Detect, Disrupt and Deter:

Domestic and Global Financial Crime -- A Roadmap for British Columbia

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A Study for the Commission of Inquiry into Money Laundering in British Columbia

March 2021

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Biosketches

Garry Clement has worked in Anti-Money Laundering since 1983 and was one of the pioneers of the RCMP's proceeds of crime program. For over 34 years, he had a law enforcement perspective his perspective was government and investigative driven. For the last 13 years Garry's perspective has been industry and compliance driven. Garry's experience as a liaison officer in Hong Kong in 1991 through 1994 gave him first- hand knowledge of the weaknesses in Canada's immigration system wherein criminals were permitted to enter Canada virtually unimpeded. At that time, he became sensitized to the threat posed by China. Garry was on the ground floor of establishing the RCMP's proceeds of crime program, retiring after 30 years as the National Director. He has been recognized both nationally and internationally as a subject matter expert in money laundering and organized crime. Garry has published several books and provided training to law enforcement, the financial sector, prosecutors and government leaders in Hong Kong, Ireland, Panama, Columbia, United Kingdom, Jamaica, Antigua, USA and every province in Canada.

Arthur Cockfield, HBA (Western Ivey School of Business), LL.B (Queen's), JSM and JSD (Stanford), is a Professor at Queen's University Faculty of Law where he was appointed as a Queen's National Scholar. He is the recipient of fellowships, external research grants, and awards for his tax research, including the Douglas J. Sherbaniuk Distinguished Writing Award. He has served as a legal consultant to organizations that include the OECD, the United Nations, the World Bank, the Department of Justice, the Department of Finance, the Canada Revenue Agency, the Office of the Auditor General and the Office of the Privacy Commissioner of Canada.

Christian Leuprecht (Ph.D, Queen's) is Class of 1965 Professor in Leadership, Department of Political Science and Economics, Royal Military College of Canada and Director, Institute of Intergovernmental Relations, School of Policy Studies, Queen's University where he is also cross-appointed to the Department of Political Studies. He is Adjunct Research Professor, Australian Graduate School of Policing and Security, Charles Sturt University as well as College of Business, Government and Law, Flinders University and a Senior Fellow at the Macdonald Laurier Institute. He is an elected member of the College of New Scholars of the Royal Society of Canada and a recipient of RMC's Cowan Prize for Excellence in Research. A former Fulbright Research Chair in Canada-U.S. Relations at Johns Hopkins University's School for Advanced Studies in Washington, DC (2020) and Eisenhower Fellow at the NATO Defence College in Rome (2019), he is an expert in security and defence, political demography, and comparative federalism and multilevel governance. He has held visiting positions in North America, Europe, and Australia, is regularly called as an expert witness to testify before committees of Parliament, and a member of the Advisory Board of the Ontario Research Fund, the German Institute for Defence and Strategic Studies, the Police Services Board of the City of Kingston and the Polar Research and Policy Initiative. His publications have appeared in English, German, French, and Spanish and include 14 books and scores of articles

that have appeared. His editorials appear regularly across Canada's national newspapers and he is a frequent commentator in domestic and international media.

Jeffrey Simser has been a lawyer in the Ontario Public Service since 1992. He was the founding Legal Director of Ontario's Civil Remedies for Illicit Activities (2000 – 2010). He created and led Canada's first civil forfeiture litigation and asset management team; led the policy, financial and legislative drafting development for two statutes (*Civil Remedies Act 2001* and the *Prohibiting Profiting from the Recounting of Crimes Act, 2002*); and supported other jurisdictions in their development of civil forfeiture laws including British Columbia, Alberta, Manitoba, Quebec, New Brunswick and Nunavut. He was a witness before the Cullen Commission on December 14, 2020. Jeff has published two legal textbooks and dozens of legal articles. He holds law degrees from Osgoode Hall Law School (LL.M., 1997) and Queen's University at Kingston (LL.B. 1989) as well as a B.A. from the University of Toronto (1984).

David B. Skillicorn is a Professor in the School of Computing at Queen's. His research is focused on data analytics applied in adversarial settings such as crime, fraud, terrorism, cybersecurity, and money laundering. He is the author of 8 research monographs and more than 150 publications. He consults with governments and police forces in several countries. He has held visiting positions at the University of Oxford, Sydney University, University of Technology Sydney, and Westmead Childrens Hospital.

John Sullivan was a member of the Ontario Provincial Police (one of North America's largest deployed police services) for over 33 years. In 1994, he was seconded to the RCMP's Integrated Proceeds of Crime Program in Ottawa and in 2000 he was named the Officer in Charge of Operations for the RCMP Integrated Proceeds of Crime Program where he spent seven years. He was Deputy Director General of Criminal Intelligence Service Canada (CISC). He returned to the OPP as Manager of the Provincial Asset Forfeiture Unit before being assigned to Communications and Technology Services Bureau. In 2015, he was appointed as the Provincial Director of the Organized Crime Enforcement Bureau and in August 2016 appointed as the Chief Superintendent/Bureau Commander of the Organized Crime Enforcement Bureau responsible for overseeing major organized crime investigations in the province of Ontario. John has a bachelor's degree in Law/Psychology and Criminology, a BA Honours in Law/Criminology and a master's degree in Law from Carleton University. He is a recipient of the Police Exemplary Service Medal, has been recognized by the Government of Ontario on 30 years of dedication and service with the Ontario Public Service. On May 25th, 2017 John was invested in the Officer of the Order of Merit of the Police Forces by the Governor General of Canada.

1.0 Key Recommendations of this Study

This study recommends to the Commission:

- The Province should create two entities to address the challenge of money laundering: a Fusion Centre that focuses on intelligence gathering, detection and prevention, a technology centre of excellence, forensic accounting, asset management, and two pilot programs; and an integrated enforcement team or IET that will bring various law enforcement functions, including policing, prosecutions and civil forfeiture under one umbrella.
- The Fusion Centre and IET will be housed within a proposed body called the Anti-Money Laundering Institute (AMLI).
- While the Commission cannot make recommendations on changes to federal entities, the Commission can urge the Province to manage the relationship between federal and provincial entities. Money laundering is a complex activity that ignores borders and takes advantage of the weakness of jurisdictional silos. The proposed AMLI requires significant federal support from bodies such as FINTRAC and the Canada Revenue Agency, CRA, to counter money laundering effectively.
- Appendix 1 of this paper reviews some asset recovery techniques, including unexplained wealth orders and outlines AMLI-like models in other jurisdictions: Australia, the UK, Ireland and the United States.
- Appendix 2 provides a survey of models from Ontario and Quebec, and how that experience informs plans for British Columbia.
- Appendix 3 summarizes ML-related statistics that have been compiled for the Cullen Commission

2.0 Introduction

This study has been prepared for the Commission of Inquiry into Money Laundering in British Columbia.[2] The Commission was established in response to concerns "over the extent and nature of money laundering in British Columbia as well as the institutional effectiveness of those charged with combatting it." (Commission Interim Report, November 2020 p.1). This study is being prepared for the evidentiary phase of the Commission slated to end in May 2021: we have been fortunate to draw on the analysis from earlier Commission reports as well as data compiled by different federal government agencies at the request of the Commission.[3]

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[2] Established through an Order in Council under the *Public Inquiry Act* SBC 2007 c.9, ss. 2 and 5 on May 15, 2019.

[3] Commission of Inquiry into Money Laundering in British Columbia, May 2019, Commissioner Austin Cullen, *Interim Report,* December 10, 2020; Peter German, *Dirty Money: An Independent Review of Money Laundering in the Lower Mainland Casinos Conducted for the Attorney General of British Columbia ,*March 31, 2018; Peter German, *Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales and Horse Racing,* March 31, 2019*;* Maureen Maloney, Tsur Somerville & Brigitte Unger, *Combatting Money Laundering in BC Real*

This study proposes a structure or entity that British Columbia can create to address money laundering. A number of functions are needed: criminal intelligence, financial intelligence, forensic accounting, a criminal investigation team, prosecutions, asset forfeiture and asset management. We propose to house these functions in two separate bodies: first, a fusion centre which can be a clearinghouse for regulatory information and provide back-office support for the umbrella (the Fusion Centre); and second, an investigative and prosecutorial centre called an integrated enforcement team or IET. The IET and Fusion Centre, collectively, form the proposed anti-money laundering institute (AMLI). The division between the IET and Fusion Centre is needed to manage investigative and prosecutorial independence as well as the challenge of disclosure (for instance, criminal and financial intelligence in the hands of a prosecutor must be disclosed to the defence in a prosecution).

The AMLI will likely need to have a statutory basis, including protocols to navigate privacy challenges. We recognize that the Commission is not empowered to make findings on the administration and management of federal agencies. That said, for the AMLI to be effective, the Province will need to engage the federal government on a partnership with federal law enforcement, agencies and resources. The RCMP provides policing for much of the province. The Commission has heard some evidence in respect of the proposed AMLI functions, with preliminary estimates of a start-up cost between $18 and 20 million and annual on-going costs between $15 and $20 million.[4]

3.0 The Policy Challenges Posed by Money Laundering

Money laundering is trickery, painting criminal gains with the patina of legitimacy. As the Commission has heard, criminal revenue disperses across a continuum of activities: lifestyle consumption and enterprise reinvestment; sometimes the revenue is laundered. Laundering occurs for many reasons:

- laundering puts the profit outside of the reach of predatory criminal rivals;
- laundering can transfer value within a supply chain, connecting raw materials, manufacturing and illicit retail markets;
- laundering can obfuscate the trail to inhibit victim recovery;
- properly laundered assets appear to the casual observer to be legitimate (and thus provide utility to the criminal); and
- sophisticated criminals do not want others to know that they control significant assets (tax authorities can assess the net worth of an individual against their reported income).

Estate, March 31, 2019. In terms of data provided to the Commission, we rely on 'Compiled ML-related Statistics for Cullen Commission' (2021), which is set out in Appendix 3.

[4] Commission Exhibit 60, *Anti-Money Laundering Financial Intelligence and Investigations Unit Draft Proposal*, May 7, 2019; Commission Interim Report, pp. 63-64

Like crime, not all laundering is carefully planned. Sometimes laundering is adventitious and good enough[5]: those arrangements work as long as no one is inquiring deeply into them. On the other hand, sophisticated arrangements can challenge the most competent financial investigator.[6]

3.1 Moving Value: Finding Links in the Chain

Money laundering requires moving value acquired as the result of a crime (the "predicate offence") to a setting in which the criminals can use it freely; in other words, money laundering tries to break the connection between the crime and the use of the value it produced. Using a chain (or better still a network) of movements makes it more difficult to find and demonstrate the connection. There is a fundamental asymmetry between criminals and law enforcement because adding more complexity to the chain is relatively easy for criminals but disproportionately increases the effort to follow the chain for law enforcement. Each link in the chain is detectable in principle because the movement of value creates data that can be captured and analysed using data-analytic techniques. However, there are several kinds of links that do not leave a trace, and so break the chain required to prosecute the offence of money laundering.

First, physical movements of cash are difficult to detect. In the absence of regulation, moving cash around and inserting and removing it from the financial system is straightforward. An estimated $US 4 billion in cash crosses the Southern border of the U.S. each year but only a tiny fraction (a few million) is intercepted. In February 2021, a man was arrested in Sydney, Australia, with $A1 million in his car as part of a global money laundering ring.

Second, transfers using cryptocurrency are close to impossible to attribute. Cryptocurrencies use blockchains, tamper-resistant and verifiable records of actions including financial transfers. Value transactions that use cryptocurrencies are visible; what is concealed is the agents performing these transactions. Identities of users of cryptocurrencies reside in public-private key pairs, also called digital wallets and these are strings of symbols that are easily concealed

Cryptocurrencies are also becoming important ways to collect the value generated by crimes such as extortion directly from each crime's targets. This removes the traditionally difficult problem of collecting the (ransom) payment without creating a lead to the criminals carrying it out. It has been estimated that 40% of cryptocurrency transactions are associated with crime. (Fortunately, cryptocurrencies are currently routinely used for financial speculation, making them unstable places to store or move large amounts of value.)

Third, moving value across international borders tends to break the chain for reasons that vary from lack of cooperation or lack of capability of government entities on

[5] Levi, M. Money-Laundering Typologies: A Review of their Fitness for Purpose (Ottawa Government of Canada, October 31, 2013) p.32
[6] Jeff Simser. *Civil Asset Forfeiture in Canada,* 2021 .

one or both sides, to differing rules about what must be declared when crossing a border. For example, while cash must typically be declared above a certain limit when crossing most international borders, a bearer instrument is simply a piece of paper when crossing some borders.

Other links are detectable in principle but extremely difficult to detect in practice. For example, fine art and jewelry have value that cannot be determined objectively. A painting, from one point of view, has value based on the canvas and paint; but from another may be worth many millions. Its value is typically determined by an expert, but experts disagree, and may be able to be corrupted. Links involving such objects can appear to carry little value in transit but realise large value at the end. Other objects whose ownership can be obscured, such as real estate or high-end vehicles, move value from one owner to another without necessarily creating a visible link (which is why determining beneficial ownership is so important to controlling money laundering).

Other links in the chain are supposed to be detected and reported to financial intelligence units, but often are not. Conventional money laundering in the financial system involves inserting the value from a crime into the financial system ("placement"), movement within the financial system designed to make the chain difficult to follow ("layering"), and eventual extraction into a usable form ("integration"). The movements that make up these stages are visible to banks and other financial institutions (including alternative remittance systems such as hawalas) and they are supposed to report them to financial intelligence units in the form of Suspicious Transaction Reports. However, the recent spate of fines for mainstream banks suggest that they are unable to resist the profits to be made from money laundering and regard the fines as the cost of doing business.[7]

There is a structural problem in the relationship between financial institutions and financial intelligence units such as FINTRAC. Financial institutions have the data and data-analytic capabilities to detect money laundering activity but lack the incentive to do so. Financial intelligence units have the incentive but they lack the data – since they see only the suspicious transactions and not the patterns of normal transactions against which to contrast them, and they see only the suspicious transactions that financial institutions choose to give them. Jurisdictions where financial intelligence units have built close relationships with financial institutions have a better track record of detecting and prosecuting money laundering.

