

COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA
OPENING STATEMENT OF THE LAW SOCIETY OF BRITISH COLUMBIA

PART 1 - OVERVIEW

1. The Law Society of British Columbia (the “**Law Society**”) has a long and active history of engagement and innovation in addressing money laundering in this province. The Law Society’s involvement has included rule-setting and enforcement, law firm audits, investigation and discipline, education of the legal profession, and collaboration with other agencies that also play a role in combatting money laundering. The Law Society works to minimize the risk that lawyers might, knowingly or unknowingly, have any involvement in money laundering.

2. The standard for lawyers is clear. Lawyers must never engage in activity that they know or ought to know is connected in any way with money laundering. If a lawyer knows or ought to know that money laundering is occurring, he or she must immediately cease acting. A rigorous set of rules and other anti-money laundering (“**AML**”) measures are in place setting out the high standard of conduct lawyers are expected to meet.

3. The Law Society is one of many organizations participating in the fight against money laundering. All bring to the table different powers and perspectives, and face different constraints. The Law Society can do things that governments cannot in order to advance AML objectives; it has investigative powers and remedies that extend beyond what is available to government. However, the Law Society also has protocols in place by which it can refer to the police those cases that require police investigation.

4. The Law Society sought out and welcomes the opportunity to participate in this inquiry because it has much to bring to the fight that is our common cause. It is one of the entities within society that has rolled up its sleeves in tackling this issue. It wants to ensure its efforts are as effective as possible, both independently and as part of a collective whole.

5. Today, in this opening, we take the opportunity to address several elements of what the Law Society is and does in the AML fight, and the constitutional and statutory context within which its work is undertaken. Our comments are organized as follows:

Part 2: a brief overview of the Law Society;

Part 3: AML as an aspect of the Law Society's mandate;

Part 4: the public interest in safeguarding clients' right to committed and confidential representation;

Part 5: addressing potential money laundering while respecting clients' rights;

Part 6: an overview of the Law Society's AML work;

Part 7: the opportunities created by this inquiry; and

Part 8: concluding remarks.

PART 2 – WHAT IS THE LAW SOCIETY?

6. The Law Society is a non-profit society that was established in this province about 135 years ago. Today it is a dynamic organization with approximately 225 staff, governed by a board of both elected lawyer benchers and appointed benchers who are members of the public.

7. All lawyers called to the bar of British Columbia are regulated by the Law Society. The oath that all lawyers must take to gain admission includes a pledge to conduct themselves in all things with integrity, to uphold the rule of law, and to uphold the rights and freedoms of all persons in accordance with the laws of Canada and the province of British Columbia.

8. In order to practise law in British Columbia, a lawyer must apply to the Law Society and meet its high standards. The Law Society acts as a gatekeeper and applicants must be of good character and repute to become practising lawyers.

9. The role of the Law Society is not to represent lawyers. Rather, its role is to uphold and protect the public interest in the administration of justice. To do that, it has substantial investigative and disciplinary powers, which are reviewed in more detail in Parts 5 and 6 of this opening.

10. The Law Society is both empowered by and accountable under a longstanding provincial statute, the *Legal Profession Act*.¹ All that the Law Society does must be seen through the lens of the object and duty set out in section 3 of that statute:

It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
(a) preserving and protecting the rights and freedoms of all persons,

¹ S.B.C. 1998, c. 9.

- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practice law in British Columbia in fulfilling their duties in the practice of law.

11. The Law Society operates independently of government and does not receive government funding. The Law Society must uphold and protect the public interest in the administration of justice even as governments and their priorities and policies change. Indeed, as returned to in Part 4, lawyers must always be in a position to protect their clients' interests in disputes with the state. The independence of the Bar is central to a free society governed by the rule of law.

PART 3 – AML AS AN ASPECT OF THE LAW SOCIETY'S MANDATE

12. Some of the matters and activities in which lawyers are involved – whether accepting retainers, being the intermediary for funds paid in settlement of litigation, or assisting clients navigate complex property dealings, business transactions, family and relationship matters, end-of-life concerns, and so on – include the transmission of money.

