BC Canada Real Estate Working Group

Work Stream 1:

Data Collection and Sharing Work Stream Report Executive Summary

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1. <u>Introduction</u>

This Executive Summary of the Data Collection and Sharing Work Stream of the BC-Canada Working Group on Money Laundering (ML) in Real Estate[1] report, focuses on the Work Stream's key findings and recommendations. The outcomes described herein are based on research and collation of money laundering typologies, an assessment of data holdings and data sharing practices of, and consultations with, work stream members, a review of data practices of foreign anti-money laundering (AML) regimes, data management practices, a literature review and consultations with subject-matter experts in Canada.

The Work Stream, co-lead by Statistics Canada and the British Columbia Ministry of Finance, considered the data needs of government authorities and data models for research and analytical functions, based on the feasibility of producing a data framework to facilitate information sharing among relevant government bodies. Although the focus of the Work Stream's work was on ML in British Columbia residential real estate, the finding and recommendations can support tax enforcement, which could benefit from the inter-agency collaboration and data sharing discussed.

AML data frameworks can be applied for both strategic and tactical purposes. Applying the framework for policy purposes could produce general estimates of money laundering in real estate at the aggregate level, useful for relevant governmental entities and policymakers. An application for strategic purposes could focus on more narrow metrics or trends that inform emerging patterns of illicit activity. An application for tactical purposes would focus on enforcement, analysing information with the intent of identifying and apprehending suspected money launderers. These complementary applications require the establishment of a data model facilitating the identification of potential money laundering and greater data access and sharing among AML regime partners.

The application of an enhanced AML data framework for real estate would rely on data sharing among organizations in the AML regime and other sharing authorities. Three different data model options are suggested for the ongoing provision of data, with varying impacts to privacy and legislative constraints. The report presents opportunities and challenges in applying the models without being prescriptive of a preferred option.

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[1] The Work Stream members include the Bank of Canada, the British Columbia Ministry of Finance, the British Columbia Financial Services Authority (BCFSA), the Real Estate Council of British Columbia (RECBC), the British Columbia Securities Commission (BCSC), the Canada Revenue Agency (CRA), the Canada Mortgage and Housing Corporation (CMHC), Finance Canada, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the Royal Canadian Mounted Police (RCMP).

Legal aspects such as changes to agency mandates, in depth privacy and Charter implications, or resource requirements associated with data and data framework implementation were not explored. Furthermore, the AML data framework is a conceptual model and will require empirical testing to determine its applicability to AML operations.

1.1 KEY FINDINGS FOR AN ANTI-MONEY LAUNDERING FRAMEWORK IN THE REAL ESTATE SECTOR

1. **Laundering money through the Canadian real estate market uses a diverse array of methods.**

A systematic review of relevant literature reveals 8 schemes and 23 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

2. **Court records do not reflect the full extent of ML efforts in Canada.**

In examining court outcomes of money laundering offences from 2009 to 2016, it was found that many police-reported incidents involving money laundering did not result in a money laundering charge. Furthermore, the majority of money laundering charges that made it to court were stayed, withdrawn, dismissed or discharged. However, guilty verdicts were often reached on other charges in these cases.

Similarly, the extent of reported money laundering incidents is frequently obscured in public reporting as more serious offences occurring in the same incident become the principal statistical record.

The low counts of money laundering charges proceeding in Canada's criminal courts may be related to the complexity of prosecuting money laundering offences. The *Criminal Code* has recently been amended to facilitate the prosecution of money laundering[2]. A future assessment of the impact of this change would reveal whether the difficulty in prosecuting a money laundering offence had an impact on the low number of charges associated with police-reported incidents.

FATF Mutual Evaluation Reports are evolving to include more measure of outputs of AML efforts such seizures, charges and convictions.   Although court proceedings are objective indicators, they do not reflect the full extent of AML efforts in Canada, and international comparisons should take into consideration the different operating contexts of national AML regimes.