Finally, there has been a rapid rise in Money Laundering as a Service (MLaaS). Here criminals provide a service to other criminals, taking the value produced by their crimes, merging it with value from others, and delivering it back to them in a way that is completely disconnected from the predicate offence (that is, the underlying criminal offence that generated the illicit revenues). This intermingling of the chain associated

[7] JP Morgan Chase, more than $US2 billion; HSBC, $US1.9 billion; US Bancorp, $US613 million; Commonwealth Bank of Australia, $A700 million; Rabobank, $US369 million; UBS, $US4.2 billion; Deutsche Bank, $US41 million; Danske Bank, still being decided but estimated between $2 and $8 billion; and Westpac, $A1.3 billion.

with each crime make it substantially difficult both to track and attribute steps in the chain to any particular crime.

The complexity of the chain between predicate offence and usable value, and the increasingly missing links makes it extremely difficult to prosecute money laundering. When prosecutions are attempted, more than 90% of them result in charges being stayed or dropped.

3.2 Options

One potential solution is the use of Unexplained Wealth Orders (UWOs), which is comparable to values-based confiscation in Australia. UWOs require those who hold value to explain how they came by it (Appendix 1 explains how UWOs work). In other words, UWOs target the exit from the chain of value movement. It does not matter how complex the chain is; the purpose from the criminals' perspective is to extract value to support their lifestyles and this is the vulnerability that UWOs target. UWOs are in place in the United Kingdom and Australia. As with civil asset forfeiture, the UWO tool is not used to prove a crime in criminal court at a criminal standard of proof. Rather the UWO focuses solely on property and challenges its provenance on a civil standard of proof. The UWO requires the state authority to prove certain facts (e.g., the respondent or defendant has significant asset holdings and no legitimate income), which then gives rise to an examination process. If the owner does not cooperate, presumptions arise about all of their property. Property without an established legitimate provenance is subject to a civil recovery by the state. In the U.K. non-European politically exposed people can be the subject of a UWO as can others with wealth greater than £50,000. The first U.K. case involved the wife of a poorly remunerated central banker in Central Asia. The wife had extensive property holdings and was very fond of profligate spending in luxury stores like Harrods.[8]

Given that direct prosecution for money laundering is difficult, and often unsuccessful, what else can be done? There is an ecosystem of intermediaries, including banks and accountants, that benefit from the movements required for money laundering but have plausible deniability about the origins of the value that they move. These enablers are much more reachable targets for law enforcement.

3.3. Strategies

There are two strategies, both within the control of provinces.

First, tighten regulation to prevent some of the links in the chains of money laundering from being used, and to force others to leave a visible trace that can be used for data analytics. This includes:

[8] *National Crime Agency v. Hajiyeva*, [2018] EWHC 2534 aff'd [2020] EWCA Civ 108; see also *National Crime Agency v. Baker* [2020] EWHC 822 (Admin). Both cases make it clear that a UWO is primarily an investigative tool.

- Forcing reporting of value transfers for a much wider set of businesses: casinos, real estate, high-end vehicle sales, jewelry and art sales, and any other business that sells objects with substantial value.
- Limit the use of cash, either absolutely or requiring mandatory reporting of transactions above threshold. How difficult this is regarded seems to be culturally mediated. Sweden has reduced cash transactions to a tiny fraction of the whole; Iceland had almost eliminated cash until a financial crisis caused hoarding of high-denomination bank notes; the pandemic has shown that most transactions do not require cash. Some countries have taken an indirect route and removed high-value notes from circulation. This has the effect of making large amounts of cash bulky and awkward to move, and so more detectable. At the same time, an Australian proposal to limit all cash transfers to less than $A10,000 foundered because of vigorous but, in our view, largely contrived lobbying ("old people save cash to pay for their funerals").

Second, investigate, prosecute and fine businesses that violate the strengthened regulatory framework. Doing so at the level of a single link in the chain is much easier than attempting something based on the entire chain. For example, a luxury car dealership that accepts a cash payment of $100,000 would be either in violation of a regulation, be obliged to report the transaction, or have their bank report it when they attempt to deposit the amount. In all three cases, the transaction is a plausible target for investigation.

The limited attempt to use a strong regulation plus vigorous enforcement strategy has been modestly successful in Canada (much more so than the prosecution of money laundering directly). However, those violating regulatory frameworks often do so because it is profitable and fines alone have proven unsuccessful at fully suppressing money laundering. Accordingly, it is likely necessary to make some actions that are currently the subject of regulations into criminal offences to be pursued by federal authorities.

These two strategies—strong regulation and vigorous enforcement—force many dubious transactions into the open and reduce the scale of the problem for law enforcement as it allows them to focus on single, discrete transfers instead of following complex chains of value.

3.4 The role of data analytics

The best way to address the information asymmetry noted above—whereby criminals create complex value chains to thwart law enforcement—is by providing better and more timely information to regulators under the proposed AMLI. Money laundering red flags creates many different data points (for example, in 2019/20 FINTRAC received over 31 million reports from reporting entities (REs), including Suspicious Transaction Reports) and regulators sometimes suffer from the 'drinking from the firehose' problem where they are overwhelmed with data and cannot make sense of what is taking place. Data analytics can help address this problem so that regulators can effectively

investigate, prosecute and fine activities that are linked to money laundering (e.g., fining and barring from operation an unlicensed Money Services Business).

Data analytics builds models of systems from data about them. Many conventional approaches to detecting crimes or regulatory violations rely on analysts querying data, looking for patterns of activity that are known or thought to associate with these crimes and violations. In contrast, data analytics computes patterns of activity that are consistent with the data and apparently plausible and presents these to the analyst. In other words, data analytics can find patterns of activity that would otherwise escape human detection

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It has three main roles in detecting regulatory violations and money laundering:

- Investigating patterns of money laundering. Many money laundering activities contain particular patterns of activity because they have proven to be effective. These are often called typologies. When these patterns of activity are already known then they can be found by querying the data, but novel and unexpected patterns can be found automatically by data analytic algorithms.
- Looking for anomalies. In large financial datasets, activities associated with money laundering or regulatory violation are typically rare and unusual. These can be detected using techniques tuned to look for data and patterns that are sharply different from the remainder of the data.
- Understanding (social) networks. Relationships among individuals and organisations naturally form networks, and so do financial flows. Social network techniques can be used to analyse such network data, for example looking for network anomalies or unusual pathways and discovering a rogue bank is helping terrorist financiers.

Data analytics enable large data to be leveraged because the algorithms automatically focus on the interesting structures within them. Scalability is required for the storage and processing of the data, but not for the number of analysts to work with it.
Data collection requirements for money laundering focus on suspicious transactions (primarily via Suspicious Transaction Reports generated by banks and other financial intermediaries). Part of the reason for this is to reduce the amount of data collected, stored, and processed. This motivation is now less important because the costs involved have shrunk by orders of magnitude in the past few decades. One of the weaknesses of requiring reporting only of suspicious transactions is that it leaves considerable leeway in the interpretation of which transactions are suspicious. One way to remove this leeway would be to require reporting of all transactions, as Australia has done for international transfers. Banks favour this approach because it reduces the cost of regulatory compliance and the need to filter transactions: by threshold and by suspicion, which is a nebulous descriptor anyway.

There are benefits to collecting and analysing data from value transfers in different contexts. The current framework requires demonstrating a complete pathway from predicate offence to integration and this is increasingly difficult. However, some steps along the pathway are still useful to integrate: Understanding where value came

from and where it went can help ascertain whether a particular step is a regulatory violation.

4.0 Structures to Address those Challenges

Canada's constitutional and institutional framework pose challenges and risks that the architecture of AMLI needs to take into account. This study proposes to break the AMLI into two areas of functionality: one, a Fusion Centre that can bring together prevention, detection, policy and back office functions; and two, the IET for investigation and enforcement functions. Investigatory and prosecutorial functions require independence for Constitutional and legal reasons (as explored below) and those functions need to focus on enforcement. Prosecutors and civil forfeiture authorities have disclosure obligations where they are required to disclose information collected during an investigation to the accused. Separating the investigative and enforcement function allows for specialization and expertise to be allocated properly across the AMLI.

5.0 Constitutional and Institutional Framework

Canada's has a federal political system, that is highly decentralized, with responsibilities constitutionally distributed among a central government, ten provincial governments, three northern territorial governments and municipal governments. Core anti-money laundering (AML) measures are federal responsibilities spread across 13 departments and agencies[9]:

- The Department of Finance has the lead for domestic and international responsibilities.
- The Department of Justice is responsible for criminal law and procedure, as well as related Mutual Legal Assistance Treaty matters.
- Global Affairs Canada is responsible for the designation of terrorist groups and individuals. Public Safety Canada plays a role in national security and public safety.
- The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is a federal agency that reports through the Department of Finance and operates as our national financial intelligence unit (FIU).

FINTRAC has a regulatory role, creating barriers to money laundering. FINTRAC is also an information gateway, collecting and analyzing information from regulated entities. If a statutory test is met, FINTRAC may disclose information to law enforcement and tax authorities. The FIU supports the national tax authority (the Canada Revenue Agency) and security establishment (e.g., the Communications Security Establishment).

[9] The Cullen Commission (www.cullencommission.ca) testimony of Hoffmann, J (February 24, 2020) at p.32

Constitutionally, provincial governments such as British Columbia have significant responsibilities for AML activities in Canada: for example, company incorporation, tax authorities, securities, real estate regulation, policing, and land registry systems.

The reality of the complexity of policy areas means that many areas of jurisdiction overlap: There are federal and provincial prosecutors as well as federal, provincial, municipal, First Nations and transport police forces. Moreover, these arrangements are highly asymmetrical across provinces.[10] Enforcement and disruption through prosecutions and asset forfeiture vary across provinces as collective-action and coordination issues differ by province: Ontario and Quebec enjoy a greater degree of autonomy because they have their own provincial police forces whereas the BC is more dependent on the federal government because it has the largest RCMP and the largest contract policing footprint in the country. This has an impact on prosecution: Fraud is almost exclusively prosecuted by Crown Attorneys in the provinces whereas ML prosecutions depend on the predicate offence: drug offences are taken up by the Public Prosecution Service of Canada while gun offences are subject to prosecution by each province.

6.0 Navigating Silos

Provincial and federal entities operate within silos, most established within a legislated framework. Some of those silos are easily managed. The RCMP operates alongside municipal police forces in Vancouver and Victoria. RCMP Federal Serious and Organized Crime (FSOC), Forensic Accounting Management Group (FAMG), Seized Property Management Directorate (SPMD) all can play a crucial role in attacking money laundering and proceeds of crime; therefore, they need to be truly integrated into a single focused organization with an established goal and assigned accountability.

Other silos pose legal challenges based on their function and constating jurisdiction i.e. the collection, use and disclosure of taxpayer information by the Canada Revenue Agency (CRA) is governed by Section 241 of the *Income Tax Act*. There can also be silos within silos i.e. RCMP multi-jurisdictional requirements and working relationships amongst various law enforcement agencies. The design of any entity in British Columbia needs to consider, navigate and mitigate these silo challenges.

6.1 Privacy

All provincial entities involved in anti-money laundering initiatives need to reckon with privacy law and access to information law. The Information and Privacy Commissioner regulates provincial institutions. Provincial entities in British Columbia are subject to the *Freedom of Information and Protection of Privacy Act* (RSBC 1996, c

[10] Christian Leuprecht, Mario Koelling and Todd Hataley. *Public Security in Federal Polities*. Toronto: University of Toronto Press. 2019.

165). Those entities must have the statutory authority to collect, use and disclose personal information. While there are exceptions to privacy rules designed to enable law enforcement, they still need careful navigation. Entities are subject to access for information requests from the public; here too there are law enforcement exemptions.

There is an analogous system in place that governs the collection, use and disclosure of personal information by federal agencies (*Privacy Act*, RSC 1985, c P-21). Private actors must also comply with federal privacy law as well (*Personal Information Protection and Electronic Documents Act*, SC 2000, c 5). Further, some private actors need to be mindful of other legal obligations: financial institutions have their own regulatory obligations (for example, with the Office of the Superintendent of Financial Institutions) and may have fiduciary and contractual obligations to their clients. Failure to comply with these obligations creates regulatory, reputational and civil litigation risks.

6.2 Crown Disclosure

There are classes of information that need special consideration as design parameters are shaped:

- Prosecutors have a duty of disclosure to defence counsel.
- The Director of Civil Forfeiture must disclose the law enforcement brief to a respondent (that is, the individual who possesses alleged proceeds of crime).
- There are recognized privileges (for example, informant privilege) that can be asserted for certain classes of information.
- Any organizational design needs to reckon with these challenges.
- A singular task force that includes intelligence, police, prosecutions and civil forfeiture litigators is inadvisable because it would put certain classes of information at risk once proceedings begin in a courtroom.

We note that organized crime prosecutions are complex and require extensive Crown disclosure (that can include thousands of pages of text). There is a need for infrastructure and information technology tools to navigate these cases successfully and those same tools can enable data analytics (see 3.4 above).