13. Any segment of society that deals with money is at risk of being used by dishonest people in an attempt to launder money. Money laundering is a kind of crime that touches on many different sectors of society and utilizes many pathways. The result is that – as the Law Society has long recognized – lawyers may be at risk of involvement in money laundering by virtue of the types of work they do: perhaps most obviously, creating corporations, charities and trusts; working on cross-border transactions; and helping to buy and sell real estate and other assets.

14. The Law Society's mandate includes working to prevent lawyers from involvement in *any* dishonesty, crime or fraud, either by clients or by anyone else. This includes money laundering.

15. Under Rule 3-109 of the detailed rules that are made by the benchers under the *Legal Profession Act* (the "**Law Society Rules**"):

If, in the course of obtaining the information and taking the steps required in Rule 3-100 [*Requirement to identify client*], 3-102 (2) [*Requirement to verify client identity*], 3-103 [*Requirement to identify directors, shareholders and owners*] or 3-110 [*Monitoring*], or at any other time while retained by a client, a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.

16. Further, the Code of Professional Conduct for British Columbia (the “**B.C. Code**”) provides: “A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.”²

17. A lawyer is not permitted to proceed in these circumstances. A lawyer’s obligation is to put an end to their involvement, not to watch matters unfold. As reviewed in Parts 5 and 6 of this opening, the Law Society has substantial investigative and remedial powers to enforce this prohibition.

PART 4 – THE PUBLIC INTEREST REQUIRES THAT DUTIES OWED TO CLIENTS BE PROTECTED DURING AML EFFORTS

18. As outlined in Parts 2 and 3, the Law Society’s object and duty are to uphold and protect the public interest in the administration of justice, which includes efforts to prevent lawyers from having any involvement, knowing or unknowing, in money laundering.

19. The administration of justice requires protecting clients’ rights to confidential dealings with committed legal counsel. The Supreme Court of Canada set out certain parameters in this regard in *Canada (Attorney General) v. Federation of Law Societies of Canada*,³ which applied in the AML context the broader constitutional principles governing the work that lawyers do for clients.

20. The Supreme Court of Canada “has repeatedly emphasized the important role that lawyers play in ensuring access to justice and upholding the rule of law”.⁴ The “rule of law” means that

² Rule 3.2-7.

³ *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 SCR 401 [*“Federation of Law Societies”*].

⁴ *British Columbia (Attorney General) v. Christie*, 2007 SCC 21, [2007] 1 SCR 873 [*“Christie”*] at paras. 20 and 22: The rule of law “embraces at least three principles”: (1) the first is that “the law is supreme over officials”; (2) the second “requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order”; and (3) the third “requires that the relationship between the state and the individual . . . be regulated by law”.

the laws of our province and country apply to everyone, including government officials, corporations and private citizens, no matter how wealthy or powerful; laws are to be administered and enforced fairly and equally; and citizens must be able to stand up against the government or other powerful interests without fear of reprisal or retribution. In this context, citizens need the ability to:

- (a) obtain legal advice. As Justice Major said in *R. v. McClure*, “[t]he law is a complex web of interests, relationships and rules. The integrity of the administration of justice depends upon the unique role of the solicitor who provides legal advice to clients within this complex system ... The important relationship between a client and his or her lawyer stretches beyond the parties and is integral to the workings of the legal system itself”;⁵ and
- (b) have the assistance of a lawyer whose duty is to represent their clients’ best interests and who remains independent of the state. The independence of lawyers from the state, which they need to be able to hold accountable, “is one of the hallmarks of a free society ... The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally.”⁶

21. In this regard, as the Supreme Court of Canada has said:

Lawyers are a vital conduit through which citizens access the courts, and the law. They help maintain the rule of law by working to ensure that unlawful private and unlawful state action in particular do not go unaddressed. The role that lawyers play in this regard is so important that the right to counsel in some situations has been given constitutional status.⁷

22. To exercise these functions, lawyers need to know from their clients the full story, and clients need to know that their lawyer will be committed to the client’s interests. Clients may not

⁵ 2001 SCC 14 at paras. 2, 31.

⁶ *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at 335-336; see also *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 887.

