> **The Province of British Columbia and the Government of Canada Ad Hoc Working Group on the Real Estate Sector:**
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> **<u>Final Report to Finance Ministers</u>**

<u>Executive Summary</u>

The Province of British Columbia (B.C.) and the Government of Canada Ad Hoc Working Group on the Real Estate Sector was created in December 2018 to explore issues related to fraud, money laundering, tax evasion and speculation in B.C.'s real estate sector to better coordinate and align policy and operations. The working group brought together officials across several departments and agencies in the B.C. and federal governments. The Terms of Reference for the working group and the participating organizations are attached as Annex A and B.

The working group produced an internal, preliminary report on its work in September 2019. Based on an assessment of priority issues, three work streams were created later that year, each with a provincial and federal co-lead.

Work Stream 1, co-led by Statistics Canada and the B.C. Ministry of Finance, considered the data needs of government authorities that could be used to better detect and deter money laundering or other criminal activities in real estate. The work stream further explored the feasibility of producing a data framework to facilitate information sharing among relevant government bodies. It identified potential data gaps, three different data framework models that would help address those gaps and facilitate information-sharing and presented opportunities and challenges in applying those models.

Work Stream 2, co-led by the Department of Finance Canada and the B.C. Ministry of Finance, explored approaches to improving the detection and deterrence of money laundering by financial intermediaries and government organizations, including areas such as regulatory gaps, and improving compliance, standards and education. The work stream recommended continued, targeted engagement between B.C. and federal government officials in areas such as promoting anti-money laundering and anti-terrorist financing (AML/ATF) Regime regulatory compliance in the real estate sector, and initiatives aimed at improving transparency in the real estate market.

Work Stream 3, co-led by the Royal Canadian Mounted Police (RCMP) and the B.C. Ministry of Public Safety and Solicitor General, looked at ways to improve law enforcement actions and the prosecution of financial crimes. The work stream was leveraged to discuss ongoing federal and provincial initiatives to better translate intelligence into evidence, and investigations into prosecutions; bring together dedicated experts from across intelligence and law enforcement agencies; and, dedicate, develop, and retain resources for AML/ATF priorities. The work stream recommended opportunities for continued collaboration in these areas.

This report provides an overview of the main findings and outcomes of this working group. The working group has allowed both B.C. and federal government officials to better coordinate on AML/ATF initiatives and to share expertise. For example, B.C.'s recent experience in

developing a land registry system and regulating part of the real estate industry provides valuable insights for other jurisdictions, while federal government authorities, such as the RCMP, Statistics Canada, and Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), have been able to make better connections between initiatives at different levels of government.

The working group recommends continued, targeted engagement between B.C. and federal government officials in the priority areas discussed below. Further, consideration should be given to how these findings and areas of future collaborative work are relevant to other provinces and territories.

1. <u>Data Collection and Sharing</u>

Although government authorities across jurisdictions already have access to and share large amounts of data for AML/ATF purposes, recent reports[1] on money laundering in Canada have highlighted the need for more data, including to better understand the extent of money laundering in real estate. Consistent with these reports, the issue of data sharing and data collection was an important focus of the working group.

The working group set out to review and identify the main typologies of money laundering and fraud in real estate. It then took stock of existing data holdings by government authorities and considered data gaps that, if addressed, would enhance our ability to understand and identify those activities. Finally, the working group presented potential data framework models that would allow for the better collection, dissemination and utilization of data across AML/ATF authorities.

a. Assessing money laundering typologies, data holdings and gaps

Two ongoing initiatives were incorporated into this work. At the federal level, as announced in Budget 2019, Statistics Canada conducted a comprehensive assessment of data needs that would support combatting illicit transactions in real estate. At the provincial level, the B.C. Ministry of Finance's Finance Real Estate and Data Analytics Unit has been looking at potential approaches to better leverage data for regulatory purposes. In that context, the working group conducted a stock taking exercise on real estate data and money laundering, which included:

- the collation of money laundering typologies;
- an assessment of data holdings and data sharing practices;
- a review of data practices of foreign AML regimes and data management practices; and,
- a literature review and consultations with subject-matter experts in Canada.