6.3 Special Classes of Information

There are also classes of information that need consideration:

- Confidential informants pose challenges and risks that require careful mitigation.
- The product of wiretaps obtained under Part VI of the Criminal Code must be managed in compliance with the law.
- Provincial tax authorities may have relevant information, but they need to be mindful of their obligations to the CRA under information sharing arrangements. The CRA have limited abilities to disclose information to a provincial entity. For example, drug investigators can, in certain circumstances, obtain tax information from the CRA, but there are strictures on the use of that information (for

example, it cannot be shared with civil forfeiture authorities). A criminal with no reported income and significant assets is a rich target for law enforcement. CRA can take their own enforcement measures. Alternatively, the *Income Tax Act* permits the CRA to disclose to law enforcement relevant taxpayers' information where criminal proceedings have been commenced by the laying of charges. There is also a *Criminal Code* process where on-going investigations can obtain disclosure (even if no charges have been laid). In either instance, disclosures are limited to category of very serious crimes, including offences related to drugs and criminal organizations. Currently, s. 462.48 of the *Criminal Code of Canada* restricts income tax applications to specific designated substance offences under the *Controlled Drugs and Substance Act* (CDSA), terrorism offences and specific criminal organization offences. Access to this essential evidence utilizing s. 462.48 is prohibited with respect to all other profit-motivated criminal offences including theft, fraud, and trafficking in other contraband outside of the CDSA. This class of information cannot be shared with the Director of Civil Forfeiture. These restrictions severely impede investigators' ability to investigate money laundering and proceeds of criminal offences that are not listed under s. 462.48. Accordingly, we recommend that this provision be amended to broaden the listed criminal offences. Similarly, s. 241 of the *Income Tax Act* narrowly restricts the information that the CRA can share with other government agencies as well as law enforcement to protect taxpayer privacy. The exemptions in this provision should be similarly broadened to allow for effective sharing with law enforcement agencies, including the proposed Fusion Centre. Some academics are revisiting the need for strong privacy protections: under one view, these protections too often benefit criminals and the wealthy, and harm the interests of the general public.[11] Notably, the CRA administers British Columbia's provincial income tax under the Canada-British Columbia Tax Collection Agreement. Accordingly, the CRA maintain financial records of taxable income generated by B.C. entities such as corporations and this information could be better shared with provincial authorities. For instance, the CRA is working with the B.C. Ministry of Finance to improve tax compliance in the real estate sector by enhancing information sharing and auditing high-risk matters such as non-resident ownership of real estate. Similar information-sharing initiatives could be built into the Fusion Centre.

- Criminal intelligence can guide law enforcement's deployment strategically and tactically. That said, the sources of that intelligence may need to be shielded from organized crime.
- The security intelligence services in Canada have information that would be relevant to an anti-money laundering effort. The JIMLIT model, discussed below, is an example of integrating security service roles into an AMLI type of structure.

[11] Arthur J. Cockfield, *How Should Countries Share Tax Information*. vol. 50 Vanderbilt Journal of Transnational Law p. 91, 2017.

6.4 Inspections and Investigations

There are further silos within institutions. Regulatory agencies typically have inspection, investigation and enforcement capacities. Each agency must be mindful of the boundaries between each function. An inspection ensures regulatory compliance. A tax authority can inspect or audit financial records. However, once that authority suspects wrongdoing, the matrix changes. Instead of a compliance inspection, the regulatory authority needs to move into an investigative mode. A judicial authorization is required to compel information from the regulated entity. If these steps are not followed carefully, an accused can argue that investigatory information was not lawfully obtained and the Crown will be unable to obtain a conviction.

6.5 FINTRAC

FINTRAC, Canada's Financial Intelligence Unit (FIU), is a silo by design. FINTRAC receives information from regulated entities (REs) like banks and other financial intermediaries and the FIU can only disclose that information in limited circumstances to law enforcement. Law enforcement can make a 'voluntary information record' and hope that FINTRAC analysts will provide actionable financial intelligence and strategic analysis that identifies potential AML concerns.

Appendix 3 reviews statistics provided by FINTRAC to the Cullen Commission. It gives a sense of both the large amount of financial data that is hoovered up by this federal agency as well as some of the enforcement challenges. The amounts of data that FINTRAC collects includes, in 2019/2020, roughly 390,000 Suspicious Transaction Reports and a total of over 31 million overall reports, each containing multiple data points. These amounts represent an increase of 558% since 2010/2011 (Table 5). In addition, in 2019/2020 FINTRAC received roughly 2,000 unique intelligence disclosures from the RCMP, provincial and municipal police, security services, the CRA and other bodies, representing an increase of 124% from 2012/2013 (Table 6). In addition to intelligence disclosures, police can submit voluntary information records, mentioned above, and FINTRAC received 2,519 such reports in 2019/2020, representing an increase of 112% from 2020/2011. Finally, FINTRAC receives roughly 200 queries a year from foreign financial intelligence units (Table 16). In the presence of data-analytic capabilities, scaling the size of data ingested is not the issue: at stake is a prospective mismatch in skillsets within agencies to make sense of patterns and specific vulnerabilities and risks in a pool of data that is projected to keep growing exponentially.

In terms of enforcement, out of an estimated 31,000 REs, FINTRAC conducted 399 compliance examinations in 2019/2020 so that roughly 1% of total REs were examined (Table 1). In terms of any administrative monetary penalties for money laundering violations, FINTRAC has issued a total of 78 Notices of Violation as of 2015 (Table 2). Since 2020/2011, FINTRAC has provided a total of 27 non-compliance disclosures to law enforcement (Table 3). In 2019/2020, FINTRAC financial intelligence disclosures supported 393 investigations by law enforcement (Table 7).

The raw data provided by REs to FINTRAC cannot be shared with law enforcement. In contrast, FinCEN (the U.S. FIU) can share such data with the police and other U.S. federal agencies. In our view, federal legislation should be amended to allow FINTRAC to share information with provincial entities such as the AMLI as well as more broadly with law enforcement agencies. This, however, necessitate significant statutory change at the federal level.

6.6 Mutual Legal Assistance Treaties (MLATs)

Money laundering often involves an international component because once money is moved offshore it is very difficult for Canadian authorities to discern what has actually taken place. In terms of proceeds from crime laws, there is a legal silo for assets linked to Canadian criminality that have moved offshore.

In the criminal law process, law enforcement have a number of options to obtain the relevant information. By statute[12], Canada can work with a foreign government where a treaty exists (Mutual Legal Assistance Treaty or MLAT). MLAT requests tend to be ponderous, bureaucratic and very slow, but because Canada works so closely on MLATs with the United States, those tend to work better than with other jurisdictions. Non-treaty requests can be made through networks, like CARIN (the Camden Asset Recovery Inter-Agency Network). Experienced investigators have their own networks and can often get a colleague in Tokyo or New York to quietly procure a title search for them. For civil forfeiture enforcement, there are mechanisms to work across borders but they vary from jurisdiction to jurisdiction. American federal laws would allow a BC civil forfeiture action to follow an asset into the US. In other places, like Europe, following assets may be tricky.

6.7. The Common Reporting Standard, Beneficial Ownership and Registries

A popular way to evade regulators or the police is to simply move laundering operations offshore through offshore bank accounts. To address the related problem of offshore tax evasion in 2013, the OECD and the G-20 endorsed the automatic sharing of bulk taxpayer information on an automatic basis under a new standard dubbed the Common Reporting Standard (CRS). Canada subsequently implemented the CRS through changes to the federal *Income Tax Act*.

Under the CRS, participating governments promised to collect and exchange information about non-resident taxpayers to other participating governments. For instance, Canada mandates that its banks collect information about above-threshold deposit amounts in bank accounts maintained by non-residents who live in other participating CRS nations then send this information to these other countries. Similarly,

[12] *Mutual Legal Assistance in Criminal Matters Act*

Canada now receives this data, which could provide valuable links to foreign ties that enable money laundering within British Columbia.

In a related initiative, Canada has signed onto FATF efforts to discern the ultimate beneficial owner (that is, the actual human being) that own criminal enterprises or assets derived from crime. A beneficial owner, as defined by FATF, "refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on who behalf transaction is being conducted." The OECD adopted the same definition for beneficial ownership for purposes of the CRS.

Once the beneficial owners have been identified they can be set out in a registry that is accessible by governments and/or the general public.

The linkages between offshore tax evasion and money laundering was noted by the Tax Justice Network's 2020 Financial Secrecy Index: "Canada has a long history in the development of tax havens, but today it is becoming better known as a destination for money laundering (or 'snow washing'), due to Canada's weak rules over corporate transparency and beneficial ownership." Transparency International ranked Canada at the bottom of the pack of all G20 countries in meeting G20 (Tax Justice Network, Narrative Report on Canada (2020). In its 2020 global ranking, Tax Justice Network concluded that Canada was the 19th most financially secret jurisdiction in the world out of 133 countries.

In 2017, federal and provincial finance ministers agreed to work toward a system to identify beneficial owners. In 2018, the Finance Standing Committee recommended the creation of a pan-Canadian beneficial ownership registry for all entities (Recommendation 1 of the Standing Committee on Finance, Confronting Money Laundering and Terrorist Financing: Moving Canada Forward (2018). In 2019, British Columbia became the first province to create a registry system via the *Land Ownership Transparency Act*: the beneficial owners of entities relating to land ownership and land transfers must be identified. In 2020, the federal government began to explore the development of a registry system to identify beneficial owners of privately-held corporations (Canada, Strengthening Corporate Beneficial Ownership Transparency in Canada, February 2020).

In our view, British Columbia should work with its federal counterparts on a national registry of beneficial owners of all business entities (e.g., corporations, partnerships, limited partnerships) and all legal entities (e.g., trusts). While the expert panel on real estate recommended that this registry should be public and data should be available for free or at a minimal cost (Expert Panel 2020, at 103), a registry that is restricted to government and law enforcement access will protect the privacy of individuals engaged in perfectly legal activities and allow for a more meaningful implementation of the registry (Cockfield 2017). Similarly, the Finance Standing Committee recommended that its proposed registry should not be publicly accessible. Information within this registry can be cross-checked against other information (such as

CRA information concerning taxpayer filings and FINTRAC information regarding cross-border transfers of funds) to ensure accuracy.

A glaring problem to the enforcement of both the CRS and the related beneficial ownership identification is that the United States does not participate in the CRS. Rather, the United States imposed a law known as the *Foreign Account Tax Compliance Act* where Canada has agreed to unilaterally provide tax information to the Americans concerning any US citizen (or, more technically, 'U.S. persons' that include resident aliens) owning a bank account within Canada. Similarly, a payee agent/trust agent can operate in the United States without the need to comply with the CRS and identify beneficial owners of criminal assets that may be derived via money laundering.

The CRS represents the main cooperative global effort to inhibit tax evasion and allow the tracing of fund movements and beneficial ownerships of assets under investigation, whether they were obtained via licit or illicit means. Notably, tax evasion was added as a predicate offence to money laundering in 2016 hence calling for a more formal integration of criminal (money laundering) and tax resources. A member of the proposed Fusion Centre could be seconded to the CRA to assess and obtain the needed information to pursue money laundering investigations. Conversely, in the old IPOC and current CFSEU models, CRA analysts have a "cubicle" in the office: they retain their authority as tax officials but can collaborate on cases.

6.8 Warrants

An investigator in the criminal law silo can lay an 'information to obtain' before a judge, who can issue a search warrant or information-gathering order based on the evidence in an affidavit. An investigator can also seek a restraint order against assets. In some instances, civil forfeiture authorities can seek assistance of the court to obtain evidence and information. An authorized disclosure may reveal account transactions showing that money has been wired to another account; further disclosure on the subsequent account can reveal further trails, all of which need to be pursued. A money launderer understands that movement of money across accounts leaves a trail, but following the money is labour-intensive and time-consuming. Combatting laundering requires dedicated and specialized resources and an organization such as the proposed AMLI that takes a sustained and long-term strategic approach to their mission.

7.0 Necessary Elements for the AMLI

This study recommends the creation of an umbrella group, notionally called the Anti-Money Laundering Institute, or AMLI, which would have two functionally distinct arms: a Fusion Centre and an Integrated Enforcement Team (IET). There are some principles that should govern the creation of the AMLI:

- Counteracting money laundering is a complex undertaking that needs a concerted long-term strategy.

- Funding needs two tranches: start-up and then long-term base funding.
- The Province needs to allocate permanent positions into the venture (FTE or full-time equivalent positions).
- Any model devised by the Province will not be effective without a partnership with the federal government and the multiple agencies that have AML jurisdiction. For example, the Province can do little about trade-based money laundering (TBML) without cooperation with Canada Border Services Agency and the Canada Revenue Agency (CBSA and CRA). The converse is also true. A federal TBML strategy cannot be effective without provincial and local cooperation. This challenge extends across the 13 different federal agencies and departments with mandates to counter TBML.
- Given the complexity, the AMLI should have a legislative basis, possibly as two agencies of the Crown. This will enable a longer-term approach. A board-governed agency would allow stakeholders and partners to participate in governance. The legislative basis would also enable the government to implement a strategy operationally. For example, legislation could enable protocols for information sharing across the silos in the system. The independence needed by police and prosecutors could be baked into the structure.
- There should be accountability measures in place: AMLI should be under the purview of the provincial Auditor General; there should be an annual reporting mechanism to the Legislative Assembly.
- Since financial crime is highly adaptive, the AMLI and its statutory and governance mechanisms should be subject to review every five years to ensure it remains fit for purpose.

8.0 Fusion Centre Capacity and Functions

8.1 Intelligence

General intelligence is collected within a federal agency called the Criminal Intelligence Service Canada (CISC) which, along with ten provincial bureaus, develops and shares criminal intelligence through various products, including a national database on organized crime. This enables intelligence assessments of threats, which law enforcement partners can use to target criminal activity strategically. As discussed, FINTRAC produces financial intelligence. The Fusion Centre should develop a dedicated AML criminal intelligence collection function, drawing on CISC and FINTRAC, but also levering relationships with regulatory agencies in the province and the specialized learning of the IET.

8.2 Technology Centre of Excellence

The Fusion Centre should incorporate a Technology Centre of Excellence. Professional money launderers build and then rely on an infrastructure to move value

amongst the various participants in their enterprise. Money launderers also have behavioral traits that may leave patterns. These patterns lend themselves to the application of data analytics. Finally, court-mandated disclosure of all relevant information drawn from investigations concerning major organized crime cases poses an immense challenge for both police and prosecutors. Building a small and agile technological infrastructure to support AMLI and law enforcement functions, combined with the human resources with technical know-how, would add value and incent various partners across regulatory and law enforcement spheres to join in the partnership. In particular, the Technology Centre of Excellence could ensure that data analytic needs and Crown disclosure challenges can be met (Sections 3.4 and 6.2 above).