⁷ *Christie*, *supra* note 4 at para. 22.

like the advice they receive after providing their lawyer with all the details, but the client will be able to make choices knowing where they stand and that the lawyer has the client's interests first and foremost in mind.⁸

23. These concepts animated the Supreme Court of Canada's 2015 decision in the *Federation of Law Societies* case, which resulted in portions of the federal anti-money laundering legislation being read down to exclude its application to legal counsel and law firms. The Court found that the state could not impose duties on lawyers that interfered with the obligations they owe to clients. In this regard, two key duties that lawyers owe to clients are "essential to the due administration of justice":⁹

- (a) lawyers "must keep their clients' confidences".¹⁰ This duty against "misuse of the client's confidential information" is "reflected in solicitor-client privilege". This privilege, which is that of the client and open only to the client to waive, "is essential to the effective operation of the legal system".¹¹ As such, it attracts constitutional protection; and
- (b) lawyers have a "duty of commitment to the client's cause";¹² this is "is an enduring principle that is essential to the integrity of the administration of justice."¹³ In this regard, a "client must be able to place 'unrestricted and unbounded confidence' in his or her lawyer" which "is at the core of the solicitor-client relationship". As such, it is "a principle of fundamental justice that the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes."¹⁴ If clients and the broader public lack confidence in lawyers' commitment "to serving

⁸ Gordon Turriff, "The Law Society, the Rule of Law and Independence of Lawyers" (2009) 67 Advocate 477 at 490.

⁹ The citations below to paragraphs 1-117 of the *Federation of Law Societies* case, *supra* note 3, are to the reasons for judgment of Cromwell J., writing for the majority. The Chief Justice and Moldaver J. agreed with the reasons of Cromwell J. insofar as they related to s. 8 of the *Charter of Rights and Freedoms*, but disagreed with the majority's approach to s. 7. In the view of the Chief Justice and Moldaver J., breach of solicitor-client privilege (which is a principle of fundamental justice) was sufficient to establish a violation of s. 7 without also needing to include as a principle of fundamental justice the notion of commitment to clients' cause. All judges agreed on the result of the appeal.

¹⁰ *Federation of Law Societies*, *supra* note 3 at para. 1.

¹¹ *Ibid.* at para. 82.

¹² *Ibid.* at paras. 1, 83-84.

¹³ *Ibid.* at para. 96.

¹⁴ *Ibid.* at paras. 83-84.

their clients' legitimate interests free of other obligations that might interfere with that duty", "the lawyer's ability to do so may be compromised and the trust and confidence necessary for the solicitor-client relationship may be undermined."¹⁵

24. Because of these essential duties owed to clients, certain AML measures in federal legislation that could have the effect of turning lawyers into state agents against their clients were unconstitutional.¹⁶

...the legislation requires lawyers to gather and retain considerably more information than the profession thinks is needed for ethical and effective client representation. This, coupled with the inadequate protection of solicitor-client privilege, undermines the lawyer's ability to comply with his or her duty of commitment to the client's cause. The lawyer is required to create and preserve records which are not required for ethical and effective representation. The lawyer is required to do this in the knowledge that any solicitor-client confidences contained in these records are not adequately protected against searches and seizures authorized by the scheme. This may, in the lawyer's correctly formed opinion, be contrary to the client's legitimate interests and therefore these duties imposed by the scheme may directly conflict with the lawyer's duty of committed representation.

I also conclude that a reasonable and informed person, thinking the matter through, would perceive that these provisions in combination significantly undermine the capacity of lawyers to provide committed representation. The reasonable and well-informed client would see his or her lawyer being required by the state to collect and retain information that, in the view of the legal profession, is not required for effective and ethical representation and with respect to which there are inadequate protections for solicitor-client privilege. Clients would thus reasonably perceive that lawyers were, at least in part, acting on behalf of the state in collecting and retaining this information in circumstances in which privileged information might well be disclosed to the state without the client's consent. This would reduce confidence to an unacceptable degree in the lawyer's ability to provide committed representation.

25. As part of its public interest mandate, the Law Society must ensure that it defends from state incursion the client rights that the Court found to have been threatened in the *Federation of*

¹⁵ *Ibid.* at para. 96.

¹⁶ *Ibid.* at paras. 108-109.

