Prosecution Service

Media Statement

March 1, 2023 23-06

BC Prosecution Service announces Special Prosecutor decision not to approve charges after directive by Attorney General

Victoria – In early 2021, the Joint Illegal Gaming Investigations Team (JIGIT) of the Combined Forces Special Enforcement Unit of British Columbia (CFSEU-BC) concluded a significant multi-year investigation into alleged money laundering and other offences. The investigation was carried out under the file name "E-Nationalize". At the conclusion of the investigation, CFSEU-BC submitted a Report to Crown Counsel (RCC) to the BC Prosecution Service (BCPS) recommending a variety of charges under the *Criminal Code*.

Following a lengthy review of the RCC, the BCPS concluded that the charge assessment standard had not been met and no charges would be approved. The Attorney General was briefed on the decision by the Assistant Deputy Attorney General (ADAG) of the BC Prosecution Service (BCPS).

On November 26, 2021, the Attorney General issued a directive to the ADAG to retain the services of an experienced criminal lawyer to conduct an independent charge assessment in respect of the E-Nationalize investigation. The directive was issued pursuant to section 5 of the *Crown Counsel Act*, which gives the Attorney General the authority to issue a directive respecting the approval or conduct of specific prosecutions. A copy of the directive is attached to this statement.

On March 11, 2022, the ADAG appointed Christopher Considine KC as a Special Prosecutor. Mr. Considine is a senior Victoria lawyer in private practice. He was given a mandate to:

- conduct an independent charge assessment in respect of the E-Nationalize investigation; and,
- apply the established charge assessment policy, including, if necessary, the exceptional evidentiary test of a "reasonable prospect of conviction", and make the charging decision he deems appropriate in the exercise of his independent discretion.

The Charge Assessment Guidelines that are applied by the BCPS and Special Prosecutors in reviewing all Reports to Crown Counsel are established in BCPS policy and are available at:

www.gov.bc.ca/charge-assessment-guidelines

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Pursuant to section 8 of the *Crown Counsel Act*, the ADAG directed that publication of the Attorney General's directive be delayed in the interests of the administration of justice pending the completion of the independent charge assessment process.

A clear statement setting out the Special Prosecutor's reasons for his conclusion not to approve any charges arising from the E-Nationalize investigation is attached to this statement.

The BCPS policy on Special Prosecutors and a related Information Sheet can be found at:

Special Prosecutors (SPE 1)

Role of Special Prosecutors

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To learn more about BC's criminal justice system, visit the British Columbia Prosecution Service website at: gov.bc.ca/prosecutionservice or follow @bcprosecution on Twitter.

BRITISH
COLUMBIA

November 26, 2021

Mr. Peter Juk QC
Assistant Deputy Attorney General
Criminal Justice Branch
Ministry of Attorney General
PO Box 9276 Stn Prov Govt
Victoria, BC
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Dear Mr. Juk:

You have advised me as follows:

a) under the file name of "E-Nationalize", the Joint Illegal Gaming Investigations Team (JIGIT) of the Combined Forces Special Enforcement Unit of British Columbia (CFSEU-BC) conducted a significant multi-year investigation into alleged money laundering and other offences;

b) from 2016 to 2021, members of CFSEU-BC consulted with Crown Counsel about the investigation;

c) at the conclusion of the investigation, CFSEU-BC submitted a Report to Crown Counsel (RCC) recommending a variety of charges against Paul King Jin, including:

   i. participation in the activities of a criminal organization contrary to s. 467.11(1) of the *Criminal Code of Canada*;
   ii. possession of currency and bank drafts obtained by the commission of an indictable offence, contrary to s. 354(1)(a) of the *Criminal Code of Canada*; and
   iii. laundering currency and bank drafts, knowing or believing that all or part of that property was obtained by the commission of a designated offence, contrary to s. 462.31(1)(a) of the *Criminal Code of Canada*;

d) after reviewing and considering the RCC, Crown Counsel concluded that no charges would be approved because the prevailing charge assessment standard was not met, specifically:

   i. although there was a possible path to prosecuting Mr. Jin for money laundering and other offences, there was not a substantial likelihood of conviction; and