8.3 Forensic accounting

Forensic accountants perform three primary tasks:

- Tracing: accountants can map financial connections in an unlawful enterprise, connecting property to unlawful activity. This supports investigators and prosecutors, connecting an accused to an offence; this also supports asset forfeiture (criminal or civil) by connecting property to crime.
- Net Worth Analysis: a forensic accountant can build a profile of an accused's legitimate sources of income and then juxtapose that profile against the accused's asset holdings. If the Commission considers statutory tools like unexplained wealth orders, this forensic accounting function will be particularly important.
- Expert Witness: a prosecutor or civil forfeiture lawyer needs to adduce evidence in court to support their case. A credible forensic accountant can play this role.

There is a federal entity, the Forensic Accounting Management Group (FAMG), that governs the government's forensic accounting efforts. As a matter of policy design, the Fusion Centre will need to explore secondments from FAMG.[13] Building an in-house capacity in forensic accounting is challenging. Big firms have the expertise but are expensive. They will sometimes second staff to a law enforcement agency; in large cases, if the seconded employee returns to the big firm, law enforcement will need to pay for that specific employee's expertise at private sector rates. It may be more cost efficient to fund full-time equivalent forensic accountants (and other needed professionals) with higher government salaries to encourage retention.

8.4 Asset management

In the 1990s, US federal asset forfeiture programs faced persistent criticism from auditors and Congressional oversight bodies, including the view that the government was overly aggressive in its seizure of assets. Currently, there are two asset management bodies operating in British Columbia: federal cases, such as drug

[13] A branch within Public Services and Procurement Canada

prosecutions, rely on the Seized Property Management Directorate (SPMD); the provincial civil forfeiture Director relies on their own resources. Integrated asset planning and management are key components for an asset forfeiture program. Appendix 2 notes the Quebec approach, which goes beyond asset management and factors in asset sharing. Forfeitures under federal legislation are shared, in part, with the provinces; civil forfeitures are managed under the Civil Forfeiture Act. Both represent a potential source of non-tax revenue to fund this model.

8.5 Open-source intelligence

In 1999 British Columbia created the Organized Crime Agency (OCA).[14] One specific function that OCA mastered was the collection and dissemination of open-source intelligence. The civilian analysts working alongside commissioned constables supporting this effort were moved into the CFSEU in 2004. That function could move to the Fusion Centre. The ability to harvest information from social media, the internet, the dark web and so on would strengthen enforcement efforts.

8.6 Fusion of Information for Regulators

There are a number of sectors that are regulated by the Province yet information barriers often inhibit effective regulation. A Fusion Centre could allow regulators to collaborate, providing where appropriate financial intelligence and information and receiving same. Each provincial regulator would need to retain their independent authority (as police agencies do) to make decisions within their mandate. They would also need a statutory basis to collect, use and disclose information in the context of the proposed Fusion Centre. Potential regulated sectors include:

- Real Estate: real estate agents and notaries; the Land Title and Survey Authority of BC, BC Assessment, BC Registries and Online Services; and the Real Estate Council of BC;
- Luxury Cars: Insurance Corporation of BC, Office of the Superintendent of Motor Vehicles, Motor Vehicles Sales Authority
- Gaming: BC Lottery Corporation, Gaming Policy Enforcement Branch, casinos; B.C. Racing Commission, horse racing.
- Financial Services: BC Financial Services Authority regulates mortgage brokers, credit unions, insurance, and trust companies.
- Securities: BC Securities Commission (the only provincial regulatory agency that is authorized to receive information from FINTRAC)
- Tax: The Revenue Division within the BC Ministry of Finance administers taxes that are imposed on activities associated with money laundering (the Property Transfer Tax and Foreign Buyer Tax and the Speculation and Vacancy Tax); and
- Others: there may be unlawful activities where financial gain and money laundering are critical elements in a specific case (disposal of toxic waste for

[14] OCA was created following the Owen Report on Organized Crime issued in 1998.

profit). The Fusion Centre should be designed to enable interactions of this nature when appropriate.

8.7 Training

As Appendix 1 makes clear, tackling money laundering calls on highly specialized skill sets. A strong training function in the Fusion Centre will serve two objectives: it will ensure everyone on the enforcement team, the IET, has the knowledge and skills they need; training of other stakeholders, police and regulators, will have a multiplier effect as those entities strengthen their ability to identify money laundering cases. Those partners can then provide AMLI with critical case referrals.

8.8 SAR review teams

In the American system, local authorities across the law enforcement spectrum (federal, state, local and so on) have formed Suspicious Activity Report (SAR) review teams. They meet regularly to review SARs that have been filed with the American FIU, FinCEN. In Canada, statute prevents FINTRAC from allowing law enforcement raw access to inputs from regulated entities (REs). FINTRAC analyzes RE information and if, based on their discretion, certain thresholds are met, the agency must make information disclosures to law enforcement.

Relative to comparable partner jurisdictions such as the U.S. and Australia, Canada's FIU is largely passive. Many FINTRAC disclosures respond to voluntary information records (VIRs). By filing a VIR, police advise the FIU of their interest in a certain target. If an FIU analyst is satisfied that a disclosure is merited, then information about the target will transmit back to law enforcement. Alternatively, the FIU can decide that, for instance, privacy interests outweigh law enforcement's need for a disclosure and refuse to provide information.[15] As discussed in Section 6.5, FINTRAC received 2,519 VIRs in 2019/2020. We agree with the Standing Finance Committee recommendation that the Government of Canada expand FINTRAC's mandate for a greater focus on building actionable intelligence on money laundering and a model to allow for two-way information sharing with law enforcement (versus focusing on information gathering) (Recommendation 15 of the Standing Committee on Finance, Confronting Money Laundering and Terrorist Financing: Moving Canada Forward (2018).

In our view, the Fusion Centre should create a pilot project with FINTRAC to replicate the SAR review team concept. Project Protect and Project Shadow, FINTRAC's private sector partnerships targeting sex trafficking, have already generated comparable successful precedents: if a partnership such as Project Protect or Project Shadow is possible with the private sector, it should be readily doable with public sector

[15] Jeff Simser. *Canada's Financial Intelligence Unit: FINTRAC* 23:2 Journal of Money Laundering Control, 297, 2020.

law enforcement partners. A good step in this direction occurred when the Real Estate Council of British Columbia entered into a memorandum of understanding with FINTRAC to cooperate and share information to inhibit money laundering within the province's real estate sector.

8.9 Private Actors

In 2015, the UK piloted the Joint Money Laundering Intelligence Task Force (JIMLIT). JIMLIT brings together law enforcement and national security personal; regulators and tax authorities; most importantly, private actors including 40 financial institutions (banks, the Post Office, MoneyGram and Western Union). JIMLIT allows law enforcement and regulated entities to share intelligence with the regulated sector. Section 7 of the *Crimes and Courts Act, 2013* provides a safe harbour so that anyone can share information with the National Crime Agency.[16] This allays the concerns of banks worried about being sued by clients. JIMLIT enabled Barclays Bank to disclose the existence of numerous bank accounts that had unusual amounts of cash moving into them. A series of coordinated civil recovery actions were brought at the same time, closing 95 accounts[17]. Professor Levi notes that while there is a lack of research, this approach is considered particularly valuable for issues like human trafficking. Levi notes a potential challenge of scalability, wondering what volume of activity could be managed by such a body.[18] With this concern in mind, the Fusion Centre could pilot a JIMLIT model to see whether it effective counters money laundering in British Columbia. We note that the Standing Committee on Finance recommended that the federal government take steps to emulate JIMLIT (Recommendation 17 of the Standing Committee on Finance, Confronting Money Laundering and Terrorist Financing: Moving Canada Forward (2018).

8.10 Policy Challenges

The Fusion Centre could incorporate a policy analysis function. Some of the challenges include:

- **Real Estate**: an expert panel on real estate and money laundering in British Columbia has made 29 recommendations, including strengthened disclosure and improved regulatory oversight[19]. An MOU between FINTRAC and the Real Estate Council of British Columbia offers the promise of increased interjurisdictional cooperation.[20]
- **Big techs** pose risk beyond those presented by Fintech. Fintech operates in the financial system; large technology firms, ranging from Alibaba to Facebook and Google, are not currently a significant player in the financial system, but they

[16] Section 462.47 of the *Criminal Code* could similarly be used.
[17] The Cullen Commission (www.cullencommission.ca) testimony of Lord, S (May 29, 2020), at p.32
[18] The Cullen Commission (www.cullencommission.ca) testimony of Levi, M (June 8, 2020) at p.17
[19] The Cullen Commission (www.cullencommission.ca) testimony of Hughes, J (February 24, 2020) at p.18
[20] The Cullen Commission (www.cullencommission.ca) testimony of Hoffmann, J (February 24, 2020) at p.15

could be with their low-cost structure and massive customer reach that can be scaled up to disrupt the sector. The Bank for International Settlements noted in their 2019 annual report that big techs present opportunities: for example, data analytics allows efficient assessments of credit-worthiness of customers, including the unbanked. That said, there are risks. The 2019 FINTRAC Annual Report notes that public policy needs to anticipate challenges, not only from a financial regulation perspective, but also from a consumer protection, data privacy and competition (anti-trust) perspective.

- **Payment Services**: from an AML perspective payment services are of great interest. Many payment services, such as Apple Pay, Google Pay and PayPal, are overlay systems that rely on existing infrastructure (credit cards). Some services, like Alipay in Asia and M-Pesa in Africa, require users to settle payments directly on that big tech firm's proprietary system. This is an area that regulators are watching closely. Facebook's proposals around Diem (formerly known as Libra), a permissioned blockchain cryptocurrency, and Novi (formerly known as Calibra), the e-wallet, have been the subject of considerable attention, particularly by the U.S. Congress. Money services businesses within British Columbia present significant regulatory risk and require superior licensing, inspection and, if needed, closure orders.
- **Cryptocurrency** presents some risk. Bitcoin is volatile and compared to a fiat currency like the dollar, relatively shallow. So-called stable coins present similar challenges. That means for smaller transactions, the transaction needs to settle very quickly to mitigate the risk of volatile swings in value (e.g. of Bitcoin). For high quantity money launderers, like a kleptocrat, there's not enough available cryptocurrency to easily move the millions (or billions) stolen from a state treasury.[21] There is a misconception about virtual currencies that they are untraceable. They can be traced, but law enforcement needs the expertise and tools to do so. In 2019, the PCMLTFA was amended to include crypt-currency exchanges and dealers within the definition of money services businesses under the Act, making them subject to registration and compliance obligations with FINTRAC. In 2021, the CRA obtained a court order against a cryptocurrency trading platform, Coinsquare, to force the company to disclose details concerning its users and their transactions, which shows that it is possible to pierce the anonymity associated with using cryptocurrencies.
- **Fintech**: a 2019 Senate report has recognized the complexity of open banking and the interplay between fintech and traditional financial institutions. Despite some statutory protections under the *Personal Information Protection and Electronic Documents Act*, after an initial consent, Canadians do not have much control over their personal data when it is held by a financial institution.
- **Lawyers**, law firms and Quebec notaries are largely exempt from AML laws, creating a significant loophole. The issue is complex: the Supreme Court of

[21] Jeff Simser. *Bitcoin and Modern Alchemy: In Code We Trust*, Journal of Financial Crime 22(2), 2015.

Canada ruled in 2015 that efforts to include lawyers in the AML program were unconstitutional. Self-regulatory bodies that oversee lawyers have some cash reporting measures, but in an AML context they are not particularly robust.[22] A working group consisting of law societies and the federal government is currently considering the issue.

- **SWIFT:** the Society for Worldwide Interbank Financial Telecommunications (SWIFT) is a network that allows financial institutions around the world to transfer information about financial transactions securely. This is the backbone for matters like wire transfers of funds. From time-to-time, other countries have threatened to move away from SWIFT. In 2017, Russia, under the threat of potential American sanctions created their own network, the SPFS (loosely translated as the System for the Transfer of Financial Messages). Following tensions between the United States and China, the Chinese Central Bank system, CIPS (Chinese Cross-border Interlink Payment System) connected to the Russian SPFS, with India included as a partner. These developments are unlikely to have an immediate material impact, but an alternative system for wire transfers merits policy attention.

9.0 Integrated Enforcement Team (IET)

Money laundering is a criminal offence: an accused can be charged, prosecuted and convicted. Criminal asset forfeiture can be sought at sentencing (or in absentia for a fugitive accused). In contrast, civil asset forfeiture is a critically important tool where there are laundered assets but no prospect of a related conviction. A money laundering investigation calls upon a variety of specialized skills that include: the ability to follow the money trail; the capacity to work through the search warrant process to link those trails (which often lead offshore); and the ability to parse oblique corporate structures. The investigator needs specialized prosecutorial support, lawyers who understand how value transfer works and how to link corporate, partnership and trust structures to individuals. Organized crime investigations also require sophistication, endurance and resources across a range of issues, including managing confidential informants and authorizing wiretaps.

IET can be structured in several ways. Appendix 1 considers the possibility of a new Integrated Proceeds of Crime Unit, as well as Ontario's Provincial Asset Forfeiture Unit model. The CFSEU in British Columbia took over OCA, the Organized Crime Agency. The CFSEU offers a properly chartered law enforcement agency, with a governance structure, that could be modified.

[22] Arthur Cockfield. *Introduction to Legal* Ethics. 2nd ed. Lexis Nexis, pp. 259-263, 2016. For example: Part III of By-law 9 of the Law Society of Ontario requires lawyers to not accept more than $7,500 in cash from clients. Beyond the basic prohibition, which seems patently susceptible to evasion, there is no reporting to the FIU.