Law Societies case.

26. At the same time, the Law Society must work firmly and vigorously to safeguard against a situation in which a lawyer crosses the line between fulfilling their obligations to the client, and becoming the facilitator of the client's illegal activities. The high standard that the Law Society requires lawyers to meet, as described in Parts 1 and 2 of this opening, draws that important line. As the majority said in the *Federation of Law Societies* case:¹⁷

Of course the duty of commitment to the client's cause must not be confused with being the client's dupe or accomplice. It does not countenance a lawyer's involvement in, or facilitation of, a client's illegal activities. Committed representation does not, for example, permit let alone require a lawyer to assert claims that he or she knows are unfounded or to present evidence that he or she knows to be false or to help the client to commit a crime. The duty is perfectly consistent with the lawyer taking appropriate steps with a view to ensuring that his or her services are not being used for improper ends.

PART 5 – ADDRESSING MONEY LAUNDERING WHILE RESPECTING CLIENTS' RIGHTS

27. Given the need to draw and enforce the line set out in paragraph 26 above, the Law Society has undertaken considerable AML efforts, both through application of its existing powers and, in many cases, through the development of new tools to address those matters that fall within its jurisdiction. Its broad AML efforts will be summarized in Part 6. For the moment, in Part 5, we deal with a more specific issue: the fact that the restrictions on state action, including legislation as in the *Federation of Law Societies* case, do not apply in the same way to the Law Society. The Law Society recognizes, in this regard, that its work must fill a role that government cannot.

28. Pursuant to the *Legal Profession Act* and the Law Society Rules, the Law Society may request information from lawyers; seek disclosure of client files, banking records and other materials; require persons – including non-lawyers – to answer questions under oath or affirmation; and conduct forensic audits of law practices. Lawyers must comply with Law Society requirements or face serious discipline, including suspension.

¹⁷ *Ibid.* at para. 93.

29. The information that comes to the Law Society through use of its investigative powers may be subject to solicitor-client privilege. However, the *Legal Profession Act* specifically provides that “[a] person who is required under [the *Legal Profession Act*] or the [Law Society] rules to provide [to the Law Society] information, files or records that are confidential or subject to a solicitor client privilege must do so, despite the confidentiality or privilege.”¹⁸

30. The provision of privileged information specifically to the Law Society does not run afoul of the principles set out in the *Federation of Law Societies* case because:

- (a) unlike many investigative agencies and tribunals, the Law Society is not, as discussed in Part 2 of this opening, government or an arm of the state. The Law Society can therefore investigate and regulate lawyer activities while at the same time protecting the interests of clients who seek out a lawyer’s advice, counsel, or assistance. Again, as a result, the Law Society recognizes that in the AML fight, its work fills a role that the work of government cannot;
- (b) specifically pursuant to the *Legal Profession Act*, as part of its public interest mandate the Law Society may audit and investigate the work of lawyers – including work subject to solicitor-client privilege – without any waiver of that privilege. Thus section 88 of the *Legal Profession Act*, which pertains to audits and investigations that the Law Society undertakes and disciplinary proceedings that may flow, provides:

(2) ...a person who, in the course of exercising powers or carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained.

(3) A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or rules.

¹⁸ *Legal Profession Act*, s. 88(1.1).

- (c) the Law Society has the qualifications and expertise to ensure that privilege and confidentiality are properly identified, and that client information is safeguarded, in compliance with these statutory provisions and constitutional imperatives.

31. The above provisions mean that while the Law Society may learn the client's privileged information in the course of its audits, investigations or proceedings, that information will remain protected from the government, parties adverse in interest to the client and the public at large. The confidentiality on which the client and ultimately the broader public depend to ensure the due administration of justice is thereby preserved in conjunction with the important AML work that the Law Society undertakes.¹⁹

32. The Law Society also has a variety of other means by which it seeks to prevent lawyers from having any involvement in money laundering, as will be discussed in the next Part of this opening.

PART 6 – THE LAW SOCIETY'S MULTI-FACETED AML WORK

33. We expect that two of the questions the Commission will address in the course of this inquiry are whether regulators like the Law Society have demonstrated commitment to AML efforts, and whether the measures they have taken have been appropriate.