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ii. even if there was a substantial likelihood of conviction, the public interest did not require a prosecution, considering the anticipated length and expense of a potential prosecution as compared to overall societal benefit to be gained from it;

e) CFSEU-BC appealed the charge assessment decision to you; and,

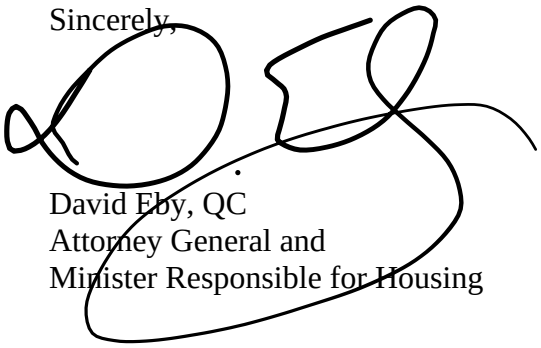
f) giving reasonable deference to the Crown Counsel who conducted the charge assessment, you concluded that you should not interfere with or overturn the decision not to approve charges.

I have received a briefing from you about this matter and appreciate the time and effort that have gone into the charge assessment process.

Money laundering poses a threat to financial integrity in British Columbia and nationally. If there is a viable path to prosecuting Mr. Jin for money laundering or related offences and no prosecution is undertaken, public confidence in the justice system could be damaged. If there is a viable path to a prosecution, it is my opinion that there is a strong public interest in conducting a prosecution. Therefore, pursuant to Section 5 of the *Crown Counsel Act*, this letter is my direction to you to retain the services of an experienced criminal lawyer to conduct an independent charge assessment in respect of the E-Nationalize investigation. Applying the established charge assessment policy, including, if necessary, the exceptional evidentiary test of a "reasonable prospect of conviction", if the lawyer concludes there is a viable path to prosecuting Mr. Jin or any other individual under section 467.11(1), section 354(1)(a), section 462.31(1)(a), or any other provision of the *Criminal Code of Canada*, that lawyer should initiate and conduct criminal proceedings under those sections.

As you may designate the lawyer to be either Crown Counsel pursuant to section 4(1) of the *Crown Counsel Act* or as Special Prosecutor pursuant to section 7 of the *Crown Counsel Act*, I leave that designation to you.

Sincerely,



David Eby, QC
Attorney General and
Minister Responsible for Housing

Clear Statement

In accordance with Crown policy in cases such as this, I am issuing a "Clear Statement" respecting my work as Special Prosecutor in this matter.

On March 11, 2022, I was appointed special prosecutor for the purpose of conducting an independent charge assessment of the E-Nationalize investigation. The appointment was made pursuant to section 7 of the *Crown Counsel Act*.

Mandate

As a Special Prosecutor, I was authorized to:

- conduct an independent charge assessment in respect of the E-Nationalize investigation;
- apply the established charge assessment policy, including, if necessary, the exceptional evidentiary test of a "reasonable prospect of conviction" and make the charging decision I deemed appropriate in the exercise of my independent discretion. My decision should be made in accordance with BC Prosecution Service policies;
- provide a written report to the Assistant Deputy Attorney General (ADAG), with the results of my assessment and the reasons for my decision;
- if I conclude there is a viable path to prosecuting Mr. X or any other individual under section 467.11(1), section 354(1)(a), section 462.31(1)(a), or any other provision of the *Criminal Code of Canada,* initiate and conduct criminal proceedings under those sections;
- offer such legal advice to the investigative agency as may be necessary in the circumstances; and,
- conduct any subsequent appeal(s) on behalf of the Crown.

This Clear Statement summarizes my findings and conclusions.

The Review Process

I have conducted a thorough review of the E-Nationalize investigation. That review included consideration of substantial material provided by the Joint Illegal Gaming Investigations Team (JIGIT)/Combined Forces Special Enforcement Unit of British Columbia (CFSEU) and Crown counsel. I also considered the Cullen Commission Report on money laundering and anti-money laundering (AML) legislation in the United States and various Commonwealth jurisdictions.

