

Commission of Inquiry into Money Laundering in British Columbia

APPLICATION FOR PARTICIPATION

FILED BY THE CANADIAN BAR ASSOCIATION, BRITISH COLUMBIA BRANCH

Name and
Address of Counsel: Kenneth Armstrong, President
Canadian Bar Association, BC Branch
10th Floor, 845 Cambie Street
Vancouver BC V6B 5T3
Tel: 604-648-7512
president@cbabc.org

Nature and Extent of Participation Sought

1. The Canadian Bar Association, British Columbia Branch ("CBABC") applies to the Commission for an order granting CBABC participation on a limited scope as follows:
 - a. to receive electronic notice of the Commission's orders and directives including hearing and witness schedules;
 - b. the right and privilege to provide written submissions; and
 - c. such further participation privileges as the Commission may deem appropriate.

Considerations for Participation

2. The CBABC asserts that, after addressing the considerations for participation in the *Public Inquiry Act*, s. 11(4):
 - a. whether, and to what extent, the person's interests may be affected by the findings of the Commission;
 - b. Whether the person's participation would further the conduct of the inquiry; and
 - c. Whether the person's participation would contribute to the fairness of the inquiry,

It will satisfy the requirements for participation in the Commission on a limited scope.

Nature of the Applicant's Interest and Effect of Findings on the Applicant

3. The CBABC is a branch of the Canadian Bar Association, the principal national member organization representing the interests of over 36,000 members of the legal profession (lawyers, law students, academics and judges) in Canada with a particular mandate to improve and promote the administration of justice in Canada. It has been in existence since 1896 and was formally incorporated by a Special Act of Parliament in 1921. Branches of the CBA operate in every province and territory in Canada.
4. Part of the CBA's mandate includes formulating positions on behalf of the legal profession and advocating those positions to government, regulatory bodies, and the public. The Mission Statement of the CBA includes the following objectives:
 - a. to improve the law;
 - b. to improve the administration of justice;
 - c. to improve and promote access to justice;
 - d. to promote equality in the legal profession and in the justice system;
 - e. to improve and promote the knowledge, skills, ethical standards and well-being of members of the legal profession;
 - f. to represent the legal profession; and
 - g. to promote the interests of the members of the Canadian Bar Association.
5. The CBABC, representing 7,200 members, advances this mission in British Columbia through a variety of means including:
 - a. providing a broad array of services including professional development, mentorship and networking opportunities;
 - b. formulating positions and making submissions to government and regulatory bodies reflecting the experiences and opinions of its members in law and legislative reform and on professional issues including the administration of justice;
 - c. contributing to public discourse of legal issues and justice policies affecting citizens;

- d. consulting with courts, government and regulators on proposed changes affecting law, administration of justice, and the regulation of the profession;
 - e. monitoring cases before the courts which engage professional issues such as the independence of the profession, the independence of the judiciary, conflict of interest, solicitor-client privilege, and the duty of confidentiality, and recommending applications for intervention by the CBA or the CBABC.
6. The CBABC has 76 sections of member groups organized by substantive areas of law and common interest. These reflect 46 distinct areas of law and interest including Criminal Justice, Business Law, Commercial & Real Estate, Banking Law and Taxation. Through this network as well as the policy committees and Executive of the CBABC, members of the legal profession formulate submissions and positions of the CBABC.
7. The CBABC differs from the regulator of the profession, the Law Society of British Columbia, whose principal mandate is protecting the public interest through efficient and effective self-regulation of the legal profession. The function of the CBABC is to speak for and represent the interests of the legal profession itself.
8. The Commission's mandate as outlined in the Terms of Reference is broad. It has the responsibility to make recommendations to address the conditions which have enabled money laundering to flourish after making findings of fact with respect to:
- a. the extent, growth, evolution and methods of money laundering in BC;
 - b. the actions or omissions of responsible regulatory agencies and individuals, and whether those have contributed to money laundering in the province or amount to corruption;
 - c. the scope and effectiveness of the anti-money laundering powers, duties and functions of these regulatory agencies and individuals; and
 - d. the barriers to effective law enforcement in relation to money laundering.
9. The findings of fact and recommendations will, to the extent that they affect the work of lawyers or the lawyer/client relationship, have a direct impact on lawyers who are the front line of the client relationship and service. Lawyers carry the responsibility of preserving the foundational principles of the lawyer-client relationship including the independence of the legal profession, solicitor-client privilege and the duty of confidentiality.

