Combatting Money Laundering in BC Real Estate

Expert Panel on Money Laundering in BC Real Estate

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Transmittal Letter

March 31, 2019

Honourable Carole James
Minister of Finance and Deputy Premier
PO BOX 9048 STN PROV GOVT
Victoria BC V8W 9E2

Dear Minister,

It is with great pleasure that we provide you with our report, *Combatting Money Laundering in BC Real Estate*, which recommends improved regulatory measures to enhance the government response to money laundering in real estate in British Columbia.

Money laundering is an urgent issue, but not just in BC. It requires concerted federal and provincial efforts to overcome the barriers that currently hold back an effective criminal justice and regulatory response in Canada. International best practices clearly illustrate that we can do better.

Through beneficial ownership disclosure, the elimination of regulatory gaps, upgrades to federal anti-money laundering legislation and practices, and better data sharing, coordination and cooperation among agencies, a more effective federal/provincial anti-money laundering regime will be built. Success requires that governments make this a priority, work together and be willing to allocate the necessary resources to ensure successful implementation.

Thank you for the opportunity to contribute to resolving this important public policy issue.

Sincerely,

Professor Maureen Maloney
Chair

Professor Tsur Somerville

Professor Brigitte Unger

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Acknowledgements

The Panel acknowledges and thanks the many regulatory agencies and industry associations that made presentations and provided valuable insights and advice, as well as the many members of the public who participated by sending in comments and advice through the portal that the Panel set up to receive public input.

We greatly appreciate the efforts of several public servants in the Ministry of Finance who provided important advice, information and administrative assistance to the Panel.

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Executive Summary

Money laundering, especially as it applies to real estate in the urban markets of British Columbia, has become one of the most hotly debated public policy issues of the time. And yet, because of its secretive nature, little is known about the quantum of money laundering in real estate or its impact on market prices and housing affordability. What is clear is that decades after money laundering was identified as an issue requiring a coordinated and sustained international response, Canada's approach – focusing on a criminal justice response – has not been effective. Urgent action is required.

The purpose of this report is to recommend what action can and should be taken by the Province, primarily regulatory in nature, to better combat money laundering in the BC real estate market.

It is clear that BC cannot be effective on its own. Accordingly, the report also identifies improvements to the core federal anti-money laundering (AML) legislation and practice, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and the operations of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).[1] There is a complex system of regulatory and AML agencies at the federal and provincial level that inevitably operate as silos to some extent. Coordination and cooperation are key in the fight against money laundering.

Consistent with the Panel's Terms of Reference (Appendix A), this report reviews the importance of combatting money laundering, describes international AML best practices, outlines original research undertaken to estimate the amount of money laundering in Canada and BC, estimates the impact of money laundering on real estate and describes the current complex system of regulatory and AML agencies to identify gaps and opportunities. The report also includes the Panel's 29 recommendations for change.

Conclusions

The Panel concluded the following:

Money laundering corrupts contagiously

1. **Money laundering significantly damages our society and causes ongoing harm,** not limited to the real estate sector or other economic sectors. Money laundering is a contagious, corrupting influence on society, damaging the reputations and stability of professions and institutions needed to enable complex money laundering schemes and spreading that damage throughout civil society. It facilitates other criminal activities, contributing in particular to drug trafficking and the violent crime and opioid deaths that result, as is sadly so evident in BC. It deprives the public and public services of the benefit of taxation revenue. It affects real estate markets and contributes to the housing affordability problem.

2. **The amount of money laundering is significant, but it is difficult to measure.** The Panel conservatively estimates annual money laundering activity in 2015 in Canada at $41.3 billion ($46.7 billion for 2018) and in BC at $6.3 billion ($7.4 billion for 2018). This is the first money laundering estimate for Canada or a province generated on the basis of economic

1 While it is beyond the scope of the Panel's work to address law enforcement directly, it is clear that more police resources focused on money laundering, along with increased financial expertise, are also required.

analysis and modelling and the first estimate of money laundering over time. However, it must be stressed that the inherent secrecy of an activity designed to hide the true nature of financial transactions, together with the lack of reliable, internationally consistent data, means that there is no definitive way to measure money laundering activity. The methodology used is likely to generate an estimate of money laundering near its lower bound.

3. **Money laundering investment in BC real estate is sufficient to have raised housing prices and contributed to BC's housing affordability issue.** The data limitations that make it difficult to estimate the level of money laundering make it even more challenging to estimate the allocation of money laundering to specific economic sectors, such as real estate and the impact of that investment on house prices. The Panel cautiously estimates that almost 5 percent of the value of real estate transactions in the province result from money laundering investment. The estimated impact of that would be to increase housing prices by about 5 percent. Successfully reducing money laundering investment in BC real estate should have a modest but observable impact on housing affordability.

4. **Red flag analysis demonstrates the need for data collection, combination and sharing improvements to distinguish between legitimate and money laundering real estate activity.** Analysis of data sets to identify transactions that share characteristics with known money laundering techniques (red flag analysis) requires both access to a variety of linked data sets and better collection of data about the characteristics of money laundering transactions found in BC. The Panel shows that characteristics commonly associated with money laundering that can be observed in public data occur in significant proportions of properties and transactions, demonstrating the need for more information, especially beneficial ownership information.

5. **Regulatory responses to money laundering are best-practice anti-money laundering measures.** Regulatory measures are used internationally to complement and enhance criminal justice efforts to combat money laundering. The lack of provincial AML regulatory efforts combined with needed improvements to core federal AML legislation and practice have contributed to Canada's ineffectiveness in preventing, detecting and deterring money laundering.

Regulatory improvements needed to achieve best practices

6. **BC's proposed beneficial ownership registry for land is a major step forward.** Disclosure of beneficial ownership is *the single most important measure* that can be taken to combat money laundering but is regrettably under-used both internationally and in Canada. The BC *Land Ownership Transparency Act* will be the first such registry to be fully compliant with best practices.

7. **Closing regulatory gaps and improving regulatory effectiveness could significantly enhance anti-money laundering effectiveness.** Taking decisive regulatory action is easier than prosecuting crimes. Accordingly, financial and real estate regulators are valuable elements of the AML system that are currently untapped because these vital regulators do not have an AML mandate. There are also major gaps in the regulatory system. BC regulation of mortgage lenders and intermediaries is antiquated and narrow. Money services businesses

are unregulated in BC. Important players in the real estate industry are unregulated for market conduct purposes. In addition, there are gaps in the set of industry subsectors that are required to report suspicious transactions to FINTRAC.

8. **Unexplained Wealth Orders could add a valuable new anti-money laundering tool.** Civil forfeiture is already used much more readily than criminal prosecution but still requires a link to criminal activity, which may be hard to establish, especially where international transfers are involved. Unexplained Wealth Orders could be used to confiscate property where there is no evident legitimate source of funds, providing another civil process tool that does not rely on criminal prosecution or evidence of a crime.

9. **Core federal anti-money laundering legislation and practice are in urgent need of reform.** Improvements should be made by the federal government to the ability of FINTRAC to collect and analyze reports of suspicious transactions from all those involved in real estate, to provide information to those who can and will use it, including regulators, to provide feedback to reporting entities and to collect and report statistically on the full range of AML activities and their effectiveness.

10. **Data sharing needs to be enhanced.** Data is the key to effective AML prevention and detection efforts. There is considerable public data available to help those involved in AML activity to detect money laundering. The BC beneficial ownership registry for land will enhance the available public data considerably. However, the data is not in a form that is easily usable for investigative purposes. There is also considerable government data that is not public, subject to a complex set of data-sharing arrangements and limitations, some of which may be unnecessarily restrictive. Improving the ability to access and share data would enhance our ability to combat money laundering.

11. **Investigative capacity and cooperation also need to be enhanced.** Across the regulatory/AML system, there is a lack of the specialized skills and abilities needed to effectively investigate the complex, secretive financial arrangements used to launder money at both the law enforcement and regulatory levels. There is also a complex web of federal and provincial agencies involved, which presents a significant challenge in terms of cooperation and coordination, and there are few formal coordination mechanisms in place.

12. **Money laundering should be addressed across Canada.** This is not just a BC problem, and it extends far beyond housing affordability. Across the country, our society is being affected and infected by money laundering, and every province has the opportunity and the obligation to make a significant contribution. In fact, without broad federal and provincial regulatory involvement, Canada cannot be successful in combatting money laundering.

Based on these conclusions, the Panel has made 29 recommendations, grouped into five areas where improvements are urgently needed:

- **Regulatory improvements** – Enhanced beneficial ownership disclosure is the single most important regulatory improvement opportunity available. In addition, provincial regulatory efforts should be enhanced to complement criminal justice efforts to combat money

laundering. Doing so requires that gaps in the regulatory system first be plugged and that new tools be created to fight and uncover money laundering, including Unexplained Wealth Orders.

- **Federal anti-money laundering legislation and practice** – FINTRAC and the requirements of the PCMLTFA are the central hub of an AML system that can only be effective if this national intelligence function operates at best-practice levels, in coordination with the other actors in the AML system.
- **Data-sharing framework** – Information is the crucial means of identifying and investigating money laundering activity, making access to information and the ability to use it of the utmost importance to law enforcement and regulators.
- **Investigation and collaboration** – Without specialized investigation skills targeted to complex financial arrangements and institutionalized coordination mechanisms, the value of information cannot be realized.
- **Involvement of other provinces** – Money laundering is a national issue requiring a combined federal and provincial response that involves all of the provinces across the whole country.

Recommendations

Provincial regulatory improvements

Recommendation 1

The BC government should implement the Land Owner Transparency registry as quickly and effectively as possible.

Recommendation 2

The BC Minister of Finance should encourage other provincial finance ministers across the country to implement beneficial ownership of land registries that are consistent with best practices.

Recommendation 3

The BC government should proceed with its commitment to require corporations to maintain beneficial ownership information and require existing bearer shares to be converted to shares compliant with the *Business Corporations Act* within a specified, reasonable time frame.

Recommendation 4

The BC Minister of Finance should encourage other finance ministers across the country to implement the Agreement to Strengthen Beneficial Ownership Transparency and enhance the disclosure of beneficial ownership for corporations, as soon as possible.

Recommendation 5

The BC government should develop a discussion paper with draft legislation for consultation about the implementation of a full corporate beneficial ownership registry covering all legal persons that is consistent with best practices and that integrates with the *Land Owner Transparency Act*.

Recommendation 6

The BC government should implement the recommendations of the *Real Estate Regulatory Structure Review* report (2018).

Recommendation 7

The BC Minister of Finance should take the steps necessary to place the onus for compliance with the *Real Estate Services Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* directly on individual real estate licensees.

Recommendation 8

The BC Minister of Finance should take the steps necessary to:

- require that real estate developers be licensed under a regulatory regime designed specifically for that segment of the real estate industry within the *Real Estate Services Act*;
- eliminate the exemption for salespeople who are employees of developers; and
- consider whether appraisers and home inspectors should also be licensed under the *Real Estate Services Act*.

Recommendation 9

The BC government should replace the *Mortgage Broker Act* with a modern regulatory statute that is effective in regulating all those in the business of mortgage lending, with few exceptions.

Recommendation 10

The BC government should consider developing a regulatory regime for money services businesses to be operated by the Financial Institutions Commission.

Recommendation 11

The BC government should consider introducing Unexplained Wealth Orders in BC.

Recommendation 12

The BC government should consider options for setting regulatory practice standards for all government regulators, including both self-regulatory organizations and other regulatory authorities, and for holding regulators to account for operating in accordance with established standards.

National anti-money laundering legislation and practice

Recommendation 13

The BC Minister of Finance should recommend to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* be amended to add mortgage lenders and mortgage intermediaries to the list of reporting entities, in addition to the entities recommended by the Standing Committee on Finance.

Recommendation 14

The BC Minister of Finance should suggest that her federal counterpart consider incorporating legal professionals in the anti-money laundering framework by requiring them to report suspicious transactions to the appropriate law society under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Recommendation 15

The BC Minister of Finance should suggest to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* be amended to require reporting entities in the real estate sector to conduct know-your-customer due diligence on beneficial ownership, as is required for several other types of reporting entities, and that the disclosure threshold for a beneficial ownership interest held by an individual be reduced from 25 percent to 10 percent.

Recommendation 16

The BC Minister of Finance should recommend to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* be amended to authorize FINTRAC to provide information to specified provincial regulators and anti-money laundering investigative agencies.

Recommendation 17

The BC Minister of Finance should recommend to her federal counterpart that the list of agencies in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* for which judicially authorized disclosure of additional FINTRAC information can be sought be expanded.

Recommendation 18

The BC Minister of Finance should recommend to her federal counterpart that FINTRAC enhance:

- the level of feedback provided to reporting entities about the quality of their reporting and the typology of money laundering constructions that may be suspicious, and
- the reporting of intelligence and statistics to better inform the public about the nature and extent of money laundering and the effectiveness of the full range of efforts to combat it.

Recommendation 19

The BC government should require BC regulators of reporting entities to enforce compliance with *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* requirements and provide training and education to assist them in doing so, in cooperation with FINTRAC.

Recommendation 20

The BC Minister of Finance should recommend to her federal counterpart that FINTRAC develop education, training, and reporting processes, methods, and requirements that reflect the realities of the different industries that are obligated to report.

Recommendation 21

The BC Minister of Finance should recommend to her federal counterpart that FINTRAC collect information in suspicious transaction reports sufficient to analyze the geographic location of those transactions, including both the location within Canada where the transaction occurred and, where suspicious transactions have a foreign component, the countries involved.

Recommendation 22

The BC government should specifically add anti-money laundering to the mandates of relevant BC regulators, including the Real Estate Council of BC, the Office of the Superintendent of Real Estate, FICOM, the BC Securities Commission, the Society of Notaries Public of BC, the Law Society of BC and the Chartered Professional Accountants of BC.

Data-sharing framework

Recommendation 23

The BC government should implement the principle of a data-sharing framework that provides each anti-money laundering agency with access to public-domain data, including land data, together with data that can be shared from other agencies, including federal agencies and agencies from other provinces as appropriate, and proprietary confidential data in a way that facilitates analysis and investigation.