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[2] *Criminal Code,* 1985, as amended 2019-06-21

3. **Anti-money laundering efforts would be more effective by enhanced partner collaboration and data sharing.**

Recent reports[3] have drawn attention to the ways in which money is laundered in the BC real estate market, and have estimated the extent of money laundering in real estate by using data held outside the AML regime partners[4]. These analyses have highlighted the need for more data sharing to facilitate a broader approach and to better understand the extent of money laundering in real estate.

a. *Canadian organizations engaged in AML initiatives use real estate data for specific investigations and case-based approaches, and have participated in partnerships to facilitate a broader approach.*

Targeted projects have brought together public and private-sector parties to overcome problems of differential access to data for AML purposes. For example, Project Athena brought together public and private sector institutions to exchange knowledge and information on casino-related money laundering. Recently, the scope of the cooperation has expanded to include real estate and other high-value items. Implementing an AML data framework supported by money laundering real estate typologies could supplement ongoing public-private partnership efforts.

b. *Effective AML initiatives could benefit from the participation of other relevant organizations, particularly those in the real estate sector.*

Regulatory and administrative institutions in the BC real estate market collect and acquire data on properties, real estate transactions, real estate financing, and the actors involved, which could be used for the detection of ML in real estate. Some of these organizations are not required to undertake or aid in AML efforts, so information is largely not kept, maintained, or shared for this purpose. Canadian law enforcement agencies may access real estate data on a case-by-case basis, but mainly encounter money laundering in real estate through their investigations or prosecutions.

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[3] German 2019; Maloney et al. 2019

[4] Finance Canada, Department of Justice Canada, Global Affairs Canada, Public Safety Canada, Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), Office of the Superintendent of Financial Institutions Canada (OSFI), Innovation, Science and Economic Development Canada (ISED), Office of the Privacy Commissioner of Canada, Royal Canadian Mounted Police (RCMP), Public Prosecution Service of Canada (PPSC), Canada Revenue Agency (CRA), Canada Border Services Agency (CBSA), Canadian Security Intelligence Service (CSIS), Public Services and Procurement Canada (PSPC), as well as other partners including provincial, territorial, and municipal Law Enforcement Agencies (LEAs), financial sector regulators, and self-regulatory organizations.

4. An AML data framework for real estate can contribute to identifying money laundering in real estate.

An approach to systematically identify instances of money laundering in real estate through data can generate insights to drive policy and enforcement efforts. Money laundered through the acquisition or use of real estate often employs methods inconsistent with standard real estate market practices, and as a result, can be identified using data about real estate owners, buyers, and their transactions.

The AML framework presented systematically defines indicators of money laundering by enumerating money laundering schemes and the ways the schemes are visible within data. The availability of data required to construct each indicator was also assessed, and this information is summarized at the sub-scheme level in Table 6-1 (p. 88).

a. *A comprehensive data framework would require accessing 160 data points within a data model for ML in real estate.*

The 8 schemes and 23 sub-schemes for money laundering in the real estate sector break down into 160 individual data points required for their detection. Based on the analysis of public data holdings, some sub-schemes would not be detectable as they rely on data which does not exist, or would be difficult to detect.

b. *An AML data framework could provide information on the extent of money laundering in real estate, and inform policies and programs.*

Contingent on data of sufficient quality and comprehensive data sharing, a data model for AML in real estate could be used to perform consistent and systematic red flag analyses of indicators. These analyses could:
- Provide indications of the extent and incidence of money laundering in real estate, including the approximate number and value of properties that may be affected.
- Provide benchmarking indicators to assess the impact of new AML policies and efforts.
- Inform analytical and enforcement efforts of geographic hot spots or prevalent schemes.
- Advise law enforcement agencies and policy makers on emerging money laundering schemes.

c. *The efficacy of a data framework for AML in real estate is contingent on extensive and high quality data coverage.*

Identifying money laundering using data indicators would require comprehensive coverage of real estate transactions and ownership arrangements within a given geographic area over time. The process relies on detecting methods and practices atypical to standard real estate practices. However, irregular or non-standard behaviours

are not always a result of money laundering attempts. Prudent money launderers will use schemes that more closely mimic regular market behaviour, thereby increasing the difficulty of detection. Data of higher quality will be more able to detect smaller anomalies or peculiarities in real estate transactions.

5. The AML data framework for real estate described would be internationally innovative.

The framework presented is novel in terms of the scope of data linked and analyzed, in its focus on real estate, and in its potential to detect real estate purchased using criminal proceeds going back in time. This contrasts with existing approaches in Canada and abroad which generally detect illicit funds as they are being laundered.

a. Models for data approaches and extensive public-private partnerships to detect money laundering can be found in other countries.