I met with senior Crown counsel involved in the initial charge approval decision to better understand their concerns. I also met regularly with senior officers in CFSEU to explore various

aspects of the investigation and potential solutions to the concerns raised by Crown counsel. I met with an internationally-recognized money laundering expert. I also met with other members of the E-Nationalize investigative team as issues arose requiring the input of investigators with specialized knowledge.

History of the Investigation

In 2016, JIGIT was formed within CFSEU. One of JIGIT's key strategic objectives was the prevention of criminal attempts to legalize the proceeds of crime through gaming facilities. In pursuit of this objective, between 2016 and 2018, JIGIT undertook a significant investigation into the suspected illegal gaming, loan sharking, and money laundering activities of one individual who is referred to in this statement as X. This investigation was assigned project name "E-Nationalize."

The investigation was lengthy and complex. It included both covert surveillance and elements of an undercover operation. The tactical phase of the investigation concluded in June 2017, culminating in the execution of multiple search warrants and the arrest of several individuals who were released without charges. From June 2017 to September 2018, the investigation focused on translating and analyzing the fruits of the investigation.

The evidence demonstrated that X's business model generally worked as follows. X would instruct his clients, primarily wealthy businessmen and women, to complete a money transfer from accounts held outside of Canada to nominee accounts in China associated with one of two individuals, referred to hereafter as A and B. The client would provide X with confirmation that the funds had been transferred, usually in the form of a screen capture, which X would forward to A or B. A or B would arrange for one of their couriers to deliver a near equivalent amount of Canadian cash to X's courier. The cash handoffs between couriers typically took place in discreet locations.

Once the cash was in the hands of X's courier, it would either be taken to X's stash house or delivered to X's loan facilitators. X's loan facilitators would sometimes deliver cash directly to the client. In other instances, X would first convert the cash into a bank draft or casino chips to assist the client. X turned a profit by the exchange rates he charged A and B and by the interest rates he charged his gambling clients.

The investigation revealed that between February 4 and May 19, 2017, X received approx. $5.4 million in bulk cash from A and B; provided over $6 million in cash, bank drafts or casino chips to clients; and arranged for the deposit of approx. $7.2 million into the Chinese bank accounts associated to A and B.

Investigators identified ten events between the months of February and May 2017 for which the evidence of X's alleged money laundering was most robust. For these ten transactions, the investigators were able to trace the chain of communications and transfer of funds, demonstrating that the cash obtained by X was the end result of an offshore transfer of funds.

The total amount of cash moved by X in these 10 transactions was approximately $2.4 million.

Proposed Charges

CFSEU proposed charges on the following eight counts:

Count 1: Participate in criminal organization: *Criminal Code*, s. 467.11(1);

Count 2: Instruct person to commit robbery with firearm for benefit of criminal organization: *Criminal Code*, ss. 344(1)(a.1) and 467.13(1);

Count 3: Instruct person to commit intimidation and mischief for benefit of criminal organization: *Criminal Code*, ss. 423(1), 430(4) and 467.13(1);

Count 4: Counsel person to commit robbery with firearm: *Criminal Code*, ss. 344(1)(a.1) and 464(a);

Count 5: Counsel person to commit intimidation and mischief: *Criminal Code*, ss. 423(1), 430(4) and 464(a);

Count 6: Fail to register money services business (MSB): *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), ss. 11.1 and 74(1);

Count 7: Possession of property, to wit: currency and bank drafts, obtained by the commission of an indictable offence, to wit: failing to register an MSB: *Criminal Code*, s. 354(1)(a);

Count 8: Laundering currency and bank drafts, knowing or believing that all or part of that property was obtained by the commission of a designated offence, to wit: failing to register an MSB: Criminal Code, s. 462.31(1)(a).

In the context of this investigation, the most significant of the proposed offences are counts 7 and 8, alleging possession of the proceeds of crime and money laundering. This memorandum will focus primarily on the viability of a prosecution of those offences. My opinion with respect to the balance of the proposed counts will be addressed more briefly toward the end of this memorandum.