This review allowed the working group to identify and catalogue an extensive list of *schemes* and *sub-schemes* for laundering money in real estate. These schemes represent different ways of obscuring the origins of the illegally acquired funds through real estate transactions and the placement of these funds in real estate investments. These schemes and sub-schemes were then

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[1] Report of the Standing Committee on Finance, November 2018, *Confronting Money Laundering And Terrorist Financing: Moving Canada Forward*; Peter German, March 2019, *Dirty Money Report – Part 2*; and Maloney et al., March 2019, *Combatting Money Laundering in BC Real Estate*.

broken down into 160 individual data points that would ideally be accessible by relevant authorities.

Subsequently, the group collected and analyzed information on current data holdings by B.C. and federal government agencies with a nexus of real estate and AML. It found that relevant AML authorities already have access to many of the identified data points, have no access to others, and only have access to certain data points on a case-by-case basis. For example, FINTRAC and law enforcement authorities can access information on a real estate transaction by making a query to the land registry system one property at a time, but they do not have access to searchable bulk data covering all real estate conveyances in Canada. Key areas identified by the group where data could be improved or where gaps exist for AML authorities include:

- information around mortgages and other financing aspects;
- information around the wealth of transacting parties;
- information on beneficial owners of certain properties and mortgage lenders;
- relationship and network information on different family members, close friends, business associates and real estate professionals involved in real estate transactions; and,
- sources of funds behind rental revenues.

Limitations to access to data can exist for a variety of reasons, including privacy considerations or technological constraints. Additionally, some data currently does not exist. Nonetheless, work conducted by the group suggests that detection of money laundering activities in real estate could be improved by better leveraging, combining and sharing existing data between federal and provincial authorities.

b. Data Models

Being able to access good quality data is a necessary, but not sufficient condition to improving Canada's ability to combat money laundering in real estate. Government authorities also need to have the right tools to manipulate, combine, cross-reference and analyze the data. Accordingly, the working group also explored models that would facilitate the exchange and analysis of data for two different purposes:

1. For strategic purposes, where the data could be used to produce general estimates of money laundering in real estate or narrow metrics and trends on emerging patterns of illicit activity useful for relevant governmental authorities and policymakers.

2. For tactical and enforcement purposes, where the data is analyzed with the intent of identifying and apprehending suspected money launderers.

The group identified three different types of data models that could be further explored by the B.C. and federal governments:

- **A "Distributed" model, as currently applied in Canada's AML/ATF regime**. Data is held by specific organizations and shared on a limited basis, typically when certain legal thresholds are met, and in a manner that respects privacy laws. Work could be undertaken to increase the sharing of data under this model.

- **An "Integrated" model designating one lead institution to be responsible for receiving relevant data collected by other government agencies and for holding and managing data within the AML framework.** This could enable the systematic analysis of consolidated data for all real estate transactions. A centralized model could facilitate consistent manipulation and usage of the data, but would involve greater privacy implications.

- **A "Hybrid" model optimizing and enhancing data held within different organizations and allowing AML authorities to access that data for strategic and/or tactical use.** This model would combine the advantages of a more centralized model while balancing some of the privacy implications. It would leverage current public data holdings by centralizing subsets at designated custodial institutions, which would serve as primary sources of data on a given subject.

Overall, the working group found that the AML/ATF Regime could benefit from a more systemic approach to accessing and leveraging real estate data, including data held by authorities without a specific AML/ATF mandate, such as provincial and territorial land registries. As such, it recommends that the B.C. and federal governments further consider the merits of the three identified data models, including potential legal implications (such as consequential changes to agency mandates), consistency with privacy laws and the *Canadian Charter of Rights and Freedoms*, as well as any potential resource implications.

2. <u>Beneficial Ownership Registries</u>

The analysis undertaken by the working group has continued to highlight how improving the transparency of beneficial ownership remains a key issue in addressing money laundering in real estate and more broadly. For example, in looking at access to data and data models, the working group found that obfuscation of ownership is a facet of the most commonly used schemes for laundering money in real estate. Having accurate beneficial ownership information is an important component for authorities to be able to confirm the presence of a significant number of money laundering indicators.