10. 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. As such, the lawyer-client relationship is unlike any other professional relationship — the lawyer's duty of commitment to the client's cause is essential to maintaining confidence in the integrity of the administration of justice. Canada's courts have long recognized that an independent Bar is fundamental to the rule of law and the fair and proper administration of justice. The importance of an independent Bar and respect for solicitor-client privilege are at the foundation of Canada's justice system.
11. Like all citizens, lawyers are subject to criminal prosecution when they violate the law, including the prohibition against money laundering. Unlike other citizens, lawyers are also subject to regulation by law societies, with rules that include robust measures to address the risks associated with money laundering.
12. The legal profession therefore has a genuine and substantial interest in the subject matter of this Commission.
13. In the CBABC's view, it is therefore important that the Commission receive submissions from the legal profession about these issues. Those will reflect the perspective of the lawyers who assist clients with legal matters in a wide range of areas from real property, business/commercial development and incorporations.

CBABC Participation Furthers the Conduct of the Inquiry

14. The CBA has a long history of action to improve and promote the law, the administration of justice and access to justice. This includes promoting the right of all persons in Canada to contact, retain and instruct counsel, and preserving the independence of the judiciary and legal profession.
15. The CBA has been actively involved in consultation, review and discussion with the federal government and with the law societies about issues relating to anti-money laundering legislation since 1998 and continuing through to today.
16. Throughout this process of review and consultation, the CBA has consistently supported the goal of combatting money laundering, but stressed that efforts must occur in the context of protecting fundamental individual rights and freedoms of all British Columbians and in compliance with Canadian constitutional requirements.
17. In addition to participating in consultations about the development of anti-money laundering legislation, the CBA was granted intervener status in two constitutional challenges to federal money laundering legislation from 2001 - 2004 and from 2011- 2015, which originated in British Columbia and are reported as follows:

Federation of Law Societies of Canada v. AG Canada, 2001 BCSC 1593
Federation of Law Societies of Canada v. AG Canada, 2002 BCCA 49
Federation of Law Societies of Canada v. AG Canada, 2011 BCSC 1270
Federation of Law Societies v. Canada (Attorney General), 2013 BCCA 147
Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC
7

18. British Columbia lawyers have significantly contributed to these legislative consultations and legal proceedings.
19. The CBABC can offer the Commission submissions, from the perspective of practicing lawyers, which are informed by over two decades of consultation, analysis and advocacy, all of which can assist the Commission with its findings and recommendations.

Contributing to the Fairness of the Inquiry

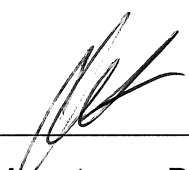
20. In its Introductory Statement, the Commission outlined four “touchstones” of public inquiries, summarized as:
 - a. time-effectiveness,
 - b. fairness,
 - c. thoroughness, and
 - d. transparency.
21. The CBABC supports these touchstones and will uphold them throughout its participation in the Commission.
22. Granting standing of participation to the CBABC will be an example of fairness of the Commission’s process and outcome by ensuring that those affected by money laundering, in this case, lawyers, will have their professional association providing submissions on their behalf.

Conclusion

23. The CBABC has a demonstrated interest in improving and promoting the administration of justice in British Columbia. It will bring a perspective to the inquiry that is distinct from that of the other parties, but one that is within the scope of the Commission. The CBABC respectfully submits that its submissions will be useful to the Commission and that it should be granted standing to participate.

Respectfully submitted on September 6, 2019,

CANADIAN BAR ASSOCIATION, BRITISH COLUMBIA BRANCH



Kenneth Armstrong, President and Counsel