The AML regimes examined – namely the UK, US, Netherlands, and Australia – allow access to information and data on suspicious transactions to a wider range of public institutions and analysts than is permitted in Canada. In some cases, they allow this data to be merged with their own datasets. Constitutional and privacy protections differ among countries, which must always be considered in assessing the possible adoption of data approaches in the Canadian context.

Most of the countries studied have developed well-functioning public-private partnerships in which data on cases are exchanged and typologies are developed. Public-private partnerships, such as Project Athena, have been successfully implemented as responses to specific threats, such as money laundering in casinos. Greater data availability and enhanced information sharing could support deeper public-private partnerships.

b. Data-driven approaches are an emerging strategy in AML efforts.

There is a broad acknowledgement of the threat posed by ML and the high demand for data to detect it. This has spurred initiatives aimed at expanding capacities for large-scale data analysis at AML institutions abroad, as well as the formation of partnerships for approaches employing multiple datasets. The Dutch system, iCOV, exchanges administrative data relating to financial crime among public institutions with customized reports to partner agencies.

6. A data framework for AML in real estate would require the creation or acquisition of additional key data sources.

Several data gaps in current data holdings would need to be filled before a framework for AML in real estate would be able to produce indicators for most of the money laundering schemes and sub-schemes. Six sub-schemes could be detectable without filling these gaps, and an additional four sub-schemes could be detectable once these data gaps are addressed.

Figure 1: Improvement in detectable sub-schemes if key data limitations were addressed
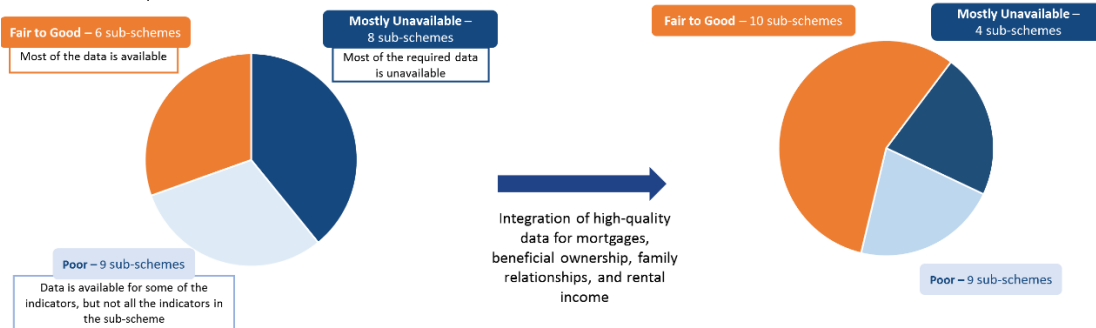
a.   *Beneficial ownership information is a key data gap.*

The obfuscation of ownership is a facet of the most commonly used schemes for laundering money in real estate. Two of 23 sub-schemes (using a shell company/trust and lending money to yourself) have indicators relying on accurate data of beneficial ownership of legal persons.

In BC, the beneficial ownership information respecting corporate interest holders of BC companies is required to be maintained by the company itself. Retrieval of this information is tedious for enforcement authorities and the information itself may be falsified, rendering it of little use for detection.

The province of British Columbia is addressing this data gap at the provincial level. The Land Owner Transparency Registry (LOTR) will house beneficial ownership information on all indirect interests in land registered with the BC LTSA. Additional beneficial ownership information on companies which do not own real estate property would need to be more readily available to better detect the sub-scheme of lending money to oneself. It be noted that this registry is not currently shareable with federal entities, due to privacy provisions in the provincial legislation.

A beneficial ownership register of corporations could provide key data points for the AML data framework in real estate. Experience with the UK's beneficial ownership register indicates that continuous verification of the information in the register is required to improve and maintain accuracy. In the UK, the public nature of the register has enabled the public to verify the accuracy of the information. However, a public registry could also introduce risks of identity theft, fraud, and harassment.

b.   *Mortgage information is a key data gap.*

Eight sub-schemes involve the utilization of one or more mortgages. Mortgage data are held mainly by financial institutions and consumer credit agencies, and by some public institutions.