34. For its part, the Law Society has been engaged with AML since at least the 1980s, with increasing AML involvement since the enactment of federal AML legislation in 2000. The Law Society's commitment to AML is found at all levels of the organization.

35. The work of the Law Society has included the formulation and refinement of rules intended to limit the potential for lawyers to have any involvement in money laundering; it has undertaken this work partly in conjunction with other law societies in Canada, but it also has taken pioneering measures in its own right. Of course, rules are not enough: they must be known, respected and enforced. The Law Society fulfils very considerable auditing, investigative and enforcement functions; it imposes disciplinary measures where appropriate; it provides significant education

¹⁹ For discussion of the constitutionality of the *Legal Profession Act* and the Law Society Rules which provide for practice reviews and other investigative powers see, for example, *Greene v. Law Society of British Columbia*, 2005 BCSC 390 and *Skogstad v. The Law Society of British Columbia*, 2007 BCCA 310.

and practice advice; and it collaborates with other entities including other regulators.

36. We expect the Law Society's work will be the subject of evidence and submissions during the course of this inquiry. That work has been both intensive and wide-ranging. For the purpose of this opening, we simply summarize the general categories of measures that the Law Society has undertaken.

A. Rule-Making and Reform

37. Clear rules are important in setting or confirming expectations for the legal profession, constraining certain activities that might increase the risk of lawyers knowingly or unknowingly having any involvement in money laundering, and providing both standards against which to measure conduct and a fair basis for imposing disciplinary measures.

38. As set out in Part 3 of this opening, the Law Society Rules include a duty to withdraw from representation if "a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct".²⁰ Further, again, the B.C. Code provides that lawyers must not engage "in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud."²¹

39. The Law Society has also implemented and improved upon more specific restrictions that are intended to minimize the likelihood of any lawyer involvement in money laundering, including:

- (a) the so-called "no cash rule", first put in place in 2004, which limits the amount of cash that a lawyer may accept from any one client and sets out how that cash is to be dealt with (Rule 3-59);
- (b) client identification and verification ("CIV") rules, including in relation to obtaining information about the client's source of money. These rules are in keeping with a "lawyer's obligation to know his or her client, understand the client's financial dealings in relation to the retainer with the client and manage any

²⁰ Law Society Rules, Rule 3-109.

²¹ B.C. Code, Rule 3.2-7.

risks arising from the professional business relationship with the client” (Part 3, Division 11 of the Law Society Rules). CIV rules were first introduced in 2008 and have steadily been enhanced; and

- (c) various rules regarding trust accounting and use, including a recent rule requiring that “[e]xcept as permitted by the [*Legal Profession Act*] or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm”, and requiring that “[a] lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate” (Rule 3-58.1).

40. The Law Society has also taken a leadership role among the law societies in Canada, working with the Federation of Law Societies of Canada to coordinate development and implementation of anti-money laundering rules throughout the country.

B. Comprehensive Trust Assurance Program

41. Many of the law firms located in the province have trust accounts. Funds by necessity flow through these accounts as part of client transactions and litigation matters, or as retainers. The Law Society’s Trust Assurance department reviews annual trust reports from every law firm in British Columbia; conducts periodic compliance audits of all law firms; and provides education, advice and resources to help ensure that lawyers handle trust funds appropriately.

42. Traditionally the Law Society conducted audits of each law firm at least once every six years, but more recently it increased the frequency of regular audits to every four years (from at least once every six years) for firms that mainly practise in higher risk areas such as real estate or wills and estates. Both historically and today, the Law Society conducts audits even more frequently where concerns arise. Flags for more frequent audits include failure to file a trust report; information on a trust report that indicates non-compliance with the trust accounting rules and procedures; referral from other departments of the Law Society; or inadequacies that were identified during a previous compliance audit. Further, the Law Society is developing new tools

for auditing complex files and larger firms, including the development of customized data analytics and artificial intelligence software.