In recent years, provinces, territories and the federal government have achieved significant progress by working together to make information on beneficial ownership of Canadian corporations available to relevant law enforcements authorities. Initiatives to increase the transparency of beneficial ownership for these entities, specifically in the real estate sector, would complement these broader efforts.

Of particular note is B.C.'s *Land Owner Transparency Act* (LOTA), which recently established a publicly accessible registry of beneficial ownership of land in the province. The LOTA and its requirements aim to prevent entities such as trusts, partnerships and corporations that own land from using these vehicles to disguise the underlying beneficial owners of property, which in turn should disrupt money laundering in B.C.

To support continued improvement to the LOTA and facilitate sharing of information on the initiative with other provinces and territories, the working group conducted a lessons-learnt

exercise. Key considerations and challenges with setting up a LOTA framework identified and discussed by the working group included issues and challenges around verification of beneficial owners; privacy and protection of vulnerable individuals; and the scope of corporate interest holders under LOTA. Overall, the working group formulated a list of suggested items for further consideration:

- B.C. could consider further measures to improve the accuracy of the LOTA registry, such as requiring the collection of tax numbers from foreign entities that do not have a Canadian tax number.
- B.C. should continue to monitor the privacy concerns that emerge from the creation of the public-facing LOTA registry.
- B.C. should consider facilitating the sharing of LOTA data with other agencies to allow for data analytics.
- B.C. should work with the B.C. Land Title and Survey Authority (LTSA) after the launch of the registry to compile a list of lessons learned in operationalization of the registry.

Regarding current efforts to increase transparency of beneficial ownership of corporations in B.C., the working group also suggest that considerations be given to the following elements:

- Including all Canadian (extra-provincial and federal) and foreign corporations registered in B.C.
- Potential practices to update and verify submissions.
- Ensuring that to a minimum, registry information is made available to law enforcement, tax and other competent authorities.

Related to this work, officials continue to advance a national approach to strengthening beneficial ownership transparency that provides law enforcement, tax and other authorities with timely and accurate information on the beneficial owners who own and control companies, while respecting provincial and territorial responsibilities. Federal officials will continue reviewing options for central registries of beneficial ownership, as well as the associated legislative amendments that may be required, in collaboration with their provincial and territorial counterparts.

3. <u>**Regulation of Real Estate Actors**</u>

The working group provided an opportunity to exchange views on work underway to enhance AML/ATF regulations, to discuss potential regulatory gaps, and to explore new approaches to deter illicit activities in real estate and improve compliance.

a. Scope of Federal AML/ATF Regulation – Potential for new reporting entities

The working group was used as a forum to discuss proposed regulatory amendments to *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) regulations. This included new requirements for certain regulated businesses and professions such as real estate agents, brokers and developers to determine whether their clients are politically exposed persons and to take steps to identify the beneficial ownership of entities as part of their due diligence

processes. The working group notably considered potential synergies or unintended effects of the measure with relation to rules for the real estate sector in B.C. These regulatory changes have been finalized, and include new customer due diligence requirements for certain regulated businesses such as real estate professionals, around politically exposed persons and beneficial ownership. The changes will come into force on June 1, 2021.

The working group also considered potential benefits of extending the scope of entities regulated under the AML/ATF Regime to include mortgage brokers and unregulated mortgage lenders. The PCMLTFA applies to certain financial institutions such as banks and credit unions, including when these entities provide mortgage lending. However, it does not apply to other entities such as mortgage finance companies (MFCs) and other types of private lenders. Making these entities subject to the PCMLTFA could create a level playing field by setting out regulatory obligations for all mortgage lenders around client identity verification, recordkeeping, and reporting (e.g., suspicious transactions reports).

Based on its preliminary assessment, the working group found there would be merits to regulating other entities involved in the mortgage sector. For example, unregulated lenders have a good understanding of their clients' financial profile and of the characteristics of the properties being purchased. They also have an expertise that could be leveraged to identify and report suspicious transactions. However, these merits need to be weighed with the objectives of minimizing undue regulatory burden and imposing regulations that are proportional to the identified risks.

Federal officials are currently updating the Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, which includes an assessment of the real estate sector. The working group recommends that the federal government leverage this ongoing initiative to further consider the benefits of expanding AML/ATF regulation to other entities in the real estate sector as a means to address underlying risks.