Recommendation 24

The BC government should conduct a comprehensive review of data sharing and confidentiality related to anti-money laundering activities to ensure that the best use is made of government data in combatting money laundering and market manipulation while respecting privacy and confidentiality principles.

Recommendation 25

The BC government should ensure that all those in the mortgage lending business should be required under provincial legislation to conduct and maintain know-your-customer records and records of the source of mortgage payment funds from borrowers, until such requirements are placed on mortgage lending businesses by the federal government.

Investigation and collaboration

Recommendation 26

The BC Ministry of Finance should create a specialized, multidisciplinary financial investigations unit that can make effective use of the available information and provide the basis for use of administrative sanctions and prosecution of provincial and criminal offences.

Recommendation 27

The BC Ministry of Finance should create institutional coordination mechanisms among the financial investigation unit and the various federal and provincial regulators and other agencies involved in the regulatory/anti-money laundering system.

Recommendation 28

Coordination mechanisms should adopt the principle that investigations be referred to the agency best able to apply its own proprietary information and investigative powers to the case, including tax authorities and the Law Society of BC.

Involvement of other provinces

Recommendation 29

The BC Minster of Finance should make every effort to convince her provincial colleagues of the importance of making combatting money laundering a provincial priority and using provincial finance and real estate-related regulatory changes in coordination with federal and other provincial agencies to combat money laundering, consistent with the Panel's recommendations.

The Panel's Vision for an Effective Anti-Money Laundering System

The 29 recommendations represent the Panel's vision for an effective system to combat money laundering and control market abuse in real estate. The vision is that the fight against money laundering will be a priority across Canada, both federally and provincially. Specifically:

- The anti-money laundering system will include renewed criminal justice efforts supported by more effective intelligence from FINTRAC and the regulators and actors involved in the real estate market.
- Provincial regulatory efforts related to the financial and real estate sectors will be explicitly included as part of the AML system, bringing a full range of investigative and enforcement authorities to bear on money laundering.
- Public beneficial ownership disclosure for land and for legal persons, such as corporations, trusts and partnerships, will add valuable information that is vital in undertaking investigations.
- FINTRAC will be able to provide suspicious transaction information to regulators, as well as law enforcement and designated federal agencies.
- All agencies will have better access to shared, linked data in a way that is conducive to analysis.
- The investigative functions throughout the regulatory domain will be better equipped to utilize the available information, through the availability of personnel with specialized investigative skills and institutionalized coordination mechanisms.
- The regulatory framework for real estate will be more effective in dealing with market abuse, not only because of better information and investigation, but also because the framework itself will be more complete.
- As a result of these changes, more money laundering will be detected, more enforcement action will be taken and, as long as anti-money laundering efforts remain a priority, some money laundering will be deterred and market abuse will also be reduced. British Columbia and Canada will no longer be attractive places for money laundering. While no single measure recommended by the Panel will have a large, immediate impact across the whole market, housing demand and therefore house prices will be reduced to some extent and there will be a long-term modest improvement in housing affordability.

More agencies, regulatory improvements, new tools, better information, more investigation, enhanced coordination leads to less money laundering

The recommended measures require a strong government response and will take time and resources to implement, making change gradual, but the harms to society caused by money laundering will be reduced and all British Columbians and Canadians will benefit.

Chapter 1: The Expert Panel on Money Laundering in BC Real Estate

Mandate

On September 27, 2018, the Government of British Columbia announced the creation of two review processes to address money laundering in BC real estate.[2]

The review that is the subject of this report was to "identify systemic risks that leave the real estate and financial services sectors open to money laundering." The other review, appointed by the Attorney General, was to "investigate specific case examples of problematic activity in real estate and other vulnerable sectors to uncover the ways that money launderers have operated in the province."

Mandate:
Combat real estate money laundering and market abuse using provincial regulation

The mandate of this Panel is set out in detail in the Terms of Reference in Appendix A. It is to advise the Minister of Finance on how regulation related primarily to the corporate and financial sectors can be used to combat money laundering and market abuse related to the real estate market. Specifically, the Panel was expected to review BC's financial regulatory system, examine international anti-money laundering (AML) best practices and make recommendations to improve the BC financial regulatory framework and integrate BC's regime into core federal AML legislation and practice. The review extends beyond money laundering to real estate market manipulation and abuse, consistent with the Ministry of Finance's responsibility for financial sector regulation.

The work of both reviews has been done within the context of *Homes for B.C.: A 30-Point Plan for Housing Affordability in British Columbia*,[3] released with Budget 2018.

Money laundering and market abuse

The key elements of the Panel's mandate are "money laundering" and "market abuse" in BC real estate. It is important to be clear from the start what those terms mean for the purposes of this report.

"Money laundering" means the crime of laundering the proceeds of crime, set out in Section 462.31 (1) of the *Criminal Code* of Canada:

Laundering proceeds of crime

> 462.31 (1) Every one commits an offence 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, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a

2 See https://archive.news.gov.bc.ca/releases/news_releases_2017-2021/2018FIN0072-001884.htm.

3 Province of British Columbia, *Homes for B.C.: A 30-Point Plan for Housing Affordability in British Columbia*, 2018, https://www.bcbudget.gov.bc.ca/2018/homesbc/2018_homes_for_bc.pdf.

part of that property or of those proceeds was obtained or derived directly or in-directly as a result of

a) the commission in Canada of a designated offence; or

b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

Under Section 462.3 (1), "designated offence" is defined to be an indictable offence, which covers serious federal offences under the *Criminal Code* and other federal legislation, including tax evasion offences.

Prosecution of the crime of money laundering requires proof that the money in question is the proceeds of a specific offence, commonly referred to as the "predicate offence." The money may be transferred to different persons and converted to and from different types of assets and remain subject to the provision, provided it can be linked back to the predicate offence. A crime that takes place in another country is a valid predicate offence provided that, had it taken place in Canada, it would have been an indictable offence.

The Panel's mandate extends beyond money laundering to also include real estate market abuse. For the purposes of this report, "market abuse" means activity that affects the market by:

- abusing the fact that many people buying or selling real estate may have less knowledge about the real estate market in general and specific properties in particular than other parties, leaving them open to abuse;
- injecting money that may not be identifiable as the proceeds of crime but is nevertheless from dubious or unverifiable sources; and
- creating artificial non-arm's-length transactions to manipulate the value of individual properties or market segments.

How the Panel Conducted Its Work

The Panel organized its workplan and this report around a few questions that align with the Terms of Reference set out Appendix A. This provided a framework within which concrete and practical recommendations for improving the BC and federal regulatory systems to better fight money laundering, especially in the BC real estate market, could be developed.

First, it is important to understand why money laundering matters and why it is not a victimless crime. That leads to the questions of why, given the importance and corrosive impacts of money laundering, it is such a difficult crime to prosecute in Canada and what money laundering in real estate looks like.

Having established that money laundering is a problem to be solved, but that at present law enforcement does not provide a full solution, the next question is how money laundering is addressed internationally. The report summarizes international approaches to AML and describes international AML best practices.

Money laundering in BC real estate is a hot topic of public and media debate because it is linked with housing affordability. That gives rise to the question of how much money laundering has contributed to the lack of housing affordability. The report tackles this complex and difficult

problem by estimating Canadian money laundering flows, the proportion of money laundering that flows into real estate and the impact of money laundering on housing prices. The report also examines methods for identifying the number, types and location of properties that may be at risk.

The report then considers the question of how the regulatory system can be used to fight money laundering. The remainder of the report focuses on answering that question, looking at two ways in which regulatory action can make a difference:

- regulators gather important information in the course of their activities that may be useful in identifying money laundering, especially when combined with other relevant information, which may contribute to the detection of money laundering, whether by regulators or law enforcement; and
- regulators may be able to take action against those engaged in or who are enabling money laundering together with or as an alternative to criminal prosecution when there are regulatory infractions related to the case in addition to suspicions of money laundering.

But before considering ways of improving the regulatory system, it is important to understand the complex system of federal and provincial regulatory agencies operating in this field and how they interact with the actors in the real estate market. It is also important to highlight gaps and overlaps in that regulatory environment.

In order to undertake its work, the Panel met with a wide range of federal and provincial agencies involved in law enforcement, financial sector regulation, professional regulation, AML activities and other related activities. The Panel also met with or received submissions from representatives of many of the regulated and unregulated actors in the real estate market. A list of participating groups can be found in Appendix C. The Panel is greatly appreciative of the open, candid and useful information and suggestions provided by all those who participated.

The Panel also accepted public comments and submissions through a public engagement website[4] through which 275 submissions were made, providing very valuable comments and suggestions.

The Panel focused on finding ways to improve the regulatory system to fight money laundering in real estate. As such, the Panel does not attribute any specific comments to any of those who have participated or made any comment on past or current activities of any of the agencies or types of participants in the real estate market.

4 https://engage.gov.bc.ca/preventingmoneylaundering/

Chapter 2: The Importance of Money Laundering

Why Does Money Laundering Matter?

Money laundering and its effects corrode the very fabric of society. It impacts all spheres of a functioning democratic society: political and civil, social, and economic. It damages the quality of life of residents of the countries, provinces and cities where it is prevalent.

Money laundering takes many different forms, and its impacts vary depending on the vehicles selected for laundering the proceeds of crime. Regions that make it relatively easy for criminals to launder money pay a heavy price for their lack of attention to ensuring that adequate laws, investigative tools and enforcement are put into place to prevent, detect, investigate and prosecute money launderers.

What are the effects of money laundering on society? Some of the effects most evident in three sectors, political and civil, social, and economic, are outlined below.

Political and civil society impacts

Impact: Corrodes the rule of law

When money launderers gain a stronghold in a country, province or city, significant adverse consequences for democracy and the rule of law will result. Wealthy criminals do not only import crime and the proceeds of crime into a society. Large criminal organizations engage in widespread use of corruption and bribery of officials and political actors to ensure that their activities can function unimpeded. Once corruption and bribery are part of the accepted culture of a society, then it is challenging, if not impossible, to uphold the rule of law and democracy.

A society without the underpinning of the rule of law is a very precarious society. We are not close to this reality in British Columbia and Canada, but precautionary tales from other countries teach us that we should not take the rule of law and democracy that we have for granted. Accordingly, taking action to stem the flow of money laundering in BC and Canada is a matter of the utmost importance.

Money laundering also requires enablers, often professionals who are trusted by society to provide needed business and personal services, including lawyers, accountants, real estate professionals, securities dealers and mortgage brokers. While some are unwitting participants, others are corrupted by the temptation of associated with the rewards for helping to conceal dirty money. That has significant consequences for the faith and trust placed in these professionals. Scandals in other countries have shown how money laundering can affect trust in banks and other institutions.

Social impacts

Impact: Makes crime profitable

The most obvious impact of money laundering is that it encourages criminal activity by facilitating the ability of criminals to clean up the proceeds of their crimes. This allows them to spend their ill-gotten gains in the legitimate economy with little fear of being traced to the original crime. Accordingly, the easier money laundering is, the greater the incentive to commit criminal acts; conversely, less money laundering will be accompanied by less domestic crime.

Another important social impact of money laundering is the damage that the predicate offence, which generated the monies, inflicts on the victim or victims of the crimes. In BC, one of the most visible crimes is the sale of illegal drugs. BC has witnessed the ravages that the sale of fentanyl and other serious drugs have wrought on the thousands of people who have died through overdoses and the grief experienced by their families and friends, who will live with the impact of their deaths for the rest of their lives.

There are also overarching impacts on society. Money laundering is a source of invidious practices that have a deleterious and often long-lasting impact on society. Regions that are more amenable than others to money laundering are, perhaps unwittingly, inviting criminals, both domestic and international, into their space. Criminals who have high incomes and extreme wealth, both domestic and international, bring with them not only their proceeds of crime but also their modes of operation, including corruption, bribery and a variety of illegal activities over and above money laundering.

Money launderers are often also tax evaders. Less taxation revenue directly impacts the ability of governments to provide quality public services for residents. This will have long-lasting impacts on the quality of life in regions where money laundering is extensive.[5]

Economic impacts

Money laundering has many disruptive and important effects on the economy primarily through its distortion of prices and improving the rewards of criminal activity relative to legal, productive economic activity.[6]

Impact: Distorts markets contributing to housing unaffordability

Market distortions arise from money laundering because money launderers are not driven by the same motives as other legal actors in the economy. Criminals' investment decisions are driven primarily by how best to launder their dirty money rather than by the profit maximization motives of legitimate investors. The prices of assets that are most attractive for money laundering rise relative to other assets that are less attractive, which encourages the flow of resources into the markets most associated with money laundering.

These market distortions are compounded by the fact that the criminals are using money taken from victims of their crimes, who will therefore have less income available for consumption. That includes the consumption of housing. Investment demand by money launderers in the residential real estate market raises prices, and this distortion increases affordability challenges for those not benefiting from the criminal activity. A conservative estimate attributes about a 5 percent increase in the price of residential real estate to money laundering (see Chapter 4: Estimated Effect of Money Laundering on BC Real Estate).