43. Currently, five accountants engaged in trust account regulation at the Law Society have obtained certification from the Association of Certified Anti-Money Laundering Specialists (“ACAMS”), with 11 more auditors expected to achieve this certification by spring 2020. Three staff are certified fraud examiners (“CFE”). All trust assurance auditors and management have Chartered Professional Accountant (“CPA”) designations. The Law Society has increased the Trust Assurance department’s staffing budget by more than 30 per cent from 2015 to 2019.

C. Rigorous Investigations and Enforcement

44. The Law Society has a Professional Regulation group responsible for investigations, monitoring and enforcement, as well as for disciplinary proceedings.

45. Any person who believes that a lawyer or law firm has been guilty of professional misconduct, conduct unbecoming to the legal profession or a breach of the *Legal Profession Act* or Law Society Rules may make a complaint to the Law Society.²² Complaints come from many sources, including the public, other lawyers, institutions and the courts. The Law Society also opens files on its own initiative when conduct concerns come to its attention, including through media reports, court decisions, audits and mandatory self-reports from lawyers.

46. The Law Society has developed substantial in-house expertise to address alleged misconduct that may involve allegations of inappropriate financial transactions. Investigations are conducted by either experienced lawyers or a CPA/CFE or both, with assistance from forensic accountants, forensic accounting analysts, an investigator who is a former officer of the Royal Canadian Mounted Police (“RCMP”) and paralegals as needed. Several of the Law Society’s investigators and forensic accountants have achieved or are in the process of achieving designations as certified anti-money laundering specialists, and four forensic accounting staff as well as two investigations staff are CFEs.

47. The Law Society has increased the investigations, monitoring and enforcement group

²² *Legal Profession Act*, s. 26(1).

(which investigates serious complaints) by over 30 percent from 2015 to 2019.

48. The Law Society's investigative powers are significant and include the ability, as referenced in Part 5, to require a person to attend to answer questions on oath or affirmation and to produce records in their possession or control.²³ The Law Society does not shy away from using its strongest investigative powers.

49. Lawyers have a duty to cooperate with Law Society investigations. This includes providing written responses to questions, producing books and records, and attending interviews. A lawyer must produce information to the Law Society regardless of a potential claim to privilege by the client, given the protections outlined in Part 5 of this opening.²⁴

50. In addition, the Law Society may obtain an order from the chair of its Discipline Committee to conduct a forensic audit of a lawyer's practice where there are reasonable grounds to believe that a discipline violation may have occurred.²⁵ The order is normally obtained without notice to the lawyer, to ensure that evidence is not tampered with or destroyed. With the order, the Law Society's forensic service providers make a forensic image of the practice's computer hard drives and other electronic data used in the law practice, including cell phones.

51. The Law Society has the ability to act quickly when the public is at risk even during the investigation phase. If there are reasonable grounds to believe that extraordinary action is necessary to protect the public, the Law Society may bring interim proceedings seeking a suspension or the imposition of restrictions or conditions on the lawyer's practice.²⁶ The lawyer may be requested to sign an interim undertaking that imposes restrictions or conditions on their practice, which would be publicly disclosed on the Law Society's online Lawyer Directory.

52. Where an investigation establishes evidence of a discipline violation, a referral can be made to the Discipline Committee with a recommendation for a disciplinary response. If determined to be warranted after a hearing, disciplinary action may include a substantial fine, the imposition of conditions or limitations on the lawyers' practice, suspension from the practice of law, or

²³ *Legal Profession Act*, s. 26(4); Law Society Rules, Rule 3-5.

²⁴ See *Legal Profession Act*, ss. 87-88; Law Society Rules, Rules 3-5 and 3-6.

²⁵ Law Society Rules, Rule 4-55.

²⁶ Law Society Rules, Rule 3-10.

disbarment.²⁷ The Discipline Committee includes public representation in the form of an appointed bencher who is not a lawyer.

D. Dedicated Educational Efforts

53. The Law Society educates lawyers on their AML obligations, and is increasing the delivery of AML content in the Law Society's Professional Legal Training Course for those about to enter the profession.

54. Law Society staff provide significant contributions to national-level educational initiatives, including through the Federation of Law Societies of Canada's Anti-Money Laundering and Terrorist Financing Working Group. These efforts have led to various publications that provide further guidance and risk advisories for lawyers in fulfilling their professional responsibilities not to have any involvement in money laundering.

