.

I. DEFINITION OF PERSONAL INFORMATION

A client's personal information is defined as all information collected by a licensee about the client, excluding publicly available contact information.

II. USING CLIENT INFORMATION

In accordance with Council Rule 7(1), a licensee cannot divulge or use any information derived from a client, except for the purpose for which the information was obtained, unless expressly authorized by the client or as required by law.

III. EXPRESS CLIENT AUTHORITY

Express authority from a client must be clear and leave no dispute that the client has allowed a licensee to use or disclose his or her personal information for a specific purpose other than the purpose for which the information was given or intended.

Council acknowledges that express authority can be given either orally or in writing, but recommends that, whenever possible, it be obtained in writing from the client or, if given verbally, subsequently confirmed with the client in writing by the licensee. Without written express authority, it is difficult for a licensee to demonstrate that he or she acted appropriately should a concern arise regarding the handling of the client's information.

Without express authority from the client, the following situations would be a breach of Council's confidentiality requirements:

- A client's information is used or accessed by a licensee, either directly or indirectly, for purposes other than what it was collected for.
- A licensee uses a client's information to promote the licensee's services or products.
- A licensee provides information upon request about a client to a licensee who works at a different agency.
- A licensee provides information about a client to the client's spouse, relative, or friend, regardless of the reason.
- An insurance adjuster provides information about an insured to the insured's insurance agent.
- A licensee shares a client's information with a third party so that the third party can offer another service to the client.

The above examples are not meant to be exhaustive, but are intended to demonstrate that an action, no matter how innocuous, could be a breach of client confidentiality.

IV. PROTECTING CLIENT INFORMATION

A licensee has a duty to safeguard all of a client's personal information that is in his or her possession. A licensee is responsible for determining the appropriate safeguards necessary to meet this duty. Such safeguards must address the accumulation, storage, and, when appropriate, disposal of a client's personal information.

As an example, disposal of a client's personal information in a manner that could expose the information to access by any unauthorized party, intentionally or otherwise, would constitute a breach. Disposing of personal information in a garbage or through a shredding service, where the service provider does not have appropriate confidentiality protocols in place, would be considered breaches.

V. SALE OR TRANSFER OF CLIENT INFORMATION

Section 20 of the *Personal Information Protection Act* ("PIPA") provides direction on what is required if a licensee's book of business is being sold to another licensee. In summary:

> A licensee may disclose personal information about clients, without their consent, to a prospective purchaser ("third party") of the clients' information, if it is necessary for the third party to determine whether to purchase the licensee's book of business. However, this may only occur if the licensee and the third party have entered into an agreement that limits the third party's use or disclosure of the clients' personal information solely for purposes related to the purchase of the book of business.
>
> If a licensee proceeds with a sale of a book of business, the licensee may disclose, without consent, clients' personal information contained in the book of business to a third party on the condition that the third party may only use or disclose the personal information for the same purposes for which it was collected, used, or disclosed by the licensee and is limited only to the personal information covered by the business transaction. In addition, the clients whose personal information was disclosed must be notified the business transaction has taken place and personal information about them has been provided to the third party. *In such cases Council recommends that the disclosure to the clients be timely (30 calendar days after completion of the sale) and in writing.*
>
> If the sale does not proceed or is not completed, the licensee must ensure the clients' information is appropriately destroyed by the third party or returned to the licensee.

Orphan Clients – Reassignment of Life Insurance Policies

When an agency (for the purposes of this section an agency means a life insurance agency or a life insurance managing general agent) knows the Agent of Record ("AOR") for a policy is no longer available to service the client, it may assist in the reassignment of the policy to another licensed agent.

An agency may take an active role in this process by informing the client that their AOR is no longer an insurance agent or has ceased to represent the agency and by offering to assist the client in reassigning their policy to a new AOR. In such situations, the client has the option of declining the agency's service and can elect to find their own AOR.

The appointment of a new AOR by an agency should not occur without first notifying the client and no personal information should be provided to a (potential) new AOR without first obtaining the client's consent. The recommended process of client notification is by way of letter, advising them of the status of their AOR and what is required to obtain a new AOR.

VI. AGENCIES, FIRMS, AND NOMINEES

It is the responsibility of insurance agencies and firms and their nominees to ensure their licensees and employees understand the confidentiality requirements and that appropriate measures and safeguards are in place to protect personal information.

Such measures should include:

- Periodic reviews and testing of how clients' personal information is managed and handled.
- Appointing an appropriate person to oversee the agency's or firm's duties in this regard.
- Implementing strict procedures on the management and handling of personal information.

VII. PRIVACY LEGISLATION

Council's position and requirements on client privacy and confidentiality do not override the requirements under existing legislation. Rather, the Guidelines are intended to emphasize to licensees the importance of client privacy. Licensees are reminded that PIPA governs their activities, which includes requiring that:

- A licensee designate one or more individuals to be responsible for the licensee's compliance with PIPA.
- Policies and practices be developed to ensure compliance with PIPA.

This is Exhibit " 3 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25th day of MARCH , 20 21 .

A Commissioner for taking Affidavits for British Columbia

Strategic Plan2020-2023

Our Vision

British Columbians have confidence in an insurance industry that meets international standards of public protection.

Our Mission

Proactive regulatory leadership that ensures qualified, competent, and ethical professionals meet British Columbians' insurance needs.

	Goal 1	Goal 2	Goal 3	Goal 4
	Effective regulatory practices and support systems that meet current and emerginginternational standards.	Regulatory oversight that protects consumers and enables industry innovation.	Enhanced ability to support insurance consumers, licensees and government.	Efficient and effective access to Council's services.
Priorities	Update regulatory practices to meet the International Association of Insurance Supervisors' Insurance Core Principles and the Professional Standards Authority's Standards of Good Regulation.	Modernize regulatory oversight to keep pace with changes in the insurance marketplace and support/ enable industry transformation.	Build awareness of Council's role and the services it provides to better serve consumers, licensees, and government.	Drive operational effectiveness.
Strategies	1. Create guidelines, policies, and standards to communicate Council's expectations regarding the Council Rules and Code of Conduct. 2. Conduct a comprehensive review and update of Council's Rules, policies, and processes to align with current practices and legislation. 3. Develop continuing education tools and regulatory courses. 4. Review and update licensee practice audit program. 5. Review and update investigation and disciplinary processes to improve effectiveness and timeliness.	1. Review and modernize licensing classes and qualifications. 2. Assess regulatory processes and modify as needed to detect and counter money laundering activities in the insurance industry. 3. Research new and emerging insurance distribution systems. Identify potential oversight mechanisms—including guidance for online insurance transactions involving an insurance agent—and implement.	1. Raise profile with and position Council as a trusted partner of the provincial government and related agencies. 2. Create broader brand awareness and public and licensee understanding of Council's role in order to support public protection activities. 3. Build our brand as an employer of choice.	1. Develop online tools to facilitate and streamline access to Council's services. 2. Build a comprehensive long term financial plan that supports proactive regulation. 3. Undertake a comprehensive records management process review. 4. Develop operational resources and processes to support business resilience.

Insurance Council
BRITISH COLUMBIA

This is Exhibit " 4 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25th day of MARCH , 2021 .

A Commissioner for taking Affidavits for British Columbia

STRATEGIC IMPLEMENTATION PLAN 2020 – 2023

KEY PERFORMANCE INDICATORS (KPI) TO JUNE 1, 2021

Priority One:

Update regulatory practices to meet the IAIS Insurance Core Principles and the PSA Standards of Good Regulation.

Initiative/ Activity	Lead Dept.	Supporting Depts.	Also achieves Priority
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

7	[redacted]	[redacted]	[redacted]	[redacted]

Priority Two

Modernize regulatory oversight to keep pace with changes in the insurance marketplace and support/ enable industry transformation.

Initiative/ Activity		Lead Dept.	Supporting Depts.	Also achieves Priority
1.	[redacted]	[redacted]	[redacted]	[redacted]
2	Assess regulatory processes and modify as needed to detect and counter money laundering activities in the insurance industry. KPI: ☐ Appropriate staff have been trained on AML detection techniques. ☐ Random practice audits have reviewed licensee compliance with FINTRAC ML/TF. ☐ Applicants for licensure have been screened for risk of participation in money laundering and terrorist financing activities as per FINTRAC guidance.	PC PQA	Licensing IT	1
3	[redacted]	[redacted]	[redacted]	
4	[redacted]	[redacted]	[redacted]	

	[redacted]			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Priority Three

Build awareness of Council's role and the services it provides to better serve consumers, licensees, and government.

Initiative/ Activity		Lead Dept.	Supporting Depts.	Also achieves Priority
1.	[redacted]	[redacted]		
2	[redacted]	[redacted]		[redacted]
3	[redacted]	[redacted]	[redacted]	[redacted]

Priority Four

Drive operational effectiveness.

Initiative/ Activity	Lead Dept.	Supporting Depts.	Also achieves Priority
1. [redacted]	[redacted]	[redacted]	[redacted]
2 [redacted]	[redacted]	[redacted]	[redacted]
3 [redacted]	[redacted]	[redacted]	[redacted]
4 [redacted]	[redacted]	[redacted]	
5 [redacted]	[redacted]	[redacted]	[redacted]

	[redacted]			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
13	[redacted]	[redacted]	[redacted]	

ADDITIONAL METRICS

Licensing

[redacted]

Professional Conduct

[redacted]

Practice and QA

- [redacted]
- [redacted]

Finance

- [redacted]
- [redacted]
- [redacted]

Human Resources

- [redacted]

Administration

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

ABCsolutions Presents: >>>>>>>>>>>>> RED FLAGS/CASE STUDIES

Canadian property and casualty (P&C)

Canadian AML legislation does not make reference to P&C insurance. This, however, should not be taken to mean money cannot be laundered through P&C products. Nor should it be taken to mean P&C agents, brokers, dealers or other insurance professionals are free from regulatory obligations with regards to AML.

These obligations come into play when the insurance product in question originates from an insurance company that operates out of a country **that *does have* P&C-related AML obligations**, such as the USA and United Kingdom. These obligations often extend extra-jurisdictionally; they relate in particular to situations when the jurisdictions in which the product is being sold do not meet the same standards as those of the originating country.

This is of particular concern to Lloyd's cover-holders in Canada, for example, and other Managing General Agents (MGAs) that underwrite on behalf of foreign P&C insurers.

- What do money laundering and terrorist financing schemes related to P&C products look like?
- What are the red flags?
- What do Canadian P&C insurance professionals need to know about AML compliance to be on the right side of the law?
- In particular, what do they need to know about products originating from companies based in the United Kingdom and in the USA?

All financial services professionals should consider ways money laundering might be possible given the products and services being offered.

There are many examples that exist of P&C insurance for luxury personal items or large commercial ventures being used to launder funds. These schemes may, but do not always, include an element of fraud.

One of the most common methods is to make a fraudulent claim against a property policy. This ensures the funds received in settlement come from a reputable source and appear legitimate.

This is Exhibit " 5 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25th day of MARCH , 20 21 .

A Commissioner for taking Affidavits for British Columbia

ABCsolutions Presents: >>>>>>>>>>>>> RED FLAGS/CASE STUDIES

Red Flags

A number of confirmed red flags should prompt action by P&C insurance professionals. It is important to remember a red flag does not necessarily mean the client is a criminal or that money laundering or terrorist financing are occurring. All suspicious activity should be investigated as a matter of good corporate governance.

There are a number of ways that launderers can use insurance products. Some of the red flags which may indicate money laundering include:

- unusual payment methods such as large cash payments or cash equivalents such as money orders;
- attempts are made to use a third-party cheque to make a proposed purchase of a policy;
- transfer of the benefit of a product or claim settlement to an apparently unrelated third party is requested;
- early termination of a policy is requested where cash was tendered and/or the refund cheque is to a third party;
- an applicant purchases a high premium insurance policy using cash, then within a short time cancels the policy and requests the cash value returned, possibly payable to a third-party;
- a customer who wishes to fund its policy using payments from a third-party;
- making a large investment, then asking for a refund after the 14-day free-look or cooling-off period;
- purchasing one or more single-premium investment-linked policies, then cashing them in a short time later;
- making over-payment on a policy, then asking for a refund;
- an applicant requests to make a lump sum payment by a wire transfer or with foreign currency;
- purchasing an annuity with a lump sum rather than paying regular premiums over a period of time, particularly if the beneficiary is of an age which entitles him to receive the funds soon after;
- an applicant is reluctant to provide identifying information when purchasing a policy, or provides minimal or unverifiable information without supporting documentation;
- an applicant shows heightened interest in the cancellation terms;
- an applicant appears to have policies with several institutions through different brokers;
- an applicant purchases policies with insurance limits that appear to be beyond the customer's apparent means or needs;
- an applicant wants to borrow the maximum cash value of a single premium policy soon after paying for the policy (life insurance);
- an applicant uses a mailing address outside the insurance broker's normal territory;

- an applicant cannot be contacted directly via telephone;
- an insured makes frequent claims and the claims amounts are conveniently under a threshold limit that would be flagged, such as a claim settlement authority limit in a binding authority agreement;
- paying a large "top-up" into an existing insurance policy;
- purchasing a general insurance policy, then making a claim soon after;
- a customer who usually purchases small policies, suddenly requests a large lump-sum contract;
- premiums being paid into one policy, from different sources;
- where the relationship between the policyholder and beneficiary seems unusual;
- "Structuring" – i.e., purchasing several policies just under the reportable limit, instead of purchasing one large policy;
- where the customer is more interested in learning about cancellation terms than about the benefits of the policy;
- unusually large payments using cash, money order or travellers cheques;
- redemption of a policy which is unusually early or does not make good economic sense;
- purchasing products which are inconsistent with the buyer's age, income, employment or history;
- the funds coming from another country, particularly high-risk jurisdictions; or
- a customer who wants to pay a large premium with foreign currency or by way of wire transfer.

Canadian insurance professionals who do business with insurance companies located in the United States, United Kingdom or other international jurisdictions should be aware the insurer may choose to – or be required to – impose the same standards on their international business as on their domestic business. If your firm works closely with a company headquartered outside of Canada, you should be aware of the rules imposed by that country and company.

Case Studies

1. Non-Life

An example of a money laundering strategy is to purchase insurance cover for risks that are not faced by the insurer. One money launderer, for example, purchased marine property and casualty (liability) insurance for a 'phantom' ocean-going vessel. The person paid large premiums on the policy, and bribed agents so that regular claims were made and paid. However, the person was very careful to ensure that the claims were less than the premium payments, so that the insurer enjoyed a reasonable profit on the policy. In this way, the money launderer was able to

receive claims cheques which were, in effect, laundered funds. A cheque from a reputable insurance company is a prized possession, because few would question the source of the funds having seen the name of the company on the cheque or wire transfer.

2. Over-Payment of Premiums

Another simple method by which funds can be laundered is by arranging for excessive numbers or excessively high value of insurance cheques or wire transfers to be made. A money launderer may well own legitimate assets or businesses as well as the illegal enterprise. In this method, the launderer may arrange for insurance of the legitimate assets and 'accidentally', but on a recurring basis, significantly overpay his premiums and request a refund for the excess. Often, the person does so in the belief that his relationship with his representative at the company is such that the representative will be unwilling to confront a customer who is both profitable to the company and important to his own success.

3. Assignment of Claims

In a similar way, a money launderer may arrange with groups of otherwise legitimate people, perhaps owners of businesses, to assign any legitimate claims on their policies to be paid to the money launderer. The launderer promises to pay these businesses, perhaps in cash, money orders or traveller's cheques, a percentage of any claim payments paid to him above and beyond the face value of the claim payments. In this case the money laundering strategy involves no traditional fraud against the insurer. Rather, the launderer has an interest in obtaining funds with a direct source from an insurance company, and is willing to pay others for this privilege. The launderer may even be strict in insisting that the person does not receive any fraudulent claims payments, because the person does not want to invite unwanted attention.

4. Non-Life – Fraudulent Claims

Four people were found guilty on charges of money laundering and fraud in an insurance swindle worth US$6 million. Luxury cars were brought, rented or leased in the USA and insured. They were subsequently shipped to Hong Kong prior to resale in mainland China at up to three times their market value. The accused then filed false insurance reports in which the cars were said to have been stolen. About 120 cars were sent to Hong Kong. More than 70 people have been charged in connection with the case, according to the state insurance department in California.

5. Return Premiums

There are several cases involved the early cancellation of policies with return of premium has been used to launder money. This has occurred where there have been:

- ✓ a number of policies entered into by the same insurer/intermediary for small amounts and then cancelled at the same time;
- ✓ return premium being credited to an account different from the original account;
- ✓ requests for return premiums in currencies different to the original premium; and
- ✓ regular purchase and cancellation of policies.

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The Insurance Council of British Columbia Training Seminar©

September 30, 2019

This is Exhibit " 6 " referred to in the affidavit of MARKO GOLUBA sworn before me at VANCOUVER this 25th day of MARCH, 20 21.

A Commissioner for taking Affidavits for British Columbia

Money Laundering & Terrorist Financing: The Life Insurance Focus

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Outline

SECTION ONE: A GENERAL OVERVIEW

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  - Legislation
  - Definitions
- **About Money Laundering**
  - Stages
  - Techniques
- **About Terrorist Financing**
  - Funding Requirements
  - Sources
- **Terrorist Financing vs. Money Laundering**
  - Filtering Funds
  - Differences

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Outline

SECTION TWO: REGULATORY OBLIGATIONS

- **Compliance Program**
  - Five Elements
  - Reporting Obligations
- **Know Your Client**
  - Identity and Associated Record Requirements
  - Business Relationships
  - Client Information Records

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- **FINTRAC Examination Process**
- **ABCSOLUTIONS Process Examples**

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BEFORE WE GET STARTED REMEMBER THIS NUMBER!!

40%

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SECTION ONE

A General Overview

Background

- In 2000, Canada introduced comprehensive legislative changes to the *Proceeds of Crime (Money Laundering) Act*, as well as the Financial Transaction and Reports Analysis Centre of Canada (FINTRAC) was created.
- In 2001, the Act was amended to include **terrorist financing**, thereby changing the name to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.
- There have been several amendments to the PCMLTFA and/or the PCMLTFR, in 2006, 2010, 2014, 2015, 2016, 2017, 2018,and 2019 which include new and/or enhancements to reporting, record-keeping, compliance, civil penalties, tax evasion, risk assessment requirements, business relationships, methods to ascertain client identification, obligations related to politically exposed persons (PEPs) and heads of international organizations (HIOs), reasonable measures, and compliance program requirements.

  The most recent include: a FINTRAC assessment manual, an updated suspicious transaction guidance, an Administrative Monetary Policy document, and changes concerning the methods to identify clients.

Legislation: The PCMLTFA Today

There are five Regulations under the PCMLTFA.

1. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*.
2. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.
3. The *Cross-Border Currency and Monetary Instruments Reporting Regulations*.
4. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Registration Regulations*.
5. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*.

The **objective** of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and associated Regulations is to help **detect and deter** money laundering and the financing of terrorist activities. It is also to facilitate investigations and prosecutions of money laundering and terrorist activity financing offences.

Legislation: Definitions

"Life insurance companies, brokers and agents must fulfill specific obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and associated Regulations to help combat money laundering and terrorist financing in Canada."

1. "A *life insurance company* means a life company or foreign life company to which the Insurance Companies Act applies or a life insurance company regulated by a provincial Act."

2. "A life insurance broker or agent means an individual or entity that is registered or licensed under provincial legislation to carry on the business of arranging contracts of life insurance."

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Legislation: Responsibilities

Life insurance companies, brokers and agents are responsible for:

1. Providing FINTRAC with certain transaction reports;
2. Implementing a compliance program; and
3. Keeping records that may be required for law enforcement investigations.

When it comes to life insurance agents and employees of a life insurance company or broker, these obligations are the responsibility of the life insurance company, except with respect to reporting suspicious transactions and terrorist property, which is applicable to both the individual and their employer.

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DEFINITIONS: Money Laundering Offence

- Under Canadian law, a money laundering offence involves various acts committed with the intent to conceal or convert property or the proceeds of property (such as money) knowing or believing that these were derived from the commission of a designated offence. In this context, a designated offence means most serious offences under the *Criminal Code* or any other federal Act.

- It includes but is not limited to those relating to illegal drug trafficking, bribery, fraud, forgery, murder, robbery, counterfeit money, stock manipulation, tax evasion, and copyright infringement.

- A money laundering offence may also extend to property or proceeds derived from illegal activities that took place outside Canada.

Who commits life insurance fraud?

In most cases, it's dishonest policyholders, insurance industry insiders (i.e., agents, brokers, company execs.), and loosely organized networks of crooked medical professionals and attorneys who use their knowledge to bypass anti-fraud measures put in place by insurance companies.

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DEFINITIONS: Money Laundering

Money laundering (proceeds ***of*** crime) is the method by which "dirty money" received from criminal activities is processed through legitimate businesses and converted into "clean money". Once cleaned, the money cannot be easily traced to the person originating the transaction or to the criminal origin of the funds. Hence, the criminal can now do what they like with their money!

In addition to cleaning dirty money, there are **five other <u>key</u> reasons** why criminals launder money:

1. Avoid seizure of wealth
2. Avoid prosecution
3. Tax evasion that would be imposed on earnings - to enjoy the ill-gotten gains
4. Increasing profits by reinvesting in criminal activities
5. To appear legitimate

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DEFINITIONS: Terrorist Activity Financing Offence

- Under Canadian law, terrorist activity financing offences make it a crime to knowingly collect or provide property, such as funds, either directly or indirectly, to carry out terrorist crimes. Contact the RCMP and CSIS, as there may be a threat to National security.
- This includes inviting someone else to provide property for this purpose. It also includes the use or possession of property to facilitate or carry out terrorist activities.
- Only suspicion that a transaction is related to a *terrorist activity financing offence* should trigger a Voluntary Suspicious Transaction Report to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) as related to terrorist activity financing.

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DEFINITIONS: Terrorist Financing

Terrorist financing (proceeds ***for*** crime) is the process by which funds are provided for terrorist activity. A terrorist or terrorist group is one that has a purpose or activity to facilitate or carry out any terrorist action, and can involve:

Individuals;

Groups;

Trusts;

Partnerships;

Organizations.

Suspected or known terrorists, terrorist groups or listed persons:

In Canada, terrorist groups (entities) are monitored by *Public Safety Canada*, while *Global Affairs Canada* maintains lists of terrorist-designated individuals. Both lists can be accessed on their respective websites.

Also these lists are available on the United Nations website.

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About Money Laundering

1. Placement

- Entry of illegal funds into the financial system

2. Layering

- Hiding the origin of the funds through multiple and/or complicated transactions

3. Integration

- Exit of clean funds from the financial system without attracting suspicion

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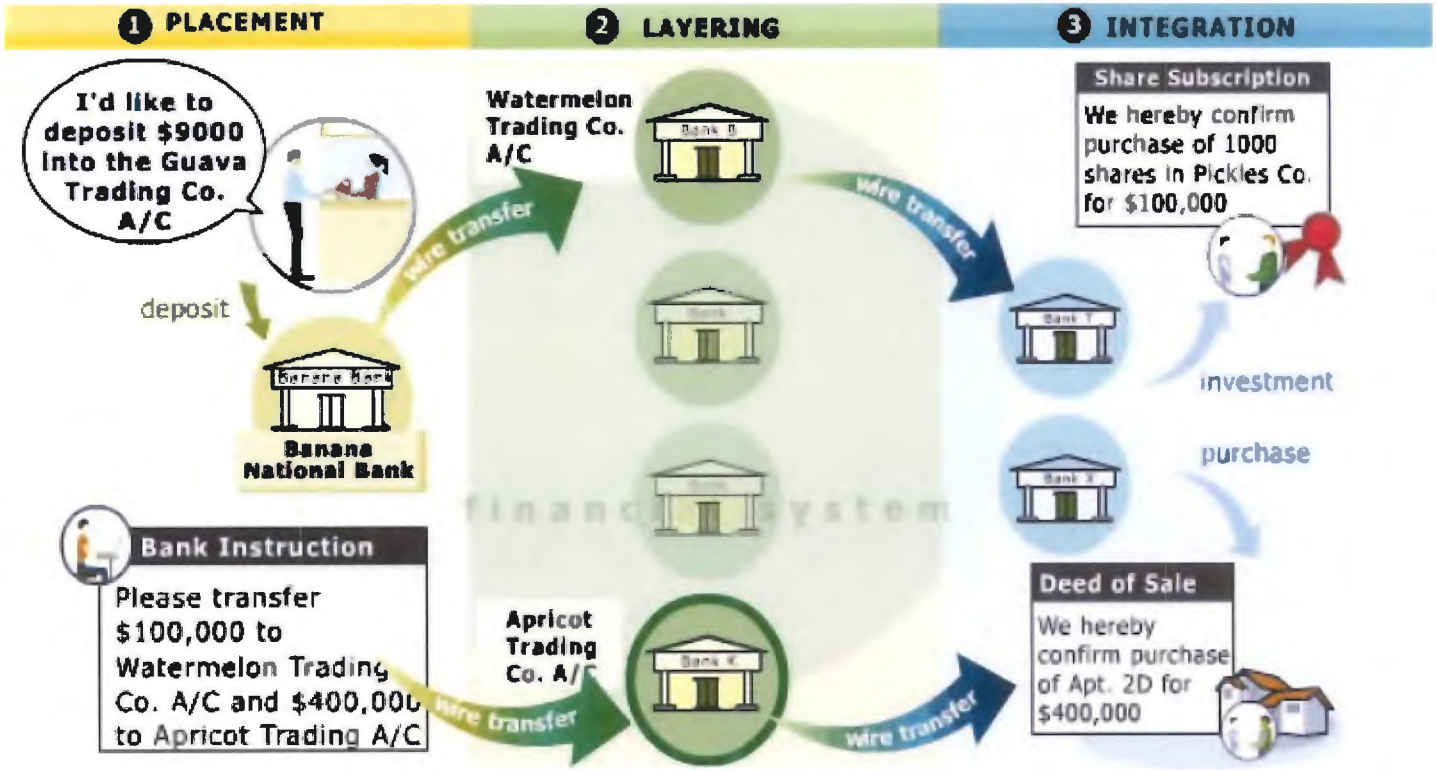
The Money Laundering Cycle



It should be noted that not all money laundering transactions go through this three-stage process. Transactions designed to launder funds can also be affected in one or two stages, depending on the money laundering technique being used.

Stage One: Placement

Purpose of the stage:

Placement is the initial entry of the proceeds of crime into the financial system. This stage serves *two purposes*:

1. Relieves the criminal of holding and guarding their dirty money;

AND

2. Places the money in the legal financial system.

Most life insurance companies do not accept cash; however, this does not mean that you will not encounter money laundering.

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Placement Technique: Structuring

Structuring is a technique that involves **splitting transactions** into separate amounts under the $10,000 threshold to avoid the transaction reporting requirements of the PCMLTFA.

Many money launderers rely on this placement technique because numerous deposits can be made without triggering the cash reporting requirements.

Structuring is a criminal offence itself as well as an indicator of other potentially illegal activity.

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Placement Technique: Business Recycling

Legitimate businesses can also serve as **conduits** for money laundering, they are referred to as 'front businesses'. ***Cash-intensive retail businesses/cash-front*** are some of the most traditional methods of laundering money. *This technique can combine the different stages of the money laundering process.*

The *principal requirement* when using businesses as fronts is that they have high cash sales and/or high turnover. This way, it becomes easy for criminals to merge illegal funds and difficult for the authorities to spot the scheme. An important indicator of front businesses is the relation between the size and nature of the business and the amount of revenue it generates. What is the estimated norm?

A criminal may simply 'start up' a new business. However, this leaves them at risk of exposure: Where did the funds come from to pay start up costs, suppliers, company rates, wages etc.? It is preferable, therefore, to buy an existing business that already has a steady stream of customers and cash flow and to own the business at arm's length, allowing the business and management to belong, on paper at least, to an unrelated third party.

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Stage Two: Layering

Purpose of the stage:

The purpose of the layering stage is to further separate the dirty money from its source by *using* different types of financial transactions to hide the money trail and disguise any link with the original crime that generated the dirty money and, if necessary, the owner of the illegal funds. **Life insurance companies are most vulnerable at the layering stage.**

Why?

The launderer makes deposits at any financial institution, then wires the funds through a series of accounts at various financial institutions across international borders to the life insurance company for premium payment, or purchase of an annuity or life insurance product. This creates a complex layer of financial transactions to mask the true origin of funds. Successful layering typically involves the anonymity of the originator for each of the transfers, structuring payments through secrecy jurisdictions or through anonymously-held corporations.

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Layering: Level of Risk

The **nature of the product being sold** is usually the primary driver of the level of risk due to the very different nature of each category of products.

Some products' features are defined and restricted whilst others, such as:

- **single premium immediate annuities and segregated funds, feature increased flexibility making them more attractive potential money laundering vehicles**.