The working group also recommends that B.C. and federal governments continue targeted discussions on complementary initiatives to address fraud and money laundering risks in the mortgage-lending sector, such as improving transparency of beneficial ownership in the sector.

b. Improved Regulation for AML – Closing potential provincial loopholes

The working group discussed potential measures at the provincial (B.C.) level for improving market conduct and reducing risk of illicit activities in real estate. Further research and analysis, including public and stakeholder consultation, may be required before a firm recommendation can be made.

The working group recommends that further policy work be undertaken to consider ending the exemption in the Real Estate Services Regulation that permits developers to use their own unlicensed salespersons to provide real estate services. Under the *Real Estate Services Act* (RESA), there is an exemption in the regulation that exempts the employees of developers from the requirement to be licensed in certain circumstances. This exemption has raised consumer protection concerns, as unlicensed employees are not subject to the same regulatory oversight as

licensed salespersons. Furthermore, as developers themselves are not licensed, there are concerns that the comparative lack of oversight could result in an increased risk of illicit activities, including money laundering.

Similarly, the working group also recommends further policy work to consider a maximum permissible threshold for certain unlicensed activities. RESA requires that a person must not provide real estate services to or on behalf of another, for or in expectation of remuneration, unless the person is licensed under RESA to provide those real estate services. However, the working group noted that unlicensed real estate service providers sometimes consciously structure their business to leverage exceptions initially intended for consumers leasing or renting their own properties to avoid RESA's licensing requirements. This can undermine the AML and other regulatory regimes. Policy work to identify the scope of the issue, and solutions that establish a permissible threshold of unregulated activity could address the issue.

A third area considered by the working group is provincial regulatory requirements for money services businesses (MSBs). In their reports, the Expert Panel on Money Laundering in B.C. Real Estate and Peter German (Independent Review of Money Laundering in Lower Mainland Casinos) both recommended that the B.C. government consider developing a regulatory regime for MSBs to be operated by the Financial Institutions Commission (now the British Columbia Financial Services Authority). The Expert Panel outlined MSBs as the largest source of suspicious transaction reports submitted to FINTRAC.

In considering options for regulating MSBs, the working group exchanged information on implementation of a licensing regime for MSBs as well as strategic intelligence on risks related to white-label ATMs (which could be defined as MSBs). B.C. also completed consultations with industry and law enforcement and is now preparing options for implementing a regulatory regime for MSBs for government consideration. The working group also recommended that further analysis be conducted on options to regulate white-label ATMs as part of the provincial regime on MSBs currently under consideration.

Recently, the Real Estate Council of B.C. (RECBC) developed and launched a mandatory anti-money laundering education course that is required continuing education for all licensees. Through the working group, FINTRAC collaborated with the RECBC to provide feedback and comments on the content of the course. This mandatory course provides licensees with tools to identify red flags that might indicate money laundering and outlines their obligation to report suspicious activity. It is designed to educate licensees on FINTRAC requirements and to ensure that they have the tools they need to identify a potential suspicious transaction.

The course is mandatory, meaning that every licensee has to take the course in order to renew their license. Given the two-year cycle for licensees, RECBC introduced incentive pricing to encourage licensees to complete the course promptly. Practice guidance for licensees has also been expanded to include AML information.

RECBC also has entered into a memorandum of understanding with FINTRAC to assist in cooperating and sharing information to facilitate anti-money laundering enforcement activities in B.C.'s real estate sector.

c. Collaboration to improve tax compliance

The working group supported discussions and information sharing on various ongoing initiatives to improve tax compliance in real estate. The Canada Revenue Agency (CRA) is working with the B.C. Ministry of Finance to improve access to provincial datasets and information that will improve CRA's ability to link provincially maintained real estate information to internally maintained tax related information. This includes real estate data obtained from the Condo and Strata Assignment Integrity Registrar (CSAIR), LOTA, and the Speculation and Vacancy Tax.

The real estate data obtained will be used by the CRA to enhance its compliance activities within the real estate sector. It will assist the CRA in identifying and auditing high-risk issues within the industry such as non-resident issues and offshore transactions.