9.1 Investigations and Prosecutions

Several *Criminal Code* offences are relevant to a money laundering case. The possession of proceeds of crime is an offence. While often applied to the possession of stolen goods, this provision would also capture proceeds. With less elements to prove and the same penalty, this possession offence is more frequently used than the money laundering offence. The *Code's* money laundering offence has the following key elements:

1. That the accused dealt with property or the proceeds of property;

2. That the property was obtained by crime;

3. That the accused knew or believed that the property was obtained by crime; and,

4. That the accused intended to conceal or convert the property (*Code*, s.462.31).

In 2019 amendments were introduced to capture recklessness.[23] An accused who was willfully blind or reckless to the origin of the property can be found to have committed an offence. Dealing with the property includes an accused who "uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means." (*Code*, s.462.31) The courts have held that Parliament intended to "cast a wide net" to prohibit the laundering of the proceeds of crime (*R. v. Tejani*). In *R. v. Daoust*, the courts have stated that the purpose of the money laundering provision in the *Code* was to prevent offenders from placing their proceeds of crime beyond reach of the law enforcement.

As mentioned, federal prosecutors normally pursue money laundering charges related to drugs cases or professional launderers. There are provincial prosecutions (gun cases, frauds and so on) which can also involve a money laundering prosecution. The two prosecutorial systems, federal and provincial, need to be have structural connections in respect of money laundering matters. The Fusion Centre can enable this structure.

9.2 Assets in the Criminal Law Sphere

Under the *Code* (and the *Controlled Drugs and Substances Act*), a prosecutor can as a general matter seek forfeiture of two types of property: proceeds of crime and ORP (offence-related property).[24] A proceed is property (or benefit or advantage) obtained or derived directly or indirectly from the commission of a designated offence. Designated offences extend beyond money laundering to include all federally indictable offences as well offences designated (or excluded) by regulation. There is a dual

[23] The Cullen Commission (www.cullencommission.ca) testimony of Hoffmann, J (February 24, 2020), at p.41

[24] There are dozens of forfeiture mechanisms in the *Criminal Code* and an even greater number in regulatory statutes.

criminality provision: if property in Canada derives from an offshore offence, that property is forfeitable as long as the offshore predicate offence would have been a designated offence had it been committed in Canada. In other jurisdictions, ORP is known as an instrument or instrumentality and only invoked in prosecutions by indictment. That is property used to commit a crime, typically an indictable offence.

Where an offender has placed proceeds of crime beyond the reach of a sentencing court, the court shall presumptively order a fine in an amount equal to the value of that property or part of that property. Where the offender willfully defaults on payment of the fine the court must impose a term of imprisonment; the scale of punishment that depends on the value of the property that cannot be forfeited (this scale ranges from up to 6 months for fines less than $10,000 to between 5 and 10 years for fines of $1 million or more).

9.3 Civil Asset Forfeiture

Civil asset forfeiture, also known as NCB or non-conviction based forfeiture, is a "remedial statutory device designed to recover the proceeds of unlawful activity as well as property used to facilitate unlawful activity".[25] In BC, a statutory Director runs the litigation program. The CFSEU has one staff on location to support the connection to civil forfeiture and where appropriate to review potential files. The Director is statutorily empowered to bring a proceeding against any type of property (*in rem*). In garden-variety civil lawsuits, the defendant is a person (or company). In a civil forfeiture proceeding, the property itself is the defendant. Generally, two types of property, proceeds and instruments, can be subject to a proceeding. Proceeds of unlawful activity are items of property that have, as their provenance, unlawful activity. Anyone with a known claim to title receives notice and has statutory grounds to contest. If the province establishes that the origin of the property is in unlawful activity, the court is empowered to extinguish the title and forfeit the property to the province. The Director relies on an information gateway authorized by the *Civil Forfeiture Act*. Provincially regulated law enforcement have an authority to share information; federally regulated (and foreign) law enforcement generally share under a statutorily mandated memorandum of understanding.

9.4 CRA

Money launderers are normally also engaged in tax evasion: illegal income that has been laundered is fully taxable under the *Income Tax Act*. Moreover, tax evasion is a predicate offence to money laundering under the *Criminal Code.*[26] As a result, the use

[25] Jeff Simser, *Civil Asset Forfeiture in Canada*. Canada Law Book, 2011, p.1-1.
[26] Arthur Cockfield, Martha O'Brien and Catherine Brown. *Materials on Canadian Income Tax*. 16th ed. Thomson Reuters, pp. 752-757, 2020. Paragraphs 239(1)(a) and 239(1)(d) of the *Income Tax Act* indicate tax evasion is either making a deceptive statement in a tax return or the willful attempt to evade the payment of tax.

of the proceeds of tax evasion is money laundering hence tax investigations can also produce evidence for money laundering cases (see Section 6.2).

Money laundering is estimated to be between $43 to $147 billion a year for Canada and $6 to $14 billion a year for British Columbia (Expert report on real estate, p. 45 (2020)). Assuming conservatively that $50 billion is laundered and that this income should be subject to a tax rate of 25%, which creates a revenue downfall of $12.5 billion per year for Canada. Assuming $10 billion is laundered each year in British Columbia, which could otherwise be subject to a provincial income tax (lower) rate of 10% leading to a billion dollar a year loss to provincial revenue. By tying investigations of money laundering with tax evasion, the provincial and federal governments stand to recover billions of dollars that could pay for the proposed AMLI as well as many other government services.[27]

The CRA itself has a criminal investigation program that investigates tax evasion and includes money laundering elements. After conducting an investigation, the CRA's Investigations Division refers the matter (or not) to the Department of Justice for prosecution. CRA analysts need to operate independently of the IET structure, but they can place investigators physically in the IET unit or vice versa.

In addition to tax evasion investigations, the CRA appears to be relying on proceeds of crime laws to seize properties of suspected tax cheats. In 2018, the CRA for the first time used proceeds of crime laws to seize properties of two taxpayers (Chi Van Ho and Thanh Ha Thi Nguyen) who were accused of tax evasion; this sort of prosecution could also be deployed to seize assets of alleged money launderers as long as there is evidence of tax evasion and the use of proceeds derived through this evasion. In 2019, the RCMP announced that, through Project Collecteur, it had arrested 17 individuals tied to a large global money laundering ring; the CRA cooperated in the investigation and seized properties valued at $15 million. These efforts show how, in addition to trying to tax illegal income, the government can also tamp down on money laundering by having assets that contribute to this income subject to seizure and sale.

9.5 BCSC

There could be a role for the BC Securities Commission. Launderers have exploited capital markets. For example, consider a criminal syndicate running a "pump and dump" scam: penny stock is promoted to small investors out of a boiler room. The scamsters know when that "stock" will have a maximized value. They can bring criminal associates into the fraud. The associate buys the stock early; the value is then artificially inflated as part of the fraud; the associate sells when the boiler room tells them to. The

[27] Arthur J. Cockfield, *Examining Canadian Offshore Tax Evasion*, vol. 65 Canadian Tax Journal pp. 651-680, 2017.

windfall from the sale can pass value and offset other transactions (for example, narcotics).

9.6 Other Linkages

Other linkages ought to be explored:

- The federal government may have requests under the United Nations Convention Against Corruption to recover assets stolen in another country and laundered into Canada. Civil forfeiture, non-conviction based forfeiture, can be an effective technique for these cases. The Civil Forfeiture Act has provisions that would allow forfeited assets to be returned to the victim country.
- Integrated National Security Enforcement Teams (INSET) are an effective model and there may be synergy between their decentralized fusion centre and the model created in BC.

Entities such as Health Canada play an important role on narcotics; the Canada Mortgage and Housing Corporation have a role to play on frauds and on domestic marihuana grow operations.

9.7 Dealing with Organized Crime via a Rico-like Statute

Most large-scale money laundering operations are carried out by members of organized crime as well as other criminal elements that serve these members. Canada needs to consider adopting legislation like the Racketeer Influenced and Corrupt Organizations Act (RICO) statute that was undertaken in the United States. A federal law designed to combat organized crime, it allows prosecution and civil penalties for racketeering activity performed as part of an ongoing criminal enterprise. Under RICO, a person who has committed “at least two acts of racketeering activity” drawn from a list of 35 crimes (27 federal and 8 state crimes) within a 10-year period can be charged with racketeering if such acts are related in one of four specified ways to an “enterprise”. Those found guilty of racketeering can be fined up to $25,000 and sentenced to 20 years in prison per racketeering count.

Upon deciding to indict someone under RICO, the U.S. Attorney has the option of seeking a pre-trial restraining order or injunction to temporarily seize a defendant’s assets and prevent the transfer of potentially forfeitable property, as well as require the defendant to put up a performance bond. This provision was placed in the law because the owners of Mafia-related shell corporations often absconded with the assets. An injunction or performance bond ensures there is something left to seize in the event of a guilty verdict.

In many cases, the threat of a RICO indictment can force defendants to plead guilty to lesser charges, in part because the seizure of assets would make it difficult to pay a defence attorney. Despite its harsh provisions, a RICO-related charge is considered easier to prove in court since it focuses on patterns of behaviour as opposed to criminal acts. Implementing RICO would be challenging from a constitutional

perspective, as the statute is a true hybrid of criminal sanctions and civil remedies (like injunctive relief and disgorgement). Part IV of Ontario's *Civil Remedies Act, 2001* has some similarities to RICO; the Attorney General is empowered to sue conspiracies that harm the public for damages and, if needed, injunctive relief.

10. Conclusion

This report sets out recommendations for the British Columbia government to create two anti-money laundering groups—a Fusion Centre that mainly serves as a clearinghouse for regulatory information and an Integrated Enforcement Team focusing on investigations and prosecutions—housed within an organization called the Anti-Money Laundering Institute. The separation of the two groups, the Fusion Centre and IET, is needed to enable investigative and prosecutorial independence and to permit the Crown to manage its disclosure obligations to individuals who are subject to investigation. Focusing on regulation and enforcement allows the provincial government to do what it arguably does best: create bureaucratic rules along with fines and other penalties to enable the detection, investigation and enforcement to tamp down on structures and individuals who promote money laundering.

Through better data collection and sharing, broad regulations that capture ever-evolving money laundering practices, combined with strong provincial enforcement along with coordination and cooperation with federal agencies, the proposed AMLI will create an effective regulatory regime to target and disrupt money laundering. We hope both the British Columbia government and its federal counterpart will continue to apply political pressure to promote the implementation of this or some other regime to address the important challenge of money laundering.

Appendix 1 Other Jurisdictional Models

Types of Remedies:

As the Commission has heard, there are a number of remedial techniques that can be used to recover assets related to money laundering, including:

- Civil asset forfeiture, already in place in British Columbia under the *Civil Forfeiture Act*. Currently there are two types of property subject to proceedings: proceeds of unlawful activity, that is property with an origin or provenance in unlawful activity and instruments, property that makes the labour of the unlawful activity possible.
- Ontario's *Civil Remedies Act* includes a conspiracies provision, the design of which tracks back to RICO, the *Racketeer Influenced Corrupt Organizations Act* passed by Congress in 1970. Ontario's provision allows the Attorney General to sue conspiracies who have caused harm to the public. There are a number of conviction-based forfeiture provisions in the *Criminal Code* and *Controlled Substances and Drugs Act* that can be applied by a prosecutor.
- The United Kingdom and Australia have unexplained wealth order provisions, UWOs. POCA or the Proceeds of Crime Act 2002 (Commonwealth) UWO provisions apply where the court finds that the total wealth of an individual exceeds their lawfully acquired wealth. UWOs are intended for higher level cases (e.g. over $100,000 A). Under POCA, the state can ask the court to compel an individual to attend before an examiner to explain the source of their wealth. If they fail to appear or offer an explanation, the burden of proof is essentially reversed, and the state can civilly recover tainted property. The UK UWO process also applies to politically exposed persons from outside of Europe, making it a potentially effective tool against corruption and kleptocracy.
- There are other asset recovery provisions in POCA allowing for the forfeiture of proceeds and instruments. Australia has provisions to permit the forfeiture of literary proceeds (similar to Ontario's literary proceeds act,[28] which permits recovery of money made by memoirs and the like based on criminal notoriety. POCA also has a pecuniary penalty process, allowing the court to make an order based on the amount earned by unlawful activity, even if those illicit profits have been dissipated or moved offshore (not dissimilar to Canada's fine in lieu process).
- There are some variants. For example, Western Australia's *Criminal Property Confiscation Act, 2000* has a process whereby a court can find an individual to be a drug trafficker. Following that finding, all property owned, effectively controlled or given away by that person is subject to confiscation.
- POCA, like their UK equivalent, have extensive provisions for information gathering, including court-ordered examinations, production, notices to financial institutions, account monitoring orders and search warrants. In addition to

[28] *Prohibiting Profiting from Recounting Crimes Act*, 2002, SO 2002, c.2

restraint orders, POCA allows a court to make a quick freezing order on a bank account if necessary.

Potential AMLI Models: New South Wales Crime Commission

The New South Wales Crime Commission (NSWCC) was created originally as a drug crime commission in 1986 and became a statutory corporation in 2012 (*NSWCC Act*). There are five key components to the Commission:

1. The Criminal Investigations Division (CID) assists with state or federal (Commonwealth) law enforcement agencies on specialized tasks, including human source tasking, analytical research and intelligence support. Two teams support the state organized crime squad and one team supports the homicide squad. A small team supports counter terrorism. The CID capability team provides technical support and surveillance, including forensic examination of electronic devices. A warrant administration team supports wiretap applications. Australian Border Force officers work alongside their CID counterparts.
2. The Financial Investigations Division (FID) employs forensic accountants and financial analysts who specialize in asset tracing and money laundering. CID investigations often gather intelligence and evidence for use in an FID case. There are firewalls to ensure a proper separation of roles. For example, the NSWCC does not trade information and intelligence in exchange for leniency in confiscation cases. While cases are litigated, the majority of FID cases are settled following negotiations with defendants and their lawyers. In a settled case, the defendant must give a warranty that they've disclosed all of their assets; if subsequent assets are found, the NSWCC can launch a breach of warranty case. Amongst the options: NSWCC can seek an asset forfeiture order, an unexplained wealth order or a proceeds assessment order. Confiscation proceedings are civil: asset forfeiture orders are similar to those obtained under BC's Civil Forfeiture Act. Proceeds Assessment Orders focus on how much income unlawful activity produced; unexplained wealth orders focus on the property holdings of a defendant (compared against their legitimate sources of income). FID have a number of information gathering powers, including examination orders, statement of affairs orders, production orders, search warrants and monitoring orders. In 2019, 1544 referrals led to proceedings against 114 defendants. Nearly $31 million (AUS) were realized.
3. The Corporate Services Division (CSD) provides back office support (human resources, business services, technology services, and enterprise services).
4. Legal Services are broken into teams that support the FID and CID divisions, as well as corporate issues.
5. A governance unit provides internal audit, legal policy and governance policy support.