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Increase Risk:

The following features may tend to increase an Insurance product's vulnerability to money laundering:

- **Give special attention to the risks arising from new or developing technologies that might favour anonymity;**
- **Has investment capabilities;**
- **Accept frequent payments (outside of a normal regular premium policy);**
- **Provide significant flexibility as to how investments are managed;**
- **Can be liquidated quickly (via surrender or partial withdrawal);**
- **Can be purchased with varying sums of money in the amount and frequency chosen by the policyholder, source of funds/wealth are not traditionally questioned.**

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Stage Three: Integration

Purpose of the stage:

The purpose of the integration stage is to return the illegal funds to the criminal in what appears to be a legitimate format.

Money launderers can purchase an annuity product by way of a cheque or an electronic funds transfer. They are known to take advantage of the 10-day free look period (a period where you can pull out of the contract and obtain a refund based on contract terms) and obtain a refund. This way, they get a cheque from a reputable company, the funds are successfully laundered, and it is extremely difficult at this stage to distinguish between legal and illegal funds.

Life insurance policies have a cash value. They are cashed out and the money is used for a purchase of a home or luxury items. Often, the policy is paid in full at the time of purchase.

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Use of Gatekeepers: Take Note of These

Lawyers, agents, accountants, and other professionals offering financial advice are a common element seen in complex ML schemes. Gatekeepers often play a key role in helping to set up such schemes, particularly company formation agents and managers of these structures. Professionals also manage and perform transactions in the most efficient way possible and in ways that avoid detection.

These **Gatekeepers** are a feature that money launderers and terrorist financiers abuse widely. Gatekeepers are, essentially, individuals that "protect the gates to the financial system" through which potential users of the system, including launderers, must pass in order to be successful.

This is especially important during the *process of determining eligibility* for obtaining financial products, to give the deal greater credibility.

In addition, company accounts are opened in the name of non-financial professionals in order to carry out various financial transactions on their behalf.

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Integration: Some Common Methods

Methods	Examples
Front Companies and False Loans	Criminals incorporate a front company in a country with secrecy laws (true ownership of the front company is then protected). They then give the front company illegal funds in the guise of a loan, making the funds appear legitimate.
Segregated Funds - Deposit	may need a minimum but not a maximum amount in order to establish an insurance contract. This is attractive because it allows the criminal to launder large amounts of money at any given time without potentially arousing suspicion.
Segregated Funds – Withdrawals/ Cancellations	allow cancellations and some may allow unlimited number of withdrawals during the life of the contract. In exchange, the insurance company may charge either a redemption fee or penalty for withdrawals. To a money launderer, the penalties associated with the transaction are viewed as the cost of doing business. **REMEMBER THAT 40% NUMBER!!**
Annuities	are attractive to money launderers because a lump sum deposit is made by cheque for the purchase of either an **immediate or deferred annuity** (where the source of funds are from the proceeds of crime) and they receive periodic payments back from the insurance company in the form of a cheque.

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Integration: Some Common Methods

Methods	Examples
Universal Life – shuttle fund /side accounts	Some UL policies have an "accumulation fund" in which all amounts paid by the policy holder are accumulated up to the maximum allowed by law to maintain the policy's tax exempt status. The **shuttle fund** receives any excess amounts necessary to maintain the policy's tax exempt status. Traditionally, there are no ceilings on amounts that can be deposited into the shuttle fund and the account activity is not usually monitored. Lump sum deposits are made by the criminal into the shuttle fund and they receive a cheque back from the insurance company by doing the following:
	• **Withdrawals** can be made at anytime from the accumulation or shuttle fund with no concern for penalties or fees. • **Policy loans** are obtained against the policy's accumulated net cash value in the accumulation or shuttle fund with quick repayments. • **Surrenders** the policy for the net cash surrender value or the market value of the accumulation or shuttle fund, less any surrender charges.

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Integration: Some Common Methods

Methods	Examples
Universal Life - replacements	Purchase of a **term life policy**, which is relatively lower risk and subject to less scrutiny; money launderer then decides to replace that policy at a later date with another higher risk policy that has either investment capabilities or builds cash value. The accumulated funds are later withdrawn with lower fees or penalties administered.

Money launderers and terrorist organizations have considerable knowledge of life insurance companies and intermediaries and take extreme measures to hide their financial activities and make them indistinguishable from legitimate transactions.

(FATF Life Insurance Sector Report)

Placement: An Example

The Dirty Insurance Policy: Stage 1

An organized crime group used the services of an insurance broker to purchase insurance policies from a local financial institution. The financial institution depended on the insurance broker / agent for **"Know Your Client"** due diligence, which, in this case, consisted of only asking for a piece of personal identification.

The policies, bought with the illegal proceeds of crime, were put in place by the broker and are now considered successfully "placed" in the legal financial system.

Layering:

The Dirty Insurance Policy: Stage 2

A year after placing the illegal proceeds of crime into the dirty insurance policies, the insurance broker responsible for the illegal transaction was apprehended by authorities on fraud charges. To distance themselves from the situation, the organized crime group decided to further layer the source of the illegal proceeds of crime away from them and the insurance broker.

Consequently, the financial institution holding the dirty insurance policies was informed that "there was a change in circumstance" and a request was made to close the policies, regardless of the financial penalties incurred, and to send the reimbursement cheque to a seemingly legitimate third party.

In this case, the third party was a shell company run by the crime group. A representative of that company cashed the cheque and put the funds into a highly viable and liquid bank draft.

Integration:

The Dirty Insurance Policy: Stage 3

The reimbursement cheque from the dirty insurance policy is now cashed at a local bank branch by the shell company and put into a bank draft.

The dirty bank draft was then taken to Montreal and used to purchase a luxury penthouse condominium.

Within the next six months, the penthouse was subsequently sold to a nice retired couple by the shell company, and the money from the sale takes on the appearance as being free, clear, and "clean".

The criminals can now spend the dirty money originally put into the insurance policy without attracting undue attention.

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About Terrorist Financing

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Funding Requirements:

Fall into *two* general areas:

1. **funding specific terrorist operations, such as direct costs associated with specific operations; and**

2. **broader organizational costs to develop and maintain an infrastructure of organizational support and to promote the ideology of a terrorist organization.**

The direct costs of mounting individual attacks have been low relative to the damage they can yield. However, maintaining a terrorist network or a specific cell to provide for recruitment, planning, and procurement between attacks represents a significant drain on resources.

Sources:

Terrorists have shown adaptability and opportunism in meeting their funding requirements.

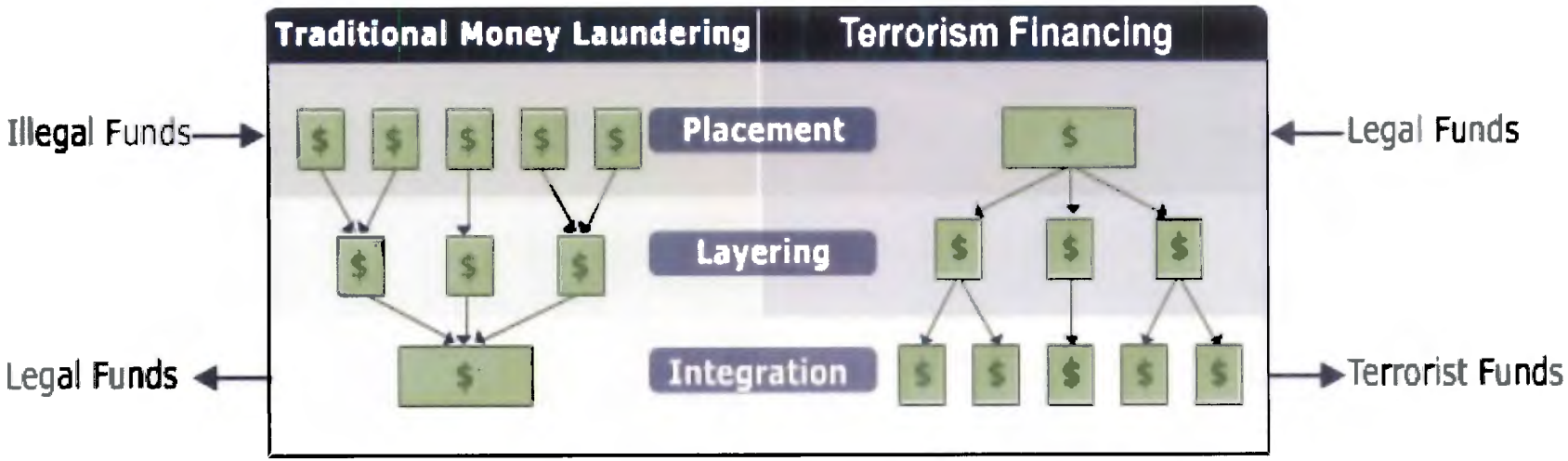
Terrorist organizations raise funding from legitimate sources, including the abuse of charitable entities or legitimate businesses, or self-financing by the terrorists themselves (e.g. Osama Bin Laden).

Terrorists also derive funding from a variety of criminal activities, ranging in scale and sophistication from low-level crime to organized fraud or narcotics smuggling, or from state sponsors and activities in failed states and other safe havens.

Terrorist Financing vs. Money Laundering

Filtering Funds

Since a large amount of funding for terrorism activities comes from legitimate sources, terrorism financing is sometimes depicted as the reverse of traditional money laundering. Instead of illegal money being 'washed' to make it legal, terrorist financing often involves the task of filtering legitimate funds into terrorist hands.



Differences

The most basic difference between **terrorist financing and money laundering** involves the **origin of the funds**.

- Terrorist financing uses funds **for** an illegal political purpose but the money is not necessarily derived from illicit proceeds.
- Money laundering **always** involves the proceeds **of** illegal activity. The purpose of laundering is to enable the money to be used legally.

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SECTION TWO

Regulatory Obligations

About a Compliance Program

It is a legislative requirement under the PCMLTFA and all life insurance companies must comply with the Act.

It Must Contain Five Elements

1. Policies & Procedures are internal policies and procedures regarding anti-money laundering and terrorist financing initiatives.

AML/CTF policies should set risk management standards to govern the approach to deterring and detecting ML and TF, and should ensure regulatory compliance.

It is essential that procedures state clearly what actions are to be taken, by whom, where, and when (noting pertinent regulatory deadlines as appropriate).

Procedures are the tools used to translate AML/CTF policies into practice.

Policies & Procedures:

FINTRAC expects that written **policies and procedures** outline all obligations applicable to the company under the PCMLTFA and associated Regulations and the corresponding processes and controls that have been put in place, including:

- when an obligation is triggered;
- the information that must be reported/recorded or considered;
- the procedures created by the company to ensure that it has fulfilled the obligation; and
- the timelines associated to the obligations and methods of reporting (if applicable).

Policies and procedures should cover the following requirements:

1. Compliance program requirements covering: risk assessment activities; training program; and the two-year effectiveness review activities.
2. Know Your Client covering: verifying client identity, Politically exposed persons, heads of international organizations, their family members and close associates, beneficial ownership and third-party determination requirements.
3. Ongoing monitoring and business relationship requirements as well as the special measures that have been implemented based on the risk assessment.
4. Record-keeping requirements.
5. Transaction reporting requirements.
6. Also document how **ministerial directives and transaction restrictions** will be handled.

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The Compliance Program

Required Elements of a Compliance Program:	
2. Compliance Officer	is accountable to oversee the Compliance Program for the company or brokerage. Can you identify your Compliance Officer?
3. Training Program	Must be written and is to ensure that all personnel are continuously trained on the requirements set out in the PCMLTFA and your life insurance brokerage's Compliance Program.
4. Review Process	Has to cover the brokerage policies and procedures, its assessment of risks related to money laundering and terrorist financing, and the training program. The review also has to be done at a minimum of **every two years**.

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The Compliance Program

Required Elements of a Compliance Program:	
5. **Risk-Based Assessment & Documentation**, as well as the documentation and implementation of **mitigation** measures to deal with associated risks	is an analysis of potential **threats and vulnerabilities** to money laundering and terrorist financing to which your brokerage may be exposed. This is in addition to meeting client identification, record-keeping, and reporting requirements. The Regulations and FINTRAC *Compliance program requirements* require that the following categories of money laundering and terrorist financing risk be covered in the assessment of risk: • your clients and business relationships, including their activity patterns and geographic locations; • the products, services and delivery channels you offer; • the geographic location(s) where you conduct your activities; • new technologies and their impacts on your clients, business relationships, and products or delivery channels of your activities; • other relevant factors affecting your business (e.g. employee turnover, rules and regulations for your industry, etc.)

Reporting Obligations:

Large Cash Transactions

- You must report large cash transactions involving amounts of $10,000 CAD or more received in cash.

Suspicious Transactions

- You must report where there are reasonable grounds to suspect that a transaction (completed or attempted) is related to the commission or attempted commission of a money laundering offence or a terrorist activity financing offence.

Terrorist Property

- You must report where you know that there is property in your possession or control that is owned or controlled by or on behalf of a terrorist or a terrorist group.

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Reporting Obligations: Large Cash Transactions

When to Report: A Large Cash Transaction Report must be completed when you:

- Receive an amount of $10,000 CAD or more in cash in a single transaction unless the cash is received from a financial entity or a public body; or

- Undertake two or more cash transactions of less than $10,000 CAD each that together total $10,000 CAD or more within 24 consecutive hours of each other and are made *by or on behalf of the same person or entity*.

Foreign Currency: If the transaction is in foreign currency, the funds must be converted into Canadian dollars using the last rate provided by the Bank of Canada at the time of the transaction. This rate is not based on the exchange rate but only to check whether the funds exceed the $10,000 CAD threshold.

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Reporting Obligations: Large Cash Transactions

Who to Report To and How:

The **report must be sent electronically** to FINTRAC if you have the capacity to report in that manner.

Reporting Timeframes:

Large Cash Transaction Reports must be sent to FINTRAC ***within 15 calendar days*** **after the large cash transaction has taken place.**

Reporting Obligations: Large Cash Transactions

When NOT to Report to FINTRAC:

- If the cash is received from a **financial entity**. In this context, a financial entity means any of the following: a bank (one that is listed in Schedule I or II of the *Bank Act)* or an authorized foreign bank with respect to its operations in Canada; a credit union or a caisse populaire; a trust and loan company; or an agent of the Crown that accepts deposit liabilities.

- If the cash is received from a **public body**. In this context, a public body means any of the following or their agent:

    - a provincial or federal department or Crown agency;
    - an incorporated municipal body (including an incorporated city, town, village, metropolitan authority, district, county, etc.);
    - a hospital authority

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Reporting Obligations: Suspicious Transactions

When to Report: Money Laundering

You must complete a **Suspicious Transaction Report** once you have **reasonable grounds to suspect** a transaction or attempted transaction is related to a money laundering or a terrorist financing offence.

A reasonable ground to suspect depends on the various suspicious transaction criteria identified for your industry.

Transaction Completion

- **The Report must be completed regardless if the client completes the financial transaction or attempts a transaction.**

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Examples of Suspicious Transaction Criteria for the Life Insurance Industry.

- Client proposes to purchase an insurance product using a cheque drawn on an account other than his or her personal account.
- Client wants to use cash for a large transaction.
- Client requests an insurance product that has no discernible purpose and is reluctant to divulge the reason for the investment.
- Client who has other small policies or transactions based on a regular payment structure makes a sudden request to purchase a substantial policy with a lump payment.
- Unanticipated and inconsistent modification of client's contractual conditions, including significant or regular premium top-ups.
- Client conducts a transaction that results in a conspicuous increase in investment contributions.
- Client cancels investment or insurance soon after purchase.

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- Client shows more interest in the cancellation or surrender than in the long-term results of investments.
- Client makes payments with small denomination notes, uncommonly wrapped, with postal money orders, or with similar means of payment.
- The duration of the life insurance contract is less than three years.
- The first (or single) premium is paid from a bank account outside the country.
- Scale of investment in insurance products is inconsistent with the client's economic profile.
- Client accepts very unfavourable conditions unrelated to his or her health or age.
- Involvement of one or more third parties in paying the premiums or in any other matters involving the policy.
- Transaction involves use and payment of a performance bond resulting in a cross-border payment. Repeated and unexplained changes in beneficiary.
- Relationship between the policy holder and the beneficiary is not clearly established.

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Reporting Obligations: Suspicious Transactions

When to Report: Terrorist Financing

Transaction Suspect	The **Suspicious Transaction Report** (completed or attempted) **must be completed** if you **only suspect** that property is owned or controlled by a terrorist or terrorist group.
Transaction Known	If you **know**, rather than suspect, that a transaction or attempted transaction is related to property owned or controlled by or on behalf of a terrorist or a terrorist group, you should **not** complete the transaction. Fill in a **Terrorist Property Report immediately**. Terrorist property must be frozen under the *United Nations Suppression of Terrorism Regulations* as well as the Canadian *Criminal Code*.

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Reporting Obligations: Suspicious Transactions

Who to Report To and How:

A Suspicious Transaction Report has been developed by FINTRAC and is accessible through their web site. **You must keep a copy of either report.**

Reporting Timeframes:

A Suspicious Transaction Report must be sent to FINTRAC **within 30 calendar days of *when you first detected* a fact that leads you to have reasonable grounds to suspect** the transaction or attempted transaction is related to a money laundering or terrorist financing offence. In other words, if it was not until six months later that further client activity made you suspect that possible money laundering or a terrorist financing offence had taken place earlier, it is from that point six months later that the 30 calendar day reporting timeframe begins.

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Reporting Obligations: Suspicious Transactions

Tipping Off:

Neither the Broker /Agent reporting nor the insurance Brokerage may "tip off" *anyone* by letting them know they made a Suspicious Transaction Report. Therefore, it's important not to ask the client questions that may directly increase their suspicion that the transaction is being considered as abnormal and may be reported to FINTRAC.

Controlling the type of questions asked will assist in protecting the safety of the Broker &/or Agent and the Brokerage reporting, as well as any potential criminal investigation.

Your Protection

- You are protected from any civil or criminal liability for making a Suspicious Transaction Report ***in good faith.***

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Reporting Obligations: Terrorist Property

When to Report: *Immediately*

A **Terrorist Property Report** must be completed **if you have property in your *possession or control* that you know is owned or controlled by or on behalf of a terrorist or terrorist group or a listed person**. This includes information about any transaction or *proposed* transaction relating to that property.

Property means any type of real or personal property in your possession or control. This includes any deed or instrument giving title or right to property, or giving right to money or goods.

A **terrorist or a terrorist group** includes anyone that has as one of their purposes or activities facilitating or carrying out any terrorist activity. A terrorist group includes anyone on a list published in *Regulations Establishing a List of Entities* issued under the *Criminal Code*.

A **listed person** includes anyone on a list published in the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* issued under the *United Nations Act*.

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Reporting Obligations: Terrorist Property

Property in these cases can include:

- Cash
- Bank accounts
- **Insurance policies**
- Money orders
- Real estate
- Securities
- Traveller's cheques
- Jewellery, gems

In cases where *you only suspect* that the designated property is owned or controlled by a terrorist or terrorist group, a Suspicious Transaction Report (completed or attempted) should be completed.

Who to Report To and How:

The report **must be sent to FINTRAC in paper format** (not electronically) either by registered mail or by fax

Reporting Obligations: Terrorist Property

Who Else to Report to and How:

In addition to making a Terrorist Property Report to FINTRAC, there is also a requirement under the *Criminal Code* to report. It is an offence under the *Criminal Code* to deal with any property if you know that it is owned or controlled by or on behalf of a terrorist or a terrorist group. It is also an offence to be involved in any transactions in respect of such property.

You must disclose to the **RCMP and CSIS** the existence of property in your possession or control that you know is owned or controlled by or on behalf of a terrorist or a terrorist group. This includes information about any transaction or proposed transaction relating to that property. Information is to be provided to them, without delay, as follows:

- RCMP, Anti-Terrorist Financing Team, unclassified fax: (613) 949-3113
- CSIS Financing Unit, unclassified fax: (613) 231-0266

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Reporting Obligations: Terrorist Property

Information in a Terrorist Property Report:

The **Terrorist Property Report** will require information regarding:

- the property
- the suspected terrorist or terrorist group
- anyone who owns or controls the property on their behalf
- any transactions or proposed transactions related to the property

OSFI has ceased to publish these lists.
Terrorist groups (entities) are monitored by *Public Safety Canada,* while *Global Affairs Canada* maintains lists of terrorist-designated individuals.

Both lists can be accessed on their respective websites.

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Know Your Client

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Identity and Associated Record Requirements

Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its associated Regulations have changed the methods that life insurance brokers and agents can apply to verify the identity of clients.

There are *three ways* you can verify the identity of an individual:

a. **Government-issued photo identification method** where the document must be:

- Authentic, valid and current; and
- An official record, that is either printed or in electronic form.

b. **Credit file method** where the information must be:

- Valid and current; or

c. **Dual process method** where the information must be:

- Valid and current; and
- From two reliable, different sources

REFER TO HANDOUT:
Legislative changes 2019

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Confirming Existence of a Not-for-Profit Organization

When you are confirming the existence of a not-for-profit organization, you must also determine the following:

- Whether or not that entity is a registered charity for income tax purposes and keep a record to that effect. To make this determination, you can ask the client or consult the charities listing on the Canada Revenue Agency website (http://www.cra.arc.gc.ca).

- If that entity is not a registered charity, determine whether or not it solicits charitable financial donations from the public and keep a record to that effect. To make this determination, you can ask the client.

Remember:
Terrorist organizations raise funding from legitimate sources, including the abuse of charitable entities.

The adaptability and opportunism shown by terrorist organizations suggests that all the methods that exist to move money around the globe are to some extent at risk.

Identification Documents with Conditions

Some identification documents are not acceptable or have specific conditions

Health cards:

- Issued by Ontario, Manitoba, Nova Scotia, and Prince Edward Island are NOT ALLOWED.
- Quebec, you cannot request to see a client's health card but you may accept it if the client volunteers and wants to use it for identification purposes.

Not Acceptable:

- Identification issued by an employer is NOT ACCEPTABLE (e.g., Military ID, Veteran's ID).
- A birth certificate or baptismal certificate issued by a church is NOT ACCEPTABLE.
- An identification card issued by an employer for an employee (i.e. an employee identification card, Military ID) is NOT ACCEPTABLE.
- Photo identification issued by a municipal government is NOT ACCEPTABLE.
- Information found through social media is NOT ACCEPTABLE for identification purposes.

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Business Relationships

Business Relationships

- A business relationship is a relationship that you establish with a client to conduct financial transactions or provide services related to those transactions.

- The business relationship only includes transactions and related activities for which you have to *ascertain the identity of your client*.

You enter into a business relationship when you conduct two or more transactions in which you have to:

- ascertain the identity of the individual or entity; or

- confirm the existence of a corporation or other entity.

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Business Relationship: Suspicious Transactions

- Remember that **all suspicious transactions and attempted transactions**, including transactions that are **normally exempt** from client identification requirements, require you to take reasonable measures to ascertain your client's identity.

- If you have a client who conducts or attempts to conduct **two or more** suspicious transactions, you have still entered into a business relationship with that client, even if you are unable to ascertain the identity of that client.

  - This is because suspicious transactions require you to take reasonable measures to ascertain the identity of the client, and so two or more of these transactions will trigger a business relationship.

  - You must treat this business relationship as high risk, and undertake more frequent ongoing monitoring and updating of client identification information, as well as any other appropriate enhanced measures.

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Business Relationship:

Once the business relationship is established, you must also:

- conduct ongoing monitoring of your business relationship with your client; and
- keep a record of the measures you take to monitor your business relationship and the information you obtain as a result.

Record Retention:

- A business relationship is established when **two transactions** that require you to ascertain the identity of your client occur within a **maximum of five years from one another**.

- If a period of five years passes from the last transaction that required you to ascertain the identity of your client, the business relationship with that client ceases.

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Business Relationship: Record

- For clients with whom you have a business relationship on the basis that they have completed two transactions that required you to ascertain their identity, or in the case of entities, to confirm their existence**; you must document the purpose and intended nature of the business relationship that best describes your dealings with that client.**

- The purpose and intended nature of the business relationship is information that should allow you to anticipate the transactions and activities of your client.

- You also have to review this information on a periodic basis and keep it up to date.
  - This is done to ensure that you continue to understand your client's activities over time so that any changes can be used to assess or detect high risk transactions and activities.
  - This may lead you to increase the frequency of ongoing monitoring, update their client identification information more frequently, and adopt any other appropriate enhanced measures.

Client Information Records

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Obligations

- Keep a Client Information Record
- Identify the individual and keep the information updated
- Make a third-party determination and keep related records
- Confirm existence and beneficial ownership

If your client is expected to pay you **$10,000 or more for an annuity or a life insurance policy over the duration of the annuity or policy**, you have to keep a **Client Information Record**. This has to be kept no matter how the client paid for the annuity or policy, whether or not it was in cash.

Transaction Source

- A Client Information Record sets out your client's name, address, and the nature of the client's principal business or occupation.
- In the case of a group life insurance policy or a group annuity, you must keep a Client Information Record about the applicant for the policy.
- Whenever you are required to keep a Client Information Record, you have to take reasonable measures to determine whether the client is acting on the instructions of a third party.
- What constitutes reasonable measures will vary in accordance with the context in which they occur, and therefore could differ from one situation to the next. However, reasonable measures would include retrieving the information already contained in your files or elsewhere within your business environment, or obtaining the information directly from the client.

Corruption - PEPs and HIOs

A politically exposed person (PEP) or the head of an international organization (HIO) is a person entrusted with a prominent position that typically comes with the opportunity to influence decisions and the ability to control resources.

The influence and control a PEP or HIO has puts them in a position to impact policy decisions, institutions and rules of procedure in the allocation of resources and finances, which can make them vulnerable to corruption.

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PEPs and HIOs

You must consider PEPs and HIOs:

When a client makes **a lump-sum payment of $100,000 or more** (whether or not it was in cash) for:

- an immediate or deferred annuity or
- a life insurance policy,

Make a determination of whether you are dealing with a PEP or HIO and, if so, keep records and take other measures.

This must be done **within 30 days after the day of the transaction**.

Once you have determined that an individual is a PEP or HIO, you will not have to do it again. Retain records regarding an account for a period of five years from the day the account to which they relate is closed. Retain records to confirm the existence of a PEP and HIO records regarding transactions for a period of five years from when the last business transaction was conducted.

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Foreign Politically Exposed Persons

DEFINITION:

A person who holds or has held one of the following offices or positions in or on behalf of a foreign state.

- head of state or head of government;
- member of the executive council of government or member of a legislature;
- deputy minister or equivalent rank;
- ambassador or attaché or counsellor of an ambassador;
- military officer with a rank of general or above;
- president of a state-owned company or a state-owned bank;
- head of a government agency;
- Judge of a supreme court, constitutional court or other court of last resort; or
- leader or president of a political party represented in a legislature.

It also includes any prescribed family member or close associate of such a person.

<u>Once determined these persons are foreign PEPs forever</u>.

Domestic Politically Exposed Persons

DEFINITION:

A person who holds, or has held within the last 5 years, a specific office or position in or on behalf of the Canadian federal government, a Canadian provincial government, or a Canadian municipal government:

- Governor General, lieutenant governor or head of government;
- member of the Senate or House of Commons or member of a legislature;
- deputy minister or equivalent rank;
- ambassador, or attaché or counsellor of an ambassador;
- military officer with a rank of general or above;
- president of a corporation that is wholly owned directly by Her Majesty in right of Canada or a province;
- head of a government agency;
- judge of an appellate court in a province, the Federal Court of Appeal or the Supreme Court of Canada;
- leader or president of a political party represented in a legislature; or
- mayor (head of a city, town, village, or rural or metropolitan municipality, regardless of the size of the population).

It also includes their family member or close associate. A person ceases to be a domestic PEP 5 years after they have left office.

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Head of an International Organization (HIO)

DEFINITION:

The head of an international organization is a person who is either:

- **the head of an international organization established by the governments of states; or**
- **the head of an institution established by an international organization.**

FINTRAC refers to the head of an international organization or the head of an institution established by an international organization; this is the primary person who leads that organization, for example a president or CEO.

An international organization is an organization set up by the governments of more than one country. The key to determining whether you are dealing with a HIO is to determine how the organization was established. If the organization was established by means of a formally signed agreement between the governments of more than one country, then the head of that organization is a HIO. The existence of these organizations is recognized by law in their member countries but the organizations are not seen to be resident organizations of any one member country.

It also includes their family member or close associate. Once a person is no longer in the HIO position, that person is no longer a HIO.

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Records of PEP, HIO, Family Members & Close Associates:

The information that a life insurance entity has to record includes:

- the office or position of the PEP or HIO;
- the name of the organization or institution of the PEP or HIO;
- the source of the funds, if known, that were used for the transaction or that are or are expected to be deposited in the account;
- the date the organization determined the individual to be a PEP, HIO, their family member or close associate;
- the name of the client of senior management who reviewed the transaction or approved keeping the account open;
- the date the transaction was reviewed or the account was approved; and,
- the nature of the relationship between the organization's client and the PEP or HIO, as applicable.

SECTION THREE

Effectiveness Testing Review Tools

Compliance Program – FINTRAC Examination

During a FINTRAC examination, it is important to demonstrate that:

- the required documentation is in place, applied, and is up-to-date;
- your compliance program is designed to effectively address your business's vulnerability to ML/TF threats and mitigates those that are high risk, if applicable; and
- employees, agents (employed by you), and others authorized to act on your behalf are trained.