Potential Obstacles to Prosecution

Disclosure Issues

Several of the concerns identified by Crown counsel relate to the size and complexity of the investigation and the corresponding disclosure obligations that would face a prosecution team.

The challenging aspects of the disclosure include the following:

- The investigation produced 41,877 documents.
- Almost 90 smart phones were seized. The contents of 45 of those devices were extracted

resulting in a dataset containing 77,643 logged calls, 15,117 unique chats, over 1.6 million chat messages, 4,458 emails, 720 text message contacts, and 22,048 individual text messages.

- Over 2 million communications were intercepted, the majority of which were in Mandarin. 537,039 of these communications were intercepted between February and May 2017 (the time frame for the proposed indictment).

If charges were laid as a result of the E-Nationalize investigation, the Crown would have an obligation to disclose to defence all information in its possession of potential relevance to the defence. The extent to which the above-described information would meet that relevance threshold would likely be the subject of considerable dispute.

I am given to understand that for both the seized electronic communications (e.g., text messages, WeChat messages, etc.) and the intercepted communications, the vast majority of these communications are in Mandarin. Only a fraction of these communications have been translated into English.

While it is possible that disclosure and translation obligations could become problematic for the Crown from a resource perspective, I am not persuaded these challenges alone are sufficient to justify a decision not to approve charges. I believe these challenges could be managed and that defence applications for unduly expansive disclosure and/or translation could be successfully resisted.

E-Pirate Concerns

Prior to the E-Nationalize investigation, a somewhat similar investigation known as E-Pirate was undertaken by the Federal Serious Organized Crime Unit of the RCMP. It began on February 15, 2015, and culminated in charges of money laundering being laid by the Public Prosecution Service of Canada. These charges were eventually stayed in November 2018.

I have considered whether the issue which led to the termination of proceedings in the E-Pirate prosecution could rear its head again in an E-Nationalize prosecution.

I have had the opportunity to discuss this issue with the investigators. While there is some basis for concern, I do not foresee that a prosecution of offences disclosed by the E-Nationalize investigation would necessarily give rise to the same concern that caused the E-Pirate prosecution to fail.

While any prosecution can run into unexpected challenges, on the basis of the information I have been provided, I do not consider this issue to be a fatal impediment to successful prosecution at this time.

The Need to Prove a Predicate Offence

Both of the principal charges under consideration require the Crown to prove beyond a reasonable doubt the existence of a "predicate offence" that has the effect of tainting the property in question as illicit in origin.

The E-Nationalize investigation produced ample evidence of X possessing, transferring, and sending cash to his clients. Potential evidence of X's alleged intent to "conceal or convert" that cash is available as well, given the clandestine nature of his operation and the exchanging of cash for bank drafts or casino chips. See: *R. v. Tejani* (1999), 138 C.C.C. (3d) 366 (Ont. C.A.).

The critical question is whether the Crown would be able to demonstrate that this cash was itself the proceeds of crime. A judge or jury would need to be satisfied beyond reasonable doubt that the cash X was moving was "obtained by or derived directly or indirectly from" the commission of an indictable offence, in the case of s. 354(1), and "was obtained or derived directly or indirectly as a result of" the commission of a designated offence for the purposes of s. 462.31.

The proposed predicate offence for both charges is the operation of an unlicensed Money Service Business (MSB), contrary to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). The Crown's theory would be that X was operating an MSB. Because he had not registered this MSB as required by the PCMLTFA, his business was illegal. As such, the cash received into and paid out of X's unlicensed MSB became tainted with criminality by virtue of having passed through an unlawful enterprise.