The NSWCC budget in 2020 was $27,251,000 (AUS).

NSWCC is part of the Fintel Alliance operates (through CID). Led by the FIU (AUSTRAC), the alliance brings together 28 agencies in a private/public partnership to investigate money laundering and terrorism financing.

Criminal Assets Bureau (CAB) Ireland

The Criminal Assets Bureau (CAB) was formed in 1996 at the same time as Irish civil asset forfeiture provisions were passed into law. The primary functions of the CAB are to:

- Identify and investigate proceeds of crime cases
- Take actions to deny and deprive criminals of that benefit
- Take actions to ensure that illegal income is taxed
- Investigate and detect cases of social welfare abuse.

The CAB is an agency independent of the police (An Garda Siochana or the Garda). CAB is led by a senior police officer who is supported by the Bureau legal officer, and interagency resources:

- 47 officers of the Garda
- 17 tax officials
- 8 social welfare officials and
- 21 other supporting staff.

The CAB includes an intelligence and assessment office, staffed by various agencies, that examines potential targets. An asset management office supports forfeiture cases. There are eDiscovery and digital forensic units. The CAB trains law enforcement officials across a range of agencies in Ireland (and abroad).

The CAB budget in 2019 was 9.8 million Euros.

National Crime Agency (NCA) UK

The National Crime Agency (NCA) is a national law enforcement agency with a mission to fight serious and organized crime. The NCA reports to the Home Office and works with police forces, Border Force, Immigration Enforcement, the Serious Fraud Office, intelligence agencies and other government departments, including the national tax authority. The operational budget in 2019 was £489 million (Pounds) with a capital budget of £66 million. In 2019-20, £150 million in criminal assets were frozen and another £9 million were forfeited. The NCA operates a National Economic Crime Centre (NECC) with a focus on fraud and illicit finance. The NECC is also responsible for the Foreign Bribery Clearing House function. There is an on-going need to coordinate activities across policing, the Serious Fraud Office and NECC. NECC leadership use

"clarity, prioritisation and persuasion" but there is a structural limit as to their capability.[29] In addition to conventional asset forfeiture tools, the NCA can apply account freezing orders and unexplained wealth orders. The NECC operates the UK Financial Intelligence Unit, which operates the system for suspicious activity reporting and defence against money laundering applications.[30] NECC also operates JIMLIT, the Joint Money Laundering Intelligence Taskforce. JIMLIT brings law enforcement, government, intelligence services, regulators and the private sector together to target serious and organized crime threats (as well as terrorist financing). JIMLIT has also partnered with the Insurance and Investment Sector Operations group. NECC also has a policy function: in 2019, NECC led the law enforcement response to the Companies House Reform consultation on building effective transparency measures for private companies.

MLARS – US Department of Justice

In the American system, there are asset forfeiture actions (civil and criminal) and money laundering prosecutions brought at the federal, state and local level (for example, New York City can bring civil forfeiture proceedings). The federal system generally divides between Treasury [CHECK] (which includes customs) and the Department of Justice (DoJ). DoJ money laundering and asset forfeiture cases are brought be US Attorney's Offices across 94 judicial districts as well as the Criminal Division at DoJ headquarters in Washington (Main Justice). Main Justice includes the Money Laundering and Asset Recovery Section or MLARS.[31] Generally MLARS manages cases that cross district lines as well as highly complex cases or cases with a significant foreign aspect. MLARS has specialized units handling foreign kleptocracy cases and cases where a financial institution is the primary target of an investigation.

[29] Levi, Michael. *The Legal and Institutional Infrastructure of Anti-Money Laundering in the UK: A Report for the Cullen Commission*. 2020.
[30] A financial institution can apply to the FIU to continue transacting on an account that is suspicious from a money laundering perspective; the FIU has seven days to respond to the application; if there's no response or the FIU approves, the financial institution has a defence should there be a subsequent money laundering prosecution. The FIU also has the ability to issue an account freezing order.
[31] Formerly AFMLS or the Asset Forfeiture and Money Laundering Section.

Appendix 2 FTE/Budget Model – the Ontario and Quebec approaches

Due to the sophistication of trans-national organized crime, it is essential that all levels of government in Canada recognize that a failure to demonstrate a resolve to combating organized crime activities will result in Canada remaining the weak link in the global enforcement chain. This will require that Canada demonstrate an ability to:

- Disrupt, dismantle, and effectively prosecute criminal networks across the globe with a goal of minimizing their impacts to levels that can be handled by local law enforcement organizations;

- Promote a transnational, cross-organizational response, and development of strategic security partnerships;

- Ensure the ongoing coordination of intelligence and show leadership within the law enforcement community to ensure all actions serve the overall strategic goal of combatting organized crime activities;

- Recognize that money laundering cases require expert investigative resources and an integrated approach to be successful. There must be a recognition that financial crime investigators need to remain specialized and attached to their respective units long-term. These Units need to be able to recruit both sworn law enforcement from other departments and civilian members where expertise gaps exist (this was the case with the Integrated Proceeds of Crime model which today has been lost);

- Accept that prosecutors and civil forfeiture lawyers need to, like financial crime investigators, be assigned to specialized units for the long term to garner the necessary expertise to be able to deal with the complexities of the cases;

- Legislatively, issues arising from *Jordan* disclosure requirements need to be addressed: cases not brought to court within a set period are likely to collapse for constitutional reasons; managing to those timelines requires expertise and bandwidth. Law enforcement, police and prosecutors, need the bandwidth and I.T. infrastructure to manage the massive flow of data. There must be expertise at all stages of a case cycle to manage risk, particularly around Part VI intercepts and the management of confidential informants. Federal legislative clarity around obligations is also necessary;

- As noted in the paper (and addressed in Appendix 2), there should be a RICO-type statute to give law enforcement effective tools to address organized crime;

- Governments at all levels need to recognize that dealing with money laundering and trans-national organized crime will require collective wisdom and financial commitments. Money laundering and financial crime cases are expensive and therefore need ongoing funding commensurate with the size of the units, and this

funding needs to be solely dedicated to the integrated units and not available for all other broad mandates;

- Create trans-agency teams, as recommended in this paper, that would integrate legal experts, forensic accountants, civilian specialists, Canada Revenue Agency, Canada Border Services, Municipal and Provincial partners, and property management experts, all of whom would be tasked with establishing the authority, legitimacy, and effectiveness of financial crime/proceeds of crime enforcement in Canada; and,

- Establish a multi-jurisdictional Government committee to examine legislative reforms to provide for more effective enforcement and prosecution of financial crime and money laundering.

Today's financial-crime enforcement team must be represented by cross-functional skill sets. The team must be comprised of qualified law enforcement investigators, business, fraud, and cyber experts; product specialists; data scientists; and financial analysts. The intelligence reviews need to be housed in within this multi-skilled team and be responsible for prioritizing files based on probability of success with respect to a criminal case and/or recommended for a civil forfeiture review.

Sustainability and cultural change for maintaining skills is key for the RCMP, municipal police and their future success. The Government could request that a portion of the forfeited property be dedicated to the sustainability of the investigative teams, as occurs in Quebec. British Columbia will require a minimum of 4 financial crime teams, multi-skilled with a combination of law enforcement, civilian members and partner organizations. The initial IPOC, integrated proceeds of crime units, had 200 investigators. Then there were additional resources for the Anti-Smuggling Initiative and for the Integrated Market Enforcement Teams. All of those resources have since been significantly eroded.

In 1994 a review was conducted of the adequacy and effectiveness of the Integrated Proceeds of Crime Units. The findings were:

- IADP (Integrated Anti-Drug Profiteering – introduced in 1992) units have demonstrated clearly that they have an impact on (criminal) organizations actively involved in money laundering within Canada. Unfortunately, their efforts are minuscule in comparison to the extent of the practice
- Current proceeds of crime investigators are seizing only a small percentage of the estimated billions of dollars being laundered in Canada annually.
- At the present time Canada has less than 200 trained POC (proceeds of crime) investigators actively involved in money laundering investigations.
- Money laundering is associated with a wide variety of crimes in Canada, such as drug trafficking and importation but also alcohol and tobacco smuggling, fraud and gambling just to name a few.
  In view of the evaluators, Canadian resources to control money laundering are insufficient to make a significant impact both the short term and long term. To

promote greater involvement by other levels of government to fund POC investigations the current success and expertise of the IADP units must be used.

Two recommendations were forthcoming:

1. The IADP concept be expanded immediately to other centres across Canada.
2. A strategic plan be created to promote greater involvement by provincial and municipal law enforcement agencies in POC investigations be developed.

Each team will need to have a minimum complement of 25 investigators, with a minimum of 2 PPSC lawyers, one representative from the Provincial AG and one representative from the Provinces Civil Forfeiture team.

Two teams would focus on financial crimes; in conjunction with "commercial crime" substantive teams, outside of money laundering and two would be tasked with money laundering and pursuing the assets of organized crime, in conjunction with focused organized crime investigative teams.

Reflections on Ontario and Quebec Approaches

Any enforcement proposal to combat money laundering is bound to be unsuccessful if it is drafted in a provincial vacuum. Money laundering is borderless and as criminal organizations become more sophisticated in hiding their criminal wealth and assets through illicit financial flows, many being international in nature, a collaborative and cooperative municipal, provincial and national approach is necessary. Programs at all levels must be complementary to ensure they focus on money laundering, proceeds of crime, offence related property and civil forfeiture. Without this approach, considerable risk to Canada's financial and economic markets will persist.

In 1997 the Ontario Provincial Police (OPP)[32] introduced their first proceeds of crime unit and it was placed within their Anti-Rackets Branch with the simple logic of senior management at the time being that it should be with all other financial investigations. This expansion only consisted of 4 detective constables tasked with investigating and enforcing the newly enacted provisions contained within Part XII of the *Criminal Code of Canada*.

In 2000, further funding was approved by the Management Board Secretariat to build a true proceeds of crime investigative unit like other units established within the OPP. This led to the creation of the Provincial Proceeds of Crime Unit and eventually the current Provincial Asset Forfeiture Unit (PAFU). A decision was made shortly thereafter by OPP senior management to relocate this unit from the Anti-Rackets Branch to the OPP Organized Crime Enforcement Bureau (OCEB) as the bulk of the investigators work was derived from substantive investigations initiated by this Bureau (Contraband

[32] Ontario has municipal police services (particularly in large centres such as Toronto, Ottawa and London), the OPP is responsible for province-wide policing and the RCMP have a significantly smaller footprint than their operations in BC.

Tobacco, Human Trafficking, Illegal Drugs, Illegal Firearms, Outlaw Motorcycle Gangs, Repeat Offenders Parole Enforcement). PAFU investigations continue to be predominantly because of *Controlled Drugs and Substances Act* (CDSA) involving organized crime groups across Ontario. Although PAFU investigators work independently of the substantive investigation it was much more operationally efficient to have these investigators working under the same command and bureau as the other approximately 371 OCEB members (OPP & Municipal/Regional) investigating the predicate offences.

Over the past two decades the OPP-led Provincial Asset Forfeiture Unit has grown into the largest joint force operational unit in the province and one of the largest in the country. Many senior police executives see it as the “Centre of Excellence” not only for investigating money laundering, proceeds of crime and offence related property, but as a model for effective joint force operational units in general. PAFU consists of 6 teams strategically located across the province, including London, Ottawa, North Bay Thunder Bay and two teams to serve the Greater Toronto area. The Provincial Asset Forfeiture Unit is quite unique compared to many joint police services units as these lengthy, complex, and intricate investigations including the drafting of numerous judicial authorizations, require a special expertise limiting its attractiveness to many police officers. Recruiting these types of skilled members and maintaining them in the PAFU can be very challenging with other opportunities including promotions, however the importance of retaining such expertise is constantly stressed to senior police leaders participating in the PAFU.

Although resources attached to the PAFU fluctuate slightly due to the commitment and prioritization of management of some of the participating police services, the resourcing of the unit consists mainly of 75 members coming from the Ontario Provincial Police and 23 municipal/regional police services. A breakdown of these resources include:

- 1 OPP Detective Staff Sergeant
- 6 OPP Detective Sergeants
- 22 OPP Detective Constables
- 3 OPP Administrative Support
- 1 OPP Training Support
- 26 Municipal/Regional Members
- 4 Liaison Officers from Municipal Police Services
- 5 Alcohol and Gaming Commission of Ontario Liaison Officers
- 7 OPP Members OPP Regions (mainly assisting with regional OPP ORP investigations)

The Unit also has an accountant from the Forensic Accounting Management Group attached to it and all the positions listed above have access to full training and support from the PAFU. The Ontario Provincial Police is responsible for the salaries of OPP members, however all JFO officers, if required, receive an OPP funded vehicle, cellular phone, computer, and incidental expenses. In the past there has been some disparity in the JFO engagement with respect to participation in provincial projects with some

municipal police executives wanting to see their members strictly work on investigations in their own jurisdiction. This micro-level thinking can have an impact on the effectiveness of the PAFU. Prior to the unfortunate demise of the RCMP Financial Crime Sections (formerly the Integrated Proceeds of Crime Sections) in March 2020, the OPP historically had 4 members attached to the units in Ontario (London, New Market and Ottawa).