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FINTRAC Assessment Manual (2019)

PART 1
EXAMINATION FRAMEWORK

PART 2
EXAMINATION PHASES

PART 3
ASSESSMENT METHODS

PURPOSE of 2019 MANUAL

- **Strengthen your compliance program**
- **Understand how FINTRAC assesses compliance**
- **Prepare for an examination and clarify expectations**

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FINTRAC Assessment Manual (2019)

PART 1
EXAMINATION FRAMEWORK

- **Risk-based examination**
- **Assessment methods**
- **Assessment approach to evaluating findings**

As a key component of the assessment approach, FINTRAC will focus the examinations on areas of higher risk and of greatest value to the businesses' compliance program. This means that focus is applied where the business may be more at risk of being used for money laundering or terrorist activity financing, and on areas where there is a greater risk of not meeting legal requirements (risk of non-compliance). FINTRAC will include in their examination plans the areas you have identified as posing a higher risk to your business as well as gaps you have identified in your compliance program, where appropriate.

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FINTRAC Compliance Examination Approach

PART 2
EXAMINATION PHASES

Phase 1- PLANNING & SCOPING

- Roles and responsibilities during the examination
- Determine the scope and type of examination (desk-review or on-site)
- Examination notification letter
- Review of material you send to FINTRAC

Phase 2- EXAMINATION & ASSESSMENT

- Scheduling scope, focus of attention
- Applying the assessment methods as described in Part 3
- Conducting interviews
- Exit interview

Phase 3- DEVELOPING CONCLUSIONS & FINALIZING THE EXAMINATION

- Assessing FINTRAC findings
- Examination findings letter
- Follow-up activities
- Penalties for non-compliance

FINTRAC Compliance Examination Approach

PART 3
ASSESSMENT METHODS

- Compliance program requirements (required five elements);
- Client identification and other know your client requirements;
- Financial transactions reporting requirements;
- Record keeping requirements;
- Correspondent banking relationship requirements;
- Foreign branch, subsidiary and affiliate requirements; and
- Ministerial directives.

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Effectiveness Review

Information Requested

- Identify the scope period under review.
- A copy of last FINTRAC examination, if relevant.
- Copy of last effectiveness testing report and action plan.
- Anti-Money Laundering/Counter Terrorist Financing (AML/CTF) most recent version of compliance policies and procedures, including:
  - those that pertain to special measures for identifying clients (i.e., ID methods, beneficial ownership, third-party determination, PEPs/HIOs (including a description of PEP/HIO determination and outcomes), business relationships, and ongoing monitoring);
  - keeping records and monitoring financial transactions in respect of the activities that pose a high risk, as required under the PCMLTFA (i.e., risk rating for clients with associated client information records);
  - policies related to how activities are reported to FINTRAC and the Board.
- Copy of policy related to procedures for how staff/agents report suspicious activities (completed or attempted), Terrorist Property, and Large Cash Transactions to compliance.

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Effectiveness Review

Information Requested

- Compliance officer's mandate/ responsibility description and current qualifications.
- Board/Senior management minutes or reports relevant to the Compliance Program.
- Process for how employees/agents contact the CAMLO.
- Summary of Compliance Budget, including allocation of funds for required elements.
- Copy of the AML risk assessment report; mitigating policy and supporting procedures.
- Criteria and process for how prescribed and suspicious transaction reports are submitted to FINTRAC.
- Company organizational chart, including Senior Management and Compliance reporting lines.
- Provide a **TOTAL** of the number of transactions for the FINTRAC **reportable** transactions for the scope period. In addition, a monthly breakdown of transactions by **reportable** transactions for the scope period. From this a sample is drawn for review.
- Copy of AML Training materials: new hires; active staff and any other training provided (e.g., videos). In addition, a copy of AML training 'log' and 'sign-off' documentation. In addition, AML training records and training material for staff/agents.

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Effectiveness Review

Information Requested

Reasonable measures records data extracts: scope period

The term "reasonable measures" refers to activities the company is expected to undertake in order to meet certain obligations. The PCMLTFA and associated Regulations explicitly state when reasonable measures must be taken to meet an obligation. **As of June 17, 2017**, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* have been changed to require that a record be kept when reasonable measures were taken, but were unsuccessful. A reasonable measure is unsuccessful when you do not obtain a response, such as a 'yes' or 'no', and you are unable to make a conclusive determination (e.g., third-party determination, PEP or determination. Refer to sections 67.3 of the Regulations for every activity where you are required to keep records when reasonable measures were unsuccessful.

When reasonable measures are unsuccessful, you must record the following information:

- ✓ the measures taken;
- ✓ the date on which each measure was taken; and
- ✓ the reasons **why** the measures were unsuccessful.

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Effectiveness Review — Document Review

Checklist, for example:

- A 118-question ABCsolutions' Compliance Review Policy and Procedure Questionnaire to assess the comprehensiveness of the compliance program to include enough information for employees to process and complete activities properly; to verify the identity of clients; keep records and file reports to FINTRAC; identify the risks related to money laundering and terrorist financing in the course of the activities and the risks associated with high risk clients such as PEPs/HIO and suspicious transactions. It contains closed-ended (quantitative) dichotomous (Yes – No) questions and a comment section.

- A 12-question ABCsolutions' Compliance Review Risk Assessment Questionnaire used to assess the documentation of risks (inherent); risk scores and impacts, and develop strategies to mitigate them; taking into account the nature of each product; the geographical regions where the company does business; and the clients and business relationships, including their activity patterns and geographic locations. It contains closed-ended (quantitative) dichotomous (Yes – No) questions and a comment section.

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Effectiveness Review

Document Review

Client Information records for every purchase of an immediate or deferred annuity, or a life insurance policy, for which a client may pay $10,000 or more (in cash or another form) over the duration of the annuity or policy. Include the following details.

- In the case of a group life insurance policy or group annuity, a client information record must be kept for the applicant of that policy or annuity.
- If the client is an individual, you must record their **name, date of birth and address, as well as the nature of their principal business or occupation**.
- If the client is an entity, you must record its **name and address, as well as the nature of its principal business**.
- If the client is a corporation, you must also keep a copy of the part of **the official corporate records that contains any provision relating to the power to bind the corporation regarding the transaction**, if this is obtained in your normal course of business. This could be a certificate of incumbency, the articles of incorporation or the bylaws of the corporation that set out the officers duly authorized to sign on the behalf of the corporation, such as the president, treasurer, vice-president, comptroller, etc. If there are changes to the articles or bylaws that relate to the power to bind the corporation to the transaction and these changes were in effect at the time, then the board resolution stating the change would be included in this type of record.

Do not include records for exempt products.

Sample size is determined depending on the number of records.

Effectiveness Review

Document Review

Client Information records Checklist is very helpful.

SPREADSHEET CODE (E.g. EPIC)	FILE STATUS	POLICY YEAR Epic Screen	ADDRESS SPREADSHEET DEFICIENCY	CLIENT INFO RECORD DEFICIENCY Address, DOB, Occupation, Third-party, PEPs, ID document, expiry date
Code #	Active/ inactive	Date	No civic address, PO Box, RR#, blank	• Indicate what is missing • Occupation vague • PEP required when a client makes a lump-sum payment of $100,000 or more • No information provided

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Effectiveness Review

Document Review

Business Relationships

The BR Checklist looks at: name, address, contact information, occupation, purpose and intended nature (PIN) of BR recorded, risk rating of BR, BR monitoring period established and reasons for BR monitoring period is recorded. The BR notes should include: how the BR was established, watch lists checked, any suspicious activity recorded (including specific transaction numbers warranting STRs).

Some type of 'BR Tracking' spreadsheet in an excel format should be provided for review. Identify the process, for example, on a monthly basis, the Compliance officer reviews all the names in the List for any unusual or possibly new business/ accounts.

Any questionable activity, entries or new business are referred to the CAMLO who will advise if any further action is required before signing off accepting the activity/transactions. Once signed off, report and sign off are emailed to the CAMLO.

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Effectiveness Review

Document Review

High Client Risk Rating

An assessment of the 'high risk' clients would also be reviewed to assess:

- ✓ The reasons for the client-risk rating (STR or other),
- ✓ were the mitigation measures put in place for the client and were they recorded?
- ✓ When is the BR reviewed and who does the review?
- ✓ What activities make up the scheduled review?
- ✓ Where are the activities recorded?
- ✓ Is the review signed off?
- ✓ Did the reviewer see proof of this sign off?

Some type of 'Master monitoring and mitigation' spreadsheet in an excel format should be provided for review. For example - Process: On a monthly basis, the CAMLO reviews all the names in the Master List for any unusual or possibly new business/accounts. Any questionable activity, entries or new business are reviewed to determine if any further action is required it is signed off accepting the activity/transactions.

Effectiveness Review

Document Review

PEPs/HIOs	Some type of 'PEFP and PEP' Scanning Report should be provided for review. For example, number of clients reviewed, involving seven policies, which were all Segregated Fund policy.
Unusual Transactions	Assess reports, the rationale provided in a log for not reporting. Is it acceptable? Should a STR have been submitted to FINTRAC?

Reports

- Suspicious Transaction Reports, Large Cash Transaction Reports and Terrorist Property Reports that were submitted to FINTRAC for the scope period, should be reviewed. Sample size is determined by the number submitted.

- For STRs particular analysis should be spent on assessing PARTS G & H. Use FINTRAC Suspicious Guidance as your reference for the detail that is required.

Effectiveness Review

Interview Requirements

- **CAMLO Interview:** to respond to a questionnaire (approximately one hour in duration).
-
- **Employee Interviews: For example:** Ten staff members, two from each site location and 2 from head office.
  - Each interview will require 30 minutes of time per employee.

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About Business Crime Solutions
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This is Exhibit "7" referred to in the
affidavit of MARKO GOLUZA
sworn before me at VANCOUVER
this 25th day of MARCH, 2021.

A Commissioner for taking Affidavits
for British Columbia

The Straight Facts

Life Insurance Sector: Case Studies

The life insurance industry has been included as a reporting entity under the money laundering legislation of numerous countries across the world, Canada included.

Although the associated risk for money laundering in the life insurance sector tends to range from low to medium depending on the product, various techniques and approaches have been used to move dirty money through these products none the less.
The following are **four case studies** that demonstrate two of the more common money laundering techniques used within the life insurance sector.

Use of Intermediaries #1:
A drug trafficker made a financial investment (life insurance) of USD 250,000 by means of an insurance broker. He acted as follows. He contacted an insurance broker and delivered a total amount of USD 250,000 in three cash instalments. The insurance broker did not report the delivery of that amount and deposited the three instalments in the bank. These actions raised no suspicion at the bank, since the insurance broker was known to them as being connected to the Bank's insurance division. The insurance broker delivered, afterwards, to the insurance company responsible for making the financial investment, three cheques from a bank account under his name, totaling USD 250,000, thus avoiding raising suspicions with the insurance company.

Use of Intermediaries #2:
Clients in several countries used the services of an intermediary to purchase insurance policies. Identification was taken from the client by way of an ID card, but those details were unable to be clarified by the providing institution locally, which was reliant on the intermediary doing the due diligence checks. The policy was put in place and the relevant payments were made by the intermediary to the local life insurance institution. Then, after a couple of months had passed, the institution received notification from the client that there had been a change in their circumstances, and they would have to close out the policy suffering the losses but coming away with a clean cheque from the institution. On other occasions the policy would be left to run for a couple of years before being closed with the request that the payment be made to a third party. This was often paid with the receiving institution, if local. Not querying the payment as it had come from another reputable local institution.

Collusion #1:
An insurer in collusion with an insured person attempted to launder money through insurance transactions. The manager of an insurance company sold health and personal injury insurance policies insuring against the liability from accidents to dummy per-

sons, normally in the names of friends and relatives. These persons paid a low premium rate. Subsequently claims were received, supported by false documentation and medical certificates to substantiate the losses and the insurer paid the claims promptly. The claims for damages were considerable. The manager then sought to legalize this scheme and recover the damages paid out. Under subrogation rights, the insurance company took legal action against all businesses where the alleged accidents had occurred. The businesses involved (restaurants, clubs etc.) responded that they had not been aware of the alleged accidents and that no such accidents had occurred at the times stated.

Collusion #2:
A drug trafficker purchased a life insurance policy with a value of $200,000.00 CAD. The policy was purchased through an agent of a life insurance company using a bank draft. The investigation showed that the client had made it known that the funds used to finance the policy were the proceeds of drug trafficking. In light of this fact, the agent charged a significantly higher commission. Three months after the transaction, the drug dealer cashed in his policy.

Professional Money Launderers in Canada: Restructuring the *Criminal Code* Offence to Remove Legal Obstacles to Prosecution

Emma Goulden[*]

INTRODUCTION

Canada's present money laundering offence allows professional money launderers to exist as anonymous actors committing invisible crimes.[1] This is so because a predicate offence is integral to the offence structure.[2] The predicate offence is an act that makes the money dirty, and in Canada the predicate offence is further prescribed as an indictable offence under an act of Parliament.[3] Professional money launderers are dissociated by design from the illegal activity of the predicate offences, providing a service to organized crime groups engaged in generating dirty money.[4] Dissociation from the predicate offence makes the money laundering not only nearly impossible to prove in court, but extremely difficult for law enforcement to connect, especially if the predicate offence occurs outside of Canada.[5]

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* MA, JD Candidate. Schulich School of Law. The author is indebted to Robert J. Currie, David Schermbrucker, and Peter German for their expertise, encouragement and insightful comments on previous versions of this article.

1 Kevin Comeau, "Why We Fail to Catch Money Launderers 99.9 Percent of the Time", *SSRN* (May 7, 2019) *Essential Policy Intelligence*, online: <ssrn.com/abstract=3388049>.

2 *Criminal Code*, R.S.C. 1985, c. C-46, s. 462.31 [*Criminal Code*] (the author recognizes that there is a money laundering legal regime in Canada but the focus of the paper is specifically on the activity criminalized in this section); Peter German, "Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia", *Government of British Columbia* (March 31, 2018) at para. 171, online: <news.gov.bc.ca/files/Gaming_Final_Report.pdf> [*Dirty Money I*].

3 Robert J. Currie & Joseph Rikhof, "Proceeds of Crime and Money Laundering" in *International & Transnational Criminal Law*, 3rd ed. (Toronto: Irwin Law, 2020) at 449; *Criminal Code*, *ibid.*, s. 462.3(1).

4 FATF, *Professional Money Laundering* (Paris: FATF, July 2018) at 6 [*Pro ML*]; Canada, Department of Finance, "Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime", *Government of Canada* (Ottawa: Government of Canada, 2018) at 35, online: <www.canada.ca/content/dam/fin/migration/activty/consult/am-latfr-rpcfa-eng.pdf> [*2018 Review*]; House of Commons, Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, 42-1 (November 8, 2018) (Hon Wayne Easter) at 46, online: <www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf> [*Standing Committee Recommendations*].

5 Comeau, *supra* note 1.

A solution to this problem is to reconstitute the offence so that it does not require proof of a predicate offence, or proof of knowledge of a predicate offence. Exactly how this could be done is the focus of this report.

1. PROFESSIONAL MONEY LAUNDERERS

In order to determine how criminal law should respond to professional money launderers (PMLs), if it is to be effective, some understanding of what PMLs are, the risk they pose, and how they work is critical. Professional money laundering is a type of third-party money laundering.[6] The Financial Action Task Force (FATF), a recognized anti-money laundering (AML) think-tank, monitor of states, and inter-governmental body that sets global AML standards, defines third-party money laundering as "the laundering of proceeds by a person who was not involved in the predicate offence."[7] By definition, then, what makes a third party is the dissociation from the predicate offence. The professional launderer may have no knowledge whatsoever of what made the money dirty, but they know it is not legitimate. The actions of PMLs are without a doubt intentional. They are paid a commission or a fee for hiding the origins of funds, legitimizing proceeds of crime, and ultimately helping those responsible for predicate offences to retain their ill-gotten gains.[8] Self-laundering, on the other hand, is laundering the proceeds of crime that one was involved in making.[9]

Canada's Financial Transactions and Reports Analysis Centre (FINTRAC) goes further with their definition, calling PMLs sophisticated and referring specifically to transnational crime: "Professional money launderers are sophisticated actors who engage in large-scale money laundering on behalf of transnational organized crime groups such as drug cartels, motorcycle gangs and traditional organized crime organizations."[10] FINTRAC asserts that PMLs are involved in the majority of the more sophisticated ML schemes.[11] The same PML network may provide services to organized crime and terrorist groups, as evidenced by many cases.[12] Canada's Department of Finance reported that the

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6 *Pro ML*, *supra* note 4 at 10.

7 Daniel Murphy, "Canada's Laws on Money Laundering & Proceeds of Crime: The International Context" (2004), 63 Asper Rev Int'l Bus & Trade L 84 at para. 27; Currie, *supra* note 3 at 451; FATF, "What We Do" (2019), online: <www.fatf-gafi.org/about/whatwedo/>; FATF, *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* (Paris: FATF, updated October 2019) at footnote 100 [*FATF Methodology*].

8 *Pro ML*, *supra* note 4 at 10-11.

9 *FATF Methodology*, *supra* note 7 at footnote 100.

10 Canada, Financial Transactions and Reports Analysis Centre of Canada, "Operational Alert: Professional Money Laundering through Trade and Money Services Businesses" (July 18, 2018) 18/19-SIDEL-025, online: <www.fintrac-canafe.gc.ca/intel/operation/oai-ml-eng> [*PML Op Alert*].

11 *Ibid.*

12 *Pro ML*, *supra* note 4 at 13-14; David Asher, "Attacking Hezbollah's Financial

majority of transnational organized crime groups operating in Canada use PMLs not just because of their expertise, but precisely because they are not involved in the predicate offence and can avoid detection by law enforcement.[13]

PMLs can include experts such as accountants and lawyers, sometimes called "gatekeepers," and they may form organizations or even networks of associates with extensive infrastructure and foreign bank accounts.[14] The method of laundering depends on the type of client and predicate offence producing the funds.[15] According to the FATF, PMLs are "highly skilled and operate in diverse settings, adept at avoiding the attention of law enforcement."[16] Within professional networks there may also be compartmentalization such that the lead actors of the PML organizations never meet with those responsible for collecting the money. The money collectors may be part of the organization or they may be unwitting money mules.[17] PMLs operate on a commission, fee, or subcontract basis, forming a shadow market.[18]

Although characterized as sophisticated, the same characteristics of insulation and compartmentalization are displayed in some gangs. PML lead actors are insulated from the money collectors just as drug wholesalers may be insulated from street-level drug traffickers.[19] In American Taiwanese gangs, the upper levels of the gang are business owners, creating legitimacy, providing advice, acting as agents for illicit business, and receiving a cut of the business.[20] The higher up in the organization, the less "criminally imbedded."[21] In addition,

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Network: Policy Options", *United States House of Representatives* (Washington, DC: House Foreign Affairs Committee, June 8, 2017), online: <docs.house.gov/meetings/FA/FA00/20170608/106094/HHRG-115-FA00-Wstate-AsherD-20170608.PDF>.

13 Canada, Department of Finance, "Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada", *Government of Canada* (Ottawa: Government of Canada, 2015), at 42, online: <www.canada.ca/content/dam/fin/migration/pub/mltf-rpcfat/mltf-rpcfat-eng.pdf> [*Finance Report*].

14 *Pro ML*, *supra* note 4 at 13-14; *PML Op Alert*, *supra* note 10; Kevin L. Shepherd, "Guardians at the Gate: The Gatekeeper Initiative and the Risk-Based Approach for Transactional Lawyers" (2009), 43 Real Property Trust & Estate LJ 606.

15 Egmont Group, "Professional Money Laundering Facilitators" (July 2019) EG-Bulletin-02/2019, online: <egmontgroup.org/sites/default/files/filedepot/external/20190701%20-%20IEWG%20Professional%20ML%20Networks%20Bulletin%20-%20final.v.pdf>.

16 *Pro ML*, *supra* note 4 at 13.

17 For a discussion on money mules, see *Pro ML*, *supra* note 4 at 22-24.

18 Egmont Group, *supra* note 15.

19 United States, Department of Justice Drug Enforcement Administration, "2018 National Drug Threat Assessment", *Drug Enforcement Administration* (October 2018) at 102, online: <www.dea.gov/sites/default/files/2018-11/DIR-032-18%202018%20NDTA%20final%20low%20resolution.pdf>.

20 Kay Kei-ho Pih, Akihiko Hirose & KuoRay Mao, "Gangs as Contractors: The Social Organization of American Taiwanese Youth Gangs in Southern California" (2010), 13 Trends Organ Crim 115.

each side is insulated from the other; the "left hand" is the money operation, and the "right hand" the street soldiers, recruiters and enforcers.[22]

PMLs present unique challenges for law enforcement.[23] Not only is there insulation and compartmentalization within a PML organization, but illicit funds are likely comingled with legitimate money at any and all stages, and PMLs use trade-based money laundering with account settlement schemes, shell companies, and underground banking.[24] PMLs may be laundering proceeds of predicate offences that took place outside Canada, and PML networks with contacts in different states have been shown to change their *modus operandi* when needed to evade detection.[25] They can serve clients in multiple jurisdictions, and the number of personal bank accounts and shell companies can be in the thousands to limit losses.[26]

What may be most concerning is what the FATF notes in a report on PMLs: "PMLs *can break the link between the predicate crime and related ML.*"[27] The United Nations Office on Drugs and Crime stated that establishing property is proceeds of crime is already "[o]ne of the most difficult issues that a prosecutor may face in securing a money laundering conviction."[28] To have *no* link between the predicate offence and the ML activity means there may be no prosecution because the money appears clean.

Breaking this link is not just a problem for bringing a case. It is precisely this absence of a linkage that can make PML investigations fruitless or rejected before they are even begun. If there is no suspicion that money is proceeds of crime, tracing money to or from a predicate offence may be impossible due to lacking grounds for judicial authorizations to enable following the money.[29] According to the European Commission, law enforcement reported that the most significant obstacle to ML investigations is the requirement in some states to demonstrate the predicate offence, especially if the case is multi-jurisdictional.[30]

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21 *Ibid.*

22 *Ibid.*

23 *PML Op Alert*, *supra* note 10.

24 *Pro ML*, *supra* note 4.

25 *Pro ML*, *supra* note 4 at 28.

26 *Ibid.*, at 29.

27 *Ibid.*, at 32, emphasis added.

28 UNODC, *Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime (for Common Law Legal Systems)*, *International Monetary Fund* (April 2009) at 17, online: <www.imolin.org/pdf/imolin/Model_Provisions_Final.pdf> [*Model Legislation 2009*].

29 Comeau, *supra* note 1 at 5. See also *United States v. Dynar*, 1997 CarswellOnt 1981, 1997 CarswellOnt 1982, (*sub nom.* United States of America v. Dynar) [1997] 2 S.C.R. 462, 115 C.C.C. (3d) 481, 8 C.R. (5th) 79 at para. 20, judicial authorizations would have been refused.

30 European Commission, "Proposal for a Directive of the European Parliament and of the Council on Countering Money Laundering by Criminal Law" (December 21, 2016)

There are indications that PMLs are becoming recognized as the biggest ML threat, yet they are receiving insufficient attention in many regions. The United Kingdom identified PML as the biggest AML problem both in 2015 and 2018.[31] In 2015 and 2016, the Federal Bureau of Investigation assessed "ML facilitation," including third party launderers, facilitators and ML networks, to be a high priority threat.[32] It is the FATF's opinion that "many countries are not sufficiently investigating and prosecuting a range of money laundering activity, including third-party or complex money laundering . . . [limiting] their investigations to self-launderers."[33]

It has been estimated that roughly $130 billion per year is laundered in Canada, although estimates vary widely.[34] Money funneled into Canada to be laundered from elsewhere in the world supports a wide range of crimes contributing to global human suffering and inequality.[35] Transnational ML represents a significant problem in many jurisdictions, for example in Europe it is estimated that proceeds of crime reach €110 billion annually, and upwards of 70% of investigations in the European Union have a "cross-border dimension."[36]

Canada has been labeled a safe haven for ML, lacking enforcement capacity and attracting a large amount of transnational ML activity.[37] In fact, two new

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2016/0414(COD) at "Article 3: Money Laundering Offences", online: <ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/legislative-documents/docs/20161221/council_on_countering_money_laundering_by_-criminal_law_en.pdf>.

31 *Standing Committee Recommendations*, *supra* note 4 at 47.

32 FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – United States, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016) at para. 159, online: <www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf> [*US FATF Report Card*].

33 *Pro ML*, *supra* note 4 at 7.

34 Comeau, *supra* note 1, but see Senate, Standing Senate Committee on Banking, Trade and Commerce, *Follow the Money: Is Canada Making Progress Combatting Money Laundering and Terrorist Financing? Not Really*, 41-1 (March 2013) (Hon Irving R. Gerstein, Hon Celine Hervieux-Payette) which puts the number much lower at $5-15 billion. Several sources cite the UNODC's estimate of 2-5% of the world's GDP. Applied to Canada's GDP, 2% would equal $342 billion. See: UNODC, "Money-Laundering and Globalization", *United Nations Office on Drugs and Crime*, online: <www.unodc.org/unodc/en/money-laundering/globalization.html>.

35 Comeau, *supra* note 1.

36 This number was prior to the exit of the United Kingdom from the European Union; European Commission, "Security Union: Commission Welcomes Agreement on Stronger Rules Criminalising Money Laundering" June 7, 2018, statement/18/4092, online: .

37 Don Pittis, "The Disturbing Question of Why Canada's Done So Little to End Money Laundering", *CBC News* (May 21, 2019), online: <www.cbc.ca/news/business/money-laundering-canada-1.5138346>; Currie, *supra* note 3 at 458. This accusation is not a new one, however, see Karen Marie Katz, "Law Gone to Politics, Politics Gone to Law: The

ML terms specific to Canada indicate this: "Snow Washing" and the "Vancouver Model."[38] The latest FATF evaluation stated Canada's results from law enforcement are not commensurate with the risk posed by ML.[39] This evaluation pointed out that FINTRAC disclosures are used primarily to investigate the predicate offence rather than conduct a money laundering investigation, and current AML efforts are inadequate, especially considering there are between 650 and 900 organized crime groups in Canada generating large amounts of proceeds of crime, much of it from drug trafficking.[40]

Media reported based on Statistics Canada data that there were just 321 convictions in 1130 ML cases between the years 2000 and 2016, resulting in a 27% conviction rate.[41] The FATF reported about the same number of ML cases between 2010 and 2014 in Canada, suggesting definitional issues, but ultimately the FATF drew the same conclusion as the media: there was a very low conviction rate.[42] According to the FATF, just 9% of the total number of ML charges resulted in a conviction for ML in Canada.[43] According to the FATF, most of the ML cases in Canada resulted in convictions of predicate offences, with the ML charge withdrawn in 87% of the cases.[44] Canada saw just one to four stand-alone ML cases brought to trial per year between 2010 and 2014.[45]

In contrast, media reported the United Kingdom convicted 3,796 of 7,569 ML cases (50%) over an eight year period, and the United States convicted 615 of 727 ML cases (85%) tried in a one year period.[46] Again, the FATF statistics differed, ranging from a 48-83% conviction rate in the United States, and standing at 70% in the United Kingdom.[47] The United Kingdom aggressively

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Evolution of Canada's Organized Crime Legislation" (2011), 57 Crim LQ 58, who stated the United States named Canada as an ML haven in 1990.

38 *Standing Committee Recommendations*, *supra* note 4 at 46.

39 FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), online: <www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html> [*Canada FATF Report Card*].

40 *Canada FATF Report Card*, *ibid.*, at paras. 20-21, 44, 46, 130; Katz, *supra* note 37 (states there are almost 900 organized crime groups).

41 Andrew Russell, "Not Just BC: Most Provinces in Canada Fail to Secure Convictions in Money-Laundering Cases", *Global News* (February 10, 2019), online: <globalnews.ca/news/4939801/provinces-canada-fail-to-convict-money-laundering/>.

42 *Canada FATF Report Card*, *supra* note 39, at para. 142.

43 *Ibid.*

44 *Ibid.*, at paras. 141-142.

45 *Ibid.*, at para. 138 Table 6.