The Land Title and Survey Authority of British Columbia collects mortgage information for properties purchased in British Columbia as a part of their work administering the provincial

land title system. However, the data is not currently employed for the systematic detection of money laundering. This data is largely unsuitable within the AML data framework; the mortgage data is entered at the time of a land transfer and is generally not subsequently updated unless there is a property transfer, may not be precise on key mortgage characteristics, and is frequently archived in analog formats.

c. Relationship information is a key data gap.

Three sub-schemes rely on the use of family members, close friends, business associates and real estate professional involved in a real estate transaction which could constitute networks of interest for understanding ML. The use of family members as nominee owners appears to be a common sub-scheme, making the ability to identify such relationships useful for ML detection**.** Additionally, in police-reported incidents of money laundering where an accused was identified, nearly half had been involved in other criminal incidents in recent years and more than two-thirds of incidents involved multiple accused.

If real estate professionals involved in a transaction were identified by a unique identifier associated with the property being transacted, networks could be better understood, helping to reveal clusters of ML activity.

Commercially available databases on Politically Exposed Persons (PEPs) and other relevant databases could be leveraged to build familial and criminal network information.

d. Wealth information is a key data gap.

Nominee real estate owners can be identified by determining that the individual cannot reasonably afford the property based on their present and historical wealth holdings. An accurate appraisal requires knowledge of the nominee's level of income and wealth prior to the acquisition of the property.

Data on individual wealth are not available from any known centralized data source. Data from many financial institutions, credit rating agencies, and public and private pension funds could be combined to produce wealth estimates for all homeowners or could be a required filing with a register where un-registered financing is being used in a purchase.

e. Rental revenue is a key data gap.

Property owners who rent their properties are required to file a statement of real estate income when completing their income taxes (income tax Schedule T776). Individuals could pad their rental income with the proceeds of crime, effectively leveraging their properties to launder money.

Data to detect this technique is currently scarcely available in British Columbia. Landlords are required to declare rental income on their tax returns, but are only obligated to list the addresses of their rental properties and the gross rents received that year. Additionally, renters are excluded

from the requirement to list their rental expenses, preventing any authentication of the values entered by the landlord.

7. <u>**Three different data models can be used to facilitate greater access and sharing of data in the implementation of an AML data framework**</u>

Key to the implementation of these models is the development or availability of new data to close identified data gaps in the typology framework presented.

a.   A "Distributed" model is currently the modus in Canada's AML regime.

Data is held by specific organizations and shared on a limited basis, typically with law enforcement agencies, when there are reasonable grounds to suspect that financial transactions or attempted financial transactions are related to the commission of a money laundering offence. This satisfies privacy considerations, but does not enable existing data to be combined and leveraged effectively for AML purposes. An enhancement of sharing under this framework would increase data utilization, but would duplicate much work throughout the participating organizations.

b.   A "Centralized" model would designate one institution to be responsible for holding and managing all data within the framework.

This would enable the systematic analysis of consolidated data for the detection of money laundering. Operational efficiency is a key advantage of this model. A centralized model ensures that the processing, cleaning, quality, and documentation of the data is consistent throughout the various sources, resulting in reliable and accurate analysis results. However, this model comes with potentially greater privacy implications and may require extensive legislative changes.

c.   A "Hybrid" model would seek to optimize and enhance data holdings within organizations where data can be shared, coupled with an organization or unit to coordinate or lead data efforts for strategic and tactical use.

This model combines advantages of a centralized model while addressing some implications surrounding privacy and legislative changes. 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 – such as real estate or taxes. The model would coordinate access and analysis of data by AML regime partners.

Some data holders have no AML mandate, and face operational constraints related to the organization of their data holdings that constrain search and research functions. If expanded functions are to be realized, additional resources may be required. An AML mandate, as a complement to a non-AML regime institution's existing mandate, could enable it to expand its current data collection to close critical AML data framework gaps. Data custodians would be

responsible for subsequent data cleaning and processing, as well as maintaining the quality of the data, and for organizing data for search and access functions.

> In addition to creating key AML data custodians, this model should designate a coordinator to lead data linkage and analytical efforts related to ML in real estate, fulfilled by an existing regime partner or special unit tasked with this responsibility. Adequate data base functionality within all data custodians would enable the designated coordinator to facilitate and undertake strategic and tactical research in cooperation with other AML regime partners. Authorized enforcement and research institutions could have access to relevant data through the coordinating unit or directly from the data custodian – as deemed appropriate.