The mandate of the Provincial Asset Forfeiture Unit has remained consistent over the years, including the investigation of suspected money laundering offences resulting from the commission of designated offences found in Part XII.2 of the Criminal Code and the identification, investigation, seizure, and subsequent forfeiture of the proceeds of crime. Additionally, the PAFU continues to make significant referrals to the Canada Revenue Agency as well as numerous referrals to the Ministry of Attorney General Civil Remedies for Illicit Activities Act. One area that has increased the workload of the PAFU investigators significantly has been with respect to the amended definition of Offence Related Property (ORP) and the expectation that the PAFU provide investigative support to all police services across Ontario when there may be an opportunity to seize ORP. The potential for ORP seizures can come from almost any investigation including drugs, human trafficking, illegal gaming, and even uniform traffic stops to name a few. Despite the relative ease of these investigations compared to a typical money laundering/proceeds of crime investigation, the PAFU is called on to coordinate and support these investigations. The Provincial Asset Forfeiture Unit has become the aide-de-camp for almost all criminal property seizure investigations in Ontario. Their expertise is called on by all police services to provide investigative advice, training, case management, asset management and expert witness.

Operational success in the Provincial Asset Forfeiture Unit can be attributed to the excellent partnerships that have been built over the years which are necessary to ensure effective and efficient money laundering and proceeds of crime investigations. Besides the numerous law enforcement partners, some of these key partnerships include the Ministry of the Attorney General, Public Prosecution Service Canada, the Canada Revenue Agency, the Canada Border Services Agency, the Ministry of Finance, and the Seized Property Management Directorate. Partnerships with financial institutions including the main five (Bank of Montreal, Canadian Imperial Bank of Commerce, Royal Bank of Canada, Scotia Bank and TD Canada Trust) have also been critical allowing for more expeditious investigations.

Although seizures and forfeitures are not always the best indicator of success for an asset forfeiture unit as they can vary for several reasons including resource availability, lengthy investigations and court, the Provincial Asset Forfeiture Unit was responsible for a very respectable $315 million in seizures and approximately $120 million in forfeitures between 2007 and 2017. Although impressive numbers, it is clearly a small percentage of the $45 billion to $113 billion that is estimated to be laundered in Canada each year. Due to the complexity of many of these investigations dealing with sophisticated organized crime groups, the PAFU must select and investigate the most viable target(s) within a criminal organization and thus ignore others. Many criminals are granted a

reprieve and can continue with their criminal lifestyle and to reinvest their ill-gotten wealth.

Historically in Ontario, one member of the Provincial Asset Forfeiture Unit would be assigned to shadow an Organized Crime Enforcement Bureau project and build evidence on who was determined to be the top viable target(s). Once the substantive investigation was completed it would be common for the PAFU investigator to take anywhere from a year to two years to complete their money laundering/proceeds of crime investigation. On July 8th, 2018, the Supreme Court of Canada in *R. v Jordan* had a significant impact on money laundering/proceeds of crime investigations as many have interpreted the "Jordan presumptive ceiling" to mean that the substantive investigation and the money laundering/proceeds of crime investigation are interconnected and the same investigation. With this interpretation and presumptive ceilings of 18 months for provincially prosecuted cases and 30 months for criminal cases in superior courts, the Provincial Asset Forfeiture Unit no longer has the luxury of lengthy post-substantive investigations.

In the wake of the Jordan decision, the Provincial Asset Forfeiture Unit was forced to adapt to this new environment by assigning several PAFU investigators to what substantive investigators and intelligence probes indicated had the biggest money laundering/proceeds of crime potential. The biggest disadvantage of this strategy once again being that even more organized crime priority projects would not be afforded the support of the PAFU and further criminals granted a reprieve and the ability to continue with their criminal lifestyle and reinvest their ill-gotten wealth. In one year, the Provincial Asset Forfeiture Unit was not able to aid nine high level organized crime files each with numerous suspects and potentially millions of dollars in illegally obtained assets and wealth. Despite these setbacks, the PAFU saw its highest seizure totals in 2019 and 2020 with over $57 million and $123 million in seizures.

In recent years the Organized Crime Enforcement Bureau has enjoyed considerable expansion with the addition of the Contraband Tobacco Team added to investigate organized crime involvement in the trafficking and smuggling of contraband tobacco; the Serious Fraud Office to investigate complex fraud offences; the Provincial Joint Forces Cannabis Enforcement Team to investigate the proliferation of illegal dispensaries; the expansion to Human Trafficking and resources required to address this national concern; and the reinvestment to Community Street Crime Units investigating street drug and property crimes. Unfortunately, with this continued expansion of substantive investigative units and resources there has not been an injection of money laundering/proceeds of crime investigative resources to ensure the criminals are unable to profit from their crime and reinvest their ill-gotten gains in further criminal activities. An injection of substantive investigators seems futile unless it is complemented by an injection of PAFU resources to ensure that all illegal profits are removed to dismantle these organized crime groups and criminals.

Quebec's Proceeds of Crime Recovery Unit

In 2019 the Sûreté du Quebec (SQ) has created an investigative and prosecutor body to attack the proceeds of crime in the Province. The initial success resulted in the formation of 3 investigative bodies to cover the province, each one responsible for a defined region and each unit responsible for sensitizing community police and patrol units about their mandate with a goal of receiving ongoing intelligence.

The regional units have a prosecutor assigned to each unit whose mandate is to coordinate with the investigative bodies and ensure that the investigations are at sufficient quality to enable successful prosecutions. Each regional team, investigator and prosecutor provides training within the regions to ensure that all police investigative teams understand the legal and investigative requirements necessary to launch successful proceeds-of-crime and/or offence-related prosecution.

Each regional unit is available to the police in the jurisdiction 24/7 to assist and ensure that any action taken conforms to legal requirements, from seizing money and vehicles to preparing the necessary affidavits.

Quebec has also enlisted the cooperation of Revenue Quebec which collaborates to ensure successful seizure of unsubstantiated proceeds.

Quebec has established a unique sharing arrangement for the proceeds that enable 45% of the amounts seized to be provided to contributing police departments. Since 1999, $216 million has been confiscated and shared. In 2018 the SQ received over $3.2 million and in 2019, approximately $1.9 million. In addition, an agreement with Revenue Quebec enables 50% of their seizures arising from police referrals to be returned to law enforcement.

In 2020 the following was achieved:

- Seizure of homes/buildings valued at $3,877,650
- Freezing of bank accounts valued at $1,148,961
- Seizure of cash valued at $209,090
- Seizure of vehicles valued at $67,000
- 14 files resulted in civil action involving property valued at $637,785.

In 2021, the government opted to add financial crime investigators to the organized crime investigative teams. Each team is made up of 6 investigators, and 1 accountant. This is in addition to the substantive organized crime investigators. Eight additional financial crime investigators have been provided to augment the regional teams.

Both Ontario and Quebec teams have been relatively successful with the stretched resources they have been provided. Quebec's financing is somewhat sustainable since under that model agencies are entitled to receive a portion (45%) of confiscated funds.

FATF Mutual Evaluation Report for Canada

On September 1st, 2016, the Financial Action Task Force (FATF), an international, independent inter-governmental body that assesses countries on their anti-money laundering and counter-terrorist financing effectiveness, released their Mutual Evaluation Report for Canada. In their report, Canada was criticized for having insufficient resources and expertise to pursue complex money laundering investigations. As well, asset recovery appeared low with investigative efforts aimed mainly at predicate offences and inadequate focus on money laundering. Although these findings were not specifically directed at the Ontario Provincial Police, the Provincial Asset Forfeiture Unit historically has only provided a parallel investigation to a substantive Organized Crime Enforcement Bureau investigation resulting is the seizure or restraint of proceeds of crime and/or offence related property. Although money laundering is an integral part of all profit motivated investigations it is seldom investigated as a predicate offence not only by the OPP but by all law enforcement in Canada.

Criminal Intelligence Service Canada (CISC) in their *2020 Public Report on Organized Crime in Canada* reported that there are more than 2000 organized crime groups operating in Canada with the majority operating out of Ontario and Quebec. Of the groups CISC assessed, more than half had an interprovincial or international scope with links to 77 other countries and of this approximately 24 percent linked to three or more countries. This report clearly demonstrates that many of these groups have established broad international networks to easily facilitate the movement of their dirty money as well as the use of professional money launderers (PMLs). PMLs facilitating large-scale money laundering are well positioned in key professions including accountants, lawyers, and international financial institutions. With most organized crime groups in Canada having such a wide international and national reach it is critical that we have a strong national program to complement what is happening provincially and municipally. This program would be best led by the RCMP who are not only positioned nationally to be the lead but have liaison officers strategically located throughout the world. To ensure its effectiveness the program could have governance and oversight by the Canadian Integrated Response to Organized Crime (CIROC) which includes the heads of organized crime from law enforcement across the country and other government bodies (CBSA, CRA, FINTRAC) who meet regularly to coordinate a national effort to disrupt organized crime through information sharing.

Lessons Learned:

- Canada's financial intelligence unit, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) was implemented to meet the international standards of the Financial Action Task Force and to assist in the detection, prevention and deterrence of money laundering and terrorist financing. FINTRAC's mandate is somewhat unique to other international FIUs with its arm's length approach ensuring it remains independent from the law enforcement

agencies and other entities to which it is authorized to disclose financial intelligence. In Ontario and Canada this approach has significantly hampered its effectiveness. Historically, police services who received disclosures from FINTRAC seldom had the resources to do any follow-up investigation as their money laundering/proceeds of crime investigators were investigating organized crime groups being actively pursued by members of their organized crime investigation units. More recently, FINTRAC has worked to align its disclosures with law enforcement priorities or in response to a Voluntary Information Reports (VIR) submitted by law enforcement. This approach has proven to be much more effective and of significant value to investigative agencies.

Disclosure of income tax information is evidence that is critical to almost all money laundering and terrorist financing investigations allowing for the completion of a net worth analysis. This information allows investigators to separate a criminal suspects legitimate income from their illegitimate income. Currently, s. 462.48 of the *Criminal Code of Canada* restricts income tax applications to specific designated substance offences under the *Controlled Drugs and Substance Act,* terrorism offences and specific criminal organization offences. Access to this essential evidence utilizing s. 462.48 is prohibited with respect to all other profit-motivated criminal offences including theft, fraud, and trafficking in other contraband outside of the CDSA. These restrictions severely impede investigator's ability to investigate money laundering and proceeds of crime offences that are not listed under s. 462.48.

- When the RCMP IPOC units were effectively functioning, they had the benefit of Public Prosecution Service of Canada prosecutors attached to the units allowing for timely applications of Special Warrants, Restraint Orders and Management Orders ensuring illegally obtained assets did not disappear. Without this luxury, asset forfeiture units continue to face hurdles and roadblocks with no consistency from region to region across Ontario with significant delays in obtaining applications. These delays lead to significant investigative costs and the liquidation of assets by suspects who attempt to protect their illicit wealth.

- Fundamental to any successful provincial money laundering/asset forfeiture program is having the infrastructure in place to manage seized or restrained property that does not fall under the Seized Property Management Act (SPMA). The SPMA came into effect on September 3rd, 1993, and created the Seized Property Management Directorate giving the Canadian Government the authority to:
    - provide consultative and managerial services to law enforcement agencies in relation to seized or restrained property in connection with designated criminal offences.
    - dispose of seized property when the courts declare forfeiture; and
    - share the proceeds from the sale of seized assets.

Ontario learned quickly that a similar infrastructure was necessary for offence related property and all other property that did not fall under the federal mandate. This process must be as seamless as possible as it should not be law enforcements responsibility to worry about asset management.

- High level organized crime money laundering and proceeds of crime investigations can be extremely complex and arduous, with techniques to move illicit wealth around the globe developing rapidly as criminal organizations attempt to avoid enforcement efforts. Despite recruiting highly trained investigators to navigate through this complex layering it may be too daunting and inefficient to expect any officer to be fully knowledgeable in the intricacies of money laundering techniques including, but not limited to, the use of private businesses, lawyers, accountants, shell companies, real estate, casinos, cryptocurrency, dark web, import/export companies and trade-based money laundering. To be more effective and disrupt criminal organizations and their activities, law enforcement must explore recruiting private experts who fully understand some of these more complex techniques. There has been a real reluctancy in Ontario and Canada to enter in public-private partnerships and, unlike most countries, it has been relatively absent from law enforcement investigations. Although there is no real legal framework for these relationships, it is mostly absent due to ignorance, legal uncertainty, security clearance and cost. It may be a big ask for some senior law enforcement executives to consider public-private partnerships as many unfortunately still struggle with sharing between other government agencies and law enforcement.

- At the conclusion of judicial proceedings in many jurisdictions around the world, forfeitures remaining once victims are compensated and management costs are recovered, are accessed by the police service responsible for the investigation. This ability helps to offset the high costs associated with investigating money laundering and asset forfeiture. Currently in Ontario there are no means available to the investigating police service to access these funds, with federal and provincial forfeitures only accessible though grant programs and applications. Annually, police services in Ontario can attempt to access funds through the Proceeds of Crime Policing Grant Program and the Proceeds of Crime Law Enforcement Grant Program with the Province stipulating what initiatives qualify with no funds allowed to be used for salary dollars. Historically, applications are approved for many police services or units within police services that do not participate in money laundering/asset forfeiture investigations.

  On March 31st, 1999, in the province of Quebec, declaration 349-99 was adopted dealing with the sharing of assets. This declaration allowed for the sharing of the net proceeds of the re-sale of illegally obtained assets seized because of police operations in the following manner:

  - 25 % to the Victims Aid Fund for victims of criminal acts.

- 25 % to community organizations whose primary objective is crime prevention, particularly with respect to youth; and
- 50 % to municipal organizations and to the Ministry of Public Security for the police services who participated in the operations that lead to the forfeiture of the assets or the issuance of the fines.

Conclusion

David Lewis the Executive Secretary of FATF, estimated only 1 percent of laundered funds are seized globally. Seen another way, a 99 percent failure rate is intolerable. Thus, the biggest threat in the fight against money laundering and the harm caused by money laundering is to tolerate the failing status quo of our AML policies, procedures, and practices.