46 Russell, *supra* note 41. Note the conviction rates are not meant as a sole measure of effectiveness of ML criminalization, but rather as one point of many to contextualize the issue. For example, it might make it more difficult to argue Canada has a problem and should follow other states if they had more success with conviction rates relative to other states.

pursues stand-alone ML cases with about 2000 cases annually where ML is the sole or principal charge.[48]

The FATF's evaluation of Canada's ML regime stated specifically that its efforts in pursuing ML cases without a direct link to the predicate offence have been insufficient, and law enforcement agencies lack experience investigating PMLs and complex ML schemes.[49] One of the priority actions recommended for Canada by the FATF was to increase efforts in prosecuting third party ML cases, which it said have started to pose more of a threat recently.[50] According to the FATF evaluation, "large-scale and sophisticated ML operations in Canada, notably those connected to transnational [organized crime groups], frequently involve professional money launderers" and these are assessed as the greatest threat, both of domestic ML and laundering proceeds of crime from outside Canada.[51] Canada's Department of Finance had earlier made the same assessment, and reported that transnational organized crime and PMLs are the "key ML threat actors" in Canada, noting their methods are challenging to detect.[52] Joanne Crampton, Assistant Commissioner of the RCMP, repeatedly told Canada's Finance Committee at the House of Commons the problem of PMLs insulating themselves from the predicate offence using sophisticated methods, using the words "professional money launderer" 11 times during the session in 2018.[53]

PML investigations are important to pursue. Not only do PMLs pose a high risk and involve transnational organized crime, but they also are likely to attract the patronage of the organized crime groups that are generating the largest amounts of money because they can provide "cash controller networks."[54] PML networks can survive multiple clients being dismantled by law enforcement efforts and remain in place for their successors.[55] On the other hand, disrupting

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47 *US FATF Report Card, supra* note 32 at 64; FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures — United Kingdom, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2018) at 40, online: <www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf> [*UK FATF Report Card*].

48 *UK FATF Report Card, ibid.*, at 40.

49 *Canada FATF Report Card, supra* note 39, at paras. 130, 156.

50 *Ibid.*, at paras. 9, 46.

51 *Ibid.*, at para. 46.

52 *Finance Report, supra* note 13 at 8, 18, 22, 30.

53 House of Commons, Standing Committee on Finance, *Evidence*, 42-1, No 134 (February 26, 2018) at 1600 (A/Commr Joanne Crampton), online: <www.ourcommons.ca/DocumentViewer/en/42-1/FINA/meeting-134/evidence#Int-9986993> [*RCMP Speech*].

54 *Pro ML, supra* note 4 at 19; Stephen Schneider, "Money Laundering in Canada: A Quantitative Analysis of Royal Canadian Mounted Police Cases" (2004), 11:3 J Financial Crime 282 at 289.

55 *Pro ML, supra* note 4 at 7.

both the funding of organized crime and the business of PMLs may be an effective way to combat the illegal activity.[56]

By intentionally evading AML legislation, as British criminal lawyer Vivian Walters phrased it, "[s]hould they for that reason be immune from prosecution?"[57] Canada's *Criminal Code* offence is structured in a way that the requirement to provide some proof of a predicate offence is unavoidable. This arguably impacts not only the conviction rate of prosecutions, but also decisions on what should be the subject of criminal investigation and prosecution. The difficulty lies in the creation of an offence that fully captures the nature of the activity PMLs are engaged in and reflects the seriousness of the offence.

2. CANADIAN MONEY LAUNDERING CRIMINAL LAW

The *Criminal Code* offence "laundering proceeds of crime" states:

> 462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that, or being reckless as to whether, all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of
>
> (a) the commission in Canada of a designated offence; or
>
> (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.[58]

The essential elements of the offence are: "(1) that the accused dealt with property. . .; (2) that the property was obtained by crime. . .; (3) that the accused knew or believed [or was reckless or willfully blind] that the property had been obtained by crime; and (4) that the accused intended to conceal or convert the property."[59]

The mental element in relation to proceeds of crime is of particular interest because PMLs may intentionally have no knowledge that the property was obtained by crime. Wilful blindness to the property being proceeds of crime,

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[56] *Ibid.*; Currie, *supra* note 3 at 448.

[57] Vivian Walters, "Prosecuting Money Launderers: Does the Prosecution Have to Prove the Predicate Offence?" (2009), 8 Crim L R 571.

[58] *Criminal Code*, *supra* note 2 s. 462.31.

[59] *R. v. Barna*, 2018 ONCA 1034, 2018 CarswellOnt 21170, 371 C.C.C. (3d) 217, leave to appeal refused *Daniel Barna v. Her Majesty the Queen*, 2019 CarswellOnt 9557, 2019 CarswellOnt 9558 (S.C.C.), relying on *R. c. Bois*, (*sub nom.* R. v. Daoust) 2004 SCC 6, 2004 CarswellQue 138, 2004 CarswellQue 139, [2004] 1 S.C.R. 217, 180 C.C.C. (3d) 449, 18 C.R. (6th) 57, and *R. v. Tejani*, 1999 CarswellOnt 2707, 138 C.C.C. (3d) 366, 27 C.R. (5th) 351 (C.A.), leave to appeal refused 2000 CarswellOnt 917, 2000 CarswellOnt 918, 42 C.C.C. (3d) vi (S.C.C.). See also *R. c. Hayes*, 1995 CarswellQue 160, 1995 CarswellQue 2614, 104 C.C.C. (3d) 316, 45 C.R. (4th) 41 (C.A.).

which may be more appropriate for PML cases, was accepted as a mental element in place of knowledge at the trial level in 2014 and upheld at the Ontario Court of Appeal in 2018.[60] The Department of Finance reviewed the ML legal regime in Canada in 2018 and reported that the legal requirement to link ML to the knowledge that the funds were proceeds of crime of a specific predicate offence was, where ML investigations are concerned, "[o]ne of the most widely recognized difficulties in Canada."[61] The review suggested that the recklessness standard used in other nations, such as the United Kingdom, could increase the number of successful ML convictions.[62] In June of 2019, Canada passed an amendment to the *Criminal Code* in an omnibus bill that made it an offence to launder money by being reckless as to whether that money was proceeds of crime.[63] The change was recommended by a House of Commons committee based in part on United Kingdom case law concerning a third-party money launderer, and in part on the RCMP's recommendation during committee testimony.[64] The reasoning was that the predicate offence would not have to be proven if recklessness were added.[65]

Recklessness will not likely produce the desired change. There is no easy way to remove the second element, that the property was obtained by crime, from the offence without also removing the mental elements, including recklessness, for a number of reasons.

The first problem is that "[p]roof of knowledge requires proof of truth."[66] With many subjective mental elements, there comes an evidentiary burden to prove proceeds of crime exist in relation to the offence. Proving knowledge, recklessness or wilful blindness involves proving proceeds of crime were involved; if the prosecutor must prove the accused knows the funds are proceeds of crime, was reckless to the funds being proceeds of crime, or was wilfully blind to them being proceeds of crime, the prosecutor first must prove the funds *are* proceeds of crime. Wilful blindness involves the need for an inquiry and a preference by the accused to remain ignorant.[67] Recklessness is "actual foresight" on the part of the accused that one's actions may cause the prohibited consequences.[68]

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60 *R. v. Barna*, 2014 ONSC 1011, 2014 CarswellOnt 6715 (S.C.J.), affirmed 2018 ONCA 1034, 2018 CarswellOnt 21170, 371 C.C.C. (3d) 217, leave to appeal refused *Daniel Barna v. Her Majesty the Queen*, 2019 CarswellOnt 9557, 2019 CarswellOnt 9558 (S.C.C.).

61 *2018 Review*, *supra* note 4 at 35.

62 *Ibid.*

63 "Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures", Royal Assent, 42-1 (June 21, 2019), online: <www.parl.ca/DocumentViewer/en/42-1/bill/C-97/royal-assent>.

64 *R. v. Anwoir*, [2008] EWCA Crim 1354, as cited in *Standing Committee Recommendations*, *supra* note 4 at 46.

65 *RCMP Speech*, *supra* note 53.

66 *Dynar*, *supra* note 29.

67 *R. v. Sansregret*, 1985 CarswellMan 176, 1985 CarswellMan 380, (*sub nom.* Sansregret v. R.) [1985] 1 S.C.R. 570, 18 C.C.C. (3d) 223, 45 C.R. (3d) 193.

Considered another way, if the accused raises a reasonable doubt that the money was proceeds of crime, whether they were reckless to that "fact" becomes a nonsensical exercise as there is no longer something about which they were reckless. "Belief," which is also an acceptable subjective fault element for the ML offence, is generally applicable to sting operations in which police money is used and does not alleviate the problem of the predicate offence where PMLs operate to intentionally isolate themselves from acknowledging such a belief.[69]

The second problem is the *Criminal Code* provision refers specifically to a "designated offence." This suggests the prosecution will not be able to avoid proving to some standard that the funds stemmed from a particular category of crimes, regardless of what the Standing Committee hoped when it suggested the addition of recklessness to the offence.[70] To prove the property is proceeds of a category of crime requires some evidence of the predicate offence.

The problem of the predicate offence does not end there. The word "conceal" in the offence wording, "with intent to conceal or convert," implies knowledge of proceeds of crime, or there would be no intent to conceal. If the accused has intent to conceal, they are intending to cover something up; an element of *mens rea* is imported, a positive act is implied.[71] At minimum, the word "conceal" places a tactical burden on the prosecutor to prove that there *is* something to cover up. In its plain meaning, "conceal" indicates some form of knowledge and intent of the accused; to conceal is to keep something secret, to prevent it from being discovered.[72] Once again, to prove the ML offence beyond a reasonable doubt, it would be impossible to ignore the very thing that is required to be kept concealed or secret; the matter being concealed is that the money is proceeds of crime, and that will need to be proven.

This is not to suggest that each element of the ML offence presents a new hurdle for a prosecutor in practice. Likely many of the elements can be proven from inferences drawn from the same set of facts. A prosecutor could also proceed on the basis of "belief" and "intent to convert," and avoid proving the property is proceeds of crime.[73] This is the only combination of *mens rea*

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68 *R. v. Buzzanga*, 1979 CarswellOnt 1502, 49 C.C.C. (2d) 369 (C.A.) at para. 50.

69 *Dynar*, *supra* note 29 first interpreted belief as acceptable *mens rea*, and it is now included in the wording of the *Criminal Code* provision itself.

70 *Standing Committee Recommendations*, *supra* note 4 at 46.

71 Regarding *mens rea* and "conceal" see *Coughlan v. R.*, 1974 CarswellAlta 71, 17 C.C.C. (2d) 430 (T.D.); *R. v. Appleby*, 1990 CarswellAlta 482 (Prov. Ct.); *R. v. Lemire*, 1980 CarswellBC 444, 54 C.C.C. (2d) 50, 18 C.R. (3d) 166 (Co. Ct.), reversed 1980 CarswellBC 449, 57 C.C.C. (2d) 561, 20 C.R. (3d) 186 (C.A.), leave to appeal refused (1981), 57 C.C.C. (2d) 561n (S.C.C.). For a discussion of the meaning of the word "conceal" as a positive act, see *R. v. Goulis*, 1981 CarswellOnt 164, 60 C.C.C. (2d) 347, 20 C.R. (3d) 360 (C.A.).

72 *Miriam-Webster.com*, sub verbo "conceal", online: <www.meriam-webster.com/dictionary/conceal> (accessed April 19, 2020).

73 See, e.g., *R. v. Tejani*, *supra* note 59, where a sting operation was used to gather evidence against a currency exchange dealer.

elements that would allow this, and the evidence would have to be appropriate to prove the belief.

Much of the offence wording is tied to evidence relating to a predicate offence or to related fault elements. To construct an offence to remove the burden of proving the predicate offence entirely would require severing most of the language of the offence, leaving that the accused "dealt with the property," with intent to convert it.[74] Clearly this is not sufficient to form a criminal offence, so another solution is needed. In other words, it will take more than amending the *Criminal Code* ML provision through the addition of recklessness to effectively address PMLs.

(a) Option for Change: Reverse Onus Offence

A requirement for the accused to prove funds are not proceeds of crime would be a simple amendment to the *Criminal Code* ML offence and would solve the difficulty of linking the predicate offence to the ML activity. This would be especially helpful for investigating and prosecuting PMLs. This could be done by constructing the offence using wording indicating it would not constitute an offence if the money was not obtained by crime, "the proof of which lies upon the person."

The wording "the proof of which lies on the person" indicates a reverse onus, placing a persuasive burden on the accused to disprove an element of the offence (that the property was not obtained by crime).[75] As AML expert Peter German noted, organized crime benefits from Canada's strong *Charter of Rights and Freedoms* which prevents most criminal law provisions from containing a reverse onus.[76] Many reverse onus provisions violate the right of the accused to be presumed innocent.[77] Twenty-three reverse onus provisions in the *Criminal Code* found to be unconstitutional were amended in 2018 by removing the offensive phrase "the proof of which lies on the person."[78] Very few remain in the *Criminal Code*.

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74 The word "convert" was specifically stated by the Supreme Court not to require that the accused intended to conceal the fact that it was proceeds of crime which were converted in *R. c. Bois*, *supra* note 59.

75 Casey Hill et al, "Presumptions" in *McWilliams' Canadian Criminal Evidence*, 5th ed. (Aurora: Canada Law book, 2013) Chapter 29.

76 Peter German & Associates, "Dirty Money Part 2: Turning the Tide- An Independent Review of Money Laundering in BC Real Estate, Luxury Vehicle Sales & Horse Racing", *British Columbia Government*, March 31, 2019 at 39, online: <news.gov.bc.ca/releases/2019AG0042-000885>; *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

77 Hill, *supra* note 75 at 29-5, 29-13; *Charter*, *ibid.*, s, 11(d).

78 *An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act*, S.C. 2018, c. 29.

In order to avoid violating the right to be presumed innocent, the Supreme Court has said the relationship between the presumed fact (the proceeds were derived from crime) and the basic fact (the money laundering activity took place) must be so tight that it would be unreasonable not to make the inference.[79] Justice Cory explained in *Downey*:

> Legislation which substitutes proof of one element for proof of an essential element will not infringe the presumption of innocence if as a result of the proof of the substituted element, it would be unreasonable for the trier of fact not to be satisfied beyond a reasonable doubt of the existence of the other element. To put it another way, the statutory presumption will be valid if the proof of the substituted fact leads inexorably to the proof of the other. However, the statutory presumption will infringe s. 11(*d*) if it requires the trier of fact to convict in spite of a reasonable doubt.[80]

An inexorable link is one that is true in all cases.[81] In other words, it would have to be true that money laundering only takes place where money is proceeds of crime. This statement is objectively true, but for the offence to contain an inexorable link it will depend on how the elements of the money laundering offence and the predicate offence are constructed. If the predicate offences are too narrowly constructed, it may not always be true, and if the money laundering activity is too broadly constructed (too commonplace or benign), it may not always be true. In other words, what appeared at first to be a simple revision to create a reverse onus provision would create more work in constructing the rest of the offence in order to form an inexorable link and avoid a *Charter* violation.

If there is a violation, it may survive scrutiny under the *Oakes* analysis.[82] The *Oakes* test as to whether a *Charter* violation will be saved by s. 1 is:

> (1) the law creating the infringement has a pressing and substantial objective; and
> (2) the means chosen are proportionate in that:
> (a) they are rationally connected to the law's objective;
> (b) they limit the *Charter* right in question as little as reasonably possible in order to achieve the law's objective; and
> (c) the law's salutary effects are proportionate to its deleterious effects on the affected *Charter* right.[83]

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79 Hill, *supra* note 75 at 29-11.

80 *R. v. Downey*, 1992 CarswellAlta 56, 1992 CarswellAlta 467, [1992] 2 S.C.R. 10, 72 C.C.C. (3d) 1, 13 C.R. (4th) 129 at para. 39 [*Downey*].

81 *R. v. Morrison*, 2019 CSC 15, 2019 SCC 15, 2019 CarswellOnt 3710, 2019 CarswellOnt 3711, [2019] 2 S.C.R. 3, 375 C.C.C. (3d) 153, 52 C.R. (7th) 273 at para. 53 [*Morrison*].

82 *R. v. Oakes*, 1986 CarswellOnt 95, 1986 CarswellOnt 1001, [1986] 1 S.C.R. 103, 24 C.C.C. (3d) 321, 50 C.R. (3d) 1.

83 Hill, *supra* note 75.

ML would likely meet part (1) of a pressing and substantial objective. Accepting that there has yet to be a case failing on proportionality at the Supreme Court when the means are rationally connected to the objective and minimally impairing, part (2)(c) of the test should also not cause difficulties.[84] Addressing part (2)(a) of the test, a rational connection between money laundering activities and the money being proceeds of crime should be able to be established with careful construction of the offence, with there being "every reason to believe" that money being laundered is proceeds of crime.[85] In *Downey*, the court took into account under this part of the test that "Parliament has recognized that evidence of this type was difficult if not impossible to obtain," and evidence of that could be found with respect to ML, as discussed above.[86]

The difficult part of the test to pass is whether the provision is minimally impairing (part (2)(b) of the test). The Court of Appeal stated in *Morrison* that the reverse onus in the offence in that case failed minimal impairment because "[t]he absence of the presumption would not undermine the prosecution of [the offence]."[87] On the other hand, the reverse onus was upheld in *Whyte* because the presumption resolved the problems caused by the alternatives of a full *mens rea* offence (which is detrimental to society when ineffective) and absolute liability (which is constitutionally abhorrent).[88] Parliament is not required to choose the "least restrictive alternative that can be imagined."[89] In *Chaulk*, the *Charter* violation was saved because proving the defence did not apply was an impossibly onerous burden placed on the prosecutor.[90] There are *Criminal Code* offences where "the state's goals are seen as too important to risk erroneous outcomes occasioned by a lighter burden on the accused."[91] In *Chaulk*, *Daviault* and *Stone*, the court was concerned with the difficulty of the prosecutor accessing evidence and the ease with which a defence could be falsely raised.[92] That is precisely the issue faced by a prosecutor of a PML who disassociates from the predicate offence with the current ML *Criminal Code* offence in Canada; they easily create plausible deniability.

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84 *Ibid.*, at 29-38.

85 *R. v. Whyte*, 1988 CarswellBC 761, 1988 CarswellBC 290, [1988] 2 S.C.R. 3, 42 C.C.C. (3d) 97, 64 C.R. (3d) 123 at para. 43 [*Whyte*].

86 *Downey*, *supra* note 80 at para. 61.

87 *Morrison*, *supra* note 81 at para. 69.

88 *Whyte*, *supra* note 85.

89 *R. v. Laba*, 1994 CarswellOnt 1169, 1994 CarswellOnt 113, [1994] 3 S.C.R. 965, 94 C.C.C. (3d) 385, 34 C.R. (4th) 360.

90 *R. v. Chaulk*, 1990 CarswellMan 385, 1990 CarswellMan 239, [1990] 3 S.C.R. 1303, 62 C.C.C. (3d) 193, 2 C.R. (4th) 1 [*Chaulk*].

91 Hill, *supra* note 75 at 29-36.

92 *Ibid.*, at 29-38; *Chaulk*, *supra* note 90; *R. c. Daviault*, 1994 CarswellQue 10, 1994 CarswellQue 118, [1994] 3 S.C.R. 63, 93 C.C.C. (3d) 21, 33 C.R. (4th) 165; *R. v. Stone*, 1999 CarswellBC 1064, 1999 CarswellBC 1065, [1999] 2 S.C.R. 290, 134 C.C.C. (3d) 353, 24 C.R. (5th) 1.

It is possible that a constitutionally sound reverse onus provision could be created to criminalize ML. However, given that the Canadian courts and Parliament have removed from almost all provisions such wording, a search for other options is warranted. A look at international law and the domestic law of other states shows PMLs are a relatively new challenge, but one in which more effective sanctions exist.[93]

3. INTERNATIONAL LAW

Various treaties set out AML directives that state parties must implement within their domestic law. Among the goals of the treaties is to eliminate "safe havens for organized crime" and focus on sustaining factors of organized crime such as ML.[94]

Article 6 of the *United Nations Convention against Transnational Organized Crime* (*Palermo Convention*), to which Canada is signatory, requires parties to adopt as criminal offences a wide range of actions (e.g., conversion, transfer, concealment, disguise, etc.) with respect to proceeds of crime, inside and outside the jurisdiction of the state, and to the widest range of predicate offences possible.[95] This was an improvement from the *Vienna Convention* of 1988 which required states to criminalize solely the laundering of drug money.[96]

All relevant paragraphs of the *Palermo Convention* include the wording "*knowing* that such property is the proceeds of crime." The treaty thus appears to make it obligatory for Canada to apply the strictest mental element to a ML offence. This would likely bind states to ignore PMLs altogether. Fortunately, the legislative guide to the *Palermo Convention* states explicitly that the convention sets out minimum standards for states for the purpose of conformity, and states are free and encouraged to exceed standards.[97]

During the drafting of the *Palermo Convention*, there were discussions about the extent of knowledge required by an offender that the funds were proceeds of crime.[98] An option for the second part of Article 6 of the *Palermo Convention*

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93 See also Currie, *supra* note 3 at 449 (recent trend of professional money launderers).

94 UNDOC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime, United Nations Office on Drugs and Crime*, at para. 2, online: <www.unodc.org/documents/treaties/Legislative_Guide_2017/Legislative_Guide_E.pdf> [*Palermo Guide*].

95 *United Nations Convention against Transnational Organized Crime*, November 15, 2000, 2225 UNTS 39574 (entered into force September 29, 2003), art 6(1) [*Palermo Convention*].

96 *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*, December 20, 1988, 1582 UNTS 27627 (entered into force November 11, 1990), art 3(1)(b) [*Vienna Convention*].

97 *Palermo Guide*, *supra* note 94 at para. 27.

98 UNDOC, *Travaux Préparatoires of the Negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, United Nations Office on Drugs and Crime* (New York: United Nations, 2006) at 52 note

contained an additional paragraph indicating state parties may make it an offence when the person accused "(a) ought to have assumed that the property was the proceeds of crime" or "(b) acted for the purpose of making a profit."[99] Although it seemed appropriate for a PML, this section caused discussion about negligence and it was eventually deleted because states could not agree about making negligence of ML a crime.[100]

Article 6 of the *Palermo Convention* also directs state parties to make it an offence to intentionally assist "any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions."[101] This could be applicable to PMLs but the offence, both as drafted and in its final form, also requires knowledge of proceeds of crime. It is likely that the focus was on what was perceived at the time to be the biggest threat: the organized crime group responsible for the predicate offence.[102] This focus is indicated by the use of the words "carried out directly *or through an intermediary*" when describing definitions of money laundering in the *travaux préparatoires* to the convention.[103] The legislative guide also indicates money laundering investigations are a means to identify organized crime groups.[104] This way of thinking persists today.[105] However, even if one is unconvinced that PMLs are themselves serious offenders, PMLs enable transnational organized crime groups involved in serious offences to remain profitable, and they may prevent investigative methods that "follow the money."

There was a discussion at the third session of the Ad Hoc Committee for the *Palermo Convention* about the reversal of proof.[106] Many delegations suggested that it would unacceptably violate the presumption of innocence. However, if an offender was convicted, a reversal of proof could apply to the question of confiscation of funds. It was decided to deal with this issue under the article on confiscation.

The *United Nations Convention against Corruption* (*UNCAC*), contains identical wording to Article 6 of the *Palermo Convention* described above.[107] The

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12, online: <www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf> [*Palermo Travaux*].

[99] *Ibid.*, at 49.

[100] *Ibid.*, at 53 note 23.

[101] *Ibid.*, at 50.

[102] See also Katz, *supra* note 37, who stated that in the late 1960's the focus turned to money because it was the "golden thread" tying organized crime groups together.

[103] *Palermo Travaux*, *supra* note 98 at 51 note 10, emphasis added.

[104] *Palermo Guide*, *supra* note 94 at para. 110.

[105] See, e.g., *R. v. Holden*, 2020 ONSC 132, 2020 CarswellOnt 1683 (S.C.J.) at para. 40 where the judge refers to the predicate offence as the "principle offence" in a money laundering case.

[106] *Palermo Guide*, *supra* note 94 at 53, note 22.

[107] *United Nations Convention against Corruption*, October 31, 2003, 2349 UNTS 42146 art

travaux préparatoires indicate that states agreed that a prior conviction for the predicate offence was unnecessary to establish the "illicit nature or origin" of the laundered money, because that could be established during the money laundering prosecution.[108] For the purposes of the present discussion, this means the expectation is that the illicit nature of the funds would have to be proven to some standard during the ML prosecution.

The *UNCAC* originally included a subsection with the wording "does not take the necessary measures to ascertain the lawful origin of such property."[109] This subsection was deleted because the parties still could not agree about establishing a negligence standard.[110] It is difficult to know how a negligence standard would have been applied with the wording at the beginning of the section, "when committed intentionally."[111] Discussions about this issue had taken place during the negotiations of the *Palermo Convention.*[112] In any event, negligence does not properly describe the intentional profit-driven motive of PMLs.

In addition to treaties, the international community has endorsed the FATF recommendations as the international AML standard, making them a form of "soft law."[113] The FATF "Forty Recommendations" were created in 1990 and revised in 1996, added to in 2001, and revised again in 2003.[114] The fourth recommendation in the original list was to criminalize drug money laundering as agreed upon in the *Vienna Convention.* This became the first recommendation in 2003. The sixth original recommendation stated that, "[a]s provided in the Vienna Convention, the offence of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances."[115] In 2003, the FATF

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23 (entered into force December 14, 2005) [*UNCAC*]. The wording is also similar to the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime,* November 8, 1990, ETS 141 (entry into force September 1, 1993).

[108] UNDOC, *Travaux Préparatoires of the Negotiations for the elaboration of the United Nations Convention against Corruption, United Nations Office on Drugs and Crime* (New York: United Nations, 2010) at 221, online: <www.unodc.org/documents/treaties/UNCAC/Publications/Travaux/Travaux_Preparatoires_-_UNCAC_E.pdf>.

[109] *Ibid.*, at 218.

[110] *Ibid.*

[111] *UNCAC, supra* note 107 Article 23.

[112] *Palermo Travaux, supra* note 98 at note 9.

[113] FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (Paris: FATF, 2012-2019), online: <www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> [*Recommendations 2019*]; Currie, *supra* note 3 at 452-53.

[114] *Ibid.*

[115] FATF, *The Forty Recommendations of the Financial Action Task Force on Money Laundering* (1990), online: <www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%201990.pdf> [*Recommendations 1990*].

recommended parties be consistent with the *Vienna* and *Palermo Conventions*, ensuring that mental state could be inferred from the facts.[116] While this may lessen the evidentiary burden on the prosecution, inferring mental states from facts does not address money laundering activity where the PML has broken the link to the predicate offence.

Model legislation has been developed by the United Nations Office on Drugs and Crime.[117] The variants of *mens rea* included for each model criminal offence of money laundering are "knows," "suspects" or "should have known" in relation to the funds in question being proceeds of crime.[118] The drafting notes to the 2009 model legislation indicate "believing" could also be used.[119] They also acknowledge the terms "self-laundering" and "third party laundering."[120] This appears solely to be in response to some countries that constitutionally prohibit charging someone with two offences for the same crime (i.e., charging a self-launderer with the predicate offence as well as with money laundering). There was also some concern about proceeds of crime later being acquired by innocent parties.[121] There was, however, no acknowledgment that the third-party launderers may be able to break the chain of evidence to the predicate offence.

The most promising part of the drafting notes to the model legislation is a discussion of acceptable standards of proof of proceeds of crime.[122] The drafting notes recognized that if the standard is too high (e.g., a conviction), this would defeat the purpose of criminalizing money laundering. The notes suggest it should not be necessary for the prosecutor to prove the specific offence, perpetrator, or circumstances, and that drafters of legislation should consider using language that indicates proof of proceeds of crime can be inferred from the way the property was handled.[123] An English Court of Appeal case, *R. v. Anwoir*, was cited to support this suggestion.[124] This is the same case cited by Canada's Parliament when the *Criminal Code* provision was amended to add recklessness.[125]

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[116] FATF, *FATF 40 Recommendations* (2003), online: <www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf> [*Recommendations 2003*].

[117] UNODC, *Model Legislation on Money Laundering and Financing of Terrorism, International Monetary Fund* (December 1, 2005), Art 5.2.1, online: <www.imf.org/external/np/leg/amlcft/eng/pdf/amlml05.pdf> [*Model Legislation 2005*]; *Model Legislation 2009*, *supra* note 28.

[118] *Model Legislation 2005*, *ibid.*, at 34.

[119] *Model Legislation 2009*, *supra* note 28 at 12.

[120] *Ibid.*, at 10.

[121] *Ibid.*, at 130.

[122] *Ibid.*, at 17.

[123] *Ibid.*, at 17.

[124] *R. v. Anwoir*, [2008] EWCA Crim 1354 [*Anwoir*].

[125] House of Commons, Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, 42-1 (November 8, 2018) (Hon Wayne

The *Anwoir* case is less helpful than it may seem. The English Court of Appeal stated the prosecutor could prove property was proceeds of crime "by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime."[126] This idea of an "irresistible inference," when read in context of the case, is not very different from the rule in *Hodge* in Canadian evidence law; if the prosecutor's case is entirely circumstantial evidence, guilt has to be the only rational inference in order to convict.[127] The rule coming out of *Anwoir* seems to be that if guilt is the only rational inference one may convict.

Anwoir was not without evidence of the predicate offence. The investigation started as a drug investigation and ended in drug offence convictions. The evidence included wiretap evidence of those convicted of drug offences indicating the laundering of large sums of drug money and fraud money. The burden of proof was not lowered in this case with respect to the proceeds of crime, it was notable only in that no specific predicate offence was required. In this case there was evidence it could be fraud or drug money.