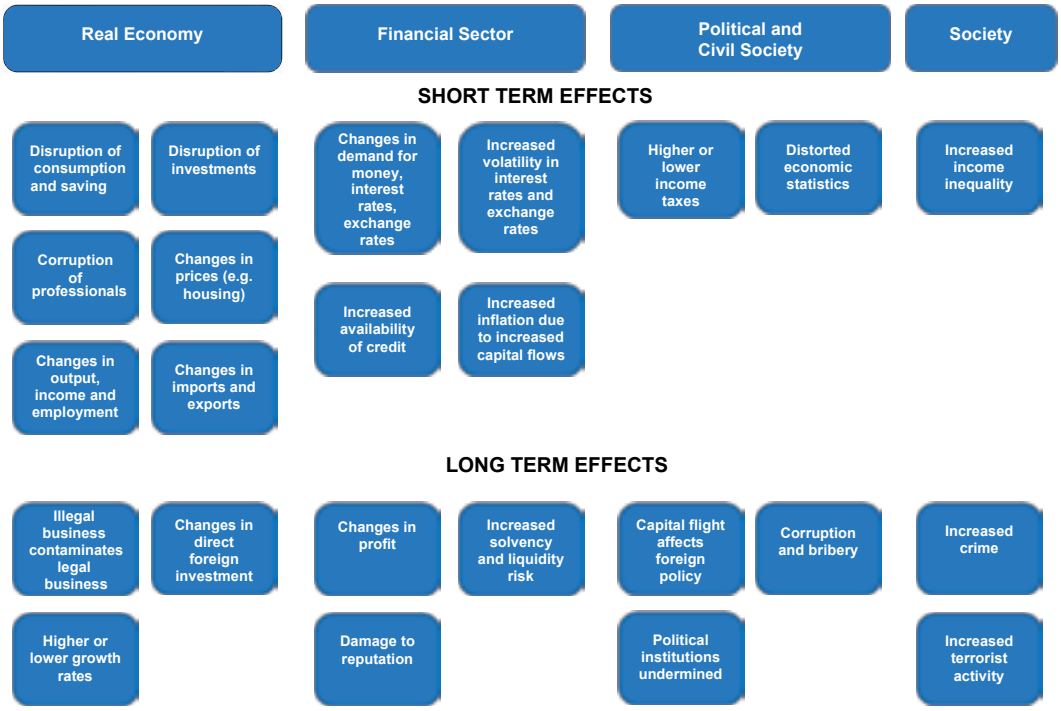
5 Perversely, money launderers may choose to declare income or capital gains for tax purposes in order to further legitimize the laundered income or assets, which would have the effect of bringing the underground criminal economy into the tax system.

6 Crime, including money laundering, is economic activity and thus has a positive impact on many economic indicators, such as GDP and capital inflows, and on wealth through its effect on asset values, including housing prices. While those impacts can be viewed as positive, they also reflect market distortions. This section focuses only on the clearly damaging effects of money laundering.

Effects on the financial sector are equally wide-ranging and deleterious, touch on its liquidity, reputation and stability. The monetary sector may also be impacted, depending on capital inflows or outflows that are part of a money laundering scheme, which may affect interest rates, exchange rates and monetary policy generally, although this is probably not a major concern in the current domestic economy.

In a meta-analysis of the studies on money laundering, Unger et al[7] identified 25 effects of money laundering, both short-term and long-term. These are shown in Figure 1. The long term effects of money laundering are a ticking bomb for a democratic society and its economy.

Figure 1: Effects of money laundering



Source: Graphic created for the Panel from Unger et al (2006) and from Unger et al (2018).[8]

Illegal funds and businesses also impact legal businesses in several ways. Illegal businesses have more money (especially if they are tax evaders) with which to outbid legitimate businesses on contracts, real estate or other commercial ventures. If money launderers are prevalent in one commercial sector, they will infect the legal entities that will need to do business with them in order to remain viable. This is especially true of the associated professional and business services that assist with business and real estate transactions, as mentioned above.

7 B. Unger, G. Rawlings, M. Busuioc, J. Ferwerda, M. Siegel, W. de Kruijf, and K. Wokke, *The Amounts and the Effects of Money Laundering* (The Hague, Netherlands, 2006).

8 B. Unger, J. Ferwerda, I. Koetsier, B. Gjoleka, A. van Saase, B. Slot, and L. de Swart, *Aard en omvang criminele bestedingen (Types and Amounts of Criminal Spending in the Netherlands)*, Report for the Research and Documentation Centre of the Dutch Ministry of Justice (WODC), (Utrecht/Rotterdam, Netherlands: Utrecht University, 2018), https://www.wodc.nl/onderzoeksdatabase/2790-witwaspiramide.aspx.

Finally, if a country acquires a reputation for being lax in relation to money launderers, more international criminals will be encouraged to send proceeds of crime there for laundering. Importantly and conversely, these inflows can scare off legitimate financial investment inflows. Legal international investors want to invest in economies with a strong reputation for its rule of law and financial stability, along with a track record of minimal money laundering and other financial crimes.

Why Is Real Estate Attractive to Money Launderers?

Real estate seems to be a particular target for money laundering activity. A 2015 European study[9] found that the sectors where money laundering was most prevalent included the hospitality sector (bars, restaurants and hotels), construction, wholesale and retail trade, transportation and real estate. A 2015 Department of Finance Canada report[10] identified mortgage fraud as one of the highest-risk areas for money laundering.

Why is real estate attractive to money launderers? There are several reasons.

Real estate is a large and diffuse market with high-valued assets that is simple to enter. Placing large sums in individual assets without arousing suspicion doesn't require expertise. Large transaction volumes occur in both the purchase and financing of real estate, allowing individual transactions to take place without the detailed regulatory oversight of transactions in financial markets.

Attraction: Property makes money, ownership easily disguised

Real estate is a secure investment. Properties can hold their value and are not as sensitive to management decisions as are active businesses. It is particularly attractive in markets that have high levels of demand and rising prices.

Part of the safety of real estate lies in the fact that there is certainty of legal ownership but many ways to hide beneficial ownership.

There are several mechanisms to generate clean profits from real estate, including capital gains from the sale of property, rents for the use of property, and debt service payments from the financing of property. Commercial property purchased as part of a business purchase can be used to mix legitimate business revenues with dirty money as a money laundering technique.

Speculation is part of the normal operation of the real estate market, making short-term holds for layering money appear legitimate and allowing potential validation of large gains in asset values from speculative investments for money launderers.

Real estate can be a prestigious investment, especially in certain neighbourhoods, which can be attractive to those wishing to trumpet their wealth.

Real estate assets are very heterogeneous. The value of each parcel of real estate depends on its unique combination of characteristics and location, so it is difficult to determine whether a given

9 Savona Ernesto U. & Riccardi Michele (Eds.), *From Illegal Markets to Legitimate Businesses: The Portfolio of Organised Crime in Europe*, Final Report of Project OCP Organised Crime Portfolio (Transcrime, 2015).

10 Department of Finance Canada, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada* (2015), https://www.fin.gc.ca/pub/mltf-rpcfat/index-eng.asp.

transaction value differs from the actual market value of the property. That can make real estate attractive to those wishing to manipulate prices in order to launder money.

Real estate is required for the conduct of many criminal enterprises, making control of that property by the criminals a necessity.

These and other attributes make investment in real estate especially useful as an investment for those laundering money.

What Does Money Laundering in Real Estate Look Like?

Money laundering ≠ Bags of cash

Bags of cash not required to launder money

The stereotypical perception of money laundering in real estate is that a drug dealer or other criminal collects a large volume of bank notes representing the profit from a number of criminal transactions and uses that cash to buy an asset, such as a luxury car or real estate. This view is so pervasive that many of the associations representing actors in the real estate industry made a point of telling the Panel that they do not take cash or know of any cases where cash has been used to purchase real estate. But money laundering is much more complicated than that. The fact that cash is not used to purchase land doesn't indicate that real estate is not used for money laundering.

Phases of money laundering

The purpose of money laundering is to take the dirty proceeds of crime and launder the money to make it available for legitimate purposes without it being linked back to a specific crime or a known criminal. The purpose of anti-money laundering (AML) legislation and regulations is to disrupt that process, ultimately reducing crime and its influence on the legitimate economy and society. The AML literature has identified three "phases" of money laundering to help people understand money laundering and develop AML techniques.

Placement

The first phase of money laundering, which gives rise to the bags of cash stereotype, is "placement." Placement is the process of moving money earned from crime into the legitimate financial system. Depending on the crime, that money may be in the form of currency, because those paying money for drugs, illegal gambling, the sex trade or other services from criminals want to have no paper trail linking the money to the crime. Other crimes, such as fraud, may involve transfers directly between bank accounts or funds that are not in cash form. In both cases, money laundering uses transfers and transactions to distance that money from the crime and put it in a form that can be used for legitimate transactions.

There are many techniques for placement, including:

- the casino approach so well documented in Vancouver;
- combining dirty cash with legitimate revenues in a cash business;
- smurfing, which involves many small cash deposits;
- false invoicing to make the money look like legitimate business proceeds.

Some placement techniques can and do involve real estate. For example, using cash to make mortgage or rent payments could be a placement activity. Another example is paying cash to contractors for custom-built homes or renovations.

Layering

The second phase of money laundering is known as "layering." It is the process of taking money that has been placed into the financial system and further distancing it from any connection with the underlying crime. This is accomplished using a series of transactions that disguise beneficial ownership and look increasingly legitimate. Defining commonly used layering patterns is difficult. All of the complexity of the international financial system can be used in innovative ways to structure a series of transactions that can be difficult or impossible to trace back in practice. Techniques include the use of:

- cross-border transactions, especially in and out of jurisdictions that are tax havens, have strict banking secrecy or are jurisdictions in which it is difficult to gather evidence;
- trusts and corporations to disguise beneficial ownership;
- false import and export invoices to effectively move money across borders;
- borrowing in one jurisdiction for repayment in another;
- nominees or straw-owners who make it look like beneficial ownership has changed when in fact there has been no change.

Aborted transactions – where money is placed in a professional's trust account for a pending transaction and is returned when the transaction is aborted – can also hide the original source of the funds, especially when solicitor-client privilege is involved.

Sophisticated layering processes usually require sophisticated professional advisory services from lawyers, accountants, investment bankers, securities dealers and other professionals.

Integration/extraction

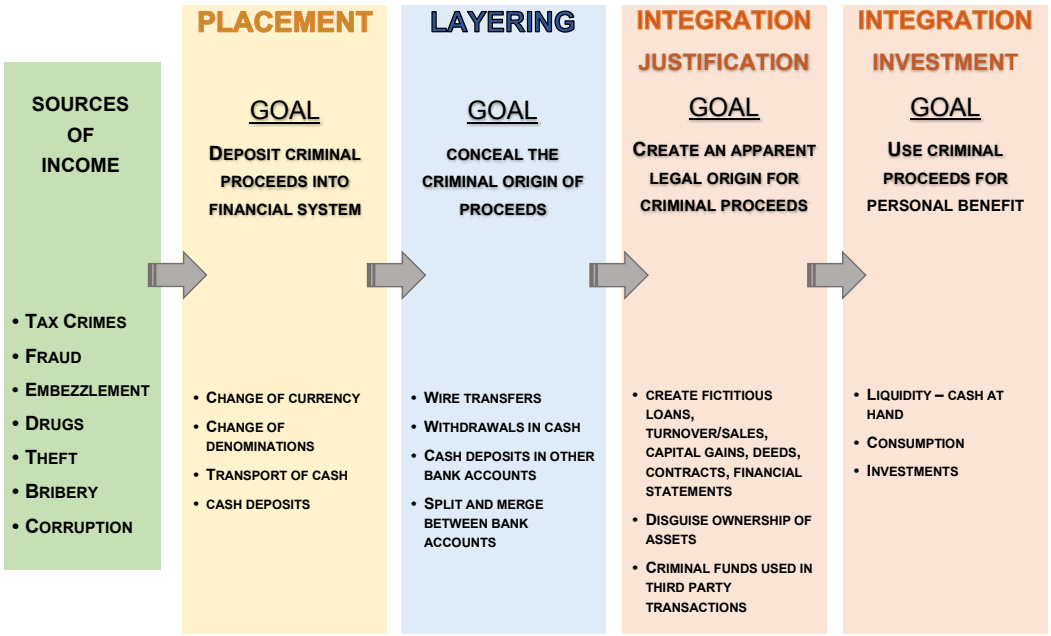
The third phase of money laundering is known as "integration" or "extraction." This phase makes laundered money available to fund expenditures or activities without giving rise to questions about the source of the funds. There are many integration techniques, including:

- paying wages to employees and dividends to shareholders, real or fake, of corporations used in money laundering;
- sale of assets purchased or built with dirty money that has been laundered to the point where it appears clean; and
- legitimate returns on investments made fully or in part with laundered money, including returns on real estate investments, such as rents and mortgage payments.

Justification

Van Konigsveld[11] has suggested that a fourth phase of money laundering be defined, between layering and integration, known as "justification." Justification refers to the process of making it look like the source of funds is legitimate so that transactions with those funds are "justified." The concept differentiates between transactions designed primarily to make it difficult to trace the money back to the crime (layering) and ongoing use of laundered money that now looks perfectly legitimate and justified (integration or extraction). Justification transactions are between the layering and integration phases of money laundering and are necessary before funds can be used without concern. The distinction is useful because justification transactions may be a relatively vulnerable type of transaction to target for AML activity.

Figure 2: Overview of money laundering



Source: Organisation for Economic Co-operation and Development, *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors* (OECD, 2009), www.oecd.org/tax/crime.

It should be noted that not all money laundering involves all of these phases. Petty criminals with relatively small amounts of profits for use in the legitimate economy are unlikely to be sophisticated enough to use complex money laundering techniques that take several steps to clean dirty money or to be able to afford the requisite professional services.

At the other end of the spectrum, those at the top of criminal organizations have the resources to manage investment portfolios and undertake a stream of transactions covering all phases of money laundering. But managing a large number of placement, layering and justification

11 T.J. van Koningsveld, "Money Laundering – 'You don't see it, until you understand it': Rethinking the stages of the money laundering process to make enforcement more effective," in B. Unger and D. van der Linde (Eds.), *Research Handbook on Money Laundering* (Edward Elgar, 2013).

transactions involving significant flows over long periods of time is a major undertaking requiring specialized knowledge and skills. A group of witting or unwitting professionals is needed. Money laundering is a business opportunity, and there are examples of money laundering businesses that provide these services. Sophisticated money laundering cannot take place without enablers, whether witting or unwitting.

Real estate money laundering

Table 1 lists some of the common transactions related to real estate that can involve proceeds of crime, and the phases of money laundering to which those transaction may be suited.

