

In-House Counsel

Cullen Commission on money laundering in B.C.: High-risk luxury goods, part two

By **Shea Coulson** and **Carina Chiu**

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(July 27, 2022, 9:03 AM EDT) -- As stated in the first article in this two-part series, on June 15, 2022, the Cullen Commission of Inquiry into Money Laundering in British Columbia (the Commission) released its final report, making four main anti-money laundering (AML) recommendations respecting luxury goods.

1. Cash transactions

Recommendation 82 in the Report recommends the province implement a universal recordkeeping and reporting requirement for cash transactions of \$10,000 or more. The Report recommends that every business that accepts \$10,000 or more in cash in a single transaction or a series of related transactions should be required to:



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- verify a customer's identification and record their name, address and date of birth;
- inquire into and record the source of funds used to make the purchase;
- determine whether the purchase is being made on behalf of a third party and, if so, inquire into and record the identity of that third party; and
- report the transaction — including the total amount of cash accepted; the item or service purchased; the source of funds reported by the customer; whether the purchase was made on behalf of a third party and, if so, the identity of that third party; and the name, address and date of birth of the customer — to the province.

These reports would go to a central authority rather than relying on existing regulatory bodies such as the Vehicle Sales Authority. The Report further recommends that the province ensure that a newly established provincial AML commissioner has access to these reports. The universal recordkeeping and reporting requirement should apply in all circumstances, with some narrow exceptions:

- one-time transactions between private individuals;
- financial institutions and financial services businesses;
- lawyers; and
- other situations where it is determined that the requirement would be unduly onerous, generate reports of little value, or is otherwise inappropriate.

Given the complaints by both auto dealers and manufacturers, and media attention on cash transactions, it is likely the province will implement some form of regulation to govern these transactions. If implemented, these recommendations will require compliance divisions for luxury goods vendors, including automotive sales brokers and dealers, to implement reliable and accurate compliance programs that are easy to implement at the customer-facing sales level.

It is not yet clear to what extent a business will be required to “inquire” into the source of funds to make the purchase or whether the purchase is being made on behalf of a third party. This will be a challenging aspect of the regulations to implement if it is not simplified with form requirements that do not require businesses to conduct their own investigations into their customers, which would be challenging and impractical. It may be that this sort of regulation will simply deter all cash transactions over \$10,000 or more as businesses seek to minimize compliance costs and exposure to regulatory risk. These are decisions that can only be made once it is clear if and how the province will respond to the Commission recommendations.

Given the structure of automotive sales in Canada, automotive manufacturers will also want to carefully consider their agreements with dealers to ensure dealers agree to maintain sufficient compliance to protect the manufacturer from regulatory liability. Moreover, it may be worth considering the development of national compliance programs in the event British Columbia implements a new regime that one or more other provinces replicates.

2. Mechanism to address new and evolving risks

One of the more contentious recommendations by the commissioner is for the province to establish a permanent provincial anti-money laundering commissioner. The central role of this commissioner is to monitor money-laundering activities in the province as a whole and ensure broader oversight to address new and evolving risks that can then be disseminated through the various regulatory mechanisms designed to combat money laundering.

The new AML commissioner would be empowered to collect information about luxury goods on an ongoing basis by consulting with businesses, industry associates and regulators; studying activity in specific markets or regions; and monitoring international money laundering trends. This could also include a power to compel information from private entities for the purpose of studying money laundering risks. The power to compel information would be a significant new power that could have a material impact on business operations and luxury goods businesses should stay aware of developments in relation to this recommendation.

3. Regulating the export of vehicles

Recommendation 84 in the Report recommends the province regulate the purchase and sale of vehicles for the purpose of export from British Columbia. The Commission heard evidence that luxury vehicles were being exported and resold in foreign jurisdictions, often on behalf of third-party buyers who used nominees to purchase and export the vehicles. The Commission expressed concern that this practice could facilitate money laundering.

The Commission also recommends that any export regulation involve a registration requirement for those who export more than an identified minimum number of vehicles annually and a requirement that the export of all vehicles by registered exporters be reported prior to export.

Should the province implement this recommendation, it will have to craft it to comply with its constitutional jurisdiction, since it is typically the federal government that regulates exports, and it is the federal government that regulates export terminals such as ports. If the province implements new regulations based on its jurisdiction over property and civil rights, that regulation would apply only within the province, and it may be difficult for this regime to capture vehicle purchases and exports that cross provincial borders in some respect.

Moreover, it is unclear how this type of regime would dovetail with regulations of automotive dealers and manufacturers. Manufacturers already have the private law rights to impose contractual terms respecting export of vehicles. Any new provincial regime should ideally be drafted so that it would be easy for manufacturers to integrate into their own sales contracts and compliance requirements.

4. Provincial sales tax on vehicles

Recommendation 85 deals with the particularly egregious practice of applying for PST refunds on vehicles purchased for export. The Commission recommended that the information required for the rebates be made available to regulatory authorities, including the Vehicle Sales Authority. It is not clear what the Commission proposed ought to be done with that information, but it is reasonable to

presume it is to permit some sort of audit of PST rebates to ensure they are not being improperly applied for.

This is the second of a two-part series. Read the first article: Cullen Commission on money laundering in B.C.: High-risk luxury goods, part one.

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