It is unfortunate that the *Anwoir* case seems to have been emphasized, and that the treaties to which Canada is party have so far not been very helpful in addressing PMLs. There are other international materials, however, that may be of assistance.

(a) Other Jurisdictions

The All-Crimes Approach. A recent case heard at the European Court of Human Rights (ECHR) is a better example than *Anwoir* of a ML conviction without proof of any predicate offence.[128] The evidence against the accused included €75,000 in cash paid to his account in five installments in the space of two months from mostly unknown third parties, lack of employment or income, and previous drug-related offences. In the trial level case, the accused testified and did not provide a credible explanation of the source of the funds. About this the ECHR stated "it would not have been difficult for him to demonstrate the origin of the disputed money."[129] Although this sounds suspiciously like reversing the onus of proof to the accused, the ECHR recalled from its previous decisions that it does not deprive an accused of a fair trial to impose upon them the obligation to explain their wealth. The ECHR unanimously declared it was not a violation of the presumption of innocence to convict the accused of ML

Easter) at 46, online: <www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf>.

[126] *Anwoir, supra* note 124.

[127] *R. v. Hodge* (1838), (*sub nom.* Hodge's Case) 168 E.R. 1136, 2 Lewin 227 (C.C.R.) as cited in *R. v. Villaroman*, 2016 CSC 33, 2016 SCC 33, 2016 CarswellAlta 1411, 2016 CarswellAlta 1412, [2016] 1 S.C.R. 1000, 338 C.C.C. (3d) 1, 30 C.R. (7th) 223.

[128] *Zschuschen v. Belgium*, [2017] ECHR 178 [*Zschuschen*].

[129] *Ibid.*, at para. 30.

without the prosecution proving the origin of the money. The court stated that it was unnecessary to precisely state the predicate offence, "provided that it can, on the basis of factual data, exclude any legal origin."[130]

The ECHR relied in part on international law, more specifically, on Article 9 of the *Council of Europe Convention on Laundering, Tracing, Seizure and Confiscation of the Proceeds of Crime and Terrorist Financing*, also known as the *Warsaw Convention*.[131] This treaty, to which only European states are party, provides that the proceeds of crime originate from a predicate offence but it is not "necessary to establish precisely which offence."[132] The treaty contains a negligence standard, wording indicating it is enough for the accused to have "suspected" the funds were proceeds of crime, and it also acknowledges that the ML may be conducted by different persons from those who committed the predicate offence.[133]

This approach has been dubbed the "all-crimes approach" undertaken by the Dutch, who have been prosecuting money laundering cases without proving predicate offences for over a decade.[134] To establish that the proceeds originate from "any crime," the prosecutor must prove that it cannot be otherwise.[135] This involves tracing the money backward and forward and finding no legal source of origin.[136] This allows "stand-alone" ML cases to be investigated and prosecuted without the necessity of investigating to determine the precise illegal source of the funds. A report from the Netherlands maintains that it is the "originates from any crime" element that is the most essential difference between their penal code and the codes of other states, allowing more efficient and more successful ML investigations.[137]

In New Zealand the ML offence is structured similarly to Canada's, with an important difference. It is not necessary to prove the accused knew any particular offence resulted in the proceeds of crime.[138] The *US Code* also specifies that the knowledge of the offender need not include the type of crime that resulted in the property.[139]

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[130] *Ibid.*, at para. 6.

[131] *Council of Europe Convention on Laundering, Tracing, Seizure and Confiscation of the Proceeds of Crime and Terrorist Financing*, May 16, 2005, CETS 198 (entered into force May 1, 2008) [*Warsaw Convention*].

[132] *Ibid.*, art 9(6).

[133] *Ibid.*, arts 3(b), 3(a), 9(2)(b).

[134] The Netherlands, Fiscal Information and Investigation Service, "Indirect Method of Proof: Providing Evidence in Stand-Alone Money Laundering Investigations" (April 15, 2019) at 1, online: <www.amlc.eu/wp-content/uploads/2019/04/Money-Laundering-the-Indirect-Method-of-Proof-2019.pdf> [*Stand Alone*].

[135] *Ibid.*, at 7.

[136] *Ibid.*, at 9.

[137] *Ibid.*, at 4.

[138] *Crimes Act 1961* (N.Z.), 1961/43 s 243(5)(a).

[139] 18 US Code §1956 (2016), s. (C)(1).

The United Kingdom ML criminal offence surprisingly does not include the word recklessness (recall that the change to the *Criminal Code* offence in Canada was said to be in part based on United Kingdom law).[140] Instead, the definition of "criminal property" (proceeds of crime) includes that which the accused suspects is derived from criminal conduct.[141] "Suspects" is a subjective mental element possible to be proven based on circumstantial evidence of the accused's conduct.[142] It may be treated similarly to recklessness if used in Canada. However, the criminalization of ML is constructed quite differently from the Canadian offence in other important ways. First, criminal conduct is not confined to a list of offences.[143] Second, it is stated specifically that it is immaterial who carried out the conduct and who benefited from it.[144] The common law interpretation of these two paragraphs is it is not necessary for the prosecution to establish the precise crime that generated the funds.[145]

Structuring Offences. The United States criminal law includes a "structuring offence" which prohibits structuring, or avoiding reporting requirements (such as those set out in Canada's *PCMLTFA*) by placing smaller amounts in multiple accounts and transferring them to a central account, for instance.[146] United States law requires the prosecution to establish that the purpose of the structured transactions was to evade obligations to report, and not the knowledge that structuring is illegal nor that the money was proceeds of crime.[147] Avoiding transaction reporting requirements is also a criminal offence in the *US Code*.[148]

Structuring is also an offence in Australia.[149] The Australian offence makes it a crime punishable by imprisonment to make two or more transactions if it is reasonable to conclude it was for the sole or dominant purpose of avoiding the threshold for reporting that transaction. In the statute it is made clear that the onus is on the accused to disprove this.[150]

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[140] See this document, *supra* note 65; *Proceeds of Crime Act 2002* (U.K.), ss. 327, 328, 329, 340.

[141] *Proceeds of Crime Act 2002* (U.K.), s. 340(3)(b).

[142] *Sitek v. Poland*, [2011] EWHC 1378 (Admin).

[143] *Proceeds of Crime Act 2002* (U.K.), s. 340(2).

[144] *Ibid.*, s. 340(4).

[145] *Anwoir, supra* note 124; *R. v. Craig*, [2007] EWCA Crim 2913.

[146] 31 USC §5324 (2004); *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 [*PCMLTFA*]; Canada, Financial Transactions and Reports Analysis Centre of Canada, "Methods of Money Laundering" in *Guideline 1: Backgrounder* (2019) at 2.2, online: <www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/Guide1/1-eng> (definition of structuring).

[147] *US v. $255,427.15 in US Currency*, 841 F.Supp.2d 1350 (S.D. Ga. Div. Augusta, 2012).

[148] 18 US Code §1956 (2016), ss. (a)(1)(B)(ii), (a)(2)(B)(ii), (a)(3)(C).

[149] *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Austl), 2006/169, s. 142.

[150] *Ibid.*, s. 142(2). A note is provided in the statute indicating "[a] defendant bears a legal burden in relation to the matters in subsection (2)- see section 13.4 of the *Criminal Code*."

Addressing PMLs Directly. TThe Dutch may have acknowledged the problem of PMLs in their penal code by penalizing "habitual" launderers more harshly than self-launderers.[151] They plan to apply a stiffer penalty to "aggravated" intentional money laundering applicable when organized crime is involved or when a professional position is abused.[152]

The Netherlands also address stand-alone ML investigations using an indirect method of proof. This efficiently addresses the problem of PMLs dissociating from the predicate offence.[153] The Dutch use a six-step approach to ML investigations supported by both the structure of the ML offence (applying to all crimes) and by the jurisprudence.[154] The six-step approach is a comingling of investigative approach, criminal procedure, evidence law, and an AML legal regime that is created by a penal code and direction from the Supreme Court of the Netherlands. Consideration of adopting the full approach in Canada raises a host of thorny issues relating to rights of the accused and is beyond the scope of this report. Nonetheless, understanding the logic of the approach is relevant to considerations of restructuring the Canadian *Criminal Code* offence.

In the first step, when there is a lack of evidence or no direct link to a predicate offence (which is likely with a PML), the "indirect method" can be used immediately and there is no need to investigate a predicate offence. This is distinctly different from the "parallel investigations" approach recommended by the FATF (investigating the ML offence at the same time as the predicate offence).[155] It also has the potential to discourage treating the investigation of ML as a method of following the money to the organized crime group, and prevent the stagnation or rejection of an investigation because it has no obvious links to a predicate offence. The second step is to gather reasonable suspicion of ML including the presence of ML typologies (i.e., indicators or grounds).[156] The

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[151] *Criminal Code of the Kingdom of the Netherlands*, *Legislation Online*, as amended on October 1, 2012, s. 420ter, online: <www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf> [translated by Legislation Online].

[152] *Stand Alone*, *supra* note 134 at 6.

[153] Although it may be tempting to compare the effectiveness of various laws by comparing a variable such as conviction rate, such an approach is problematic for many reasons, not the least of which is the lack of control over other variables such as other laws (e.g., privacy laws, laws of evidence), law enforcement culture, geography, resources, etc. For the curious reader, the FATF has not done a recent evaluation since 2011 of the Netherlands, prior to several changes in their laws, and at that time exact conviction rates were not reported, possibly due to lack of reliable data. The FATF did comment that conviction rates were high. See FATF, *Anti-Money Laundering and Combating the Financing of Terrorism — The Netherlands, Mutual Evaluation Report* (Paris: FATF, 2011) at Table 1, online: <www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Netherlands%20full.pdf>.

[154] *Stand Alone*, *supra* note 134 at 7, 14.

[155] FATF, *Operational Issues Financial Investigations Guidance* (Paris: FATF, June 2012) at para. 22, online: <www.fatf-gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf>.

third step is to, very early on, hold a hearing during which the suspect is asked to "clarify the origin of the money."[157] This makes it possible to verify the story, or assume that with enough indicators that criminal origin is the only acceptable explanation and proceed with a conviction.[158] During the hearing in the Dutch courts, the trier of fact determines whether the statements are concrete, verifiable and not highly unlikely. If the statements pass that test, the prosecutor may decide to further investigate.[159] If the statements do not pass the test, the court decides if there is enough evidence to convict using the process of logic that if legal origins have been ruled out the "only logical and likely explanation for the origin of the object is a criminal origin."[160]

4. RECOMMENDATIONS

Although not all-encompassing of the nature and sophistication of PMLs, a structuring offence presents a viable option for prosecuting PMLs because it avoids the requirement to prove the predicate offence. Canada does not have a structuring offence, and relies instead on reporting entities to flag structuring as suspicious transactions.[161] It was Recommendation 10 of the Standing Committee on Finance that Canada model the United States structuring offence.[162] The Government of Canada responded to this recommendation in 2019 only that it agreed with the direction of the Committee's Recommendations 1 through 13, and that it is "currently reviewing" Recommendations 7 to 11.[163] Canada could also take a broader approach, making it a criminal offence to intentionally evade reporting requirements.

Canada could integrate an all-crimes approach as a better solution to PMLs. Just one year ago the Dutch government called upon countries like Canada that maintain a "listed approach" to change their ML criminal provisions to support stand-alone cases.[164] Calls like this should be seriously considered, keeping in mind organized crime will move from a jurisdiction where law enforcement is more effective to one that allows them to continue operating, and as well FATF Recommendation 19, that states may apply countermeasures.[165] Canada's

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[156] *Stand Alone*, *supra* note 134 at 14-17.

[157] *Ibid.*, at 17.

[158] *Ibid.*, at 17-18.

[159] *Ibid.*, at 19.

[160] *Ibid.*, at 20.

[161] *Dirty Money 1*, *supra* note 2 at para. 353.

[162] *Standing Committee Recommendations*, *supra* note 4 at 31.

[163] Canada, "Government Response to the twenty-fourth Report of the House of Commons Standing Committee on Finance Entitled Confronting Money Laundering and Terrorist Financing: Moving Canada Forward", *House of Commons* (February 21, 2019), online: <www.ourcommons.ca/content/Committee/421/FINA/GovResponse/RP10326634/421_FINA_Rpt24_GR/421_FINA_Rpt24_GR_PDF-e.PDF>.

[164] *Stand Alone*, *supra* note 134 at 23.

regime of ML laws show historically that they were created in part to ensure good relations with other states and prevent organized crime money from other jurisdictions from being laundered in Canada.[166]

To take an all-crimes approach, Canada would need to depart from the listed approach in the *Criminal Code* by removing reference to designated offences.[167] It could then integrate into the *Criminal Code* ML offence what the Supreme Court laid out as the test in the Netherlands. The content would have to reflect the following points:

> There is no need to be able to prove from the available evidence, that the object in question is derived from a precisely indicated crime. There is no need to be able to prove by whom, when and where the crime was actually committed.
>
> For obtaining a conviction, it is required to establish that the object originates from any crime. This requirement is met on the ground that it cannot be otherwise than that the object – directly or indirectly – comes from a crime.
>
> Excluding a legal origin adheres to the following steps: starting point: there is no direct link between the object and the profit from any predicate offence; excluding a legal source of origin of the object (exclusion method); establishing the relationship (e.g. receiver, owner, seller, user etc.) between the object and the suspect.[168]

Recognizing that this approach has both penal and investigative components, it is nonetheless important that the wording of the offence not ignore the implications it carries for police work and instead encompass the spirit of the all-crimes approach. This can be done by explanatory notes or definitions within the *Criminal Code* itself (e.g., using "for greater certainty," or "evidentiary matters"). Alternatively, policy documents or parliamentary debate could assist courts in their interpretation of the provision.

An important consideration when drafting the offence is whether it violates the presumption of innocence provided under s. 11(d) of the *Charter*. Although the all-crimes approach used in the Netherlands was held by the ECHR not to constitute a violation of the right to remain silent, right to a fair trial, or presumption of innocence, there is the sense that a *Charter* challenge might deliver a different result if the same approach were taken in Canada.[169] An analysis of whether this is a result of the all-crimes construction of the Dutch

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[165] *Recommendations 2019*, *supra* note 113 at 17; Murphy, *supra* note 7 at paras. 34-38 (states have applied counter-measures).

[166] Katz, *supra* note 37.

[167] This would obviously not embrace the entire six-step approach of the Netherlands but would incorporate the most critical parts with respect to addressing PMLs.

[168] *Stand Alone*, *supra* note 134 at 7, 9.

[169] *Zschuschen*, *supra* note 128.

penal code offence or whether it is the six-step method that might be problematic is important to discern in order to avoid violating the *Charter*.

In the six-step method in the Netherlands, the accused is required to prove the money was not derived from crime with evidence that is "concrete, verifiable and not highly unlikely" once confronted by the prosecution that no "clean" source can be found.[170] This is an evidentiary burden.[171] Offences including the wording "without lawful justification" are not uncommon in the *Criminal Code*, indicating an evidentiary burden on the accused will not always violate the presumption of innocence.[172] Canadian courts would, however, insist the offence be articulated such that it avoids placing an evidentiary burden on the accused to prove on balance the legal origin of the funds, because an accused need not prove a defence on a balance of probabilities.[173] The words "concrete, verifiable and not highly unlikely" do not seem to require that standard of proof.

Proving that the money in question is "clean" is an affirmative defence that is always available to the accused in a ML case, including that used by the Dutch and the present *Criminal Code* offence. Evidentiary burdens placed on the accused to provide justifications or excuses, require an "air of reality" to put them in issue.[174] The "air of reality" test in Canada, outlined in *Cinous*, is "whether there is evidence upon which a properly instructed jury acting reasonably could acquit if it accepted the evidence as true."[175] This is where the Supreme Court of Canada might bristle at the "concrete, verifiable and not highly unlikely" standard of proof used in the Netherlands, because it seems to require something more than an air of reality. The Dutch court requires it not just be "not highly unlikely" but also concrete and verifiable. This standard is likely not only higher than an "air of reality" but qualitatively different because it prescribes a certain type of evidence, that which is concrete and verifiable. This standard is unlikely to hold up to a *Charter* challenge.

An all-crimes ML offence articulated in a way that avoids placing an evidentiary burden on the accused to prove a defence to any more than an "air of reality" standard is likely to be constitutionally no different from any offence which allows an affirmative defence. With careful construction, it need not violate the *Charter*, and it may provide a more digestible way to amend the ML

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[170] *Stand Alone*, *supra* note 134 at 19.

[171] See Hill, *supra* note 75 at 12.

[172] *Criminal Code*, *supra* note 2, ss. 83.02, 98(3)(ii), 163(2), 298(1), 342.01(1), 350(b)(ii), 450, 451, 452, 458, 459 contain this phrase.

[173] Hill, *supra* note 75 at 21, *R. v. Whyte*, 1988 CarswellBC 761, 1988 CarswellBC 290, [1988] 2 S.C.R. 3, 42 C.C.C. (3d) 97, 64 C.R. (3d) 123, See also *R. c. Fontaine*, 2004 SCC 27, 2004 CarswellQue 814, 2004 CarswellQue 815, (*sub nom.* R. v. Fontaine) [2004] 1 S.C.R. 702, 183 C.C.C. (3d) 1, 18 C.R. (6th) 203 regarding automatism, and a reverse onus defence.

[174] Hill, *supra* note 75 at 27.

[175] *R. c. Cinous*, 2002 SCC 29, 2002 CarswellQue 261, 2002 CarswellQue 262, [2002] 2 S.C.R. 3, (*sub nom.* R. v. Cinous) 162 C.C.C. (3d) 129, 49 C.R. (5th) 209 at para. 81 [*Cinous*].

Criminal Code offence than a reverse onus. An example of such construction is as follows (suggested amendments emphasized):

> **462.31 (1)** Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that, or being reckless as to whether, all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of *a criminal offence.*
>
> ***Evidentiary Matters***
>
> *(2) For greater certainty, subsection (1) does not require,*
>
> *(a) that the property is derived from a precisely indicated criminal offence,*
>
> *(b) evidence proving by whom, when or where the criminal offence was committed.*
>
> *(3) For greater certainty, subsection (1) requires that the property originates from any criminal offence. Evidence of the following tends to constitute evidence that the property originates from a criminal offence:*
>
> *(a) establishing that it cannot be otherwise than that the property was obtained or derived directly or indirectly as a result of a criminal offence by excluding a legal origin of the property, or*
>
> *(b) establishing a direct or indirect link between the property and the profit of any criminal offence.*
>
> *(4) For greater certainty, knowledge or intent referred to in subsection (1) may be inferred by objective factual circumstances.*

The construction of this offence avoids the reverse onus and evidentiary burden problems, it adopts an all-crimes approach and it encourages the reliance on evidence that indicates ML and reduces the emphasis on the predicate offence. It clearly lays out that evidence excluding a legal origin of property supports the inference that it was obtained by crime and by doing so it may inspire the investigation of more stand-alone ML cases. Finally, it explicitly adopts wording recommended by the FATF and utilized in the *Palermo Convention*, the *Vienna Convention*, the *UNCAC*, and the *Warsaw Convention*.[176]

CONCLUSION

Canada is not alone in its problem of low ML enforcement, and this may be because of the history of following the money to organized crime and because

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[176] *Recommendations 2003*, *supra* note 116; *UNCAC*, *supra* note 107 art 28; *Palermo Convention*, *supra* note 95 art 6(f); *Vienna Convention*, *supra* note 96 art 3(3); *Warsaw Convention*, *supra* note 131 art 6(2)(c).

multilateral treaties have instructed the criminal offence structures in many nation states. In a recent report for judges and prosecutors, the FATF recognized that many jurisdictions focus on the predicate offences and ignore or deprioritize the ML investigations.[177] The FATF noted this is for various reasons, many related to convenience; prosecuting the predicate offence may be easier, less time-consuming and resource-intensive, and the sentence could be the same.[178] It also recognized that one of the biggest challenges in ML investigations is collecting evidence proving the laundered money is proceeds of crime, especially when required to be proven beyond a reasonable doubt.[179] Good practices identified by the FATF were an all-crimes approach, ensuring the predicate offence need not be proven (or using a reasonable grounds standard), and lowering the standard of subjective knowledge with respect to the origin of the funds.[180]

The FATF recommendations insist on states being responsive to the current ML environment. Recommendation 35 is that sanctions be effective, proportionate, and dissuasive.[181] The FATF noted in the 2003 revision of the recommendations that ML techniques were increasing in sophistication and complexity.[182] The revisions were supposed to be a way to call on states to take steps to respond to "evolving money laundering typologies" with effective measures.[183]

That said, there is a lack of awareness and response to PMLs in the *travaux préparatoires* to the conventions to which Canada is party, as well as in the legislative guides, model legislation, and FATF recommendations. Furthermore, it is not clear the treaties are continuing to be effective against ML if they do not address PMLs. Although state compliance with the *Vienna* and *Palermo Convention* requirements to criminalize ML was recently assessed as substantial by the FATF, no states achieved a high level of effectiveness, and only 7 of 50 states achieved a substantial level, demonstrating the "significant challenges" faced by states, perhaps because PMLs are evading those standards.[184]

Professional money laundering in its current sophisticated form may be a relatively new phenomenon in a world of global travel, cryptocurrency, underground banking and electronic transfers. It is therefore understandable

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[177] FATF, "FATF President's Paper: Anti-Money Laundering and Counter Terrorist Financing for Judges & Prosecutors," (Paris: FATF, 2018) at 25, online: <www.fatf-gafi.org/media/fatf/documents/reports/AML-CFT-Judges-Prosecutors.pdf> [*FATF Judges Prosecutors*].

[178] *Ibid.*, at 25.

[179] *Ibid.*, at 28.

[180] *Ibid.*, at 5, 25-26, 28.

[181] *Recommendations 2019*, *supra* note 113 at 24.

[182] *Recommendations 2003*, *supra* note 116 at 3.

[183] *Ibid.*, at 2.

[184] *FATF Judges Prosecutors*, *supra* note 177 at 22-23.

that large multilateral treaties do not yet effectively address it, and only set out minimum standards, even though transnational crimes and ML are at their core. However, there is a clear expectation in both soft law and treaty law that Canada will create effective laws to discourage ML within its jurisdiction, especially because lax legislation may invite the legitimizing of proceeds from predicate offences committed in other states.[185]

Canada missed an opportunity to revise its *Criminal Code* ML offence when it recently added recklessness to the provision, and it may take some time before the investigations and prosecutions "fail forward" before attention is turned to its structure again.[186] When it does, other jurisdictions have provided relevant and tested examples of what could be added to the *Criminal Code* to more effectively investigate and prosecute PMLs while avoiding *Charter* violations. The challenges should not cause undue hesitation, remembering that the current ML regime was met with resistance 20 years ago, and was criticized as eroding the presumption of innocence, being over-inclusive and grandiose, and impeding legitimate commercial activity.[187] The regime and the treaties were put in place to ensure Canada does not become a safe haven for ML, and amendment of that regime is simply the way to respond to the changing threat environment.[188]

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[185] In 1994 it was assessed that 80% of ML cases investigated in Canada had an international component: Arthur Pittman, "Money Laundering: A Challenge for Canadian Law Enforcement" (1999), 41 Crim LQ 238.

[186] The money laundering offence has been amended multiple times over the years to broaden the predicate offences applicable: Pittman, *ibid.*

[187] Katz, *supra* note 37.

[188] *United Nations Convention against Transnational Organized Crime*, UNGA UN doc A/Res/55/25 (2001) states in part "*Determined* to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level."

Insurance Council of British Columbia
Re: BC Vehicle Export Grey Market

Expert Report

Private & Confidential

This is Exhibit " 9 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25th day of MARCH, 2021.

A Commissioner for taking Affidavits for British Columbia

PREPARED FOR: Insurance Council of British Columbia
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DATE: October 1, 2020

MNP LLP

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MNP LLP

1.0 TERMS OF REFERENCE

1.1 MNP LLP ("MNP", "we", "us" or "our") was retained by Insurance Council of British Columbia ("ICOBC") to review the ICOBC report and findings regarding the investigation of [redacted] a Licensee employed with [redacted] and comment on indices of the grey market export of luxury vehicles in the examined transactions.

1.2 Transactions related to the investigation examined in this Report are for the period of April 12, 2017 to March 14, 2018 ("Period of Review").

1.3 We understand that our Report will be used for the purpose of expert witness testimony in the disciplinary process of [redacted]

MNP LLP

2.0 BACKGROUND

2.1 ICOBC is a British Columbia Provincial Government appointed regulatory body for licensed insurance agents, sales persons and adjusters. They are responsible for oversight of the licensee's education, conduct and discipline under the *Financial Institutions Act*.

2.2 To work as an insurance agent, licensees must complete appropriate applications and courses to work in British Columbia ("BC"). Their application is reviewed and approved by ICOBC. ICOBC can initiate an investigation into the conduct of a licensee or brokerage should they receive indication of potential rule breaches or misconduct. Disciplinary proceedings can be commenced against licensees found to have breached rules.

2.3 In June 2018 ICOBC was notified by the Insurance Corporation of British Columbia ("ICBC") of the results of their investigation into the reported actions of select licensees working at [redacted] who were suspected of facilitating the export of new luxury vehicles out of BC ([redacted] The subjects of the ICBC investigation were:

- [redacted]
- [redacted]
- [redacted]
- [redacted]

2.4 ICOBC commenced their own investigation into the actions of [redacted] to determine whether ICOBC's rules of professional conduct were breached. In their investigation the ICOBC suspected that the transactions were indicative of the Grey Market export of luxury vehicles in BC.

2.5 The Grey Market Exporting of luxury vehicles was examined by Mr. Peter German in his report "Dirty Money – Part 2" ("2nd German Report") and is further discussed in Section 4 of this report in relation to the facts presented in the ICOBC and ICBC reports.

MNP LLP

3.0 SCOPE OF ENGAGEMENT

3.1 MNP was asked to examine the facts and data compiled by ICOBC, inclusive of documentation and information provided to ICOBC by ICBC, with respect to their investigations in the context of the Vehicle Export Grey Market ("VE Grey Market") in BC. Our focus was to provide comment on whether the facts and data demonstrate the indicia of the VE Grey Market and if so, provide additional comment on the impact of the practice on agencies or government beyond the ICOBC.

3.2 In preparing our report we completed the following:

- A summary of the transactions investigated by ICBC and the ICOBC to show the type of vehicles purchased and insured, parties involved, timing and flow of funds,
- Prepared a flow chart showing the method of purchasing the vehicle through to assumed export, and
- Conducted research for further comment on the indicia of Vehicle Grey Market transactions in relation to the facts of this case and potential impact beyond the ICOBC.

3.3 We reviewed and relied on the following documentation and information in preparing our report:

- ICBC/[redacted] List of Vehicles Commissions;
- ICBC Vehicle Purchase Documents including:
  - Owner's Certificate of Insurance and Vehicle License;
  - Transaction Record for payment slip, if available;
  - Vehicle Registration;
  - Transfer/Tax Form;
  - Application for Cancellation;
- Ownership Registration, Insurance Certificate and Cancellation of Insurance; and
- Transcripts of Interviews with [redacted]

Independence and Objectivity

3.4 This report was prepared in conformity with the Standard Practices for Investigative and Forensic Accounting Engagements of the CPA Canada, in doing so the authors acted independently and objectively.

3.5 This report was prepared in conformity with, and aware of the duties as they pertain to, Supreme Court Civil Rule 11-2, Duty of Expert Witness ("Rule 11-2"). If called on by ICOBC to provide expert witness testimony in their disciplinary process, any testimony given will be in conformity with Rule 11-2 which is anticipated to equally apply to this matter. [redacted].

Limitations

3.6 In undertaking our analysis and forming our conclusions, we note the following limitation:

- We have not independently verified the data and summaries compiled by ICBC and the ICOBC.

3.7 This report has been prepared prior to the determination of certain information as fact and therefore it has been necessary to use certain assumptions in our analysis and calculations. Using different assumptions may have a material impact on the conclusions drawn in this report.

3.8 The reader is cautioned that selecting portions of the analysis contained in this report, without considering all factors and analysis in the calculations could result in the misinterpretation of comments and conclusions drawn.

3.9 We reserve the right to review all calculations included or referred to in our report and, if we consider it necessary, to revise our calculations in light of any new information which becomes known to us after the date of the report.

4.0 VEHICLE EXPORT GREY MARKET IN BC

4.1 The Vehicle Export Grey Market ("VE Grey Market") refers to the practice of purchasing new or next to new luxury vehicles via straw buyers in BC for immediate export overseas. Luxury vehicles in foreign markets, particularly in Asia, are sold at double or triple the purchase price in Canada. The following description of the VE Grey Market is based upon direct experience working at the RCMP and the Insurance Bureau of Canada.

4.2 The scheme typically involves an order for a specific vehicle from a buyer in a foreign market. The order is received by a contact or exporter which may or may not be affiliated with organized crime. The BC contact orchestrates the purchase and export of the vehicle to the buyer or another intermediary in the foreign market. To circumvent local business requirements, a person is recruited by the exporter to pose as a legitimate buyer of the vehicle ("straw buyer"). The straw buyer is paid a commission which can range between 3% and 5%. Money exchanged between the international buyer and the local exporter can take different paths involving intermediaries.