Money laundering looks just like "normal" real estate transactions

Table 1: Real estate money laundering transactions

Real estate transaction	Money laundering phase
Purchase real estate without a mortgage to earn rental and capital gains income using a corporation or nominee owner, sometimes with a subsequent resale	Integration/extraction – This is a way to extract legitimate income from an asset purchased with proceeds of crime that have already been justified.
Purchase real estate with a relatively high loan-to-value ratio mortgage, using a corporation or nominee owner and an unregulated private mortgage lender, sometimes with a subsequent resale	Placement and layering – Such a transaction can leverage money being layered, and mortgage payments can be a way to place dirty money, especially if the lender will accept cash for debt service payments.
Purchase real estate with a low loan-to-value ratio mortgage, using a corporation or nominee owner and a regulated mortgage lender, sometimes with a subsequent resale	Layering, justification and integration/extraction – This type of transaction could justify the asset if the equity in the purchase has already been layered and the source of funds to pay the mortgage is not a consideration in lending. It can generate rental and capital gains income for extraction.
Purchase real estate or a business owning real estate to conduct criminal activity, sometimes combined with legitimate business activity	Placement and integration/extraction – Regardless of the structure of the purchase, the purpose of the transaction includes using the property to conduct criminal activities and thus generate profits. It can also provide opportunities to combine dirty money with legitimate business cash flow.
Abort an accepted offer to purchase before closing	Placement, layering and justification – The return of money deposited to the trust account of a lawyer, notary or real estate agent increases the legitimacy of the transaction and makes the money harder to trace back to the crime.
Invest in mortgages	Layering, justification and integration/extraction – Mortgage investments provide a combined interest and return-of-capital stream of funds that appears legitimate. Buying and selling investments in a mortgage lending scheme, whether a mortgage investment corporation, syndicated mortgage or other vehicle, combined with other types of asset purchase and sale transactions, can be layering activity.

Real estate transaction	Money laundering phase
Owners build a custom home or conduct a major renovation	Placement and integration/extraction – Use of proceeds of crime, including but not limited to cash payments to building trades, is a way to contribute dirty money to increase the value of an asset that can subsequently be sold at a profit that appears legitimate.
Purchase and assign condominium pre-sale purchase agreements	Layering and justification – Purchase and sale of these assets may help to make the funds appear increasingly legitimate and provide an opportunity to earn capital gains.

These are only some of the types of transactions that could involve proceeds of crime, but they share a common characteristic: all of them are also legitimate types of transactions related to real estate that are important and frequently used in the real estate market. Unless there is a direct connection with a criminal or criminal enterprise, it is difficult at the transaction level to distinguish money laundering real estate transactions from the vast majority of legitimate transactions of the same type in the market (see "Using Flag Analysis to Identify Money Laundering" in Chapter 4: Estimated Effect of Money Laundering on BC Real Estate).

Some of the described transactions are well suited to the placement phase of money laundering, but most are not. Most types of real estate money laundering transactions take place after the funds have already been placed in the financial system and often after funds have been layered to disguise their source.

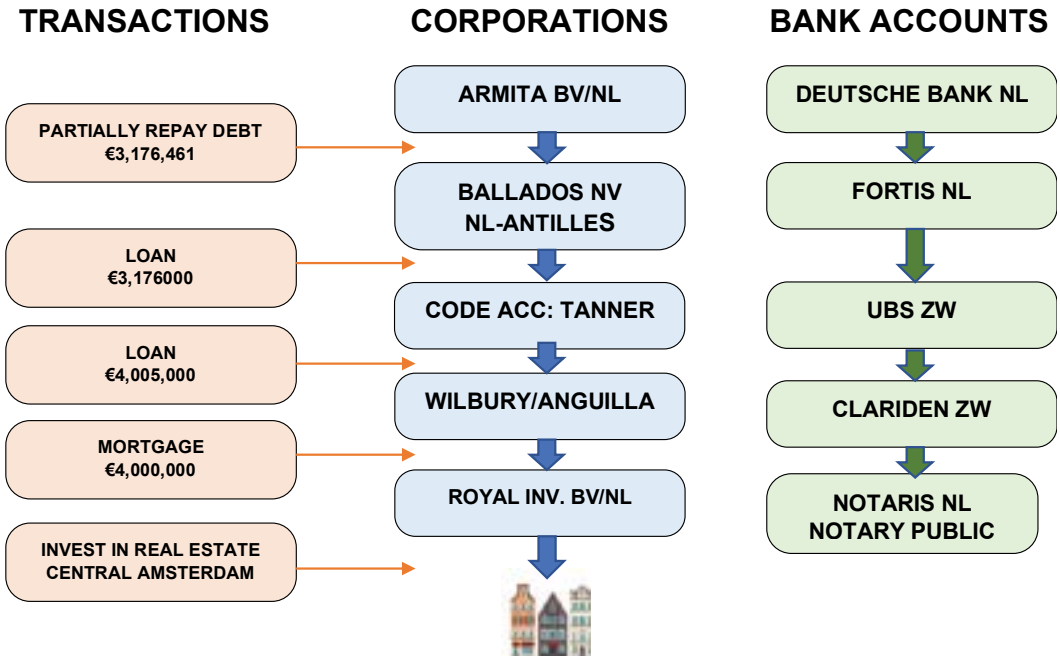
Several of these transactions create tax liabilities, such as capital gains tax or tax on rental income or interest income. It is often assumed that money laundering activities are designed to evade such taxes. While that may be true in some cases, payment of taxes can also add to the perception of legitimacy and may be an important part of the justification phase.

Figure 3 demonstrates how complex money laundering constructions in real estate can be, with a long string of transactions that are difficult to link back to the crime:

- Willem Holleeder, a Dutch criminal blackmailed a real estate magnate Willem Endstra and received three million Euros.
- The blackmailed money was deposited in the name of a company, Armita BV at Deutsche Bank in the Netherlands.
- Armita BV used the money to partially repay money owed to Ballados NV in the Dutch Antilles by transferring money to Fortis Bank in the Netherlands.
- Ballados NV transferred the money to a code account "Tanner" at UBS in Switzerland and accounted for the transfer as a loan.
- Tanner transferred money to a bank account at Clariden Switzerland as a loan to Wilbury in Anguilla.
- Wilbury gave a mortgage to Royal Investment Bank in the Netherlands, which used a notary public to buy a high-value residential property for three million Euros in the center of Amsterdam.

While companies incorporated all over the world were involved, the money actually only moved from the Netherlands to Switzerland and back. Identifying complex money laundering structures such as this requires specialized skills, knowledge and investigation techniques.

Figure 3: Complex money laundering construction



Source: Konigsveld (2015) Dissertation

Why Is Money Laundering So Difficult to Prosecute in Canada?

Complexity, few resources, lack of investigative skills, low priority, Civil Forfeiture alternative

Relatively few money laundering cases have been prosecuted in Canada generally and BC specifically in the past decade. It is estimated that in the last 10 years there have been fewer than 50 money laundering convictions in Canada, compared, for example, with the 1,168 criminal convictions for money laundering secured by the Netherlands Prosecutor's Office in 2015 alone.

While the mandate of the Panel does not include identifying ways to increase the criminal justice response to money laundering, the apparent difficulty in effectively prosecuting this crime is one of the reasons for looking at how the regulatory system can play a bigger role in combatting money laundering.

The Panel heard several reasons why money laundering is not frequently prosecuted and convictions are rare, including the following:

- Financial crimes in general, including money laundering, are complex and thus challenging to successfully investigate and prosecute. The series of transactions involved can be complex and specifically designed to make the trail hard to follow. It is hard to gather evidence that is sufficient to support a successful prosecution in even the simplest case. The link between

funds and a specific predicate offence can be difficult to prove to the criminal standard of "beyond a reasonable doubt."

- Money laundering and terrorist financing are addressed together internationally under the auspices of the Financial Action Task Force and in Canada under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. In Canada, greater priority is given to addressing terrorist financing than money laundering (see "The Anti-Money Laundering System" in Chapter 3: International Anti-Money Laundering Practices). Many in the criminal justice system view money laundering as a victimless crime or a crime where the damage to society is less obvious than it is with violent crimes and drug crimes, for example.
- In many money laundering cases, international transactions and/or crimes perpetrated in other countries are involved. Gathering evidence in other countries is complex and time-consuming even for countries with a strong rule-of-law ethic and where there are mutual legal assistance treaties, such as the United States and the European Union. In other countries, such as East Asian countries or Russia, evidence collection is extremely difficult. Using international transactions is a way for criminals to effectively immunize themselves from prosecution for money laundering in BC.
- The difficulty in investigation is compounded by the lack of specialized police resources trained in and focused on financial crime investigations. Prior to 2012 there was a specialized financial crimes unit in BC, but that was reorganized into a unit with broad responsibility for serious crimes and organized crime, with a priority on violent gang activity and drugs, especially opioids (the RCMP's Federal Serious and Organized Crime unit – FSOC).
- While justified by the level of drug crime and violent crime in BC and the need to be able to allocate resources as priorities and needs change, the reorganization almost eliminated the RCMP's capacity to deal with complex financial crimes. Financial crime investigation takes a level of training, experience and ongoing focus that has been significantly reduced. It also requires specialized skilled resources, like forensic accountants and data analysts.
- In cases where there is both direct criminal activity and money laundering, the money laundering part of the case may be stayed as part of a plea bargain. In other cases, proceeds of crime may be seized and forfeited as property used in a crime rather than the money laundering itself being prosecuted. Those actions are effective for the purposes of disrupting money laundering and related criminal activity. However, there is no agency that is activity recording all of the criminal cases involving money laundering and their disposition to determine the extent or success of criminal justice anti-money laundering efforts.
- Across Canada,[12] civil forfeiture legislation provides a mechanism for government to take civil action against property that is the proceeds of, or used in, unlawful activity, without the need for a criminal conviction. The relative ease of taking action using civil forfeiture compared with a criminal prosecution leads to police often referring cases to the Civil Forfeiture Office rather than to Crown Counsel on efficiency grounds. The result is viewed as a successful disruption of money laundering but, as noted above, is not accounted for as such.

12 Eight of 10 provinces and one territory have civil forfeiture laws. Exceptions are Prince Edward Island, Newfoundland and Labrador, Yukon and the Northwest Territories.

One conclusion that can be drawn from this analysis is that the number of money laundering criminal convictions is not a robust measure of the level of either anti-money laundering effort or its success.

This analysis also suggests that better use of the regulatory system could add to the AML toolkit in BC. Civil forfeiture is a quasi-regulatory response, and there may be other similar measures such as Unexplained Wealth Orders that could be used in a similar way (See Chapter 8: Analysis and Recommendations). Specialized financial investigatory skills and experience are also clearly needed if regulatory AML efforts are to be effective.

Chapter 3: International Anti-Money Laundering Practices

The Anti-Money Laundering System

Combatting Money Laundering: An International priority since 1989

The Financial Action Task Force (FATF) was created at a 1989 G-7 Summit to coordinate efforts to combat money laundering, originally as part of the war on drugs approach of following the money associated with the drug dealers. Corruption and other predicate crimes were added over the years, and terrorist financing was added after 9/11. The original 16 members have now expanded to 38 countries and regional organizations, which cover most of the world. Canada is a founding member.

The FATF maintains comprehensive standards for anti-money laundering and activities to combat terrorist financing. It also undertakes mutual assessments together with its members on a regular basis to evaluate compliance with standards and effectiveness of practices. FATF provides an internationally agreed framework for undertaking AML activities, recognizing the legal and cultural differences among countries.

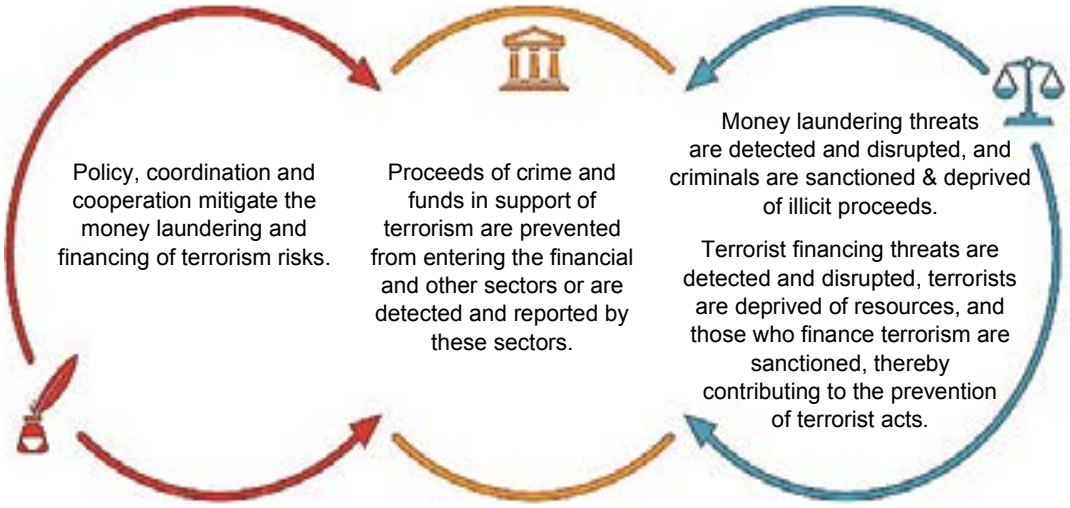
Current FATF standards, last updated in 2012, are based on 40 recommendations[13] that cover:

- policy setting and national coordination
- criminalizing money laundering and confiscation of proceeds
- terrorist financing
- preventive measures
- transparency and beneficial ownership disclosure
- powers and responsibilities of government agencies involved in AML, and
- international coordination.

The FATF framework comprises three areas, as shown in Figure 4: the policy, legislative and cooperation framework for AML activities; the institutional structures that engage in AML activities; and the set of operational AML activities that disrupt money laundering and terrorist financing.

13 Financial Action Task Force, The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (FATF, 2012) http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf.