4.   Improving Law Enforcement, Investigations and Prosecutions

The working group considered ways to improve law enforcement actions and the prosecution of financial crimes. It provided an opportunity for B.C. and federal officials responsible for AML/ATF intelligence gathering, law enforcement, and prosecutions to consult on ongoing initiatives and recommend opportunities for continued collaboration.

The working group discussed different challenges authorities have with the investigation and prosecution of money laundering, including with respect to real estate. Focus was given to information sharing across federal and provincial levels, and between investigators and prosecutors. These discussions also allowed for deeper consultation on ongoing initiatives.

A strong focus of the working group has been on recent initiatives that aim to foster further collaboration between federal, provincial/territorial and private sector actors to make money laundering investigation and prosecution more effective. Since the formation of the group, the federal government announced funding for a new pilot under Public Safety for an "Anti-Money Laundering Action, Coordination and Enforcement" (ACE) team. The team aims to bring together dedicated experts from across intelligence and law enforcement agencies to strengthen inter-agency coordination and cooperation, and raise awareness on the means and tools available to effectively detect, investigate and prosecute financial crime in Canada.

As part of the process to identify and define further its strategy, the ACE Team engaged with AML operational stakeholders, including law enforcement, prosecution, and regulatory agencies at the federal, provincial, and municipal levels to determine key enforcement challenges they face and AML support needs. The working group served as an additional forum to further those discussions and feed directly in this consultative process. The ACE Team is in the process of final planning in order to transition to its implementation phase, which is planned from 2021-22 to 2023-24.

Similarly, the working group contributed input and perspective to the Counter Illicit Finance Alliance (CIFA). While law enforcement and FINTRAC have been collaborating with the private sector for many years on numerous projects to combat complex financial crimes, there has been very strong momentum recently around turning one of the recent collaborative projects into a permanent entity (the CIFA). It is envisioned that CIFA will be a Public-Private Partnership initiative composed of regional bodies established in a phased approach that will

share common principles, vision and objectives to combatting money laundering, while tailored to provincial realities. CIFA had its inaugural meetings at the end of 2020.

Finally, the working group also discussed and provided feedback to the RCMP on the work it currently conducts for the formation of "Integrated Money Laundering Investigative Teams (IMLITs). IMLITs are being established following funding provided in Budget 2019 to the Federal Policing Regime to support money laundering investigations. The proposed teams would support different RCMP divisions across Canada with the proceeds of crimes/money laundering component of priority investigations and may include personnel from different government agencies such as the CRA, the Public Prosecution Service of Canada and the Canada Border Services Agency (CBSA).

The working group recommends that its members continue to collaborate on a targeted basis with key stakeholders of the Public Private Partnership (PPP) Regime; including federal partners, financial institutions, ACE and CIFA-B.C. to advance collective efforts to address continuing and emerging issues.

The working group further considered a number of issues, including:

- potential processes to standardize information sharing between agencies with a criminal investigative mandate;
- structure of investigative units and how to ensure that the right skills and expertise (data, financial legal etc.) are present and retained;
- processes and potential approaches to engage and coordinate with prosecutors before and during an investigation;
- ways to further increase expertise on prosecuting money laundering;
- operational challenges which can make investigation/prosecution more difficult, such as issues around the usage of bulk cash; and,
- discuss enforcement tools available to LOTA enforcement officers and potential options to foster information exchange with other government agencies.

The working group recommends that consultations between law enforcement agencies and the Public Prosecution Service of Canada around appropriate engagement on investigations and training opportunities continue. It suggests furthermore that the RCMP leverages the discussions and the feedback received from the working group as it finalizes its money laundering/proceeds of crimes strategy.

The group also recommends that the B.C. and the federal governments continue targeted discussions on potential avenues for information sharing between the LOTA Enforcement Officer and other government agencies as LOTA becomes operational. This could include options around the Enforcement Officer sharing information with FINTRAC.

Conclusion

Overall, the working group has facilitated a common understanding of existing rules and compliance and enforcement activities aimed at combatting illicit activities in real estate between B.C. and Canadian government officials. It also supported coordination and information sharing on ongoing efforts to address risk around fraud, tax evasion and money laundering in real estate.

Lastly, it served as a forum to discuss potential vulnerabilities and gaps in the current frameworks, and helped to identify and assess potential avenues for future improvements.