4.3 Straw buyers are individuals who represent themselves as the purchaser of the vehicle for their own use when in fact they are deployed by the person or company who is the conduit for exporting the vehicle to the foreign market. The need for the straw buyer is a result of administrative rules put in place by manufacturers which precludes the dealership from selling the vehicle to the exporter or ultimate purchaser. In the case of the VE Grey Market, the manufacturers' mandate that the dealerships do not sell vehicles in Canada which are destined for export. If a dealership is caught participating in this activity they could be sanctioned by the manufacturer and have their allotment of the highly prized vehicles restricted or severely reduced therefore affecting their local sales figures and business.

4.4 Vehicles which are highly prized in the Asian markets are brands originating from European manufacturers. They are typically sport utility vehicles ("SUVs"). Based upon discussions with contacts at local dealerships, manufacturers like Mercedes and BMW are aware of the market price differences and have put measures in place to attempt to stop or make the purchase of vehicles for export difficult. They identify that the practice is not illegal.

4.5 Recent measures put in place by luxury vehicle manufacturers include requiring the purchaser to insure the vehicle for a year, selling the vehicle under a lease agreement for six months with the buyout being $1, or putting a lien on the vehicle for six months. Many of these provisions rely on the dealership and their sales staff to identify potential straw buyers and stop the sale.

4.6 The financial portion of the transaction is typically completed through wire transfers and negotiable instruments such as bank drafts. Unless there is access to the banking and financial records of the company or individual purchasing the wire transfer or bank drafts there is no way to know the true source of the funds.

4.7 The purchase of luxury vehicles has also been linked to money laundering as referred to in the 2nd German Report, specifically with respect to the vehicle export market. The VE Grey Market can be separate and distinct from the use of luxury vehicles to launder money. The typology of laundering money through vehicles referenced in the 2nd German Report refers to the theft of luxury vehicles and purchase of vehicles with cash connected to the proceeds of crime. Vehicles can also be used for trade-based money laundering or in the Grey Market to take advantage of differences in the domestic and foreign markets.

4.8 Internationally, trade-based money laundering ("TBML") through the purchase and subsequent export of the vehicles is common practice. A 2006 study by the Financial Action Task Force (FATF)[1] defines TBML as "the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illicit origins". The Grey Market may not involve money laundering in the sense that it may not involve the use of proceeds of crime to purchase the vehicle however the BC economy can be negatively impacted by the practice. Canadian law enforcement is aware of the grey market and opportunity for money laundering to occur in connection with the export of luxury vehicles in BC.

4.9 Further to the impact of reducing the inventory of luxury vehicles in the BC market, the VE Grey Market impacts other services and agencies in BC. These include the opportunity for the purchaser of the vehicle to claim a refund of the Provincial Sales Tax paid on the purchase of the vehicle. This can amount to thousands of dollars on a single purchase and millions of dollars to the BC economy in addition to the cost to process the claims, as shown in Table 1 below. The number of vehicle PST Refund applications for process has grown from less than 500 in 2013 to over 4,000 in 2018[2].

Table 1: Vehicle PST Refunds by Year

Year	$ Million
2013	0.4
2014	5.0
2015	5.1
2016	22.0
2017	23.7
2018	28.0

4.10 In addition, there is a cost to ICBC with respect to insurance policies being issued and shortly thereafter cancelled with the insurance premium refunded to the purchaser. The commission paid to the broker is not clawed back. There are legitimate reasons for an insurance policy to be cancelled however when there is a pattern of numerous immediate cancellations connected with one broker, it could be an indication of a larger financial scheme, i.e. trade based money laundering.

[1] FATF is the global money laundering and terrorist financing watchdog, established by the G-7 Summit held in Paris in 1989.
[2] 2nd German Report – Part 3 Luxury Vehicles, page 37-38.

4.11 The VE Grey Market supports an underground economy where the financial transactions are largely unreported and unregulated. The commissions earned by the straw buyers would typically be paid in cash or left in their bank account after the exchange of bank drafts. The commission earned would be unreported and it is unlikely that the profit earned by the exporter would be reported for federal and provincial tax purposes.

5.0 DETAILED FINDINGS

Data Analysis – 119 Transactions

5.1 Our review examined 119 transactions where an insurance policy was sold and then cancelled within a short period of time, typically within 8 days. ICBC provided supporting documentation for 38 vehicle insurance purchase and cancellations (10 of which were not included in the 119 list). [redacted] is a summary of the 38 insurance transactions with documentation.

5.2 The particulars of the 119 transactions show the following:

Table 2: Summary of Vehicles by Year

Year of Vehicle	Count
2013	6
2014	9
2015	6
2016	12
2017	44
2018	42
Total	**119**

Table 3: Summary by Vehicle Age

Vehicle Age	Count	%
New (1 Year)	96	81%
Older (2+ Years)	23	19%
Total	**119**	**100%**

5.3 Table 3 shows that 81% of vehicles purchased were brand new or within 1 year of life at the time the insurance policy was purchased. The most common years of make purchased were 2017 and 2018 vehicles. These statistics align with the indices of a VE Grey Market scheme.

5.4 Of the vehicles purchased, 87% were made by Mercedes-Benz, followed by BMW at 11%.

Table 4: Summary by Manufacturer

Manufacturer	Count	%
MERCEDES-BENZ	104	87%
BMW	13	11%
TOYOTA	2	2%
Total	**119**	**100%**

5.5 The most popular model of Mercedes-Benz in the transactions examined is the GLC 300 class of SUV, which make up 79 of the 104 Mercedes-Benz vehicles purchased. A total of 83 Mercedes-Benz SUVs was purchased, with the remaining 21 being of cars of varying models (Table 5 below). The make and model of the SUVs are consistent with the expectation of vehicles targeted for the VE Grey Market.

Table 5: Summary by Mercedes-Benz Model

Mercedes-Benz Model	Type	Count
GLC300 4DR AWD	SUV	57
GLC300 4DR COUPE AWD	SUV	18
GLC300	SUV	4
GLA45 4DR AWD	SUV	1
GLC43 4DR AWD	SUV	1
GLC43 4DR COUPE AWD	SUV	1
GLE450 4DR COUPE AWD	SUV	1
SUV Total		83
CLA250 4MATIC 4DR COUPE	Car	6
E300W 4MATIC 4DR	Car	5
C300W 4MATIC 4DR	Car	4
CLA250 4DR COUPE	Car	4
C400 4MATIC 4DR	Car	2
Car Total		21
Total		**104**

Document Analysis – 38 Transactions

5.6 ICBC provided supporting documentation to ICOBC for 38 vehicles related to [redacted] as the Exporter, 10 of which were not included in the 119 transactions analyzed above[3]. Documents analyzed included:

- ICBC Owner's Certificate of Insurance and Vehicle License;
- Transaction Record for payment slip, if available;
- ICBC Vehicle Registration;
- ICBC Transfer/Tax Form;
- ICBC Application for Cancellation.

5.7 Additional detail was analyzed from the documents including dates of insurance purchase and cancellation, cost of insurance and amount refunded, credit card used for insurance payment, and names of ownership and signatures. The documentation for the 38 vehicles has been summarized in [redacted]

[3] It is not within the MNP mandate to reconcile the list of vehicles examined by ICOBC and ICBC.

5.8 The following vehicle statistics were obtained from the 38 transactions:

Table 6: Document Summary by Vehicle Year

Vehicle Year	Count
2016	2
2017	25
2018	11
Total	**38**

Table 7: Document Summary by Manufacturer & Colour

Manufacturer	Black	White	Grey	Total
Mercedes-Benz	16	18	1	35
Toyota	1	1	-	2
Ford	-	1	-	1
Total	**17**	**20**	**1**	**38**

Table 8: Document Summary by Model

Manufacturer	Model	Count
Mercedes-Benz	GLC 300	30
Mercedes-Benz	GLC 43	1
Mercedes-Benz	E 300	2
Mercedes-Benz	C 300	1
Mercedes-Benz	GLE 400	1
Ford	Mustang	1
Toyota	4Runner	1
Toyota	Sienna	1
Total		**38**

5.9 The transactions continue to show that the most popular years of vehicles were 2017 and 2018. Black and white Mercedes-Benz are the most desirable, and the GLC 300 SUV is the most sought-after model. The more detailed statistics continue to indicate that the vehicles identified in the investigation were part of a VE Grey Market scheme.

5.10 The documents provided payment record for 32 of the transactions. Visa Card [redacted] was used in 27 or 84% of the transactions and paid for $75,779 of insurance purchased. This card has been linked to [redacted] by ICBC.

Table 9: Document Summary by Credit Card

Credit Card	Count	Total $
V[redacted]	27	75,779.00
V[redacted]	3	7,470.00
V[redacted]	1	6,399.00
V[redacted]	1	3,763.00
Total	**32**	**93,411.00**

5.11 A total of $112,656 worth of annual insurance was purchased and of this, $98,387 was refunded when the policies were cancelled. There is a net cost to the purchasers of $14,269 for the days the insurance was active on the vehicles. For the 30 transactions listed on the ICBC Commission List and supported by documents, total insurance paid was $81,906 with $70,599 refunded.

5.12 The 30 transactions listed on the ICBC Commission list resulted in a total of $5,501.31 paid to [redacted] in commission for processing the policies.

5.13 The documents provided the dates the insurance was purchased and cancelled. The following table summarizes the number of days between the 1-year insurance policy purchase date and cancellation date. The number of days until cancellation ranged from 2 to 8 days. The average time between purchase and cancellation was 4.75 days.

Table 10: Document Summary between Purchaser and Cancellation Date

# Days	Count
4	9
8	7
3	7
2	6
6	4
7	2
5	2
N/A	1
Total	**38**

5.14 Upon cancellation of insurance, a reason must be provided for why the policy is being cancelled. Of the 36 available Application for Cancellation documents, the reasons provided are summarized as:

- 24 transactions listed "Temp Out of Use";
- 11 transactions listed "Sold";
- 1 transaction listed no reason for cancellation.

5.15 There are 27 parties listed as the purchaser of the vehicles, assuming the position of Straw Buyer. [redacted] is listed as the purchaser in 12 of the transactions; 6 transactions occurred in the form of [redacted] as Lessor with a Straw Buyer as the Lessee.

Transaction Flow

5.16 Based upon the data and explanation of the process provided by the licensees, we prepared a flowchart ***(refer Appendix C)*** demonstrating the general process employed by the Exporter and [redacted] in the matter reported to the ICOBC. The 9 steps in the process are shown on the flowchart and further described below.

- Step 1 – Although not specifically addressed in the investigation it is assumed that [redacted] would have received a request or order for a vehicle.
- Step 2 – The Exporter would then contact a straw buyer and insurance broker with instructions for the specific vehicle needed. The Exporter connects the insurance broker with the straw buyer for the purchase.
- Step 3 – The Exporter obtains a bank draft for the purchase of the vehicle and provides it to the straw buyer for the purchase. The Exporter also provides their credit card information for the broker to process the vehicle insurance.
- Step 4 – The straw buyer and the broker attend the dealership together to purchase the vehicle and process the insurance.
- Step 5 – The vehicle is registered as sold to the straw buyer. It is not clear from the investigation as to how the vehicle leaves the dealership and proceeds to be exported.
- Step 6 – The licence plates and insurance are cancelled, typically within a few days. The licence plates are returned to the broker and in some instances were never affixed to the car. This further raises the question of how the vehicle left the dealership.
- Step 7 – Ownership is transferred to the Exporter. Transfer from Straw Buyer to Exporter is an expected transaction, however, documentation with respect to the current matter confirming this is not available.
- Step 8 – The investigation does not specifically follow the vehicle through to export, but it is assumed that this was the intention of the transaction.
- Step 9 – The Exporter is paid for the sale of the car to the assumed foreign buyer. As noted in the description of the Grey Market, this payment could be completed by wire transfer or by cash. Examination of the Exporter would need to be completed to determine how the vehicle was exported and ultimately sold.

5.17 The above steps are indicative of grey market transactions. Based upon the interviews of the [redacted] producers and the documentation compiled by ICBC, it is clear that at least 119 transactions bear the indicators of the VE Grey Market. These indicia include the involvement of a straw buyer to hide the identify and purpose of the transaction from the dealership, payment for the vehicle provided by the Exporter by way of bank draft, involvement of a friendly insurance agent to assist in the licensing, and the subject vehicles being in line with the make, model and age of those desired in foreign markets. Further there are common parties and payment methods (i.e. credit card) to the transactions which suggest some kind of commercial venture versus personal transactions.

5.18 There is no indication that cash was used in the purchase of the vehicles or other indicators of TBML such as misrepresentation of price, quantity or quality of the vehicles. Cash in larger quantities may be connected to criminal activity such as the illegal drug trade which would be a strong indication of TBML. Further information related to the source of funds used to purchase the vehicles and export documentation is required to make a determination of TBML with respect to these transactions.

5.19 The facts of the case do not address if and when, Provincial Sales Tax might have been refunded on the transactions. Further work would be required to determine if refunds were issued and the quantum.

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6.0 CONCLUSION AND CONSIDERATIONS

6.1 The data and interview evidence provided by the ICOBC for review is consistent with the practice of purchasing new luxury vehicles from dealers in Canada with the intent of exporting the vehicles to foreign markets. The makes, models and age of the vehicles purchased are indicative of those that are sought in the foreign markets and sold at a price that is much higher than in Canada.

6.2 Based upon the involvement of straw buyers, the type of vehicles, quick transfer of ownership to an identified exporter and payment process, along with the involvement of a common exporter for numerous transactions we conclude that the transactions, taken as a whole, we conclude that the transactions are VE Grey Market transactions.

6.3 While TBML can involve the export of luxury vehicles, the available data in this case does not support a conclusion of TBML. Should additional information related to the source of the funds for the bank drafts used by [redacted] be obtained along with the export documentation, a further conclusion related to TBML may be made.

6.4 As noted in our review of the data and transcripts, the impact of the transactions extends beyond a conduct review of a Licensee and the commissions paid to the broker. The facts of this case demonstrate that the transactions include or impact government and agencies beyond the ICOBC. Other included and impacted parties could be:

- ICBC – As demonstrated in their investigation, commissions were paid to the insurance agency for policies that were obtained to facilitate the Grey Market transactions. Interviews with the parties to this investigation indicate that the practice is not uncommon or isolated. It should be considered that a close relationship between an insurance broker and an autobody shop could pose a risk for insurance fraud. ICBC should examine claims paid to [redacted] and identify if the relevant policies were issued by the registrant at issue.
- Provincial Sales Tax – The Ministry of Finance in BC is impacted by the loss of PST revenue on vehicles that were destined for the BC market. There is a further cost to process the PST refunds resulting from the increased VE Grey Market.
- Canadian Border Services Agency ("CBSA") – The vehicles destined for export flow through the ports and under the authority and review of CBSA. While the export of vehicles is not illegal further focus is being placed on the VE Grey Market to which CBSA holds vital information which would provide further insight to the practice.
- Financial Institutions – Financial institutions play a key role in the transactions by providing negotiable instruments to facilitate the purchase of the vehicles. Bank drafts are legitimate forms of payment but are used by the Exporter to hide that they are the party purchasing the vehicle and not the Straw Buyer.

7.0 RESTRICTIONS AND LIMITATIONS

7.1 This Report was prepared for the ICOBC as set out in Section 1. This report is not to be used for any other purpose and we specifically disclaim any responsibility for losses or damages incurred through its use for a purpose other than described in this paragraph. This report should not be reproduced in whole or in part without our express written permission, other than as required by Insurance Council of British Columbia in relation to litigation matters.

7.2 We reserve the right, but will be under no obligation, to review and/or revise the contents of this Report in light of information which becomes known to us after the date of this Report.

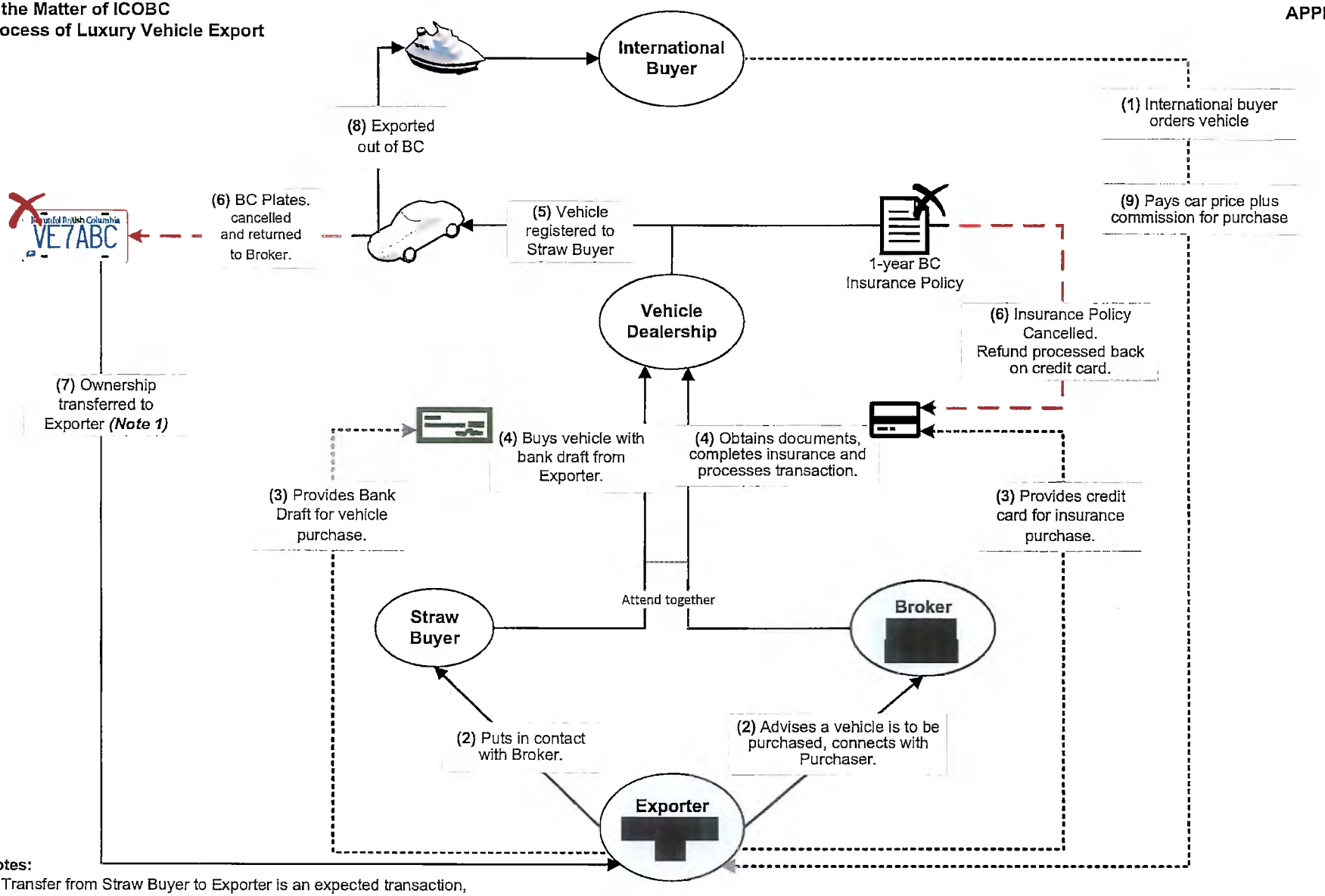
Yours truly,

MNP LLP

MNP LLP

In the Matter of ICOBC
Process of Luxury Vehicle Export

APPENDIX C



Notes:
1) Transfer from Straw Buyer to Exporter is an expected transaction, however, documentation with respect to the current matter confirming this is not available.

Advisement: This schedule is integral to and should be read in conjunction with MNP LLP Report dated October 1, 2020

Legend:
------ Financial Transaction
— — Cancelled Transaction

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Detecting and Investigating Money Laundering

Insurance Council of British Columbia

February 19, 2021

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PRAXITY

Best Employer

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Disclaimer

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This is Exhibit " 10 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25th day of MARCH, 2021.

A Commissioner for taking Affidavits for British Columbia

- MNP has prepared this presentation for the Insurance Council of British Columbia for an internal training session. The contents and slides are not to be copied, reproduced, distributed or used for any other purpose without express permission from MNP. MNP specifically disclaims any responsibility for losses or damages incurred through its use for a purpose other than described in this paragraph.

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Training Overview

- Money Laundering in Canada
- Money Laundering in the Life Insurance Sector
- Provide an update on current regulatory changes
- Practical examples

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3

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Money Laundering in Canada

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Money Laundering

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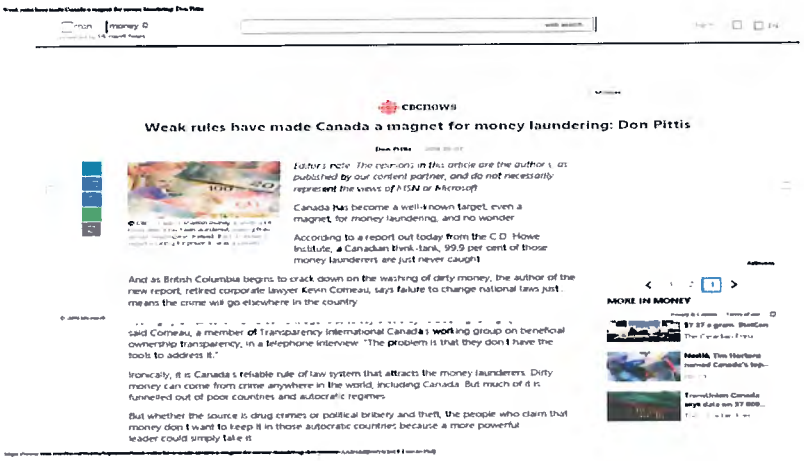
Money Laundering & Globalization

6

State of Money Laundering in Canada



cbcnews

Weak rules have made Canada a magnet for money laundering: Don Pittis

Editor's note: The opinions in this article are the author's, as published by our content partner, and do not necessarily represent the views of MSN or Microsoft.

Canada has become a well-known target, even a magnet, for money laundering, and no wonder.

According to a report out today from the C.D. Howe Institute, a Canadian think-tank, 99.9 per cent of those money launderers are just never caught.

And as British Columbia begins to crack down on the washing of dirty money, the author of the new report, retired corporate lawyer Kevin Comeau, says failure to change national laws just means the crime will go elsewhere in the country.

said Comeau, a member of Transparency International Canada's working group on beneficial ownership transparency, in a telephone interview. "The problem is that they don't have the tools to address it."

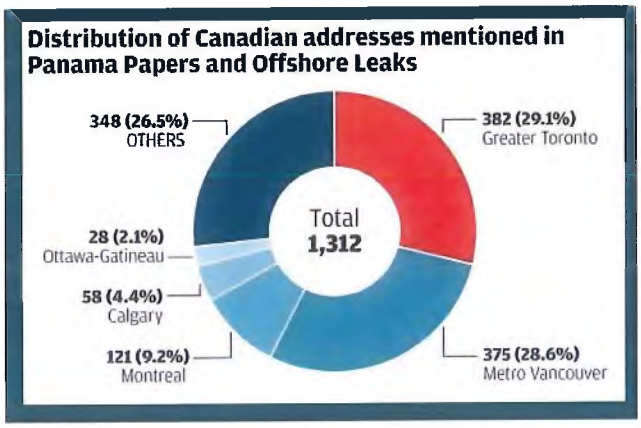
Ironically, it is Canada's reliable rule of law system that attracts the money launderers. Dirty money can come from crime anywhere in the world, including Canada. But much of it is funnelled out of poor countries and autocratic regimes.

But whether the source is drug crimes or political bribery and theft, the people who claim that money don't want to keep it in those autocratic countries because a more powerful leader could simply take it.

MORE IN MONEY

7

Panama Papers



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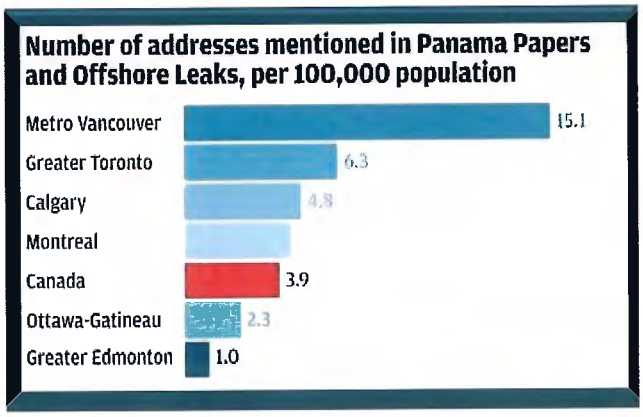
Metro Vancouver



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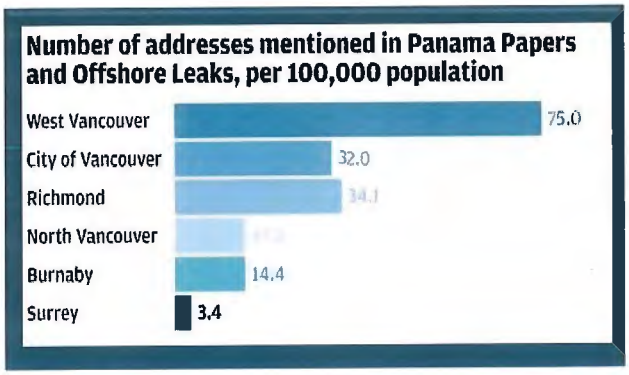
Lower Mainland



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Money Laundering Defined

11

What is Money Laundering

The United Nations defines money laundering as "any act or attempted act to disguise the source of money or assets derived from criminal activity." Essentially, money laundering is the process whereby "dirty money"—produced through criminal activity— is transformed into "clean money," the criminal origin of which is difficult to trace. There are three recognized stages in the money laundering process.

Placement → Layering → Integration

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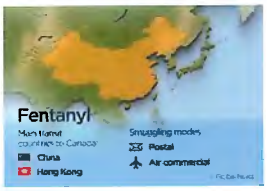
Criminal Activity



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Placement

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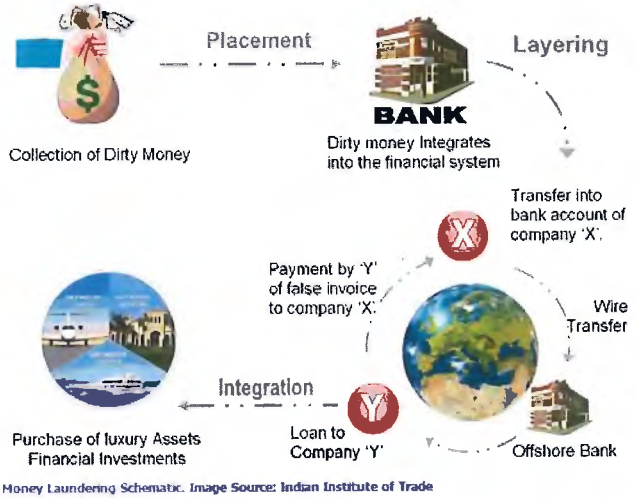
Money Laundering – 3 stages



Money Laundering Schematic. Image Source: Indian Institute of Trade

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Money Laundering in the Life Insurance Sector

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Why is Life Insurance Attractive?