Figure 4: AML system features



Source: FATF, "An Effective System to Combat Money Laundering and Terrorist Financing," *http://www.fatf-gafi.org/publications/fatfgeneral/documents/effectiveness.html*

Key features of the AML system recommended by FATF are as follows (see Appendix F for a summary of the relevant recommendations):

- **Cooperation and coordination** across the various agencies involved, including exchange of information consistent with confidentiality and data privacy rules;
- **Confiscation of proceeds of crime** and instruments of crime, including measures that allow confiscation without a criminal conviction or that require an offender to demonstrate the lawful origin of property;
- **Beneficial ownership disclosure** to prevent beneficial ownership from being disguised by the use of legal persons such as corporations or trusts, effectively hiding the identity of the natural person(s) ultimately owning the property;
- **Suspicious transaction reports** required to be provided by financial institutions, money services businesses and a range of designated non-financial businesses and professions, known as "reporting entities";
- **Financial intelligence units** (FIUs) that receive and disseminate suspicious transaction reports and other relevant information, with broad data access and the ability to cooperate internationally, in each country;
- **Customer due diligence** (CDD) or "know-your-customer" (KYC) rules requiring verification of the identity of the customer and the beneficial owner, and understanding their business interests, including maintaining records that can be accessed with appropriate authorization

in an investigation. Part of CDD relates to determining whether customers are politically exposed persons who are at risk for corruption and treating them as high-risk individuals;

- **Internal controls** that create an AML compliance system in the reporting entity;
- **Involving regulators** for each type of reporting entity in the AML process, with sufficient authority and responsibility placed on the regulators;
- **Guidance and feedback** provided by the FIU and the regulators to reporting entities, especially related to detecting and reporting suspicious transactions;
- **Sufficient investigative resources** with the right training and with multidisciplinary specialists in areas such as forensic accounting, law, finance and data analysis, preferably in a dedicated investigation unit or cooperative framework dealing with both law enforcement and regulators; and
- **Statistics** maintained and published on all aspects of AML, including suspicious transaction reports, investigations, prosecutions and confiscation.

How does the Canadian AML system compare with the FATF recommendations?

As mentioned above, every country is regularly assessed through a mutual evaluation process looking at both compliance with the FATF recommendations and operational effectiveness. Canada has been the subject of four mutual evaluations. The most recent report was completed in 2016.[14] Highlights from the report include the following (*emphasis added*):

Canadian AML efforts not consistent with money laundering risks

> Canada has a strong anti-money laundering and combating the financing of terrorism (AML/CFT) regime which achieves good results in some areas but requires further improvements to be fully effective.
>
> … The AML/CFT regime covers all high-risk areas, except legal counsels, legal firms and Quebec notaries; the Supreme Court declared AML/CFT measures inoperative in their respect. The lack of coverage of these professions is a significant loophole in Canada's AML/CFT framework and raises serious concerns. *Legal persons and arrangements are at high risk of misuse for money laundering* or terrorist financing purposes, and that risk is not satisfactorily mitigated.
>
> Constitutional constraints limit the analysis that Canada's financial intelligence unit, FINTRAC, can conduct. The fact that *FINTRAC is not authorized to request information from any reporting entity* creates a gap, however, FINTRAC does cooperate effectively with law enforcement agencies.
>
> The Canadian authorities have achieved some success in combating money laundering, notably when conducting law enforcement efforts with the support

14 http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html

> of FINTRAC's analysis. However, these efforts are not entirely in line with the money laundering risks that Canada faces, and overall, *the recovery of proceeds of crime appears to be relatively low. …*
>
> Financial institutions, including Canada's six domestic systemically important banks, generally apply adequate measures to mitigate the money laundering and terrorist financing risks that they face. *Designated non-financial businesses and professions, however, are not as effective in their implementation of AML/CFT measures.* The financial and non-financial sectors are subject to appropriate risk-sensitive AML/CFT supervision, but *further supervisory efforts are necessary with respect to the real estate* and dealers in precious metals and stones sectors.

The report includes the following recommended priority actions:

- Ensure that legal counsels, legal firms, and Quebec notaries engaged in the activities listed in the standard are subject to AML/CFT obligations and supervision. Bring all remaining financial institutions and DNFBPs into the AML/CFT regime.
- Increase timeliness of access by competent authorities to accurate and up-to-date beneficial ownership information – Consider additional measures to supplement the current framework.
- Increase timely access to financial intelligence – authorize FINTRAC to request and obtain from any reporting entity further information related to suspicions of money laundering, predicate offences and terrorist financing.
- Use financial intelligence to a greater extent to investigate ML and trace assets.
- Increase efforts to detect, pursue and bring before the courts cases of money laundering related to all high-risk predicate offences, third party money laundering, self-laundering, laundering of proceeds of crime of foreign predicate and the misuse of legal persons and trusts in money laundering activities.
- Ensure that asset recovery is pursued as a policy objective throughout the territory.
- Ensure compliance by all financial institutions with the requirement to confirm the accuracy of beneficial ownership in relation to all customers.
- Require DNFBPs to identify and verify the identity of beneficial owners and PEPs.
- Coordinate more effective supervision of federally regulated financial institutions by OSFI and FINTRAC to maximize the use of resource and expertise, and review implementation of the current approach.
- Ensure that FINTRAC develops sector-specific expertise and applies more intensive supervisory measures to the real estate and the dealers in precious metals and stones sectors.

The Federal Department of Finance, on behalf of FINTRAC and other federal agencies involved in AML activities, completed an extensive questionnaire that provided the basis for comparing Canada's AML regime with others. The Panel is grateful for the time and effort taken to provide the information. The results confirmed much of the information contained in the mutual evaluation report, including that Canada is generally in compliance with most FATF recommendations.

The results also raised several concerns for the Panel, including:

- the degree to which FINTRAC is domestically focused;
- the fact that its core responsibility, its intelligence function, is not more important within FINTRAC than its supervisory/compliance function;
- the poor understanding among the public and reporting entities of the threat of money laundering, which the Department of Finance or FINTRAC should be explaining;
- the relatively small number of cases pursued and the even smaller number of convictions arising from FINTRAC information sharing.

International AML Best Practices

The following are examples of AML best practices, primarily from European countries, that have been found to be effective in combatting money laundering. Not all of these best practices are directly applicable in Canada. Many were developed in unitary states without the complexity of jurisdiction divided between federal governments and sub-national jurisdictions like Canadian provinces. Constitutional protections of rights and freedoms differ across countries, with the Canadian *Charter of Rights and Freedoms* providing relatively strong and clear protections in Canada. Cultural differences mean that different countries have different values and priorities, resulting in different views on the public acceptability of some practices. Nevertheless, these best practices hold valuable lessons for more effective AML efforts in Canada.

Beneficial ownership disclosure

Best practice:
***BC's* Land Owner Transparency Act**

Money laundering often relies on the ability to disguise the ownership of property in order to make it difficult to link the property back to the proceeds of a specific crime or the fact that the property is being used for a criminal purpose. This applies to all kinds of property, including real property (real estate), all kinds of financial instruments, bank accounts and personal property.

Greater transparency of ownership can be obtained by making a distinction between the "legal owner" of the property, the "legal person" that is able to legally exercise the rights of ownership, and the "beneficial owner" of the property. FATF defines the beneficial owners as the "[natural] persons[15] who exercise ultimate effective control over a legal person or arrangement."

Disclosure of beneficial ownership is an important way that money laundering can be disrupted.

There are two levels of beneficial ownership disclosure; both are important:

- beneficial ownership of legal persons, whether in the form of corporations, trusts, partnerships or other arrangements, referred to here as corporate beneficial ownership registries;
- beneficial ownership of property, especially real property, whether the legal owner is a natural person or not.[16]

There are best practices for both.

15 In other words, individuals.

16 That is, both beneficial ownership of corporations, trusts, partnerships and other legal persons that own property and cases where natural person(s) act as nominee(s) to represent the beneficial owner.

Beneficial ownership of corporations, partnerships and trusts

Unless beneficial ownership of legal persons is disclosed, it is difficult to determine if the beneficial owners of the property are involved in money laundering.

The Tax Justice Network[17] compared corporate registries in 112 jurisdictions worldwide to determine best practices. Of the countries reviewed, 34 countries (most of them European countries, including the United Kingdom, Sweden, Germany and France) have established corporate registers of beneficial ownership and another 11 (including the Netherlands, Ireland and Luxembourg) plan to do so by 2020. The most recent European Union (EU) Anti-Money Laundering Directives require all EU states to have corporate beneficial ownership registries. Many countries outside the EU, including Canada, the United States, Australia and New Zealand, do not currently have corporate beneficial ownership registries.

The best practices for corporate beneficial ownership registries are as follows:

1. **Information should be maintained about both the beneficial owner and the legal owner.**

   Beneficial ownership refers to the natural persons who ultimately own the company. The registry should include beneficial owners holding more than a specified threshold of shares, interest or control in the legal entity. Legal ownership refers to the registered owner of a corporate entity, which may be an individual, but may also be a nominee or another corporate entity.

   Information for natural persons, whether beneficial or legal owners, should include full name, country of residence, full address and means of verifying identity, such as passport number, birthdate, Taxpayer Identification Number or other verifiable government-issued ID reference (such as Social Insurance Number [SIN] in Canada).

   In the case of legal entities that are legal owners, information should include the corporate registration number plus the address of the principal place of business or the registered address.

2. **The ownership threshold for disclosure should be no greater than 10 percent.**

   The FATF standard sets the threshold for beneficial ownership disclosure at 25 percent, but the standard used for securities disclosure in publicly listed companies is 10 percent. At 25 percent, a company owned equally by four owners would not be required to disclose. The Tax Justice Network suggests that the best practice threshold should be no more than 10 percent.

17 A. Knobel, M. Harari, and M. Meinzer, The State of Play of Beneficial Ownership Registration: A Visual Overview (Tax Justice Network, 2018), https://www.taxjustice.net/2018/06/28/ending-secret-ownership-we-assess-the-progress-and-challenges/.

3. **The beneficial ownership register should include all types of non-individual owners.**

   In Europe, non-individual ownership types include:

   - companies
   - limited liability partnerships
   - private foundations
   - domestic law trusts
   - foreign law trusts with a local trustee.

   In Canada, the list includes business corporations, partnerships and trusts (domestic and foreign, including bare trusts) and nominee shareholders (individuals holding shares on behalf of another individual) but not societies, which do not have owners per se.[18]

4. **The beneficial ownership register should be easily accessible and regularly updated.**

   Types of registers that satisfy this best practice include online registers with open access to data, online registers with fee-based access, provided the cost is not prohibitive, or online access to basic information with or without a fee, with more extensive information available to law enforcement and regulators.

   Beneficial ownership registries should be living and dynamic databases that can be consulted in real time by banks and other reporting entities that have a responsibility to determine beneficial ownership before engaging in business as part of know-your-customer (KYC) rules. Beneficial ownership registries should publish a list of "active" entities that are currently compliant with all regulations and filings and are not considered suspicious.

5. **Bearer shares should be forbidden.**

   A "bearer share" is a corporate share where ownership is determined not by a register of shares but by whoever is in physical possession of the share certificate. For bearer shares, not even the legal ownership of the shares can be determined, let alone the true identity of the ultimate beneficial owner, without the shares being present. Bearer shares should not be allowed to be issued, and pre-existing bearer shares should be forced to be converted to shares where the legal and beneficial owners are registered.

None of the existing corporate beneficial ownership registries follow all of these best practices. Sweden has a comprehensive registry except for foreign trusts but does not make the registry accessible online. The UK has a comprehensive open online registry, but only for companies. Only a few countries have ownership thresholds below 25 percent, including Portugal, Curacao, Bermuda, British Virgin Islands, Latvia, Uruguay and Costa Rica.

18 This is not to say that societies, whether charitable or not, are not a money laundering risk, just that beneficial ownership disclosure is not applicable as an AML tool.

Beneficial ownership of land

As long as there are jurisdictions where it is possible to disguise beneficial ownership of legal persons, it will also be necessary to create beneficial ownership registries for ownership of land. That is because real estate is a class of asset that is particularly susceptible to using legal persons to disguise beneficial ownership. Registries for the beneficial ownership of land are also needed to disclose beneficial ownership in the case of nominee legal owners.

Best practices for beneficial ownership of land registries are essentially the same as those for corporate beneficial ownership registries:

1. Information should be maintained about both the beneficial owner and the legal owner.
2. The ownership threshold for disclosure should be no greater than 10 percent.
3. The beneficial ownership register should include all types of non-individual owners.
4. The beneficial ownership register should be easily accessible and regularly updated.

The bearer share prohibition best practice is not relevant to the ownership of land and must be applied at the corporate registry level. Exemptions from public disclosure (but not registration) of a person's address and other information are needed to protect vulnerable individuals.

The EU has proposed that the requirement to have beneficial land ownership registries be added to the EU's Anti-Money Laundering Directive, but the proposal does not include requiring public online access. While there are some open, online European registries of legal ownership, there are no beneficial land ownership registries to date.

The only example of a beneficial land ownership registry that will likely fulfill these best practices at present is BC's proposed *Land Owner Transparency Act* , based on the discussion paper and draft legislation released in fall 2018. The ownership threshold for disclosure in the draft Act was 25 percent, but the Panel, in a letter dated January 29, 2019, recommended that the threshold be reduced to 10 percent to make the registry fully compliant with best practices (see Appendix D).

Sharing information

Best practice: broadest possible access to information

A 2012 study[19] commissioned by the EU compared the effectiveness of AML policies in 27 EU member states to determine which practices contributed most to making AML efforts effective, focusing on the effectiveness of financial intelligence units (FIUs). There are several different models for the organization of FIUs and their role in AML activities.

All FIUs collect information about suspicious transactions from financial system actors. Some are administrative in nature, acting as a clearing house for information that is then acted upon by other agencies in the AML system. Others have investigatory authority and are either police organizations, such as in the UK, or have some powers similar to those of police organizations. Some are judicial FIUs with control of prosecutions, such as in Greece and Cyprus.