55. The Law Society's Practice Advice department provides education and resources relevant to AML. Further, the department's practice advisors (all of whom are lawyers) provide one-on-one advice. These practice advice services assist lawyers who may have some concern about a client interaction or some area of their practice, and include advising on compliance with CIV rules or identifying red flags for money laundering; there is also a trust compliance auditor "hotline" which assists with similar inquiries.

56. In addition, as noted above, the Law Society's Trust Assurance department provides education and resources for lawyers and law firm staff, including a Trust Accounting course, a Trust Accounting Handbook and various other materials.

57. Further, the Law Society publishes on its website Hearing Panel decisions where lawyers have been found to have committed professional misconduct or to have breached the Law Society Rules. Summaries of these decisions are included in the Benchers' Bulletins that are regularly delivered to lawyers, and linked to the involved lawyer's profile on the Law Society's Lawyer Directory. Discipline Advisories may also be prepared to further highlight conduct concerns.

²⁷ *Legal Profession Act*, ss. 38-39.

E. Collaboration with Government and Other Investigative Agencies

58. Money laundering affects every aspect of our society and its institutions, including financial institutions, law enforcement agencies and professional regulators. No single agency has the resources to effectively combat money laundering on its own. Further, different agencies have different powers, strengths and forms of expertise.

59. The Law Society supports initiatives to elevate inter-agency collaboration, cooperation and, where appropriate, information sharing and has been working towards increasing the level of activity on this front.

60. The Law Society has developed relationships with other organizations such as the B.C. Securities Commission, the U.S. Securities and Exchange Commission, the Society of Notaries Public and the Land Title Survey Authority, and has encouraged them to refer to the Law Society, for investigation, any concerns they may have or that may come to their attention about lawyer conduct. The Law Society has invited the RCMP to do the same.

61. The Law Society has also, together with other agencies, participated in discussions regarding AML and fraud-related trends, activities, typologies and red flags. Further, the Law Society is part of Project Athena, a public-private initiative dedicated to eradicating money laundering as well as a new federal working group established by the federal Minister of Finance.

62. Parts 3-5 of this opening addressed the constitutional and statutory framework that requires client rights to be protected in the AML process, and the means used in the context of Law Society investigations and disciplinary proceedings to do so. However, beyond that:

- (a) protocols have been developed among the Law Society, law enforcement, Crown counsel and the courts that deal with the search of a law office, which may allow law enforcement to access information while properly addressing solicitor-client privilege. The Law Society's collaboration efforts include making law enforcement agencies aware of the protocols established for them to seek access to information;

- (b) the Law Society Rules permit the Law Society to deliver information that may disclose a criminal offence to law enforcement agencies while properly addressing solicitor-client privilege;
- (c) during an investigation, the Law Society also encourages complainants and witnesses to directly report their concerns about criminality (including on the part of a lawyer) to law enforcement; and
- (d) in rare instances, where it is clear that communications between a lawyer and a client are, of themselves, criminal, or where those communications relate to obtaining advice with respect to facilitating a criminal enterprise, confidentiality protections either never applied or are lost.

F. Legislative Reform

63. The Law Society is mindful of opportunities that may exist to reform legislation in ways that would facilitate AML efforts by lawyers, by the Law Society itself as a regulator, and by other agencies involved in AML endeavours.

64. A recent example of potential reforms being identified and then acted on by the provincial government, was in relation to improving transparency in terms of beneficial ownership of property. The Law Society supported the provincial efforts to create a publicly accessible registry of beneficial ownership. The registry, to which certain regulators may have access that is more substantial than available even to the public, may also provide an important tool to the Law Society in its investigative efforts. The Law Society is also educating members about assisting their clients to fulfil those clients' new or pending statutory obligations under the *Land Owner Transparency Act* and legislation pertaining to business corporations.

G. Further Work and Evolution

65. The Law Society recognizes that money laundering is a serious and evolving problem. The Law Society is alert to identifying possibilities for further AML work to be undertaken, and for additional AML measures to be employed. Indeed, this is why its rules, staffing and efforts have evolved over the years in which it has been involved in AML. This is also why the Law Society

contributed to and closely reviewed various reports listed in the Commission's Terms of Reference.