Addressing the issues of illicit activities in real estate is highly complex and will require continued federal-provincial collaboration. New opportunities for collaboration will emerge as initiatives such as the LOTA, ACE team, and CIFA are implemented.

As a result, the working group recommends that targeted discussions continue between B.C. and federal officials, in order to advance priority issues identified in this report. This includes further work to consider how to leverage data from real estate transactions; strengthen transparency of beneficial ownership of real estate ownership; address any gaps in the federal AML/ATF legislative framework; and, improve the investigation and prosecution of money laundering. Consideration could be given to sharing this report with other provinces and territories, to generate broader information sharing and collaboration.

Annex A: Terms of Reference for the British Columbia-Canada Ad-Hoc Working Group on Real Estate

Mandate

The mandate of this Working Group is to enhance communication, information sharing and alignment amongst relevant operational and policy partners to explore and better address issues and risks related to fraud, money laundering and tax evasion through real estate in B.C.

Objectives

- Discuss compliance with tax and anti-money laundering rules in B.C.'s real estate sector, and other related sectors that facilitate real estate transactions.
- Identify the means of money laundering in B.C. with respect to real estate.
- Provide updates between the federal and provincial governments related to the real estate sector (such as, but not limited to, purchases of real estate in B.C.).
- Develop a clearer understanding of the challenges government agencies have in carrying out their mandate in the real estate sector, and other related sectors that facilitate real estate transactions.
- Share information such as data, trends, typologies, and case examples related to real estate ownership and money movement, including flows of foreign funds or proceeds of crime, into B.C. real estate.
- Discuss what information is available to federal and provincial governments in relation to real estate transactions, ownership and financing and possibilities of coordinating that information to combat anti-money laundering.
- Identify gaps in the provincial and federal regulatory and enforcement frameworks that could reduce money laundering in BCs real estate sector.
- Discuss how existing systems, e.g., land registries or aggregated data collected by the province can be leveraged to improve information gathering and assist authorities such as FINTRAC in the detection of suspected money laundering or the CRA and law enforcement authorities in their respective investigations.
- Discuss and create coordinated mechanisms across agencies, as appropriate, to address compliance and enforcement issues in B.C.'s real estate sector
- Understand and develop linkages to the federal/provincial/territorial working group on beneficial ownership and discuss how transparency can be improved through beneficial ownership information of real estate.
- Discuss ways in which BC and the federal government can work together to address the risks identified in the federal report on the Assessment of Inherent Risks of Money Laundering and Terrorist Financing 2015.
- Develop linkages to the federal/provincial/territorial working group on housing and extend the dialogue to other provinces.

Co-Chairpersons

The Working Group is to be co-chaired by Christina Dawkins of the Ministry of Finance, B.C. and Lynn Hemmings of the Department of Finance Canada.

Reporting

The work is intended to provide information and analysis, to encourage frank and productive discussions amongst officials. Working Group members will report findings and summaries of discussions to their respective senior officials as necessary.

The Working Group will provide an update to Ministers in spring 2019 and fall 2019.

Further, the Working Group will endeavor to provide an update to the Financial Sector Dialogue on possible recommendations and best practices that could assist policy development and operations.

Meetings

Meetings will be held on an ad-hoc basis and in-person meetings will occur in Victoria, B.C. or Ottawa, Ont. The Working Group will endeavor to complete its work by Fall 2019.

Communication

Communications will be conducted by a variety of methods including in-person meetings, teleconferences, and by electronic means, for example email.

Costs

Each member of the Working Group is responsible for their own costs related to travel expenses and other incidentals.

Annex B: Participating Organizations

Organizations from the Province of B.C.	Federal Government Organizations
B.C. Ministry of Finance	Department of Finance Canada
B.C. Ministry of the Attorney General	Royal Canadian Mounted Police (RCMP)
Financial Institutions Commission -- Registrar of Mortgage Brokers	Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
Office of the Superintendent of Real Estate	Statistics Canada
Superintendent of Financial Institutions	Canada Revenue Agency
Real Estate Council of B.C.	Canada Mortgage and Housing Corporation (CMHC)
B.C. Securities Commission	Public Prosecution Service of Canada (PPSC)