In Canada, FINTRAC is an administrative FIU, with the ability to collect, analyze and distribute information to law enforcement agencies subject to a legal framework controlling their activities,

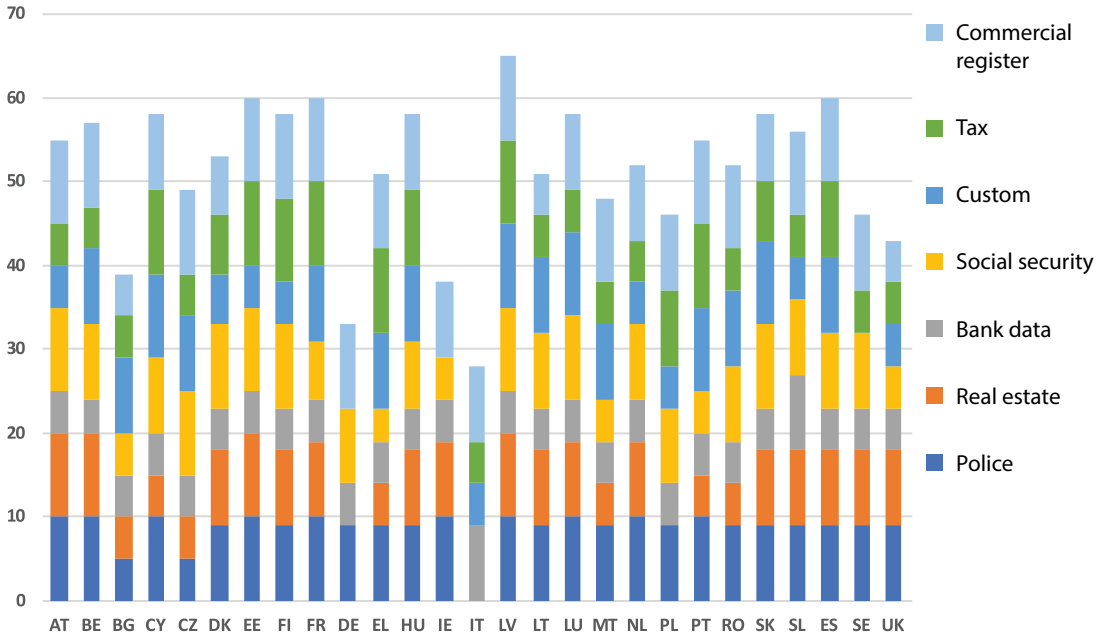
19 B. Unger, J. Ferwada, M. Van Den Broek, and I. Deleanu, *The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy* (Edward Elgar Publishing, 2014).

consistent with the Canadian constitutional and criminal justice framework and principles. Without crossing the line into investigating a specific case, FINTRAC must decide which information meets the test to be passed on to law enforcement and other designated agencies involved in AML activities.[20]

The study showed that there are large disparities in effectiveness among the 27 countries, measured by the rate of money laundering prosecutions. These differences were not explained by the type of FIU. Rather, the most important factor was the extent to which the FIU had access to and utilized government data.

Figure 5, excerpted from the study, shows an analysis of access to various types of data in the 27 countries. Data sources included corporate registries (commercial registers), tax data, customs data, social security data, bank data, real estate ownership and value data, and criminal justice data on charges and convictions (police data). Full access to all this data would result in a score of 70 on the graph. There was reportedly a high level of correlation between FIU access to data and effectiveness of AML activities.

Figure 5: FIU data sources in the EU



Source: Unger et al, *The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy*, 2014.

The best practice for data sharing is to combine as many data sets as possible and provide the FIU and other agencies involved in AML activities with easy access to that data, restricted as needed to comply with privacy requirements.

20 The test for disclosure in Section 55 (3) of the PCMLTFA is that FINTRAC "has reasonable grounds to suspect that designated information would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence."

Infobox Criminal and Unaccountable Assets (iCOV)

An example of the implementation of this best practice is a data-sharing collaboration established in the Netherlands in 2013, known as Infobox for Criminal and Unaccountable Assets ("Infobox Crimineel en Onverklaarbaar Vermogen," or iCOV). iCOV is an institutional arrangement for data sharing among the tax authorities, the public prosecution office, the Dutch Central Bank, customs authorities, the tax fraud police, the FIU, various regulators and diverse police and law enforcement agencies.

iCOV acts as a central data aggregator with analytical capacity, which supplies data-intelligence products, develops risk indicators and discovers patterns of money laundering and fraud constructions using combined data from:

- suspicious transaction reports
- tax administration data
- tax fraud data
- police data
- central bank data (under construction)
- criminal convictions
- real estate data, and
- customs data.

The goal of iCOV is to help detect illegally acquired assets by cooperating to gain insight into networks of criminals and transactions. By bringing together information from multiple network partners, more specific investigations can be carried out and criminal networks can be discovered. There is a legal framework of defined conditions under which public AML agencies can get access to the analysis and data within a protected environment to ensure that the information remains secure. It can be used both for public policy purposes, such as allocating resources and setting priorities, and as an investigatory research tool. It can also be used to detect unexplained wealth.

Sharing suspicious transaction reports

In the Netherlands, reporting entities submit unusual transaction reports (UTRs), from which the FIU then filters suspicious transaction reports (STR)s that meet a test related to having sufficient reason to be suspicious. These suspicious transactions are included in the data pool to which law enforcement agencies, such as regional and national police, tax fraud police, public prosecutors and customs authorities, have access.

UTR and STR have a different meaning in the Dutch context than they do in Canada: Dutch UTRs are analogous to Canadian STRs, and Dutch STRs are analogous to intelligence provided by FINTRAC after review of STRs, where the test for disclosure to law enforcement is met. The difference is that in the Netherlands a data set composed of information that meets the disclosure test is maintained and can be accessed by designated AML agencies.

Feedback to reporting entities

Another feature of the Dutch system is the feedback mechanism in place between the FIU and reporting entities. The Dutch FIU does not give reporting entities feedback about any specific reports, such as how reports have been classified or whether they have been disclosed to law enforcement. Rather, the FIU has a practice of providing the reporting entities, especially banks, with feedback on the quality of reporting to help them improve their reporting and compliance systems. Feedback to the reporting entities is considered a best practice for enhancing compliance and reporting quality, supported by FATF recommendation 34.

New technologies for confidential data sharing

Sometimes confidentiality rules restrict the ability of AML agencies to ask other agencies about a specific person or transaction either because they cannot disclose that they have such an interest or because the other agency cannot disclose that they have information without authorization. If they knew information existed, they could get authorization to share it but cannot reveal identifying information when making or responding to requests from other agencies. That can create a catch-22 where, to get enough information to obtain a warrant or other judicial authorization to gather information, they require some information that they can't get without a warrant.

New encryption technologies allow exchange of information and at the same time respect data protection.

In Europe, FIUs have been applying technology to address this issue with a project known as FIU.net, which originated in 1998. FIU.net is intended to establish appropriate and protected communication channels between EU FIUs, making the timely exchange of information on money laundering possible, irrespective of its legal nature.

The system operates in three layers:

- an internal layer, which contains each FIU's operational databases and is strictly speaking outside the network, but which is the source for information to be made available to partners;
- an exchange layer within and controlled by each FIU, into which the available information is entered; it includes:
  - information that can be exchanged
  - a database that stores information received from other FIUs
  - state-of-the-art security measures protecting the information stored; and
- a communication layer, in which information is exchanged, with advanced security measures that protect the FIU's confidential information from the outside world.

Each FIU retains the autonomy to define its own scenarios (e.g., with whom it is willing to share information and the nature of the information that can be shared). All FIU's keep full control of their information at all times.

In some cases, this requires sharing of information about the existence of data without sharing the underlying data. For example, one FIU may wish to ask another FIU if a certain person appears in their data without saying exactly who they are looking for. An elaborate coding system allows

them to do this; it includes submission of lists of names with the target embedded and with the names coded in such a way that the result is not necessarily unique. Such responses still convey valuable information that can advance an investigation without any unauthorized disclosure of confidential information. When obtaining authorization for disclosure of information is time-consuming and expensive, such an approach can reveal where best to apply limited resources.

Block chain and other trusted communications protocols have the potential to allow similar exchanges of information without revealing confidential data.

While this concept was developed for use at the FIU level, it could easily be adapted and employed to facilitate information sharing among AML agencies within a jurisdiction where there are controls on their ability to directly exchange data without appropriate authorization. That would be a best practice.

Specialized investigation

As noted previously, it is difficult to prosecute money laundering in BC in part because financial crimes are complex and investigation into them requires specialized experience and expertise. Money laundering constructions often involve multiple countries, bank accounts and legal persons and include strings of purchase and sale transactions involving real property and financial assets. It is clear that significant specialized investigative resources are required to effectively combat money laundering. Both police and regulators require such resources.

Best practices: resources, expertise, data, ability to travel

The criminal investigation service of the Dutch Tax and Customs Administration, known as Fiscale Inlichtingen- en Opsporingsdienst (FIOD), is an example of a best-practice specialized investigation unit. The FIOD combats fiscal, financial-economic and commodity fraud; safeguards the integrity of the financial system; and combats organized crime, especially its financial component. It is part of the Ministry of Finance tax authority rather than part of a law enforcement agency.

FIOD has about 1,500 investigators highly specialized in fiscal fraud, money laundering and corruption, including professionals such as forensic accountants, criminologists, lawyers and a group of strategic and tactical criminal analysts. FIOD investigators travel around the world to determine the ultimate beneficial ownership of companies hidden in offshore jurisdictions. As part of the tax authority, they have access to tax data and to police data. A specialized financial fraud group, knowledgeable about complex financial constructions, enables them to detect patterns of transactions that would otherwise be effectively hidden by money launderers.

The best practices associated with specialized investigation units include having:

- sufficient resources;
- the right kinds of expertise;
- access to data;
- the ability to travel to trace the money.

Cooperation and coordination

Best practice: formal and informal ongoing inter-agency forums

Most countries have developed institutional cooperation and coordination mechanisms to combat money laundering. Cooperation among reporting entities and government authorities, including regulators, the FIU, law enforcement and public prosecutors, is essential for effective AML operations. Canada and BC have both recently taken steps to increase inter-agency cooperation. The 2019 federal budget announced a federal AML Task Force to enhance cooperation and collaboration. In January 2019 the Canada-BC Ad Hoc Working Group focused on money laundering in real estate had its inaugural meeting in Victoria, BC, where senior representatives of several AML agencies met for the first time.

Cooperation is also highly developed in the Netherlands. The following groups exist in the Netherlands to combat money laundering:

- Regional Information and Expertise Centers (RIECs)
- National Information and Expertise Center (LIEC)
- Fiscale Inlichtingen- en Opsporingsdienst – tax fraud authority (FIOD)
- Anti-Money Laundering Centre of the FIOD (AMLC)
- Financieel Expertise Centrum (FEC) – the financial expertise center
- the Financial Crimes Enforcement Network (FinCEN)
- Infobox Crimineel en Onverklaarbaar Vermogen (iCOV) – located at the tax authority.

Given the inevitability that AML responsibility will be distributed among a number of different agencies, which results in a siloed approach, the best practice is to have formal, ongoing and effective cooperation and coordination among all of the AML actors, using a variety of forums and arrangements.

Shared supervision of AML reporting responsibilities

In Canada, FINTRAC is the only agency responsible for supervising the compliance of reporting entities with the AML requirements set out in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. However, that is not the only approach. In many countries, FIUs do not supervise compliance with AML requirements at all. Rather, other regulators are either fully responsible for or share responsibility for AML compliance supervision.

Best practices: involve reporting entity regulators

Unger[21] examined whether responsibility for the AML supervision in each of the 27 EU member states is given to one supervisory authority or is shared among supervisory authorities. The work distinguished between countries where reporting entities are regulated by self-regulatory organizations and countries where the regulators are government agencies fully independent of the regulated industry or profession, referred to here as "external regulators." The distinction between self-regulatory organizations and external regulators applies mostly to professions and non-financial businesses, since financial institutions are generally regulated by external regulators.

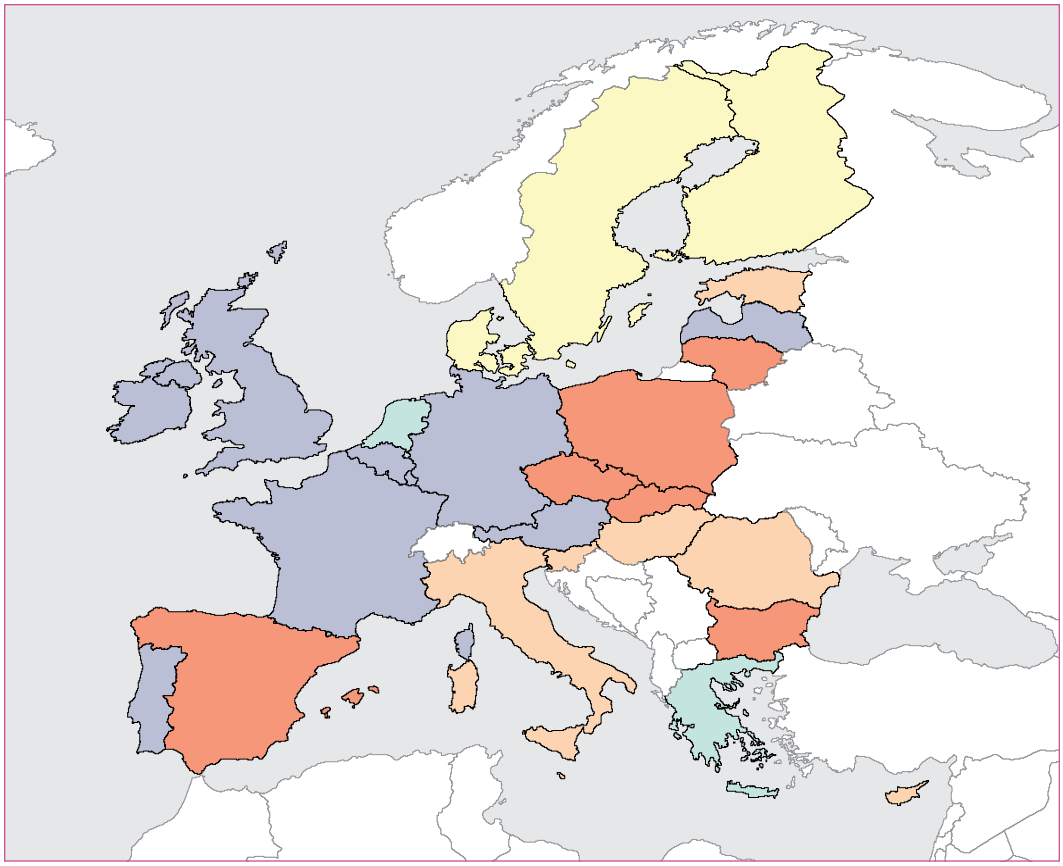
21 B. Unger, H. Addink, J. Walker, J. Ferwerda, M. vanden Broek, and I. Deleanu, *Project ECOLEF: The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy* (European Commission, DG Home Affairs: 2013) http://www2.econ.uu.nl/users/unger/ecolef_files/Final%20ECOLEF%20report%20(digital%20version).pdf.