The requirement for registration of an MSB under the PCMLTFA is found in s. 11.1:

> *11.1 Except as otherwise prescribed by regulation, every person or entity referred to in paragraph 5(h) or (h.1), those referred to in paragraph 5(l) that issue or sell money orders to, or redeem them from, the public, and every other person or entity that is referred to in section 5 and that is prescribed must be registered with the Centre in accordance with this section and sections 11.11 to 11.2.*

Section 74(1) of PCMLTFA makes failure to comply with s. 11.1 an indictable offence:

> *74 (1) Every person or entity that knowingly contravenes any of sections 6, 6.1 and 9.1 to 9.31, subsection 9.4(2), sections 9.5 to 9.7, 11.1, 11.43, 11.44 and 11.6, subsections 12(1) and (4) and 36(1), section 37, subsections 55(1) and (2), section 57 and subsections 62(2), 63.1(2) and 64(3) or the regulations is guilty of an offence and liable*
>
> *(a) on summary conviction, to a fine of not more than $250,000 or to imprisonment for a term of not more than two years less a day, or to both; or*
>
> *(b) on conviction on indictment, to a fine of not more than $500,000 or to imprisonment for a term of not more than five years, or to both.*

In the E-Nationalize investigation, it is proposed that the operation of an unlicensed MSB would serve as the predicate offence to charges of money laundering and possession of the proceeds of crime.

Like the police and the Crown counsel who reviewed this matter before me, I have been unable to locate any Canadian authority or precedent in which the operation of an unlicensed MSB served as a predicate offence for a money laundering or possession of the proceeds of crime prosecution. It appears this issue has not been considered by Canadian courts.

Although this question has not been litigated in Canadian courts, an analogous body of law has developed in the United Kingdom that is instructive. Canadian courts would not be bound by this line of authority. However, it is reasonable to expect that our courts would take guidance from established precedent in the UK. To that end, I have spent considerable time examining this line of authority and how it might impact the interpretation of the relevant Canadian legislation.

The central theme from the UK authorities is that to determine whether money is obtained as a result of criminal conduct requires a close analysis of the statute the individual has violated.

The question the UK authorities would invite us to ask is this: Does the legislation explicitly criminalize the operation of a MSB in the absence of a licence or does it merely criminalize the failure to obtain a licence? On the UK authorities, property derived from the latter type of offence is not considered to be the proceeds of crime.

Notably absent from s. 11.1 of the PCMLTFA is an explicit criminalization of the operation of an unlicensed MSB. Unlike most of the UK legislative instruments where the activity itself was found to be prohibited, the PCMLTFA leaves the distinct impression that it is the failure to register that is the offence, not the operation of an unlicensed MSB itself.

It is certainly the case that one of the primary objects of the PCMLTFA is "the investigation and prosecution of money laundering offences" (s. 3(a)). It is also clearly the case that it is contrary to the PCMLTFA to operate a money services business without being registered under the Act. However, based on the wording of the statute, it is arguable that although the PCMLTFA criminalizes the failure to register, it does not criminalize the operation of a money service business in the absence of registration.

That, according to the UK authorities, is the critical distinction. While the trend in the UK authorities is in the direction of recognizing unlicensed commercial activity as criminal conduct in and of itself, the absence of any overt criminalization of the operation of an unlicensed MSB in the PCMLTFA leaves the Crown's potential theory of culpability vulnerable to challenge.

Some of the authorities to which my attention has been drawn suggest that it may be possible for the Crown to prove a proceeds of crime/money laundering offence in the absence of evidence of the illicit origin of the funds if the Crown can show that illegal activity of some kind is the only possible explanation.

The challenge in this regard is the paucity of evidence concerning the activities of A and B. They appear in the narrative as little more than ATMs from whom X obtains his cash, but with no evidence as to where A and B obtained the funds or what sort of activities they are involved in. Large bundles of cash are highly suspicious, but without evidence of A and B being engaged in unlawful activity, does the cash on its own lead to the irresistible inference that it can only be the proceeds of offences prosecutable by indictment? I am not certain it does.

In other words, the inference that X believed A's and B's money was dirty is not, in my view, irresistible.

Ultimately, while the evidence, taken together, paints a highly suspicious portrait of A's and B's operations, suspicion alone is not sufficient to prove a predicate offence beyond reasonable doubt. As the Supreme Court of Canada observed in *R. v. Villaroman*, 2016 SCC 33 at para. 30, "…an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits …" I am not satisfied that is the case here. These pieces of evidence taken together do not lead to the inexorable conclusion that A or B derived the cash supplied to X from drug trafficking. I am bolstered in this conclusion by the fact that CFSEU themselves did not propose drug trafficking as a predicate offence.