8. **Applying the AML data framework for real estate requires sounds data management from contributing data holders.**

A key challenge for the use of data from multiple sources is the assurance of data quality and standardization across data providers. Sound data management practices can help improve the overall accuracy of the identification of money laundering in real estate and can contribute to the avoidance of flawed inferences. As such, the implementation and maintenance of adequate data management practices among public data holders ensures that collected data maintains its value both within and outside of the institution holding the data. This includes adequate data structuring, data quality, data retention and information management practices.

9. **Privacy and other legal protections need to be analyzed further when considering ways to enhance data-sharing on AML framework for real estate.**

While the potential of an AML data framework is demonstrated at the conceptual level, a thorough review of the practical implications in the context of existing legislation is necessary. As such a model requires the collection, integration, storage, and analysis of personal data stewarded by multiple data holders, an equally extensive assessment of the legal compatibility and privacy impacts of such an approach is warranted.

Whereas data in the public domain greatly enhances the shareability of data, it can raise privacy concerns. As noted previously in Finding 6.1, the publicly accessible UK BOR enables citizen involvement to verify data, aiding AML efforts, however it can have unintended consequences. These consequences, including the risk of commercial data exploitation, could be mitigated my restricting data to authorized users and uses. It is not intended that data maintained for AML be available to financial service providers to market their products or to solicit business.

a. Current legislation limits data sharing.

The Privacy Act, governing federal institutions, broadly prohibits the sharing of personal information except for some purposes such as law enforcement, research and other purposes consistent with the statute that authorized the data collection.
Additional acts govern the use of data holdings, such as the PCMLTFA for FINTRAC and the Statistics Act for Statistics Canada.

The Freedom of Information and Protection of Privacy Act (FOIPPA), governing provincial institutions in BC, mostly mirrors the Privacy Act with a few differences. Clauses related to the purpose for the collection and the disclosure of personal information may give provincial entities more options relative to their federal counterparts.

Many statutes contain their own information disclosure provisions, which may allow for broader information sharing between and among provincial and federal institutions.

b. The use of personal data is regulated, and considerations of a data framework will need to elucidate and assess privacy impacts.

A thorough assessment will be needed to consider the potential benefits to combatting money laundering by implementing the three data models presented, against the privacy impacts of an AML data framework.

c. Separate assessments are required for the generation of strategic and tactical insights.

The use of personal data for the purposes of research or law enforcement is addressed independently in prevailing legislation. The legal requirements and privacy impact of any implementation of an AML data framework in real estate vary depending on its intended use. The generation of strategic insights – aggregated results to inform policymakers, is subject to legislative restrictions governing the supporting organization. The generation of tactical insights, findings on individuals and organizations which inform law enforcement actions, will be regulated by legislation applied to law enforcement agencies. Both have extensive privacy implications for Canadians. Separate assessments of the legal restrictions and privacy impacts are required for each use case.

10. <u>Data framework approaches may be relevant beyond the real estate sector.</u>

While the findings of the Work Stream members has focused on money laundering in real estate, financial crimes in Canada span a multitude of other avenues such as money laundering through luxury items, false invoicing or tax evasion. The approach discussed may be relevant to data and information analysis and sharing with respect to other sectors.

1.2 RECOMMENDATIONS FOR ANTI-MONEY LAUNDERING IN THE REAL ESTATE SECTOR
More and better data can help raise flags on the illicit use of real estate to launder money.
Specifically, the Data Work Stream recommends that:

1) **A hybrid data model consisting of custodial and co-ordinating functions could support high-quality data on BC real estate for either strategic and /or tactical purposes and merits further consideration.**
    a) A custodial function is mostly applicable to non-regime partners but regime organizations may perform this role as well. Formal recognition of custodial roles could be considered to enable and or foster these functions within designated organizations, which could include:
        i) expanded collection or receipt of AML related data
        ii) verification, processing, storage and organization of relevant data
        iii) sharing data or otherwise facilitating its access, including creating and maintaining data base search functions
        iv) ensuring data is protected and used only for authorized uses. Commercially exploitable data relevant to the AML data framework, such mortgage terms, should only be accessible to authorized data users.
    b) A co-ordinating function within a hybrid data model could be performed by an existing AML regime partner, a newly constituted unit or organization, or a consortium of organizations. This function could include:
        i) determining options for sourcing, linking and sharing AML framework data among regime partners;
        ii) the maintenance and development of the AML data framework
        iii) AML related data analysis and research including research to determine the most effective indicators for detecting money laundering;
        iv) setting data standards to facilitate AML data sharing and system inter-operability for authorized data users
        v) reducing and eliminating duplication of activities among hybrid model partners
        vi) the development and production of metrics such as suggested in Recommendation 7.

2) **Organizations holding AML data could further consider how their data holdings can be expanded or improved within the purview of their current operations with a view of better filling the AML data framework data gaps.**
    Additional data points that would enhance the application of the AML data framework could include:
    a) the names of all significant actors[5] in real estate transactions. This could be facilitated if a unique identifier, such as a property ID, was required for all actors in a real estate transaction;
    b) specific and accurate terms of financial contracts to acquire real estate, including lender(s), principle amounts, interest rates, amortization periods;
    c) updated financial records when real estate is re-refinanced or the terms are altered;

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[5] Including lawyers, realtors, real estate firms, brokers, financial institutions, lenders, and guarantors.

d) the retention of land title applications that are rejected or returned to the applicant due to possible irregularities.
Data that is publicly accessible will facilitate (a data custodian's) data sharing and data organizations who hold publicly accessible data will be better placed to assume AML data custodial functions.

3) **BC registries aimed at improving corporate transparency consider:**
   a) including all Canadian (extra-provincial and federally) and foreign corporations registered in BC;
   b) adopting practices to regularly update and verify submissions including allowing public access to enable citizen participation to verify submissions;
   c) that registry information at a minimum be made available to law enforcement, tax and other competent authorities;

4) **Key data gaps on relationships should be filled through further work to establish the feasibility of linking proxy ownership and criminal networks or politically exposed persons.** This could include:
   a) building and maintaining network information;
   b) leveraging information on co-accused in registered criminal cases and other public records to help detect cases of potential ML;
   c) leveraging information on PEPs and familial relations in public and commercial databases to help detect cases of potential ML.

5) **AML regime organizations should review their data stewardship and management practices.**
   This includes **maintaining** data that is validated, and kept in machine-readable and searchable formats, along with up-to-date data documentation, adequate data retention and protection strategies.

6) **Comprehensive and objective indicators relevant to Canada be created for strategic uses to measure the effectiveness of AML programs, processes, strategies and initiatives related to real estate.** These could include recording and tracking the following type of information:
   a) resource inputs such as salaries, full-time equivalent employees, program budgets;
   b) outputs such as charges, convictions, number and value of seizures, number of reports generated or information exchanges (including by source), etc.;
   c) outcomes such as estimations of price impact of illicit flows in real estate markets, consumer welfare loss and ML activity trends in real estate;
   d) comparing efforts and outcomes of AML efforts related to ML across provinces and internationally, taking into account the Canadian operating environment (e.g., administrative regulatory context, the Charter of Rights and Freedoms, federal system, etc.).

7) **Further work** could be conducted to/by**:**
   a) evaluate the potential to fill data gaps using data holdings not studied in this report, including holdings by the private sector;
   b) investigate the potential to fill the rental data gap pertaining to rents received and paid;
   c) investigate the application of new privacy enhancing technologies and artificial intelligence applications to identify and share suspicious activity with the responsible authorities;
   d) investigate ways to collect beneficial ownership information concerning the private financing of real estate to address schemes involving loans among non-arms-length parties.
   e) Finance Canada to further assess the feasibility of collecting information on the purpose of international financial transfers;
   f) develop models to measure ML in Canada and the flows of illicit funds to and from Canada, possibly engaging Statistics Canada to enhance its measure of the underground economy and undertake a feasibility study to build an economy-wide framework to measure ML in aggregate. Consideration be given to reactivate its financial performance ratio program by industry and geography to help identify outliers consistent with ML activity;
   g) the RCMP and/or police departments to consider estimating the value of proceeds of crime for all incidents as an input into measures of ML in Canada.