Transnational organized crime (TOC) poses a significant and growing threat to national and international security, with dire implications for public safety, public health, democratic institutions, and economic stability across the globe. The 2011 White House Strategy to Combat Transnational Organized Crime defines TCOs as “self-perpetuating associations who operate transnationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/ or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms.” Transnational organized crime and transnational criminal organizations refer to a network or networks structured to conduct illicit activities across international boundaries to obtain financial or material benefit. Transnational organized crime harms citizen safety subverts government institutions and can destabilize nations.

The question is, how do we overcome what only can be described as systemic failures? We should be looking at the establishing of a National Financial Crime committee to look at gaps and make recommendations that will sustain investigations for the foreseeable future. We need to look at what skills are required and ensure units are formed with the identified skills in mind whether from law enforcement, public sector, or academia.

Global losses associated with financial crimes continue to climb year over year. Managing the investigative requirements associated with money laundering, fraud and cyber has never been a timelier imperative for Provinces and Canada to protect society and thwart trans-national organized crime while enhancing Canada’s reputation on the world stage through demonstrating our financial system is not open for business to the criminal element.

Creating an effective enforcement response necessitates a whole-of-government approach and beyond that vibrant relationships with partner nations based on trust. These are essential if Canada is to be viable partner amongst groups such as the 5 Eyes. British Columbia’s bold approach to combatting the problem head on is a great first step.

Appendix 3 Compiled ML-related Statistics for the Cullen Commission

Compiled ML-related Statistics for Cullen Commission

Statistics

Compliance and Supervision

Table 1: FINTRAC Compliance Examinations, 2010-11 to 2019-20

Sector	Est. Number of REs (2016)	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Real Estate	20,784	70	40	270	203	140	191	152	172	190	146
Financial Entities[1]	855[2]	209	447	306	183	178	142	129	66	45	48
Money Services Businesses	850	201	425	222	161	143	158	110	64	112	114
Life Insurance Companies, Brokers and Agents	89	52	5	13	123	59	60	57	53	11	1
British Columbia Notaries	336	-	-	16	1	6	35	73	53	24	10
Securities Dealers	3,829	120	136	129	167	85	102	69	47	57	58
Dealers in Precious Metals and Stones	642	-	10	166	276	2	43	62	43	49	16
Casinos	39	12	5	10	1	6	7	7	1	5	5
Agents of the Crown	-	-	1	-	-	-	-	-	1	-	-
Accountants	3,829	20	-	25	11	10	1	2	-	4	1
Total	***Est. 30,398***	684	1069	1157	1126	629	739	661	500	497	399

Table 2: Administrative Monetary Penalties for AML/CFT Breaches, as of November 16, 2015

Sector	# of Notice of Violation Issued	Publicly Named
Accountant	1	0
Casinos	4	0
Financial Entities	15	3
FRFI	1	0
Life Insurance	1	0
MSBs	38	25
Real Estate	11	4
Securities Dealers	7	4
Total	***78***	***36***

[1] I.e., banks, trusts and loans, credit unions and caisses populaires.
[2] This total includes 81 banks, 75 trusts and loans, 699 credit unions.

Table 3: FINTRAC Non-Compliance Disclosures to Law Enforcement, April 1, 2010 to March 31, 2020

2010-11	2011-12	2012-13	2013-14	2014-15	2015-16[3]	2016-17	2017-18	2018-19	2019-20	Total
1	4	0	2	0	-	1	5	7	**7**	**27**

Table 4: Outcomes on PCMLTFA Charges, 2009-10 to 2018-19

Outcome	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	Total	%
Convictions / Guilty Pleas	2	20	24	12	12	10	3	2	1	-	***86***	***66%***
Acquittal	0	1	2	1	-	-	-	-	-	-	***4***	***3%***
Discharge	0	1	1	1	-	1	-	-	-	-	***4***	***3%***
Stay of Proceedings (Crown)	0	2	6	3	1	2	2	2	-	4	***22***	***17%***
Judicial Stay of Proceedings	0	0	2	-	-	-	-	-	-	-	***2***	***2%***
Withdrawal	0	2	2	1	-	3	2	-	-	2	***12***	***9%***
Other	0	0	-	1	-	-	-	-	-	-	***1***	***1%***
Total	***2***	***26***	***37***	***19***	***13***	***16***	***7***	***4***	***1***	***6***	***131***	***100%***

Financial Intelligence

Table 5: Reports submitted to FINTRAC by Reporting Entities, 2010-11 to 2019-20

Year	Suspicious Transaction Reports	% Increase from 2010-11	All Reports (EFTs, LCTRs, CDRs, STRs, CCRs)	% Increase from 2010-11
2010-11	58,722	-	19,265,355	-
2011-12	70,392	20%	18,528,922	-4%
2012-13	79,294	35%	19,744,923	2%
2013-14	81,375	39%	19,750,453	3%
2014-15	92,531	58%	21,088,735	9%
2015-16	114,422	95%	23,727,393	23%
2016-17	125,948	114%	24,753,663	28%
2017-18	179,172	205%	25,319,625	31%
2018-19	235,661	301%	28,119,852	46%
2019-20	386,102	558%	31,417,429	63%

Table 6: FINTRAC intelligence disclosures by recipient and total unique disclosures[4]

Recipient	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
RCMP	580	703	779	976	1,354	1,664	1,509	2,405
Municipal Police	182	207	331	582	806	1,198	795	914
CSIS	164	243	312	429	597	581	502	436
Provincial Police	144	135	214	303	-	557	455	703
Foreign FIUs	131	163	259	384	318	401	253	234
CBSA	96	139	169	225	-	353	324	500
CRA	149	153	173	205	-	281	252	287
Provincial Securities Regulators	-	-	-	69	-	92	74	66

[3] Data not available for 2015-16.

[4] Some disclosures are sent to multiple recipients.

CSE	32	33	23	47	-	66	20	12
Canadian Armed Forces	-	-	-	-	-	0	8	-
Total (Unique Disclosures)	***919***	***1,143***	***1,260***	***1,655***	***2,015***	***2,466***	***2,276***	***2,057***
% Increase from 2012-13	***-***	***24%***	***37%***	***80%***	***119%***	***168%***	***148%***	***124%***

Table 7: Number of police, law enforcement, national security and other partner agency major and project-level investigations supported by FINTRAC financial intelligence disclosures

Fiscal Year	Number of Investigations[5]
2017-18	262
2018-19	296
2019-20	393

Table 8: Number of voluntary information records received by FINTRAC

Fiscal Year	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
# of Reports	1,186	1,034	1,082	1,320	1,380	1,619	1,958	2,397	2,754	2,519
% Increase from 2010-11		-13%	-9%	11%	16%	36%	65%	102%	132%	112%

Investigations and Prosecutions

Table 9: Police-reported incidents of money laundering - proceeds of crime (Part XII.2 CC), Canada, 2008 to 2018[6]

Statistics	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Actual incidents	452	520	405	379	291	263	276	248	237	328	218
Rate per 100,000 population	1.4	1.5	1.2	1.1	0.8	0.7	0.8	0.7	0.7	0.9	0.6
Percentage change in rate	-10.6	13.7	-23.0	-7.3	-24.0	-10.6	3.9	-10.8	-5.5	36.8	-34.5
Total cleared	119	117	129	150	103	117	90	82	76	58	31
Cleared by charge[7]	51	53	46	82	72	86	58	63	50	40	21
Cleared otherwise[8]	68	64	83	68	31	31	32	19	26	18	10
Total persons charged	62	55	54	60	59	81	66	80	69	52	22
Total adults charged	61	55	54	60	55	76	66	76	68	52	22
Total youth charged	1	0	0	0	4	5	0	4	1	0	0

Source: Statistics Canada, Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey.

[5] New indicator. Data for prior years prior to 2017-18 not available.
[6] The offences which comprise the category of money laundering in the Uniform Crime Reporting Survey include: laundering proceeds of crime (CCC s.462.31) and restraint order violation (CCC s.462.33).
[7] At least one accused has been identified and there is a criminal charge laid or recommended to be laid against this individual in connection with this criminal incident.
[8] An accused has been identified by police in relation to the criminal incident, and there is sufficient evidence to lay a charge, however a charge is not laid by police and the accused is processed by other means. Examples of charges cleared otherwise include warnings, cautions, alternative measures, extrajudicial sanctions and instances where the accused has died.

Table 10: Completed court cases of money laundering, adult criminal courts, Canada, 2008-09 to 2016-17

Fiscal Year	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Completed cases where money laundering is the most serious offence	98	88	87	130	109	122	91	136	135
Completed cases where money laundering is one charge in the case	146	141	184	241	235	241	208	237	264

Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey.

Table 11: Completed court cases where money laundering is the most serious offence, adult criminal courts, Canada, 2008-09 to 2016-17

Fiscal Year	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Number									
Guilty[9]	26	30	16	31	30	41	33	37	27
Acquitted of offence charged[10]	0	2	0	0	4	8	5	8	4
Stay of proceeding[11]	11	7	8	13	15	17	5	23	17
Withdrawn / Dismissed / Discharged[12]	60	49	63	74	57	52	45	60	79
Other decision[13]	1	0	0	12	3	4	3	8	8
Percent									
Guilty	26.5	34.1	18.4	23.8	27.5	33.6	36.3	27.2	20.0
Acquitted of offence charged	0.0	2.3	0.0	0.0	3.7	6.6	5.5	5.9	3.0
Stay of proceeding	11.2	8.0	9.2	10.0	13.8	13.9	5.5	16.9	12.6
Withdrawn / Dismissed / Discharged	61.2	55.7	72.4	56.9	52.3	42.6	49.5	44.1	58.5
Other decision	1.0	0.0	0.0	9.2	2.8	3.3	3.3	5.9	5.9

Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey.

Table 12: Most serious sentence for guilty decisions in completed court cases where money laundering is the most serious offence, adult criminal courts, Canada, 2008-09 to 2016-17

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Number									
Custody	17	20	8	15	18	19	16	21	12

[9] Guilty findings include guilty of the charged offence, of an included offence, of an attempt of the charged offence, or an attempt of an included offence. This category also includes guilty pleas, and cases where an absolute or conditional discharge has been imposed.

[10] Acquittal means that the accused has been found not guilty of the charges presented before the court.

[11] Stay of proceeding refers to stays, as well as court referrals to alternative or extrajudicial measures and restorative justice programs. These decisions all refer to the court stopping criminal proceedings against the accused.

[12] Withdrawn/Dismissed/Discharged includes withdrawals, dismissals and discharges at preliminary inquiries. These decisions all refer to the court stopping criminal proceedings against the accused.

[13] Other decisions includes unknown sentences. This category also includes other final decisions such as waived out of province or territory, not criminally responsible, any order where a conviction was not recorded, the court's acceptance of a special plea, cases which raise Charter arguments and cases where the accused was found unfit to stand trial, among others.

Conditional sentence	4	2	3	6	5	9	4	4	7
Probation	2	3	4	6	2	10	6	7	6
Fine	1	1	1	0	2	0	3	1	0
Other sentence[14]	2	4	0	4	3	3	4	4	2
Percent									
Custody	65.4	66.7	50.0	48.4	60.0	46.3	48.5	56.8	44.4
Conditional sentence	15.4	6.7	18.8	19.4	16.7	22.0	12.1	10.8	25.9
Probation	7.7	10.0	25.0	19.4	6.7	24.4	18.2	18.9	22.2
Fine	3.8	3.3	6.3	0.0	6.7	0.0	9.1	2.7	0.0
Other sentence[6]	7.7	13.3	0.0	12.9	10.0	7.3	12.1	10.8	7.4

Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey.

Seizures and Forfeitures

Table 13: Federally Seized, Restrained and Forfeited Assets by Appraisal Value, $CAD, PSPC-SPMD[15]

Fiscal Year	Seized and Restrained Assets	Forfeited Assets
2009-10	80,533,349	46,368,328
2010-11	83,430,829	58,872,881
2011-12	72,896,801	77,698,567
2012-13	60,247,601	83,935,231
2013-14	76,466,149	75,997,602
2014-15	44,384,617	72,869,240
2015-16[16]	-	-
2016-17	30,009,589	28,366,594
2017-18	44,901,166	21,858,119
2018-19	44,990,516	25,036,816
Total	***$537,860,617***	***$491,003,378***

Source: Seized Property Management Directorate.

Mutual Legal Assistance

Table 14: MLA – Proceeds of Crime/Money Laundering – Incoming and outgoing requests received

Year	# of Incoming Requests	# of Outgoing Requests
MLA	***720***	***190***
Extradition	***132***	***16***

Table 15: MLA – Proceeds of Crime/Money Laundering – Outcomes of requests closed

	Year	# of Requests Executed	# of Requests Refused	# of Requests Abandoned	# of Requests Withdrawn
MLA	***Incoming***	***455***	***9***	***59***	***34***
	Outgoing	***114***	***2***	***11***	***13***
Extradition	***Incoming***	***81***	***11***	***22***	***12***

[14] Other sentences include absolute and conditional discharge, suspended sentence, community service order and prohibition, among others.
[15] The status of assets may change within the same period. SPMD prorates asset values by the number of acts and sections implicated in each case.
[16] Data not available for 2015-16.

	Outgoing	***1***	***1***	***2***	***2***

Table 16: Information exchanges with foreign financial intelligence units (FFIUs)

Type of Information Exchange	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Queries received from FFIUs	329	202	241	222	240	217	255	225	**1,931**
Queries sent to FFIUs	74	105	116	140	147	146	211	149	**1088**
Disclosures to FFIUs	146	131	163	178	384	318	401	253	**1,974**

Table 17: RCMP Assistance to Foreign Agency Files, by Reported Year

Fiscal Year	Money Laundering	Terrorist Financing	Total
2018-19	-	-	***188***
2017-18	145	8	***163***
2016-17	167	8	***185***
2015-16[17]	-	-	-
2014-15	130	53	***183***
2013-14	118	51	***169***
2012-13	102	42	***146***
2011-12	101	75	***176***
2010-11	91	101	***192***
2009-10	70	75	***145***
Total	***924***	***413***	***1,547***

[17] Data not available for 2015-16.