

In-House Counsel**Cullen Commission report on money laundering in B.C.: High-risk luxury goods, part one**By **Shea Coulson and Carina Chiu**

Shea Coulson

(July 25, 2022, 2:09 PM EDT) -- On June 15, 2022, the *Cullen Commission of Inquiry into Money Laundering in British Columbia* (the Commission) released its final report and recommendations (the Report). The Report makes four recommendations respecting luxury goods. This series of two articles will review each of the recommendations and discuss their implications for those in the luxury goods sector, including the automotive sector.

Defining 'luxury goods'

Austin Cullen, the commissioner, proposed that the category of "luxury goods" should be "broad and open," "defined by the nature of the money laundering risk presented by the markets and products in question." The luxury goods market should not be narrowly understood to encompass only those goods that are commonly thought of as "luxury goods," such as jewelry and fine art. Rather, a broad definition of luxury goods is necessary to ensure robust anti-money laundering (AML) efforts.



Carina Chiu

Specifically, the commissioner found that the risk posed by luxury goods comes from four of their specific features: their high value, their capacity to retain value, their transferability and their portability. Any markets that have these four specific features should be understood to be at risk for money laundering.

Money laundering in luxury goods

The commissioner determined in relation to luxury goods that "it is evident from the evidence before me that this sector is at a high risk of being exploited for money laundering or spending of criminal proceeds and that, to some degree, this risk has been realized in the form of actual money laundering activity." The commissioner recommended that the province take "immediate action to drastically reduce" the risk of money laundering in the luxury goods sector. This recommendation includes money laundering through the purchase, sale and export of luxury automobiles.

The commissioner was particularly concerned with diffusion in the luxury goods sector and noted that in 2021 there were 1,535 separate licensed motor vehicle dealers in British Columbia. This diffusion makes it difficult to combat money laundering because it creates a multitude of distinct locations that money laundering could occur at.

The commissioner noted that "even heavily regulated markets in this sector — particularly the motor vehicle industry — suffer from a dearth of anti-money laundering regulation." The *Motor Dealer Act*, RSBC 1996, c. 316 does not address money laundering despite providing a comprehensive scheme for regulating motor vehicle dealerships and salespeople in the province. At the same time, certain luxury goods markets, such as jewelers and art dealers, are largely unregulated industries.

The commissioner also found that voluntary industry action cannot be relied on as a complete

solution to the risk of money laundering and that government engagement is necessary.

Key lessons

The commissioner described three key lessons regarding the regulation and organization of luxury goods markets.

1. Access to information. Traditional luxury goods markets are infused with a culture of discreetness. Additionally, the diffusion of the sector makes it difficult to collect information. Further, there is an absence of regulation which means there is an absence of records. The first step to tackling AML necessarily involves having access to information to understand what is happening in the markets.
2. Need for focused regulation. This means creating strong regulatory frameworks where regulators have clear mandates — and the necessary authority and resources to carry out their mandates.
3. Role of voluntary action. Voluntary industry action should be encouraged, as it allows the industry to tailor AML efforts to their specific luxury goods markets. However, voluntary industry measures must exist in conjunction with (and not instead of) direct government action.

This is the first of a two-part series. Part two will cover the four recommendations the report made in relation to luxury goods.

Shea Coulson is a commercial litigator based in the Vancouver office of McMillan LLP with a broad practice and significant experience in a wide range of matters, including partnership and shareholder disputes, joint venture disputes, disputed buyouts, collapsing or collapsed transactions, disputes relating to business valuations, broker fees and professional services, commercial supply agreements and real estate. Carina Chiu is a litigation and dispute resolution associate based in the Vancouver office of McMillan LLP. Her practice focuses on complex, corporate commercial disputes. She has substantial experience with various types of conflicts, including oppression claims, valuation disputes under buyout provisions in shareholder agreements, partnership disputes, commercial landlord and tenant disputes, licensing matters, breach of contract claims, breach of confidence claims and fraud/civil conspiracy actions.

Photo credit / ARTYuSTUDIO ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437- 828-6772.

© 2022, The Lawyer's Daily. All rights reserved.