Cullen Commission Final Report makes sweeping recommendations for anti-money laundering regulation in B.C.

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On June 15, the Commission of Inquiry into Money Laundering in British Columbia (referred to as the "Cullen Commission") released its Final Report on money laundering in British Columbia to the public. The Final Report makes findings about the leading causes of money laundering in British Columbia and suggests a number of action items for both provincial and federal governments to undertake to curb the laundering of money in British Columbia.

The Final Report takes a holistic approach to combatting money laundering in British Columbia and makes 101 recommendations that range from anti-money laundering training for the legal community to reporting on cash used to purchase luxury goods. It also highlights the importance of transitioning Canada from a secretive jurisdiction to a transparent jurisdiction by implementing a national beneficial ownership registry. The Final Report scrutinizes federal anti-money laundering legislation to highlight enforcement gaps, communication gaps, and necessary future changes to the legislative regime.

Background

On May 15, 2019, British Columbia's lieutenant governor issued an order in council establishing the Commission of Inquiry into Money Laundering in British Columbia, for the purpose of inquiring into, reporting on and making recommendations regarding money laundering in British Columbia. The Honourable Austin F. Cullen was appointed as commissioner. The commission was tasked with making findings of fact with respect to the following:

- The extent, growth, evolution, and methods of money laundering in British Columbia, particularly in the following economic sectors:
    - Gaming and horse racing;
    - Real estate;
    - Financial institution and money service, including unregulated entities and persons who provide banking-like services;

- Corporate, in relation to the use of shell companies, trusts, securities and financial instruments for the purpose of money laundering;
- Luxury goods; and
- Professional services, including legal and accounting;

- The acts or omissions of responsible regulatory agencies and individuals, and whether those acts or omissions have contributed to money laundering in the province or amounted to corruption;
- The scope and effectiveness of the powers, duties, and functions of those regulatory agencies and individuals; and
- The barriers to effective law enforcement respecting money laundering in British Columbia.

The commission also undertook to make recommendations pertaining to these areas.

In total, the Cullen Commission held 143 hearing sessions over the course of several months of 2020 and 2021, with oral closing submissions concluding on October 19, 2021. The commission heard testimony from 199 witnesses and received over 1,000 exhibits.

The final report

The Cullen Commission Final Report was published on Wednesday, June 15, 2022. The Final Report follows the Cullen Commission Interim Report, which was released on December 10, 2022. The Final Report, which is more than 1,800 pages long, sets out 101 recommendations for action that various parties can take to combat money laundering in British Columbia.

Since the Cullen Commission was established at the provincial level, it did not have the authority to make formal recommendations to the federal government. Nevertheless, the Final Report includes significant findings regarding the weaknesses of the federal anti-money laundering regime. In the Final Report, the commissioner notes that Canada has "no comprehensive crime strategy, no real understanding of the money laundering threats facing the country, and no meaningful evaluation of the effectiveness of the anti-money laundering measures put in place by the federal government." Overall, the Final Report finds that the federal anti-money laundering regime lacks strategic vision.

Recommendations for the provincial government

In a press conference following the release of the Final Report, Commissioner Cullen was particularly focused on his recommendation that the province of British Columbia establish an "AML Commissioner", an independent office of the Legislature specifically focussed on anti-money laundering. The Final Report sets out the following responsibilities for the AML Commissioner:

- Producing a publicly available annual report on money laundering risks, activity, and responses, as well as special reports on specific issues;
- Undertaking, directing, and supporting research on money laundering issues in order to develop expertise on money laundering issues, including emergingtrends and responses, informed by an understanding of the measures taken internationally;

- Issuing policy advice and recommendations to government, law enforcement, and regulatory bodies concerning money laundering issues;
- Monitoring, reviewing, auditing, and reporting on the performance of provincial agencies with an anti-money laundering mandate; and
- Leading working groups and cooperative efforts to address money laundering issues.

Other key recommendations from the Final Report for the province of British Columbia include the following:

- That the province introduce a statutory requirement that all government agencies, regulators, and law enforcement bodies with an anti-money laundering mandate designate an anti-money laundering liaison officer to be the primary point of contact for improved inter-agency collaboration and information sharing;
- That the province work with its federal, provincial, and territorial partners to ensure that a publicly accessible pan-Canadian corporate beneficial ownership registry be established by the end of 2023;
- That the province implement a universal record-keeping and reporting requirement for cash transactions of $10,000 or more;
- That the province implement a regulatory regime for virtual asset service providers;
- That all provincial and municipal law enforcement agencies in British Columbia implement a policy requiring all officers involved in the investigation of profit-oriented crime to consider money laundering and proceeds of crime issues at the outset of the investigation;
- That the province create a dedicated provincial money laundering intelligence and investigation unit to lead the law enforcement response to money laundering in British Columbia;
- That the AML Commissioner conduct a comprehensive review of the provincial money laundering intelligence and investigation unit every five years; and
- That the province transition the Civil Forfeiture Office from a self-funded agency to a government-funded agency, in which the revenue generated by the Civil Forfeiture Office flows to government.

At a press conference following the release of the Final Report, David Eby, Attorney General and Minister of Housing, expressed enthusiasm for all of the commissioner's recommendations, and noted the importance of the province taking on a stronger anti-money laundering governance role. However, he noted that he could not yet commit to firm timelines for the implementation of any of the commissioner's recommendations.

Recommendations related to vulnerable sectors

The Final Report also makes numerous recommendations in relation to specific economic sectors and professional groups, such as mortgage brokers, lawyers, accountants, and notaries. The commissioner pays particular attention to the gaming sector and the real estate sector, as these are two of the sectors which were identified as the most vulnerable to money laundering.

In the Final Report, the commissioner canvasses the history of money laundering in casinos in the province, and finds that from roughly 2008 to 2018, casinos in the Lower Mainland regularly accepted "extraordinarily large volumes of cash", much of which was

suspicious in nature and bore the hallmarks of proceeds of crime. Notable recommendations for the gaming sector include lowering the threshold for proof of source of funds for cash casino transactions and the implementation of 100 percent account-based, known play in British Columbia's casinos.

The Final Report also pays significant attention to the real estate sector. The commissioner notes that there are several practical benefits and attractions of real estate for money launderers, and sets out several recommendations based on these vulnerabilities. For example, the commissioner recommends that the province give the Financial Real Estate and Data Analytics Unit an express anti-money laundering mandate, so that it can prioritize data analysis and policy development that will further anti-money laundering objectives.

Key takeaways

The Cullen Commission Final Report identifies numerous vulnerabilities that have led to widespread money laundering in British Columbia. Minister Eby has expressed enthusiasm about implementing as many of these recommendations as possible in British Columbia. He has also expressed hope that the Final Report will lead to more effective resources being allocated to anti-money laundering efforts at the federal level.

The industry groups targeted by the Final Report should scrutinize the recommendations and begin considering the implementation of the commissioner's recommended policy changes. They should also consider preparing for potential legislative changes at the provincial level. Some of these industry groups include accountants, notaries, lawyers, money service businesses, financial institutions, banks and credit unions, the real estate sector (private lending, mortgage brokers, land ownership transparency, real estate licensing), and casinos. Companies working in the luxury goods sector or dealing with virtual assets should also prepare themselves for legislative changes.

For more information on the Commission of Inquiry into Money Laundering in British Columbia Final Report, please reach out to any of the key contacts below.

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