66. In addition, the need to uphold and protect the public interest in the administration of justice requires that the Law Society and the legal profession that it regulates maintain public confidence. The Law Society is committed to its efforts to inform the public and other agencies about its work, both to ensure public confidence and to find ways to collaborate.

67. The Law Society welcomes the opportunities that this Commission of Inquiry presents to examine and assess the nature of the money laundering issues that face our province, to evaluate the AML work that has been done, and to build further bridges among the agencies that are deploying their resources and expertise to grapple with the problem. The Law Society addresses these opportunities in more detail in the next Part of this opening.

PART 7 – THE OPPORTUNITIES CREATED OR FURTHERED BY THIS INQUIRY

68. The Commission of Inquiry provides an important forum for the Commission, participants and witnesses to discuss and address money laundering and how it should be combatted. The Law Society welcomes the opportunity to work together on recommendations arising from the Commission's broad mandate as set out in the Terms of Reference.

69. The Law Society takes particular note of, and applauds, the fact that the provincial government instituted this inquiry. While consideration of the regulatory models and methods employed in other jurisdictions may be appropriate, constitutional and statutory imperatives highlight the importance of a "made-in-Canada", and indeed to an extent a "made-in-B.C.", approach to AML. This is a consideration that we expect to be a theme over the course of the inquiry; the Commission is well-placed to understand the local and legal context and from there to find solutions that actually work for all the parties who are involved in AML efforts in this province.

70. The Commission provides a particularly important forum for encouraging collaboration, rather than litigation. As the *Federation of Law Societies* case demonstrated, there is a risk that legislative measures imposed by a government may inadvertently produce consequences that are found to be unconstitutional. If legislative measures were imposed in future that again threatened

the public interest in the administration of justice, the Law Society and other participants might well need to return to the courts to ask their view of whether those measures are constitutional. Litigation consumes considerable time and resources, and detracts from the AML work that needs to be done. It is more productive to address the underlying issues in a collaborative manner.

71. The Law Society sought, and was granted, a broad grant of standing in this inquiry, in part because the work of its more than 12,500 practising lawyers and the Law Society itself in regulating them touches on many of the areas identified in the Commission's Terms of Reference. The Law Society sees its role in the Commission process as:

- (a) providing a clear and accurate understanding of the Law Society's place in AML efforts, and the constitutional and statutory framework that the Law Society, and lawyers, operate within in relation to AML; and
- (b) beyond its direct role as regulator, providing the Commission with information and resources that the Law Society has gathered and brought to bear on this issue over the years.

72. The Law Society also appreciates the fact that the inquiry process will raise awareness of the money laundering risks and challenges that British Columbia is facing. Increased awareness helps all regulators be more effective. In particular, it assists the Law Society by further raising the profile of this issue for lawyers, and raising the profile of the issue for members of the public who may provide information for Law Society investigations.

73. In exploring the specialized resources, skills and responsibilities of the various organizations engaged in AML work, we expect as well that the Commission's process will reveal further avenues for cooperation and information sharing, as well as gaps that may exist. As noted above, the Law Society continues to engage actively with other entities that share a common interest in AML work, and welcomes suggestions on how to build on those efforts.

PART 8 – CONCLUDING REMARKS

74. The Law Society acknowledges that money laundering is a serious issue. It also acknowledges the importance of its participation in AML efforts compatible with its regulatory

mandate and informed by the *Federation of Law Societies* case.

75. Successfully addressing money laundering will require a wide range of organizations to play a role commensurate with their mandates, their expertise, and the constitutional and statutory framework in which they operate. That framework includes recognition that the administration of justice obliges lawyers to maintain their clients' confidences and advance their clients' causes, especially when those causes may put their clients in conflict with the state, subject of course to lawyers' duty not to have any involvement in any dishonesty, crime or fraud.

76. The Law Society commits to continue working collaboratively with other organizations and the Commission and to supporting the public inquiry process in order to advance the AML fight.

Dated: 18/Feb/2020



Ludmila B. Herbst, Q.C. and
Catherine George

Counsel for the Law Society of British
Columbia