Five models of AML supervisory architecture were defined: the FIU Model, the Self-Regulatory Organization (SRO) Model, the External Model, the External/SRO Model and the Shared Model, as shown in Table 2. The geographical distribution of the models is shown in Figure 6.

Table 2: FIU compliance supervision models

FIU involved	FIU not involved
FIU Model (FIU supervision) Bulgaria, Czech Republic, Lithuania, Malta, Poland, Slovakia and Spain	**SRO Model** (SRO supervision) Austria, Belgium, France, Germany, Ireland, Latvia, Luxembourg, Portugal and the United Kingdom
	External Model (External regulator supervision) Greece, Netherlands
Shared Model (FIU plus external regulator and/or SRO) Cyprus, Estonia, Hungary, Italy, Romania, and Slovenia	**External/SRO Model** (External regulator and SRO supervision) Denmark, Finland and Sweden

Figure 6: Geographical distribution of FIU supervision models



EU member states with models that involve the FIU, with or without shared responsibility, tend to be in the eastern and southern parts of the EU. By contrast, member states in the north and west generally use external regulators and/or self-regulatory organizations as AML supervisors without FIU involvement.

Where FIUs are the sole supervisory agency, it is often because other regulators do not exist or are not trusted. Use of the FIU for supervision is also justified as a way to apply specialized AML expertise to supervision and as a way to ensure a consistent level of effort across the variety of reporting entities.

On the other hand, the reasons for not involving FIUs in supervision or sharing supervisory responsibility are that FIUs often do not fully understand each of the different types of reporting entity and their industries, and an FIU focus on compliance can distract from the intelligence function of the FIU.

The choice between external and self-regulatory organization regulators is often a trade-off between the ability of a self-regulatory organization to best understand the industry they are regulating and concerns about external accountability and independence that are best represented by external regulators. The same considerations apply to the use of these regulators as AML supervisory bodies.

For those that use self-regulatory organizations, the creation in the UK of the Office for Professional Body Anti-Money Laundering Supervision in 2018 is a best practice. The Office oversees the relevant self-regulatory organizations and ensures that they meet consistent standards in terms of regulating each profession for compliance with AML requirements.

Shared responsibility between the FIU and regulators is an approach that enables the FIU to ensure that each regulator is adequately supervising compliance with AML requirements, while ensuring that direct supervision of the entities themselves is done by the regulator that best understands each type of reporting entity.

The best practice for supervision and enforcement of reporting entity compliance with AML reporting requirements is to at least involve the regulators to apply detailed understanding of the various reporting entity professions and industries to AML compliance supervision.

Best Practice Summary

The best practices identified by the Panel are as follows:

- **Beneficial ownership of corporations, partnerships and trusts** – an open, online registry that meets the following criteria:
  - Information about both the beneficial owner and the legal owner is maintained;
  - The ownership threshold for disclosure is no greater than 10 percent;
  - The beneficial ownership register includes all types of non-individual owners;
  - The beneficial ownership register is easily accessible and regularly updated;
  - Bearer shares are prohibited.
- **Beneficial ownership of land** – an open, online registry that meets the following criteria:
  - Information about both the beneficial owner and the legal owner is maintained;
  - The ownership threshold for disclosure is no greater than 10 percent;
  - The beneficial ownership register includes all types of non-individual owners;
  - The beneficial ownership register is easily accessible and regularly updated.
- **Sharing information** – combining as many administrative data sets as possible and providing easy access to that data for FIUs and other agencies involved in AML, restricted as needed to comply with privacy requirements; includes:
  - providing limited access by AML agencies to vetted suspicious transaction reports;
  - providing feedback to reporting entities about the quality of suspicious transaction reports;
  - developing technologies for the sharing of certain information without violating confidentiality requirements among FIUs, law enforcement and regulators.
- **Specialized investigation** – dedicated investigatory units with sufficient resources, the right kinds of expertise, access to data and the ability to travel to trace the money.
- **Cooperation and coordination** – ongoing effective cooperation and coordination among all of the AML actors using a variety of forums and arrangements.
- **Shared supervision of AML reporting responsibilities** – involving the regulators of each of the types of reporting entities in AML compliance supervision.

Best practices should also be applied to provincial agencies, not just FINTRAC and RCMP

Chapter 4: Estimated Effect of Money Laundering on BC Real Estate

There is a strong public perception that British Columbia has a significant amount of money laundering and that it is a greater problem here than in the rest of Canada. The media and policy makers have had money laundering in sharp focus, paying considerable attention to the questions of how much money laundering there is in BC, how much money laundering involves real estate and ultimately what impact money laundering has on housing affordability in BC.

The purpose of this chapter of the report is to shed light on these questions. First, housing affordability in BC is reviewed and put into a Canadian and international context. Vancouver is among the most expensive and least affordable cities in the world. Next, original research directed by a Panel member is presented, applying economic modelling to estimate the amount of money laundering in Canada and BC. The amount of the money laundering activity in BC that may be related to real estate is then estimated, as well as the impact that activity may have on housing prices. The chapter ends with a discussion about the use of flag analysis to identify where money laundering may be observed.

Housing Affordability in BC

Vancouver housing the least affordable in Canada, among the world's worst

Before addressing questions about the quantum of money laundering in BC generally and real estate specifically and how that impacts housing affordability, it is important to understand how unaffordable housing currently is, how that has changed over time and how BC housing markets compare with the rest of Canada and the world. The following summarizes the main points, discussed more fully in the review of housing affordability in Appendix H.

The price of housing varies considerably across BC, but prices in BC's most expensive markets are high by Canadian and international standards.

Table 3 shows average assessed values for select BC regions – and how variable prices are across the province. The highest prices in BC are in the Lower Mainland, followed by the Capital Region and the Fraser Valley. Prices in the north and eastern parts of the province are lowest, with Central Interior and Central Vancouver Island prices somewhat higher.[22]

Figure 7 puts Vancouver housing prices into the Canadian context and shows how prices changed from 2005 to 2017. In 2005, benchmark Vancouver and Toronto home prices were already high compared with the rest of Canada. By 2017, Vancouver prices had spiked significantly, rising at a rate of almost 30 percent annually in mid-2016.

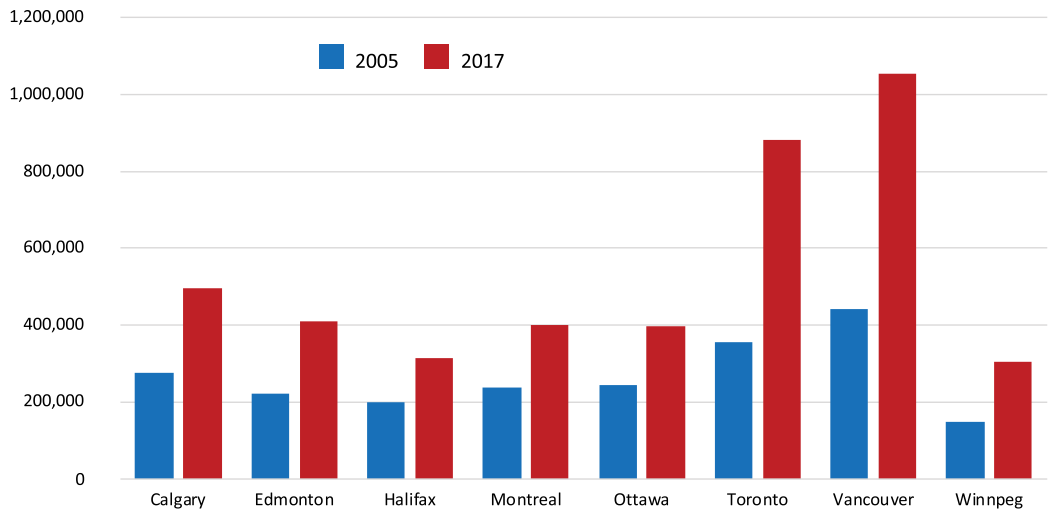
22 See *Appendix H, Table 1* for average assessed values for all of the Assessment Areas and for townhouses and condominiums as well as detached single-family homes.

Table 3: Average assessed value, select Assessment Areas, single-family residences, 2019 assessment year

Assessment area	Single family
Lower Mainland	
Vancouver	2,368,570
Richmond-Delta	1,406,240
Surrey-White Rock	1,184,500
Capital	882,680
Fraser Valley	843,040
Central Interior	
Kelowna	741,770
Penticton	503,020
Central Vancouver Island	533,710
Southeastern BC	
East Kootenay	408,130
Nelson/Trail	335,510
Northern BC	
Prince George	299,560
Peace River	285,370

Source: Calculations using BC Assessment data.

Figure 7: Canadian single-family house prices, 2005 and 2017



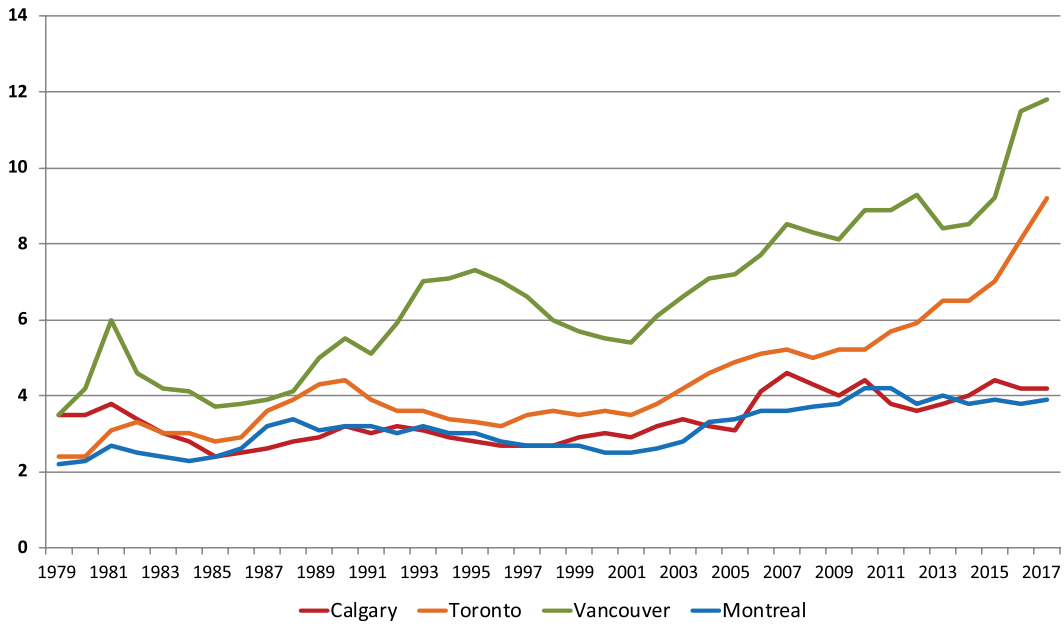
Source: Brookfield RPS

Housing affordability is not just a function of the price of housing. It depends on the ability to buy or rent housing, which depends on income. The degree to which housing price increases reduce affordability depends on how much income changes at the same time.

One measure of housing affordability is the house price-to-income ratio. This is a measure of the difficulty in saving a sufficient down payment to purchase a house. Although this not a perfect measure of housing affordability,[23] it is a useful basis for comparison of housing affordability across jurisdictions. In North America, the benchmark for housing affordability is a price-to-income ratio of 3.

The following chart shows the price-to-income ratios for Vancouver, Toronto, Montreal and Calgary. While all four cities currently exceed the benchmark, in Vancouver the affordability of residential real estate has deteriorated rapidly, and it is by far the least affordable market in Canada. Using the same ratio to make international comparisons, in 2016 Vancouver had the third highest price-to-income ratio among English-speaking advanced nations, comparable to Hong Kong, Sydney, Auckland, San Jose and Melbourne and considerably worse than London and New York

Figure 8: Canadian house price-to-income ratio Single-family house price and median family income)



Source: Calculations using Brookfield RPS and CUER series from Royal LePage (house prices), Statistics Canada CANSIM Table 206011 (non-elderly family median income), and CANSIM Table 2820071 (weekly provincial wage earnings).

Another measure of housing affordability compares the ongoing annual cost of home ownership to income. Those costs include mortgage payments, property taxes, insurance, utilities and maintenance. Canadian mortgage lending underwriting standards only consider mortgage payments, property taxes and the cost of heating when deciding whether to approve a mortgage. Using the ratio of the latter costs to price shows that in 2017 Vancouver costs amounted to over

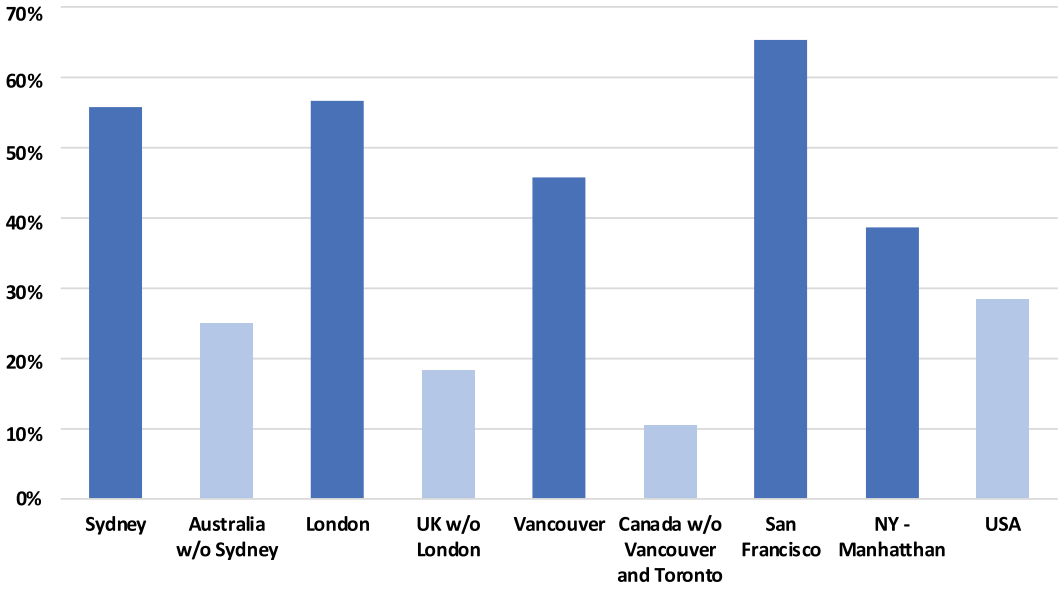
23 See discussion in Appendix H.