I have also considered the evidence that X was willing to accept and convert other limited funds offered to him in the course of the undercover operation, some of which were explicitly identified to him as being "not legit" or the result of credit card fraud. While these instances demonstrate a willingness on X's part to accept funds irrespective of their source, I am not satisfied that one can infer from this that A's and B's funds were illicit in origin.

Conclusion Re: Predicate Offence

Substantial Likelihood of Conviction

The Crown's normal charge approval standard requires that I be satisfied, in respect of any charges laid, that there is a substantial likelihood of conviction.

For the reasons explained above, I am concerned that a prosecution which relies on the operation of an unlicensed MSB as a predicate offence may be ill-fated from the outset. The language of the PCMLTFA combined with the UK case authorities gives rise to the very real prospect of a viable defence that could prevent the Crown from securing a conviction on proceeds of crime or money laundering charges.

In the absence of Canadian jurisprudence on this point, I am unable to predict how a Court would receive such a Crown theory of culpability. Because of this uncertainty, I cannot conclude there is a substantial likelihood of conviction on the most serious charges proposed by the investigating agency.

Reasonable Prospect of Conviction

My mandate as special prosecutor included a direction that I consider not only the usual charge approval threshold, but also the exceptional evidentiary test of a "reasonable prospect of conviction."

I am advised by the terms of my appointment that the Attorney General is of the view that there is a strong public interest in conducting a prosecution. I infer from this, as well as the explicit direction to consider the exceptional evidentiary test, that the Attorney General believes the public interest factors in this case are sufficiently weighty to warrant a resort to the lower charge assessment standard if necessary.

Informed by the above-referenced policy, I have asked myself whether I could lay these charges with a reasonable expectation of a conviction as a potential outcome, informed by my previous experience and common sense.

I have concluded that I cannot. I find the UK caselaw persuasive. While it is possible that a Canadian court would see matters differently, I am not satisfied that such an outcome is a reasonable expectation.

Moreover, even if there were a "reasonable prospect" of conviction with respect to the predicate offence issue, I cannot lose sight of the many other ways such a prosecution could be derailed. I am asked to apply my experience and common sense. I know from experience that it is difficult, if not impossible, to predict at the outset the challenges that a complex prosecution will face. My optimism with respect to the Crown's ability to address disclosure and translation issues could be misplaced. The issue that prevented successful prosecution of the E-Pirate investigation could pose greater challenges than I anticipate. The Crown's ability to lead the essential evidence of the transactions could be thwarted by a successful challenge to the many judicial authorizations. The complexities and time-requirements of the case – translation issues in particular - could create real difficulties with respect to the Crown's ability to bring the case to trial within the time limits established by the Supreme Court of Canada in *R. v. Jordan,* 2016 SCC 27.

I am also concerned that the strong public interest in prosecuting money laundering is predicated on the very thing the Crown would be unable to establish, namely, that the money in question was "dirty money."

While it is possible to identify on paper a theoretical legal path to conviction, my instincts tell me a prosecution is likely to founder. The public interest would not be well served by embarking on an expensive and lengthy prosecution that comes to naught.

Viability of a Prosecution for Lesser Offences

I have also considered whether there is merit in a prosecution of X for the various other discrete offences alleged in the Report to Crown Counsel. This includes X's alleged conversion of a small sum of funds provided to him in the undercover operation, as well as his alleged counseling of an individual to commit various offences, such as mischief, intimidation, and robbery, and criminal organization offences.

For the purposes of this clear statement, I do not propose to analyze the strengths and weaknesses of each of these individual possible charges in detail. The Crown likely would be able to prove some of these offences, while others are less certain. However, my overriding concern with such a prosecution is that it would likely require a level of Crown and police resources comparable to what would be required for a trial on the money laundering and proceeds of crime charges. Even a slimmed-down prosecution on these lesser offences would still need to overcome many of the most challenging aspects of an E-Nationalize prosecution, such as disclosure and translation issues. In short, the Crown would be faced with a lengthy and complex mega-trial either way.