- No one is looking
- Premium Policies
- Refund on Premiums
- Options: surrenders/redemptions/withdrawals
- Top-Ups
- Transferring ownership / designating beneficiary
- Using Single Premium Policies as collateral for bank loans
- Secondary life market

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Features that increase vulnerability of ML in life insurance

- Accept payments or receipts from third parties;
- Accept cash payments;
- Investment capabilities;
- Accept frequent payments (outside of a normal regular premium policy);
- Provide significant flexibility as to how investments are managed;
- Be liquidated quickly (via surrender or partial withdrawal)
- Be used as collateral for a loan;
- Can be purchased with varying sums of money in the amount and frequency chosen by the policyholder, source of funds/wealth are not traditionally questioned;

Features that increase vulnerability of ML in life insurance continued

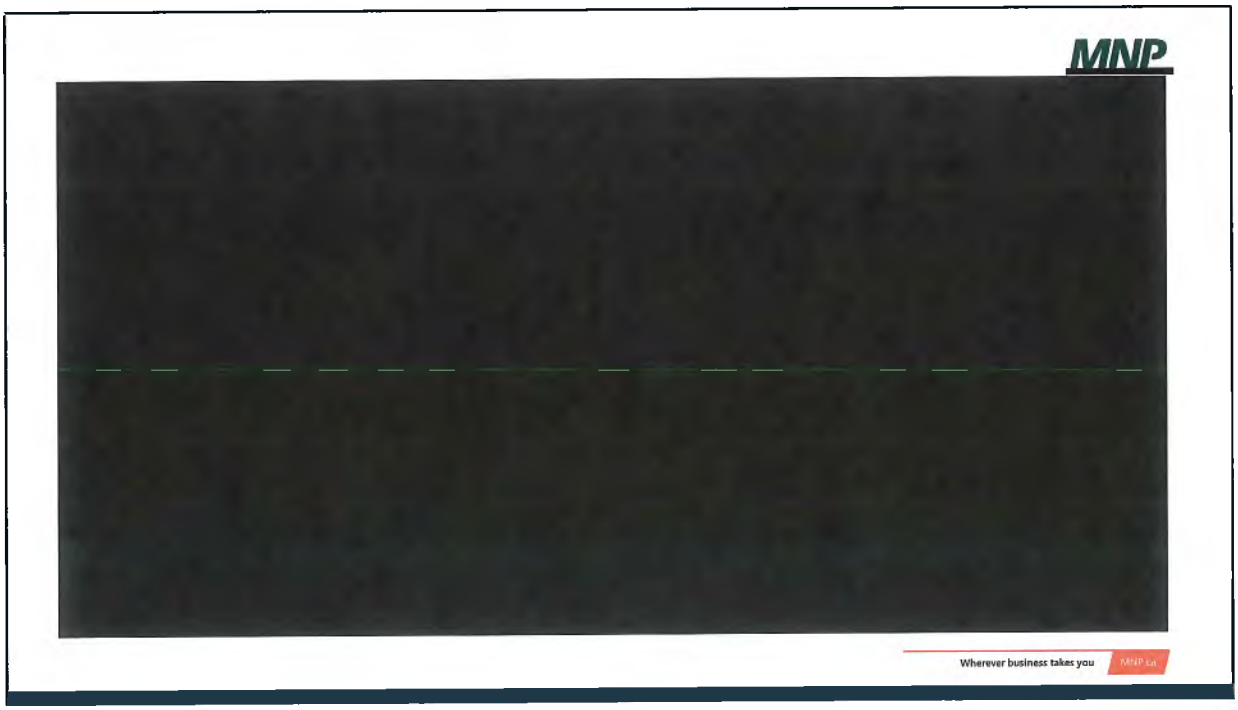
- Allows conversions to other types of higher risk products such as annuities and segregated funds;
- Subject to a free-look period (cancellation without penalties) of 10 days of which the company will refund the premiums received within thirty days of the request;
- Builds cash values; and
- Single premium provision - allows for one single, lump-sum contribution by policy holder.

ML scheme via life insurance product

- **Phase 1:** Money in
- **Phase 2:** Money out
- **Phase 3:** Successful laundering scheme

What is typically attractive to Money Launders?

- Annuities: Immediate and Deferred
- Segregated Funds
- Universal Life
- Mortgages



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Why Does Money Laundering Matter?

- Political and civil society impacts
- BC and Canada's reputation
- Social impacts
- Economic impacts
- Expand crime

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Why Money Laundering?

- Invisibility of the crime
- Anonymity of the perpetrators of the crime
- Legal difficulties of tracing the money
- Absence of legislation against ML

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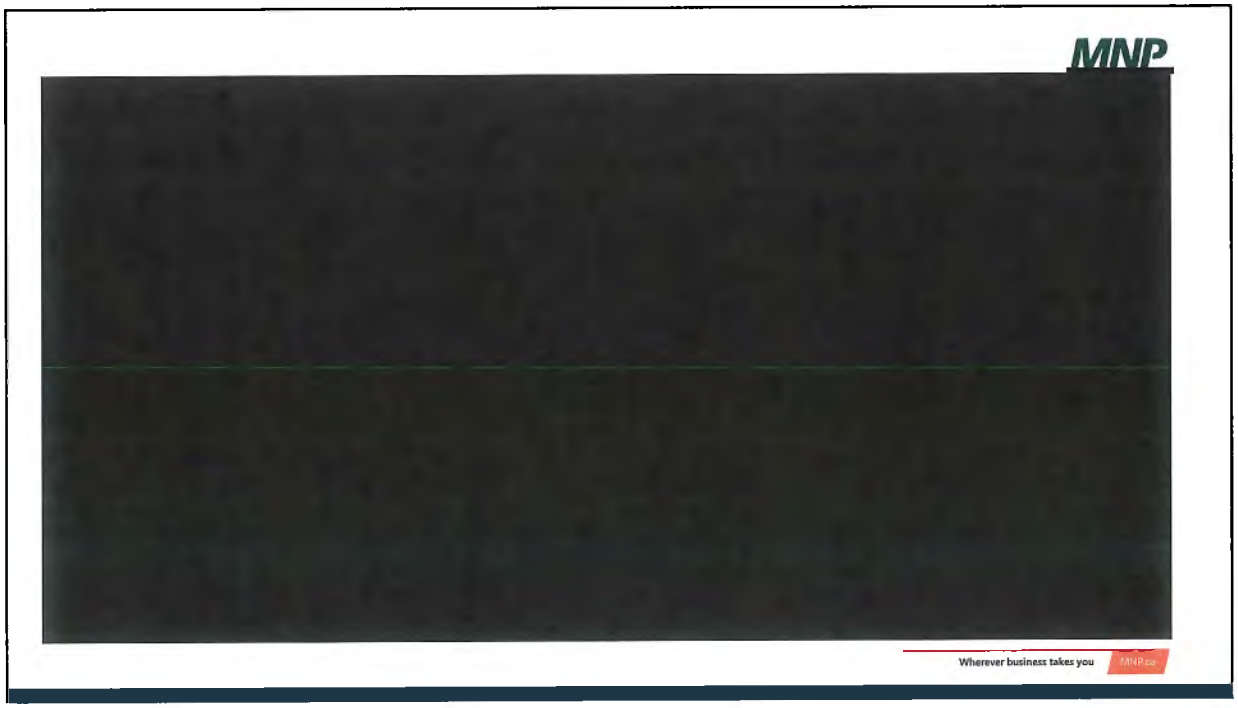
Regulatory Updates

26

FINTRAC –Life Insurance Companies

- Obligations
- Act
- Regulations
- Compliance program
- KYC
- Reporting
- Record keeping
- Penalties for non-compliance

Practical Examples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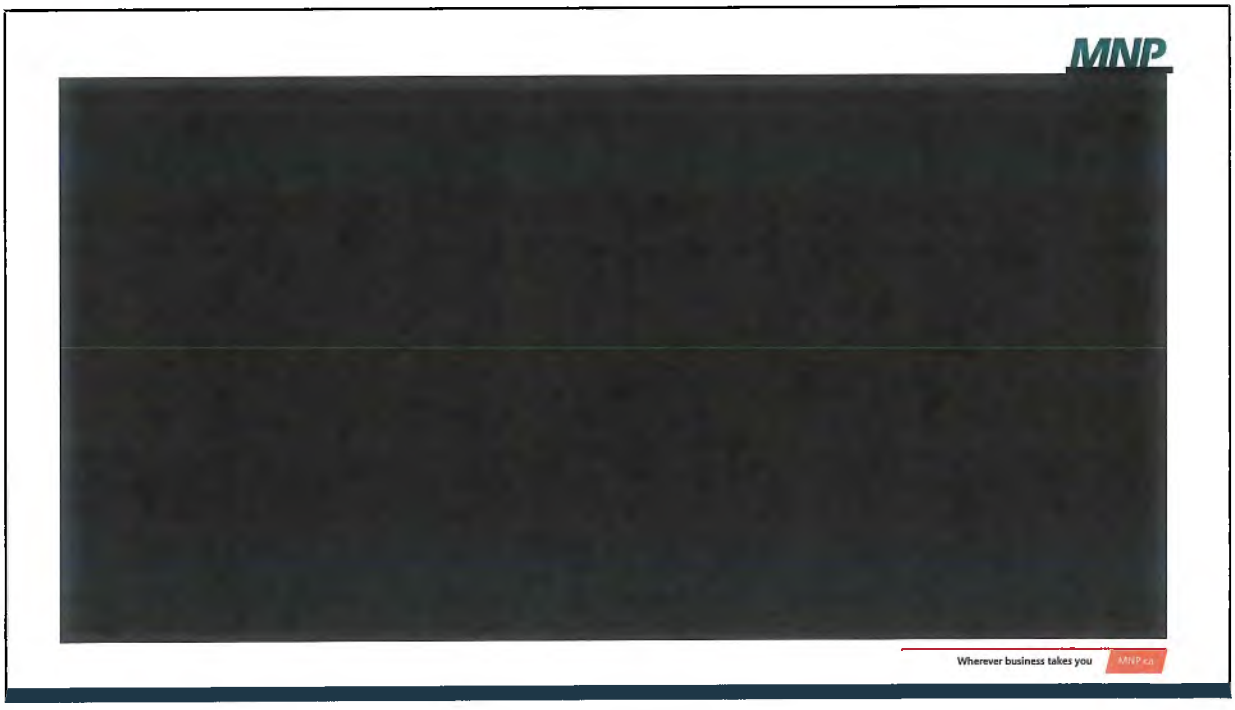
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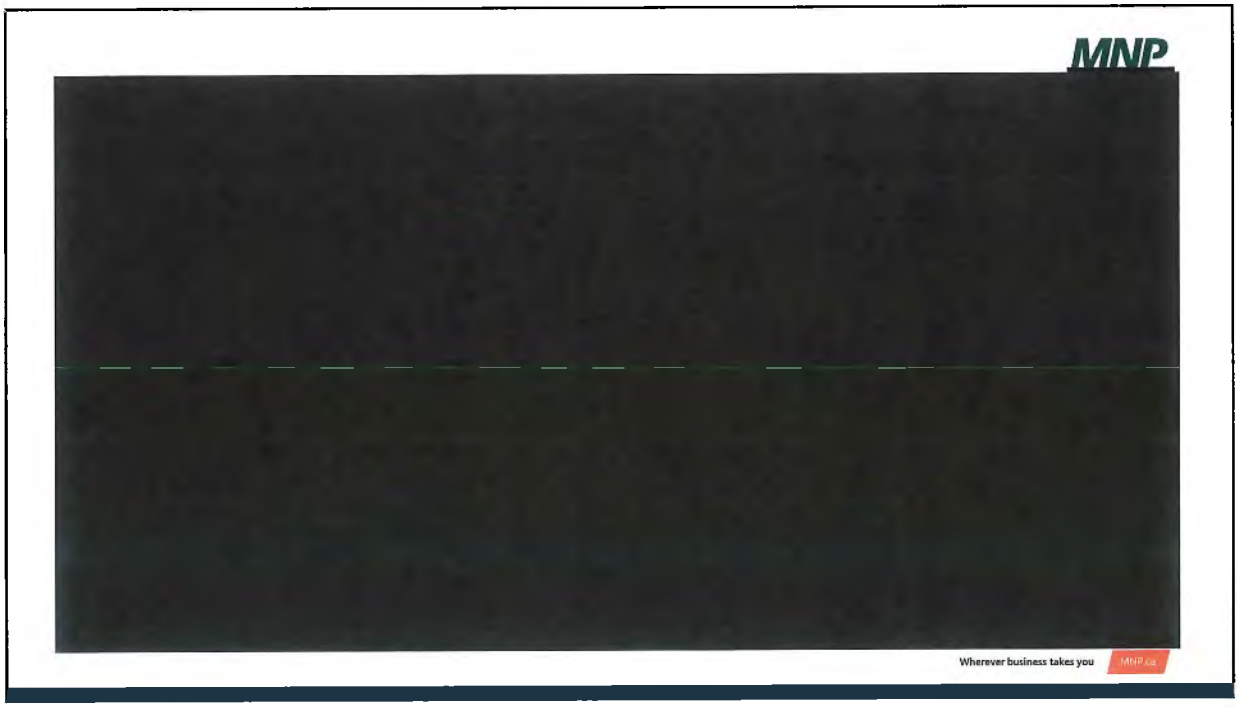
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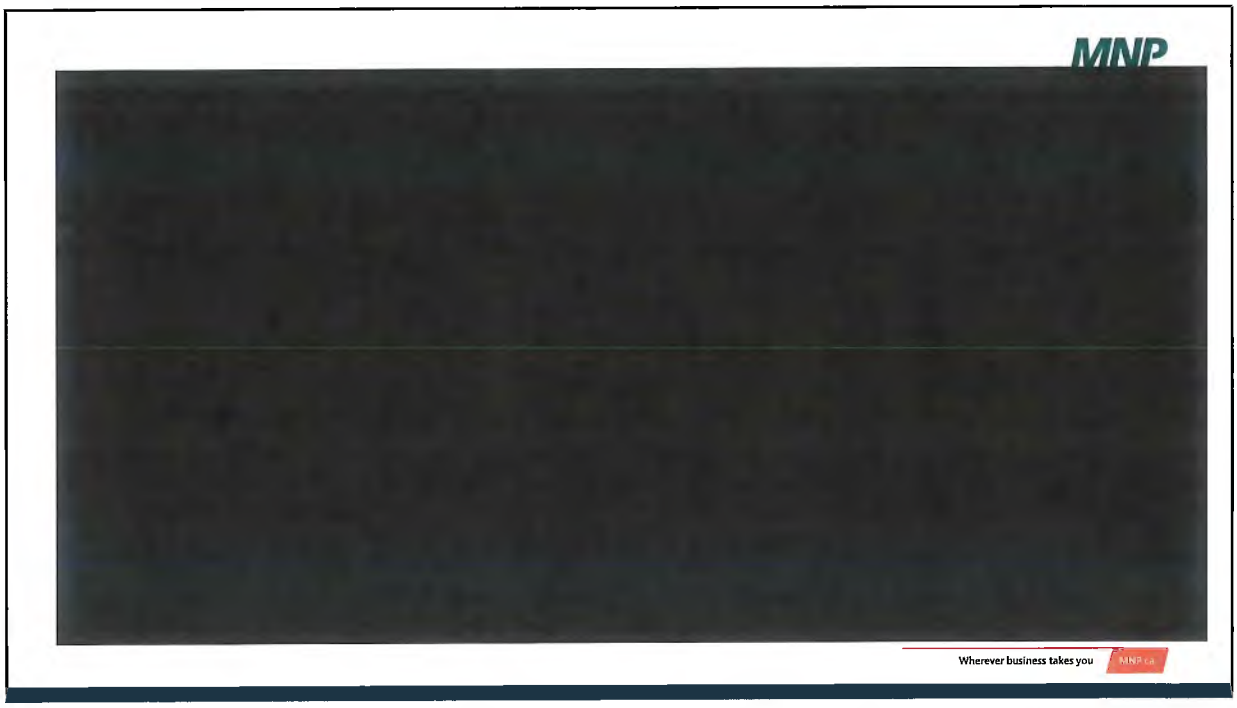
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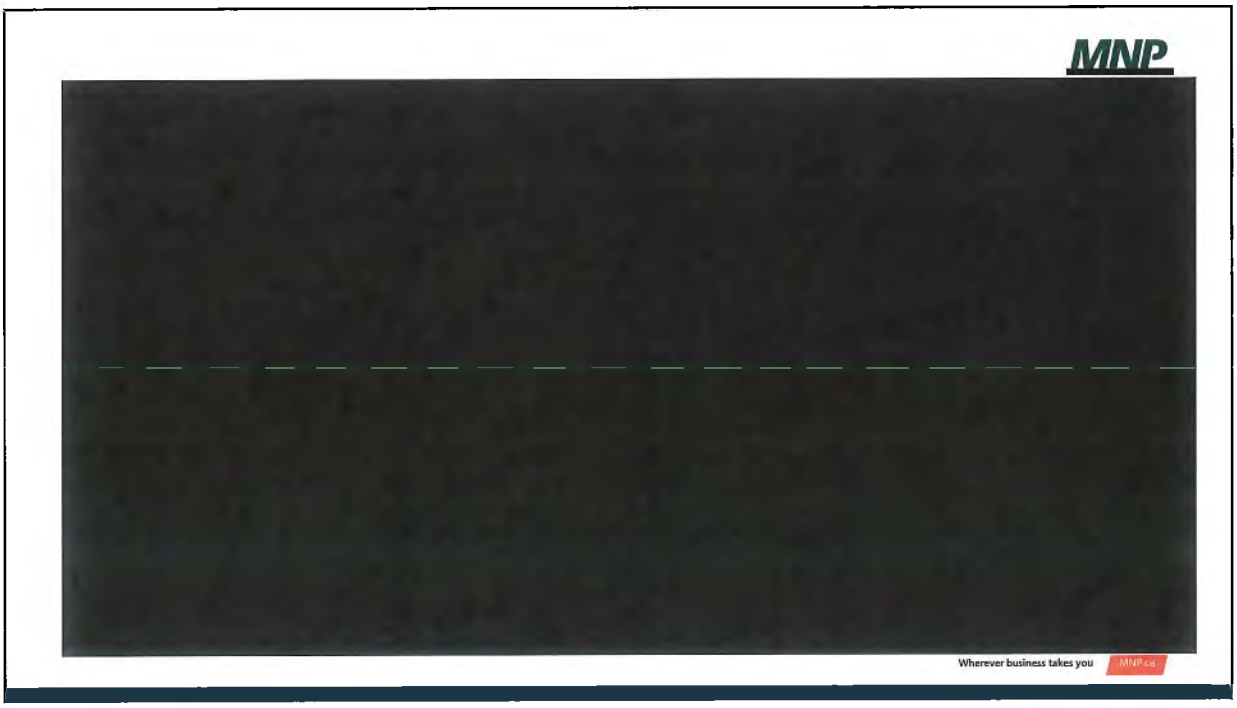
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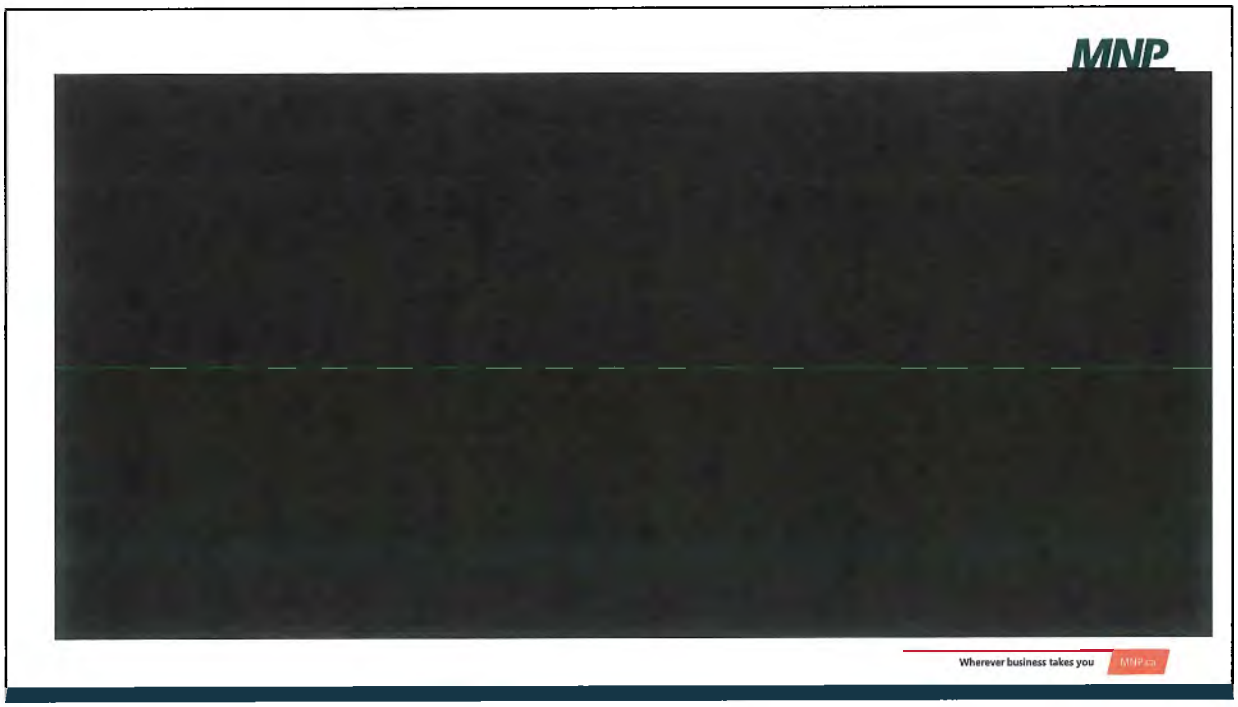
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Building a *Culture of Compliance*

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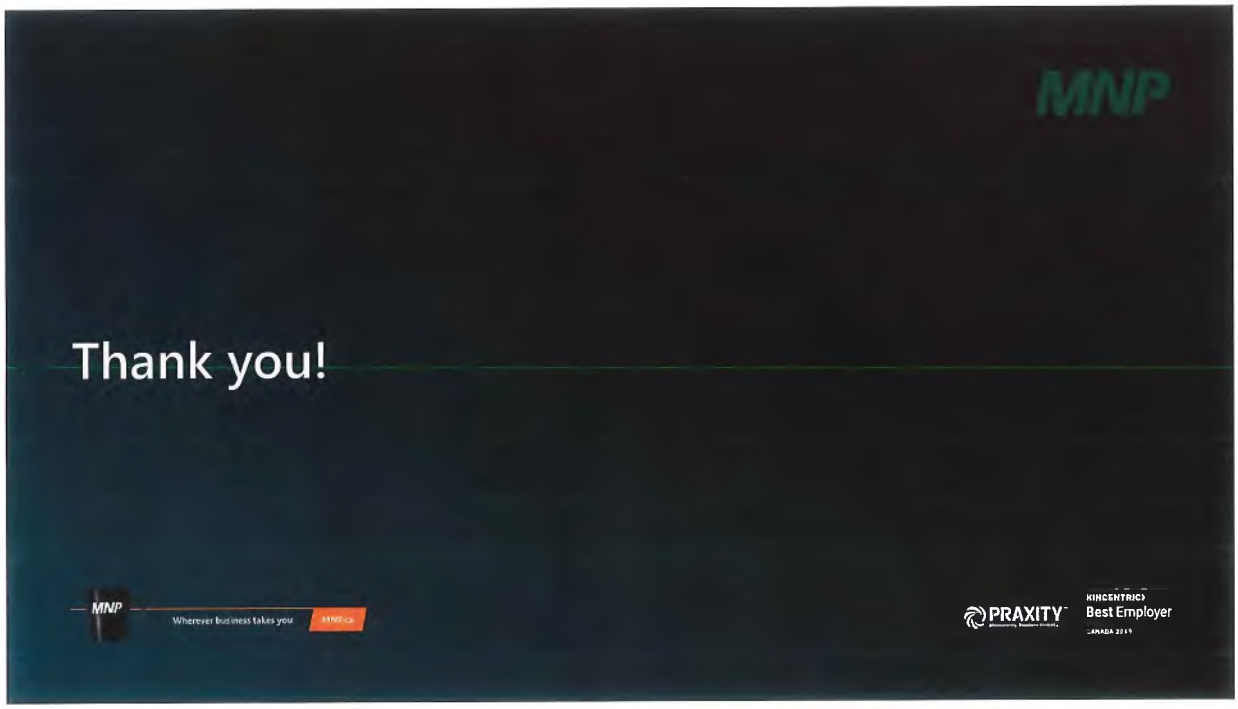
Why is this important?

- The information that you provide to FINTRAC could be useful for law enforcement purposes
- FINTRAC fines can negatively impact your reputation and the reputation of the industry

The mentality of the world we live in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Thank you!
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IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the "Act")

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

TING EN (BRIAN) LIN
(the "Licensee")

ORDER

This is Exhibit " 11 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25th day of MARCH, 2021.

A Commissioner for taking Affidavits for British Columbia

As Council made an intended decision on December 15, 2020, pursuant to sections 231, 236 and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated January 20, 2021; and

As the Licensee has not requested a hearing of Council's intended decision within the time period provided by the Act;

Under authority of sections 231, 236 and 241.1 of the Act, Council orders that:

I. The Licensee's life and accident and sickness insurance agent ("Life Agent") licence and general insurance licence are suspended for a period of six months, commencing February 11, 2021 and ending at midnight on August 11, 2021;

II. The Licensee is fined $5,000, to be paid by May 12, 2021, and which must be paid in full prior to the Licensee's licence suspension being lifted;

III. The Licensee is assessed investigative costs of $1,562.50, to be paid by May 12, 2021, and which must be paid in full prior to the Licensee's licence suspension being lifted;

IV. A condition is imposed on the Licensee's Life Agent licence and general insurance licence that he will not be permitted to complete his 2022 annual filing until such time as the fine and investigative costs are paid in full;

V. A condition is imposed on the Licensee's Life Agent licence that he be supervised by a Council-approved Life Agent supervisor for a period of one year of active licencing, commencing at the end of the suspension period; and

VI. A condition is imposed on the Licensee's general insurance licence reducing it to a Level 1 Salesperson general insurance licence for a period of one year of active licensing, commencing at the end of the suspension period.

This order takes effect on the **11th day of February, 2021**.

Janet Sinclair, Executive Director
Insurance Council of British Columbia

This is Exhibit " 12 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25 day of MARCH, 2021.

A Commissioner for taking Affidavits for British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

TING EN (BRIAN) LIN
(the "Licensee")

1. Pursuant to section 232 of the Financial Institutions Act (the "Act"), Council conducted an investigation regarding allegations that, in 2017 and 2018, the Licensee had been unethically profiting from commissions received from the Insurance Corporation of British Columbia ("ICBC") by regularly processing one-year vehicle insurance policies for automobile dealerships engaged in the export of vehicles out of Canada, and then canceling the policies only days later. The purpose of the investigation was to determine whether the Licensee had breached Council Rule 7(8), which requires licensees to comply with Council's Code of Conduct, as well as sections 3 ("Trustworthiness"), 4 ("Good Faith"), 7 ("Usual Practice: Dealing with Clients") and/or 8 ("Usual Practice: Dealing with Insurers") of the Code of Conduct.

2. On November 3, 2020, as part of Council's investigation, a Review Committee (the "Committee") comprised of Council members met with the Licensee via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to both the Committee and the Licensee in advance of the meeting. A discussion of the investigation report took place at the meeting, and the Licensee was given an opportunity to make submissions or provide any further information. The Committee met again virtually on November 26, 2020 for further discussion. Having reviewed the investigation materials and discussed the matter with the Licensee, the Committee prepared a report for Council.

3. The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its December 15, 2020 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

4. Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Licensee may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

FACTS

5. The Licensee was first licensed with Council as a Level 1 general insurance salesperson ("Level 1 Salesperson") in June 2012, and he became a Level 2 general insurance agent ("Level 2 Agent") in October 2014. The Licensee has also been licensed as a life and accident and sickness insurance agent ("Life Agent") since April 2018.

6. The Licensee worked for an agency ("Agency A") until being terminated in or around September 2017. Shortly after his departure from Agency A, the Licensee began working for a different agency ("Agency B"). In October 2017, Agency B's nominee noticed that several licence plates were stored under the desk of one of Licensee's colleagues (the "Colleague"), including some which were still in their original plastic wrappings. A preliminary investigation by the nominee revealed that the Colleague had been issuing one-year Autoplan insurance policies that were being cancelled within a few days. ICBC was notified by Agency B's nominee about the matter in December 2017.

7. ICBC commenced its investigation in or around January 2018, investigating the Licensee as well as the Colleague. On May 28, 2018, ICBC prohibited the Licensee from conducting Autoplan business and accessing ICBC's database for a period of at least one year. ICBC required the Licensee to complete the Ethics for Insurance Brokers course offered by the Insurance Brokers Association of British Columbia ("IBABC") before being allowed to conduct Autoplan business again, and he was also required to complete ICBC's Information Security and Privacy Course and PolicyCenter Essentials Course within 30 days of resuming conducting Autoplan business.

8. In order to circumvent contractual terms imposed by vehicle manufacturers prohibiting the sale of new vehicles directly to used vehicle dealerships, the practice of the exporters was to make use of individuals ("Temporary Owners") who would purchase automobiles, typically luxury vehicles, using funds provided by an exporter, for the purpose of transferring them to that exporter shortly after purchase.

9. The Licensee told Council's investigator that he had performed approximately twenty to thirty transactions for exporters while employed at Agency A. After being terminated by Agency A and beginning to work for Agency B, he estimated that he processed an additional ten transactions for exporters. These transactions involved the Licensee issuing one-year Autoplan policies to Temporary Owners and then cancelling them a few days later when the vehicles were transferred to the exporter. In doing so, the Licensee would receive a commission from ICBC for having processed a one-year policy. The Licensee explained that ICBC would pay approximately $200 in commissions for a one-year policy on a new luxury car, of which 50% would go to himself, and 50% to his agency.

10. The Licensee stated that the new vehicle dealerships would not sell vehicles unless the purchaser obtained a one-year policy and plates, and claimed that, if not for that requirement, he would have issued Temporary Operating Permits instead of one-year policies.

11. When asked by Council's investigator about his termination from Agency A, the Licensee explained that, although he had not been given a reason, he suspected it was because of the transactions he was processing for exporters. The Licensee stated that his manager at Agency A had met with him to discuss the matter, and instructed him to stop processing transactions for exporters. However, the Licensee then spoke to a former manager, no longer affiliated with Agency A, and was told that such transactions were legal as long as the taxes were paid appropriately. The Licensee indicated that he also reviewed ICBC's guidelines and found no specific rules prohibiting the practice, and therefore concluded that processing these transactions for exporters was ethical. He continued to issue and cancel one-year policies at the request of exporters until terminated by Agency A.