I am not persuaded that the modest sentence the Crown might achieve on such charges could possibly justify so significant an outlay of resources. As the police conceded in a November 10, 2020 memorandum, "… if a limited portion of the case is prosecuted there would be a relatively low sentence that would not be commensurate with the resources required to prosecute." I concur.

I fully appreciate the need to send a message that the Province takes money laundering seriously and that consequences will flow from the commission of such crimes. I am concerned that a multi-year, multi-Crown, multi-million dollar prosecution that results only in a non-custodial sentence may send the opposite message.

Conclusion

For the foregoing reasons, I have come to the difficult conclusion that I will not be approving charges arising out of the E-Nationalize investigation. Given the wording of the PCMLTFA, the absence of a link between X's cash and true criminal activity, as distinct from unlicensed activity, is the principal obstacle to a successful prosecution.

In saying this, I intend no criticism of the investigators, many of whom have worked tirelessly to bring this unwieldy investigation to completion in a commendably orderly and coherent state. I have been consistently impressed with their commitment, professionalism, and dedication to the task. Regrettably, the challenge of proving a viable predicate offence, given the wording of the current legislation, combined with the complexity of an enormous data set in a foreign language, have conspired to make the prospects for conviction poor, despite the best efforts of many dedicated officers.

Recommendations

Legislative Changes

The viability of using the operation of an unlicensed MSB as a predicate offence could be substantially enhanced by amendments to the PCMLTFA. As discussed above, at present, the Act criminalizes the failure to obtain a licence, but does not explicitly criminalize the operation of an unlicensed MSB. Were such language to be introduced into the PCMLTFA, the line of authorities in the United Kingdom would support, rather than weaken, the case for using an unlicensed MSB as a predicate offence for money laundering or proceeds of crime offences.

Such an amendment would bring Canadian law into harmony with the approach in both the UK and the United States. The American equivalent of FINTRAC is the Financial Crimes Enforcement Network (FinCEN). Under the Federal *Bank Secrecy Act* regulations at 31 CFR 1022.380, MSBs must register with FinCEN and comply with various reporting requirements. As with the UK statute, the American federal legislation explicitly makes unlawful the *operation* of an unlicensed MSB. Similar prohibitions are found in s. 74 of Australia's *Anti-Money Laundering and Counter-Terrorism Financing Act* 2006.

Alternatively, the *Criminal Code* itself could be amended to specify that funds transmitted through an MSB that has not complied with the registration requirements of the PCMLTFA are, by definition, derived from the commission of an indictable offence.

I recognize, of course, that amendments to the PCMLTFA or *Criminal Code* are within the purview of Parliament, not the Provincial Legislature. I raise this issue simply as a potential point of discussion with the Attorney General's federal counterpart, should the Attorney General conclude that a change in the law is desirable.

Legal Advice

I understand the E-Nationalize investigative team did have the benefit of access to legal advice from two senior Crown counsel during the course of the investigation. Other prosecutors were consulted on a more *ad hoc* basis as specific issues arose.

Nonetheless, it is apparent to me from my discussions with the lead investigators that JIGIT would benefit from a more formal and ongoing relationship with advisory Crown. JIGIT investigators embarking on a complex investigation would benefit from having access to a consistent source of legal advice. A more fixed relationship with legal advisors would provide JIGIT with guidance in shaping the course and objectives of similar investigations with the goal of ensuring a legally viable prosecution as the end result.

Cullen Commission

In addition to the above recommendations, I would add my support to the suite of proposals in Recommendation 51 of the June 2022 Final Report of the Cullen Commission with respect to Provincial oversight and regulation of MSBs operating in British Columbia.

I am grateful for the opportunity to have conducted this independent charge assessment on behalf of the Attorney General. While I have come to the conclusion that the charge approval standard is not met in E-Nationalize, I trust the above analysis and the many productive discussions I have had with JIGIT investigators in the course of arriving at that conclusion will assist in guiding future investigations.

This Clear Statement concludes my involvement in this matter as Special Prosecutor.