12. The Licensee also confirmed to Council's investigator that he had himself served as a Temporary Owner for exporters on three occasions, purchasing new vehicles in October 2017, January 2018, and February 2018, with funds provided by exporters. The October 2017 purchase was done for an exporter that the Licensee had been introduced to by the Colleague, and the Colleague gave him either $300 or $350 afterwards on behalf of the exporter.

13. The Licensee stated that he stopped processing transactions for exporters and serving as a Temporary Owner in March 2018, when interviewed by ICBC about the matter. He told Council's investigator that, upon reflection, he now understands there were ethical problems associated with accepting commissions from ICBC for one-year policies that would quickly be canceled.

14. Council was cognizant throughout its investigation that transactions involving the "grey market" export of vehicles are sometimes associated with money laundering. In the course of its investigation, Council determined that the Licensee had facilitated grey market transactions involving the export of luxury vehicles.

REVIEW COMMITTEE MEETING

15. The Licensee was apologetic throughout the meeting, expressing regret about his conduct. He stated that there were no clear guidelines available at the time to provide information about whether the transactions he was processing for his exporter clients were right or wrong. The Licensee told the Committee that he now understands that there was an ethical problem with the transactions he processed, and that they were exploitative of ICBC.

16. The Licensee explained that part of his motivation for processing the exploitative transactions was simply how widespread the practice is. He said that he had assumed, since many other agents were processing transactions for exporters, that there must not be an issue. The Licensee stated that processing such transactions was extremely common in the industry.

17. The Licensee explained to the Committee that exporters were interested in exporting vehicles to China. To do so, they would use Temporary Owners, who would go into a new vehicle dealership to buy a vehicle, and once the deal was confirmed by the dealership, the Temporary Owner would contact the exporter. At that point, the Licensee would attend at the dealership to process the insurance. He would ask the Temporary Owner for their driver's licence, and ask them about usage of the vehicle, which would typically be described as "for pleasure." The Licensee said that he would have offered them short-term insurance or a permit, but the dealerships would not sell the vehicle if only short-term insurance was being purchased. A few days after the vehicle was purchased by a Temporary Owner, the one-year policy would be canceled and ownership of the vehicle would be transferred to the exporter. The Licensee said that he processed some, but not all, of the cancellations relating to the vehicles he had processed one-year policies for. He also stated that he was aware that these clients were in the export business.

18. The Licensee estimated that, while at Agency A, he dealt with more than "twenty or thirty" Temporary Owners, and that he processed an exporter related transaction approximately every two weeks.

ANALYSIS

19. Council considers the Licensee's actions, whereby he repeatedly processed and collected commissions for one-year Autoplan insurance policies in circumstances in which he knew or ought to have known that the policies would be cancelled merely days later, to be unethical behavior in contravention of Council Rule 7(8), as well as of sections 3, 4, 7 and 8 of the Code of Conduct.

20. Specifically, Council believes that the breaches of sections 3 ("Trustworthiness"), 4 ("Good Faith"), and 8 ("Usual Practice: Dealing with Insurers") are relatively straightforward. The Licensee's processing of the described transactions demonstrated an overall lack of trustworthiness and good faith, and was exploitative of ICBC and its commissions system. The breach of section 7 ("Usual Practice: Dealing with Clients") was also considered as relevant because the Licensee's actions show that he was not representing all of his dealership clients equally and fairly, exploiting loopholes for the sake of some dealerships that could give them a competitive advantage over other dealership clients.

21. Council took mitigating factors into consideration. Council believes that the remorse shown by the Licensee throughout the meeting was genuine, and also considered the Licensee to have been open and forthright with information. It was also noted that the Licensee continues to be supported by Agency B. The most significant mitigating factor identified by Council was the fact that the Licensee had already experienced considerable sanctions from ICBC for his misconduct, having been prohibited from conducting Autoplan business for a year and being required to complete courses prior to and after having his privileges returned.

22. However, Council also took note of several relevant aggravating factors. For one, Council recognized that the Licensee's actions were financially motivated. Additionally, the admitted number of transactions that the Licensee processed for exporters was sufficient to establish a clear pattern of unethical behavior, and to demonstrate a lack of due diligence and an incredible amount of willful blindness on the part of the Licensee. To make matters worse, the Licensee continued to process exporter transactions and accept ICBC commissions for them after being told to cease doing so by his manager at Agency A, and even after being terminated by Agency A for what he suspected to be their disapproval of the transactions he was carrying out for exporters.

23. Prior to making its disposition, Council took three previous Council decisions into consideration as precedents, as well as one decision of the Financial Services Tribunal (the "FST"). Although Council is not bound to follow the outcomes from prior decisions, it

acknowledges that similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.

24. Apex Insurance Services Ltd., Apex Insurance Services (1993) Ltd., Apex Insurance Services (1996) Ltd. and Amy Man Mee Lau (June 2007) concerned three related agencies and a nominee. Agents working for the agencies processed an excessive number of Autoplan transactions for their own vehicles, as well as for the vehicles of family members. These consisted of 242 ICBC transactions in total, included 64 transactions processed on the nominee's own vehicle. Council found that the agencies and nominee had not acted in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance. Council accepted the nominee's evidence that she had not actively participated in processing the excessive transactions, but concluded that she knowingly allowed others to process them at her office and had taken no action to ensure that misconduct of this nature did not occur. Council suspended the nominee's licence for nine months and ordered that she could not hold a Level 3 general insurance agent for a minimum period of two years. The nominee was also fined $5,000, while the agencies were each fined $20,000; the nominee and agencies were also held jointly and severally liable for Council's investigative costs of $7,800. In separate but related decisions, Council suspended the two agents responsible for the majority of the transactions for six months and fined them both $10,000; two other agents were also fined $1,000.

25. Baljinder Singh Takhar (October 2007) concerned a Level 1 Salesperson licensee who, between May 2004 and July 2006, processed 163 Autoplan transactions on his and his wife's vehicles. Every two to three weeks, the licensee would purchase a new one-year term policy on either his or his wife's vehicle, then cancel the policy and issue a storage policy. The licensee would earn commission for each new one-year policy, and he avoided cancellation fees by buying a storage policy each time the one-year policy was cancelled. The licensee earned approximately $4,700 in commissions for the 163 transactions. The licensee's agency was sanctioned by ICBC for the exploitation of its commissions system, and the licensee repaid over $4,200. Council found that the licensee had failed to act in a trustworthy manner, in good faith and within the usual practice of the business of insurance, and that he had abused his position as an insurance salesperson for personal benefit. He was suspended for a year, fined $5,000, and assessed half of Council's investigative costs ($1,181.25).

26. Peter Hing-Fu Hung (January 2015) concerned a Level 1 Salesperson who worked mostly as a mobile road services agent. Over the course of two days, the licensee completed insurance transactions for two different luxury vehicles, for an individual who was later found to have been an imposter. There were suspicious circumstances involved with the transactions, but the licensee did not put notation on the transaction documents or take any other action to flag suspicions to ICBC or his supervisor. Council believed that the licensee had "turned a

blind eye" to the suspicious circumstances, and that he had not appreciated his responsibilities when conducting suspicious transactions. The licensee was fined $1,000, assessed costs of $2,625, and required to complete three ICBC courses. The licensee was also required to complete IBABC's Ethics for Insurance Brokers course and was only allowed to conduct insurance business from his agency's office until his courses were completed.

27. Council also took into consideration Decision No. 2017-FIA-002(a), 003(a), 004(a) 005(a), 006(a), 007(a) and 008(a), published by the FST in July 2018 (the "Toll Bridge Decision"). This decision concerned seven licensees who had each, on multiple occasions, exploited a "glitch" in ICBC's software that allowed agents to bypass the normal system restrictions that, at the time, prevented Autoplan insurance from being renewed for a customer with outstanding toll bridge debts. Each of the licensees had used the glitch to allow customers to renew their insurance without first settling their toll bridge debts; the number of incidents ranged from 32 to 116. In each case, Council imposed a $5,000 fine for misconduct. Council's decision, however, was challenged by the Financial Institutions Commission, which argued that $5,000 fines were not significant enough sanctions given the untrustworthiness displayed by the licensees, and the matter was brought to the FST for review. The FST concluded that $5,000 fines did not reasonably protect the public interest, and emphasized that, in these scenarios involving licensees habitually behaving in an untrustworthy manner, it was wrong to assume that they would not pose an ongoing risk to the public or ICBC. The FST stated that a suspension of six months and the requirement to take an ethics course should serve as the baseline reasonable penalty, which could be adjusted depending on the particular mitigating and aggravating factors applicable in each case. The FST directed Council to issue new penalties, and Council proceeded to do so, suspending the licensees' licences for varying lengths of time depending on the specifics of each case (between five to nine months), and requiring the licensees to complete an ethics course (although this requirement was waived for licensees who had taken an ethics course already, following commencement of the investigation into their conduct).

28. Council's opinion is that sanctions levied against the Licensee must take into account the need for both specific and general deterrence. Even though the Licensee was apologetic and remorseful throughout his meeting with the Committee, the number of times that he engaged in exploitative transactions is an indication that he was capable of turning improper behavior into a habitual business practice. As emphasized in the Toll Bridge Case, such habitual practice shows, firstly, that the Licensee could not be trusted to refrain from improper practice, and secondly, that he could not be trusted to critically evaluate and stop the practice through a process of reflection. As such, sanctions must serve to deter the Licensee from engaging in similar behavior in the future. However, Council believes that its decision should also send a message to the insurance industry and general public that generating commissions through the processing of exploitative transactions is not

acceptable to Council, and that licensees should self-correct and seek guidance and clarification in situations in which they suspect there may be ethical problems. Council is concerned, based on remarks heard during the Committee meeting, that the practice of exporting vehicles in the manner carried out by the exporters with whom the Licensee dealt may be widespread in British Columbia, and that the involvement of licensees, processing and cancelling Autoplan insurance policies as the Licensee had, may be similarly widespread.

29. After weighing all the relevant considerations, Council concludes that it is necessary to suspend the Licensee's licences for a period of six months and to impose a fine of $5,000. Further, Council considers it necessary to downgrade the Licensee's general licence for a period of one year of active licensing following the suspension, and to place a supervision condition on his Life Agent licence. Council believes that such a result is compatible with the precedents, including the Toll Bridge Decision. Council would have also required the Licensee to complete an ethics course prior to returning to the insurance business, but it is noted that the Licensee recently completed IBABC's Ethics for Insurance Brokers course, in accordance with ICBC's sanction.

INTENDED DECISION

30. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:

I. Suspend both the Licensee's general insurance agent licence and Life Agent licence for a period of six months, commencing on the date of Council's order;

II. Fine the Licensee $5,000, to be paid within 90 days of Council's order, and which must be paid in full prior to the Licensee's licence suspension being lifted;

III. Assess the Licensee $1,562.50 of Council's investigative costs, to be paid within 90 days of Council's order, and which must be paid in full prior to the Licensee's licence suspension being lifted;

IV. Impose a condition on the Licensee's licences that he will not be permitted to complete his 2022 annual filing until such time as the fine and investigative costs are paid in full;

V. Impose a condition on the Licensee's Life Agent licence that he be supervised by a Council-approved Life Agent supervisor for a period of one year of active licencing, commencing at the end of the suspension period; and

VI. Impose a condition on the Licensee's general insurance licence reducing it to a Level 1 Salesperson licence for a period of one year of active licensing, commencing at the end of the suspension period.

31. Subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

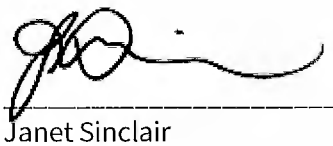
RIGHT TO A HEARING

32. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, **the Licensee must give notice to Council by delivering to its office written notice of this intention within 14 days of receiving this intended decision.** A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director. **If the Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.**

33. Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the FST. The BCFSA has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at fst.gov.bc.ca or visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the **20th day of January, 2021**.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director
jsinclair@insurancecouncilofbc.com

This is Exhibit " 13 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25th day of MARCH, 2021.

A Commissioner for taking Affidavits for British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

ANTHONY BRYAN CHUA CUA
(the "Licensee")

1. Pursuant to section 232 of the Financial Institutions Act (the "Act"), Council conducted an investigation regarding allegations that, in 2017 and 2018, the Licensee had been unethically profiting from commissions received from the Insurance Corporation of British Columbia ("ICBC") by regularly processing one-year vehicle insurance policies for an automobile dealership engaged in the export of vehicles out of Canada (the "Exporter"), and then canceling the policies only days later. The purpose of the investigation was to determine whether the Licensee had breached Council Rule 7(8), which requires licensees to comply with Council's Code of Conduct, as well as sections 3 ("Trustworthiness"), 4 ("Good Faith"), 7 ("Usual Practice: Dealing with Clients") and/or 8 ("Usual Practice: Dealing with Insurers") of the Code of Conduct.

2. On November 3, 2020, as part of Council's investigation, a Review Committee (the "Committee") comprised of Council members met with the Licensee via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to both the Committee and the Licensee in advance of the meeting. A discussion of the investigation report took place at the meeting, and the Licensee was given an opportunity to make submissions or provide any further information. The Committee met again virtually on November 26, 2020 for further discussion. Having reviewed the investigation materials and discussed the matter with the Licensee, the Committee prepared a report for Council.

3. The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its December 15, 2020 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

4. Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such

action. The Licensee may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

FACTS

5. The Licensee was first licensed as a Level 1 general insurance salesperson ("Level 1 Salesperson") in November 2015, and he became a Level 2 general insurance agent ("Level 2 Agent") in September 2016.

6. In October 2017, the nominee of the agency for which the Licensee worked (the "Agency") noticed that several licence plates were stored under the Licensee's desk, including some which were still in their original wrappings. A preliminary investigation by the nominee revealed that the Licensee had been issuing one-year Autoplan insurance policies that were being cancelled within a few days. ICBC was notified about the matter by the nominee in December 2017.

7. ICBC commenced its investigation in or around January 2018. On May 28, 2018, ICBC prohibited the Licensee from conducting Autoplan business and accessing ICBC's database for a period of at least one year. ICBC required the Licensee to complete the Ethics for Insurance Brokers course offered by the Insurance Brokers Association of British Columbia ("IBABC") before being allowed to conduct Autoplan business again, and he was also required to complete ICBC's Information Security and Privacy Course and PolicyCenter Essentials Course within 30 days of resuming conducting Autoplan business.

8. In order to circumvent contractual terms imposed by vehicle manufacturers prohibiting the sale of new vehicles directly to used vehicle dealerships, the Exporter's practice was to make use of individuals ("Temporary Owners") who would purchase automobiles, typically luxury vehicles, using funds provided by the Exporter, for the purpose of transferring them to the Exporter shortly after purchase.

9. The Licensee explained to Council's investigator that employees of the Exporter would contact him when they needed Autoplan transactions processed. He would then meet with a Temporary Owner and a dealership representative in order to process a one-year Autoplan policy. In doing so, the Licensee would receive a commission from ICBC for having processed a one-year policy. A few days later, however, the one-year policy would be cancelled, but the commission would not be clawed back by ICBC. The Licensee described the Exporter's owner as being a family friend.

10. Documents collected and reviewed in the course of Council's investigation indicate that the Licensee processed at least 129 transactions for the Exporter throughout 2017 and 2018. The Licensee also confirmed to Council's investigator that he had himself served as a Temporary Owner for the Exporter on two occasions, purchasing two new vehicles from different dealerships in 2017, using funds provided by the Exporter.

11. The Licensee also introduced a colleague to the Exporter (the "Colleague"), who proceeded to serve as a Temporary Owner for the Exporter in October 2017. The Licensee paid the Colleague either $300 or $350 on behalf of the Exporter, and processed the transactions relating to the purchase of the vehicle, as well as the subsequent cancellation.

12. Over $24,000 in commissions were calculated to be owed to ICBC as the result of the Licensee's exploitative transactions. After its investigation, ICBC pursued a recovery of the commissions paid.

13. In the course of its investigation, Council commissioned professionals with expertise in identifying money laundering and grey market activities to review the investigation report and other relevant documents. The conclusion of the experts was that the Licensee had facilitated grey market transactions involving the export of luxury vehicles.

REVIEW COMMITTEE MEETING

14. The Licensee was apologetic throughout the meeting, expressing regret about his conduct. He stated that he had rationalized his actions at the time, but in hindsight realizes that he should have sought guidance from either Agency management or ICBC about whether his processing of transactions for the Exporter were appropriate.

15. The Licensee took the opportunity to clarify certain points about which he considered the investigation report and other materials provided to him to be either inaccurate or ambiguous. He explained that the one-year Autoplan policies were issued because they were required by the new car dealerships in order for a sale to be made, not because they were the preference of the Exporter. He also explained that he had simply served as a courier of the money he gave to the Colleague, and had not himself paid the Colleague for being a Temporary Owner.

16. The Licensee explained to the Committee that he would typically be contacted by the Exporter when a vehicle was ready to be purchased by a Temporary Owner. He would then prepare the necessary documentation and travel to the dealership to meet with the Temporary Owner and a representative of the dealership to obtain signatures and prepare hard copies of the documents. He would also make plans to meet with the Temporary Owner

on a later date, so that the insurance policy could be cancelled and the vehicle's ownership transferred to the Exporter. The Licensee confirmed that he processed "a large number" of transfers from Temporary Owners to the Exporter, as well as cancellations.

17. When asked by the Committee to describe the occasions on which he had served as a Temporary Owner, the Licensee explained that, on the first occasion, he had attempted to have a Temporary Operating Permit (a "TOP") issued rather than a one-year Autoplan policy, but staff at the dealership would not allow the vehicle to be sold to him unless a one-year policy was put in place. He stated that the insurance costs, in addition to the cost of the vehicle, were paid for by the Exporter, but that he had attempted to have a TOP issued instead of a one-year policy because he had not felt right about the process.

18. The Committee asked questions to the Licensee throughout the meeting about whether he thought it was widespread practice in British Columbia for vehicles to be purchased for export by Temporary Owners, with insurance agents rapidly processing transactions and cancellations in the manner he had. The Licensee stated that he had no knowledge as to whether it was common practice.

19. The Licensee was asked several questions concerning whether he had been compensated by the Exporter for the insurance services he provided, as he had described the work of traveling to dealerships to process transactions as time consuming and onerous. The Licensee explained that he received no compensation for his work, other than the commissions from ICBC, and his description remained consistent with what he had earlier told Council's investigator.

ANALYSIS

20. Council considers the Licensee's actions, whereby he repeatedly processed and collected commissions for one-year Autoplan insurance policies in circumstances in which he knew or ought to have known that the policies would be cancelled merely days later, to be unethical behavior in contravention of Council Rule 7(8), as well as of sections 3, 4, 7 and 8 of the Code of Conduct.

21. Specifically, Council believes that the breaches of sections 3 ("Trustworthiness"), 4 ("Good Faith"), and 8 ("Usual Practice: Dealing with Insurers") are relatively straightforward. The Licensee's processing of the described transactions demonstrated an overall lack of trustworthiness and good faith, and was exploitative of ICBC and its commissions system. The breach of section 7 ("Usual Practice: Dealing with Clients") was also considered as relevant because the Licensee's actions show that he was not representing all of his

dealership clients equally and fairly, exploiting loopholes for the sake of some dealerships that could give them a competitive advantage over other dealership clients.

22. Council took mitigating factors into consideration. Council believes that the remorse shown by the Licensee throughout his meeting with the Committee was genuine, and also noted that the Licensee was a relatively inexperienced agent with no previous disciplinary history at the time of the misconduct. The most significant mitigating factor identified by Council was the fact that the Licensee had already experienced considerable sanctions from ICBC for his misconduct, having had his Autoplan privileges suspended for a year and being required to complete courses prior to and after having his privileges returned.

23. However, Council also took note of several relevant aggravating factors. For one, Council recognized that the Licensee's actions were financially motivated. Additionally, the sheer volume of transactions that the Licensee performed for the Exporter in a relatively short period of time establishes a clear pattern of unethical behavior, and demonstrates a lack of due diligence and an incredible amount of willful blindness on the part of the Licensee. In fact, the Licensee noted during the meeting with the Committee that part of his usual course of business when meeting with Temporary Owners as they purchased vehicles from a dealership was to plan a meetup a few days later, at which the cancelation could be processed.

24. Prior to making its disposition, Council took three previous Council decisions into consideration as precedents, as well as one decision of the Financial Services Tribunal (the "FST"). Although Council is not bound to follow the outcomes from prior decisions, it acknowledges that similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.

25. Baljinder Singh Takhar (October 2007) concerned a Level 1 Salesperson licensee who, between May 2004 and July 2006, processed 163 Autoplan transactions on his and his wife's vehicles. Every two to three weeks, the licensee would purchase a new one-year term policy on either his or his wife's vehicle, then cancel the policy and issue a storage policy. The licensee would earn commission for each new one-year policy, and he avoided cancellation fees by buying a storage policy each time the one-year policy was cancelled. The licensee earned approximately $4,700 in commissions for the 163 transactions. The licensee's agency was sanctioned by ICBC for the exploitation of its commissions system, and the licensee repaid over $4,200. Council found that the licensee had failed to act in a trustworthy manner, in good faith and within the usual practice of the business of insurance, and that he had abused his position as an insurance salesperson for personal benefit. He was suspended for a year, fined $5,000, and assessed half of Council's investigative costs ($1,181.25).

26. Apex Insurance Services Ltd., Apex Insurance Services (1993) Ltd., Apex Insurance Services (1996) Ltd. and Amy Man Mee Lau (June 2007) concerned three related agencies and a nominee. Agents working for the agencies processed an excessive number of Autoplan transactions for their own vehicles, as well as for the vehicles of family members. These consisted of 242 ICBC transactions in total, included 64 transactions processed on the nominee's own vehicle. Council found that the agencies and nominee had not acted in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance. Council accepted the nominee's evidence that she had not actively participated in processing the excessive transactions, but concluded that she knowingly allowed others to process them at her office and had taken no action to ensure that misconduct of this nature did not occur. Council suspended the nominee's licence for nine months, and ordered that she could not hold a Level 3 general insurance agent for a minimum period of two years. The nominee was also fined $5,000, while the agencies were each fined $20,000; the nominee and agencies were also held jointly and severally liable for Council's investigative costs of $7,800. In separate but related decisions, Council suspended the two agents responsible for the majority of the transactions for six months, and fined them both $10,000; two other agents were also each fined $1,000.

27. Peter Hing-Fu Hung (January 2015) concerned a Level 1 Salesperson who worked mostly as a mobile road services agent. Over the course of two days, the licensee completed insurance transactions for two different luxury vehicles, for an individual who was later found to have been an imposter. There were suspicious circumstances involved with the transactions, but the licensee did not put notation on the transaction documents or take any other action to flag suspicions to ICBC or his supervisor. Council believed that the licensee had "turned a blind eye" to the suspicious circumstances, and that he had not appreciated his responsibilities when conducting suspicious transactions. The licensee was fined $1,000, assessed costs of $2,625, and required to complete three ICBC courses. The licensee was also required to complete IBABC's Ethics for Insurance Brokers course and was only allowed to conduct insurance business from his agency's office until his courses were completed.

28. Council also took into consideration Decision No. 2017-FIA-002(a), 003(a), 004(a) 005(a), 006(a), 007(a) and 008(a), published by the FST in July 2018 (the "Toll Bridge Decision"). This decision concerned seven licensees who had each, on multiple occasions, exploited a "glitch" in ICBC's software that allowed agents to bypass the normal system restrictions that, at the time, prevented Autoplan insurance from being renewed for a customer with outstanding toll bridge debts. Each of the licensees had used the glitch to allow customers to renew their insurance without first settling their toll bridge debts; the number of incidents ranged from 32 to 116. In each case, Council imposed a $5,000 fine for misconduct. Council's decision, however, was challenged by the Financial Institutions Commission, which argued that $5,000 fines were not significant enough sanctions given the untrustworthiness

displayed by the licensees, and the matter was brought to the FST for review. The FST concluded that $5,000 fines did not reasonably protect the public interest, and emphasized that, in these scenarios involving licensees habitually behaving in an untrustworthy manner, it was wrong to assume that they would not pose an ongoing risk to the public or ICBC. The FST stated that a suspension of six months and the requirement to take an ethics course should serve as the baseline reasonable penalty, which could be adjusted depending on the particular mitigating and aggravating factors applicable in each case. The FST directed Council to issue new penalties, and Council proceeded to do so, suspending the licensees' licences for varying lengths of time depending on the specifics of each case (between five to nine months), and requiring the licensees to complete an ethics course (although this requirement was waived for licensees who had taken an ethics course already, following commencement of the investigation into their conduct).

29. Council's opinion is that sanctions levied against the Licensee must take into account the need for both specific and general deterrence. Even though the Licensee was apologetic and remorseful throughout his meeting with the Committee, the number of times that he engaged in exploitative transactions is an indication that he was capable of turning improper behavior into a habitual business practice. As emphasized in the Toll Bridge Case, such habitual practice shows, firstly, that the Licensee could not be trusted to refrain from improper practice, and secondly, that he could not be trusted to critically evaluate and stop the practice through a process of reflection. As such, sanctions must serve to deter the Licensee from engaging in similar behavior in the future. However, Council believes that its decision should also send a message to the insurance industry and general public that generating commissions through the processing of exploitative transactions is not acceptable to Council, and that licensees should self-correct and seek guidance and clarification in situations in which they suspect there may be ethical problems. Council is concerned, based on remarks heard during the Committee meeting in addition to information provided by the commissioned experts, that the practice of exporting vehicles in the manner carried out by the Exporter may be widespread in British Columbia, and that the involvement of licensees, processing and cancelling Autoplan insurance policies as the Licensee had, may be similarly widespread.

30. After weighing all the relevant considerations, Council concludes that it is necessary to suspend the Licensee's licence for a period of one year and to impose a fine of $7,000. Further, Council considers it necessary to downgrade the Licensee's general licence for a period of one year of active licensing following the suspension. Council believes that such a result is compatible with the precedents, including the Toll Bridge Decision. Council would have also required the Licensee to complete an ethics course prior to returning to the

insurance business, but it is noted that the Licensee recently completed IBABC's Ethics for Insurance Brokers Course, in accordance with ICBC's sanction.

INTENDED DECISION

31. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:

    I. Suspend the Licensee's licence for a period of one year, commencing on the date of Council's order;

    II. Fine the Licensee $7,000, to be paid within 90 days of Council's order, and which must be paid in full prior to the Licensee's licence suspension being lifted;

    III. Assess the Licensee $1,925 of Council's investigative costs, due and payable within 90 days of Council's order, and which must be paid in full prior to the Licensee's licence suspension being lifted;

    IV. Impose a condition on the Licensee's licence that he will not be permitted to complete his 2022 annual filing until such time as the fine and investigative costs are paid in full; and

    V. Impose a condition on the Licensee's licence reducing it to a Level 1 Salesperson licence for a period of one year of active licensing, commencing at the end of the suspension period.

32. Subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

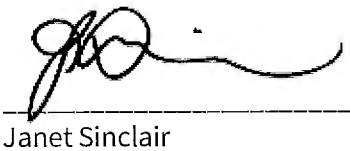
33. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, **the Licensee must give notice to Council by delivering to its office written notice of this intention within 14 days of receiving this intended decision. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice.** Please direct written notice to the attention of the Executive Director. **If the Licensee does not request a hearing within 14**

days of receiving this intended decision, the intended decision of Council will take effect.

34. Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the FST. The BCFSA has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at fst.gov.bc.ca or visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the **20th day of January, 2021**.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director
jsinclair@insurancecouncilofbc.com

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the "Act")

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

ANTHONY BRYAN CHUA CUA
(the "Licensee")

This is Exhibit " 14 " referred to in the affidavit of MARKO GOLUZA sworn before me at VANCOUVER this 25 day of MARCH , 20 21 .

A Commissioner for taking Affidavits for British Columbia

ORDER

As Council made an intended decision on December 15, 2020, pursuant to sections 231, 236 and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated January 20, 2021; and

As the Licensee has not requested a hearing of Council's intended decision within the time period provided by the Act;

Under authority of sections 231, 236 and 241.1 of the Act, Council orders that:

I. The Licensee's general insurance licence is suspended for a period of one year, commencing February 11, 2021 and ending at midnight on February 11, 2022;

II. The Licensee is fined $7,000, to be paid by May 12, 2021, and which must be paid in full prior to the Licensee's licence suspension being lifted;

III. The Licensee is assessed investigative costs of $1,925, to be paid by May 12, 2021, and which must be paid in full prior to the Licensee's licence suspension being lifted;

IV. A condition is imposed on the Licensee's general insurance licence that he will not be permitted to complete his 2022 annual filing until such time as the fine and investigative costs are paid in full; and

V. A condition is imposed on the Licensee's general insurance licence reducing it to a Level 1 Salesperson general insurance licence for a period of one year of active licensing, commencing at the end of the suspension period.

This order takes effect on the **11th day of February, 2021**.

Janet Sinclair, Executive Director
Insurance Council of British Columbia