60 percent of median family income, compared with less than 50 percent in Toronto and about 23 percent in Montreal and Calgary.

Regardless of the measure of affordability used, housing is less affordable in Vancouver than the rest of the province and the country.

The rise of housing prices in Vancouver and Toronto combined with much lower rates of increase in the rest of the country is not a unique situation. As Figure 9 shows, many internationally attractive cities are facing the same situation. These jurisdictions have experienced the same type of reaction as Vancouver has, linking rapid price increases and the attendant reduction in housing affordability to foreign capital inflows and money laundering.

Figure 9: House price appreciation, 2012–2016: City versus national



Sources: Australia Bureau of Statistics, UK Office of National Statistics, Brookfield RPS, New York City Dept of Finance, and S&P CoreLogic Case-Shiller Index.

Money Laundering Estimates for Canada and BC

Impossible to measure, hard to estimate

As has been extensively reported, there are few estimates of money laundering in Canada and only one estimate of money laundering in BC. Estimates for Canada include a 2001 RCMP estimate of $5 to $15 billion and a 2007 Criminal Intelligence Service of Canada estimate of $50 billion.[24] The methodologies used to develop these estimates are not known. A recent media report suggested an estimate of $1 billion for BC money laundering, but the source of that estimate is unknown.[25]

24 Financial Action Task Force, *Anti-Money Laundering and Counter-Terrorist Financing Measures: Canada Fourth Round Mutual Evaluation Report* (FATF, 2016), http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf.

25 D. Meissner, "Money Laundering in B.C. Estimated at $1B a Year – But Reports Were Not Shared with Province, AG Says," *CBC News*, January 18, 2019, https://www.cbc.ca/news/canada/british-columbia/money-laundering-billions-bc-david-eby-1.4983471.

In fact, there are few estimates of the flow of monies to be laundered in total for the world or for other countries. In 2005, FATF[26] suggested that the variety and complexity of money laundering activities made estimating it impossible. A 2015 report from the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)[27] reviewing the various methodologies used to estimate money laundering flows, which was recently released in response to a freedom of information request, indicated that:

> The task of estimating money laundering globally or within a specific country remains very challenging. Analysis has been done on this issue for approximately 20 years; however there appears to be no consensus about which methodology, if any, can be relied on for this purpose.

That is not surprising. Money laundering is by nature secretive and complex, and it innovates rapidly in response to AML efforts. The full range of money laundering techniques is not well understood and is continually expanding. Many known techniques are, by their nature, difficult to distinguish from legitimate transactions.

Appendix G includes a review of some of the methodologies that have been used to estimate money laundering. Both the FINTRAC study mentioned above and the review in Appendix G point out that the most commonly quoted estimate of money laundering is a rule of thumb or "wet finger estimate" of 2 to 5 percent of gross domestic product (GDP) put forward by the International Monetary Fund (IMF). Applied to Canada, that gives a range of $43 to $147 billion per year and applied to BC it implies a range of $6 to $14 billion per year.

In an attempt to provide estimates for money laundering for Canada and BC using economic modelling techniques, the Panel has adapted a gravity model of money laundering, previously used in the Netherlands, to the Canadian context. The methodology is detailed in Appendix G.

Gravity model estimates

The first economic model money laundering estimate for Canada, BC and over time

The Utrecht gravity model of money laundering has been developed and steadily improved since 2005, based on a gravity model originally described by Walker.[28] One of the Panel members, Brigitte Unger, has made a significant contribution to the model's ongoing development. Together with colleagues at the University of Utrecht, she used the model to estimate money laundering in Canada and BC.

In essence, application of a gravity model to money laundering involves estimating how much of the proceeds of crime in a given country are laundered within that country and how much flows to each other country in the model. Those flows depend on an attractiveness index based on characteristics that measure how attractive a given country is to money launderers, including GDP per capita, and a distance index that measures how close each pair of countries is geographically and characteristics that measure distance from a cultural perspective. The money laundering in a

26 Financial Action Task Force, *Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism: Australia* (FATF, 2005) https://www.imf.org/external/pubs/ft/scr/2006/cr06424.pdf.

27 Financial Transactions and Reports Analysis Centre of Canada, *Estimating the Scale of Money Laundering in Canada* (FINTRAC, 2015).

28 J. Walker. "How Big Is Global Money Laundering?" *Journal of Money Laundering Control*, 1999, 3(1), 25–37. https://doi.org/10.1108/eb027208

country is the sum of domestic proceeds of crime that remain in the country plus the flow into the country of monies for laundering from all other countries. While the model has been previously applied to the Netherlands, it has not been used to estimate Canadian money laundering before and it has never been used to estimate money laundering for a province or other sub-national region.

In order to apply the model to Canada, six regions were defined: BC, Alberta, Prairies (Saskatchewan and Manitoba), Ontario, Quebec, and Atlantic (New Brunswick, PEI, Nova Scotia, and Newfoundland and Labrador).[29] Each of the regions was treated in the model as if it were a country in order to determine the allocation of money laundering within Canada.

Limitations of the gravity model

The Panel concluded that this is the best available approach to estimating money laundering at this time. The estimates of money laundering in this report are the Panel's effort to apply academic rigour and widely accepted empirical economic methodologies to estimate the extent of money laundering in BC and Canada. However, the nature of money laundering presents significant challenges in developing such estimates.

The actual extent of money laundering is hidden by the very nature of the activity, making accurate measurement extremely difficult. Conventional economic analysis relies on accurate data representing actual results for the activity being analyzed, if not in the area being studied, then at least in some country, and if not current, then at least at some point in time.

Efforts to estimate money laundering activity must be conducted without the benefit of accurate measurements of actual flows in any jurisdiction, let alone data about the sectors of the economy and the classes of assets into which these funds flow. The accuracy of any empirical data-based estimating methodology is limited when clear examples based on measured data are not available.

Large margin of error due to lack of measured data and international data inconsistency

In addition, as with any modelling exercise, the accuracy of the model depends on both the model's mathematical specification and the quality and coverage of the underlying data. Both factors could contribute to a divergence between the estimates reported here and the actual amounts of laundered monies in BC.

A model will understate the extent of money laundering if the data does not completely cover all sources of funds that are then laundered. The gravity model used to estimate money laundering in BC bases the aggregate amount of monies to be laundered on crime statistics reported to the United Nations. It uses assumptions about the proportion of crime proceeds used directly by criminal enterprises and the proportion that is laundered. The laundered fund flows are then allocated between the amount that stays in the host country and the amount that flows to other jurisdictions.

29 The territories were omitted because of their small population bases.

If the underlying crime statistics completely included all crimes committed, including bribery, corruption and tax evasion, and included the full magnitude of monies involved in each type of crime, then the base amount of crime proceeds worldwide would be accurate. However, crime reporting is highly uneven across countries, particularly for the three areas mentioned. Under-reporting of crimes and proceeds by some countries will result in a lower estimate of the total amount of money to be laundered, which would result in generally under-estimated money laundering for all countries.

If the incidence of under-reporting is more acute in countries with stronger attraction factors for those funds to flow to a particular jurisdiction, like BC, then the amount of money laundering estimated for that jurisdiction will be lower relative to other regions where this attraction factor is weaker. Money laundering in BC will be particularly underestimated if crime reporting, especially for tax avoidance and corruption, by some East Asian countries that have close ties with BC through its Asia-Pacific location and demographic makeup, is incomplete. That effect is above and beyond the more generally lower estimate from global under-reporting.

The second aspect of modelling that may result in systematic inaccuracies in the estimate of money laundering in BC and Canada results from the model's mathematical specification. This is a general problem with models and reflects the fact that economic models are by their very nature simplifications based on assumptions, with the degree of simplification driven often by the availability of consistent data.

A model must be simple enough to be estimable with the data that is available for all countries, which limits accuracy. This can result in estimated model parameters that are unbiased predictors of the large variations in outcomes across the range of countries in the world, but that are less accurate when applied to a subset of similar countries or regions.

Within Canada, while economic data varies by region, many other characteristics that affect attractiveness for money laundering purposes are constant across the whole country. For example, Canada as a whole is a rule-of-law country with a stable banking system and no beneficial ownership disclosure. This lack of variability effectively places a greater weight on within-Canada variation in GDP and crime rates than would otherwise be the case, potentially introducing bias. How such bias might affect the estimate of money laundering in BC is beyond the scope of this report but is a caveat worth remembering as a general rule.

Money laundering estimates

The model has estimated money laundering in Canada and BC with results for the period 2011 to 2015 shown in Figure 10. The amount of money laundering in Canada in 2015 is estimated to be about $41.3 billion or about 2.1 percent of GDP. Estimates were done for the period 2003 to 2015, and this estimate remained constant at very close to 2.1 percent of GDP for the entire period, with the absolute amount of estimated money laundering increasing roughly in step with GDP growth. At 2.1 percent of GDP, the amount of money laundering in Canada in 2018 would be $46.7 billion.

Money laundering estimate in BC: $7.4 billion

Figure 11 puts these estimates into the context of other estimates that have been published. As shown in the figure, 2.1 percent of GDP is near the bottom end of the IMF estimate of 2 to 5 percent of GDP.

Given the limitations to the model described above, it is reasonable to conclude that money laundering in Canada is currently in the 10s of billions of dollars, likely in excess of $40 billion.

Figure 10: Estimated money laundering in Canada

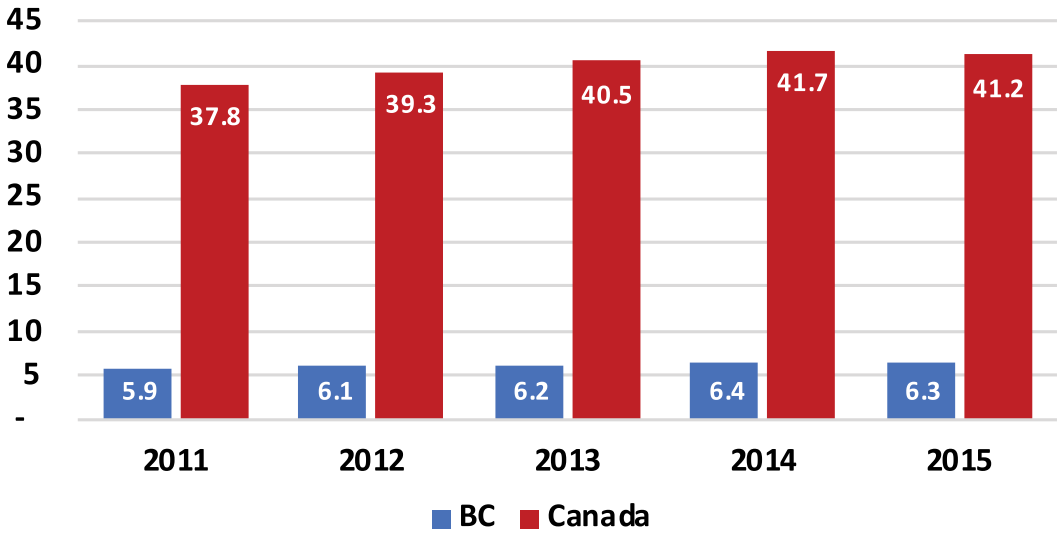
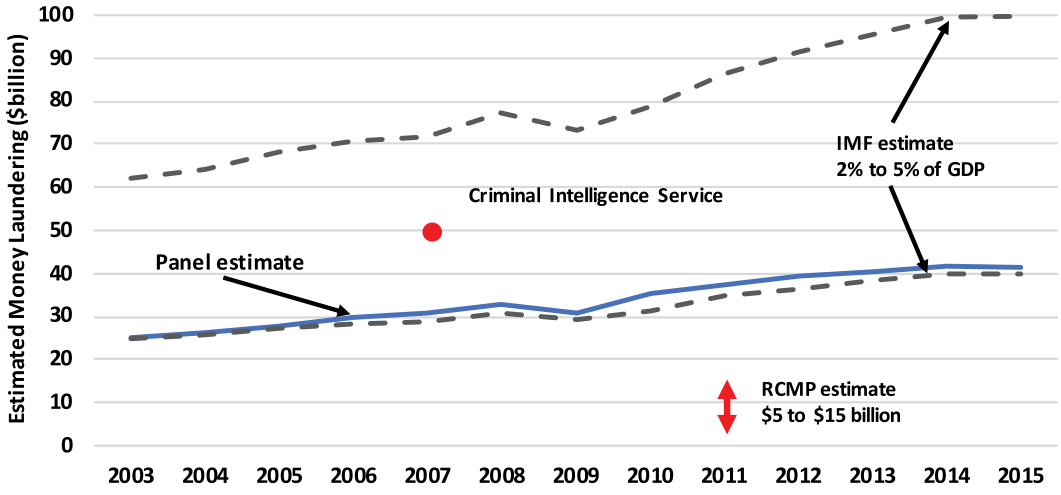


Figure 11: Comparison of money laundering estimates



The amount of money laundering estimated by the model for BC in 2015 is $6.3 billion, which represents 2.5 percent of GDP. Assuming that the proportion of BC GDP that is money laundering activity remained constant, BC money laundering in 2018 is estimated to be $7.4 billion.

It is reasonable to conclude that money laundering activity in BC is indeed significant and a matter that deserves serious government attention.

With an estimate of more than $30 billion in money laundering activity in other provinces, it is also reasonable to conclude that money laundering is just as significant across the rest of Canada and requires the serious attention of every senior government across the country.

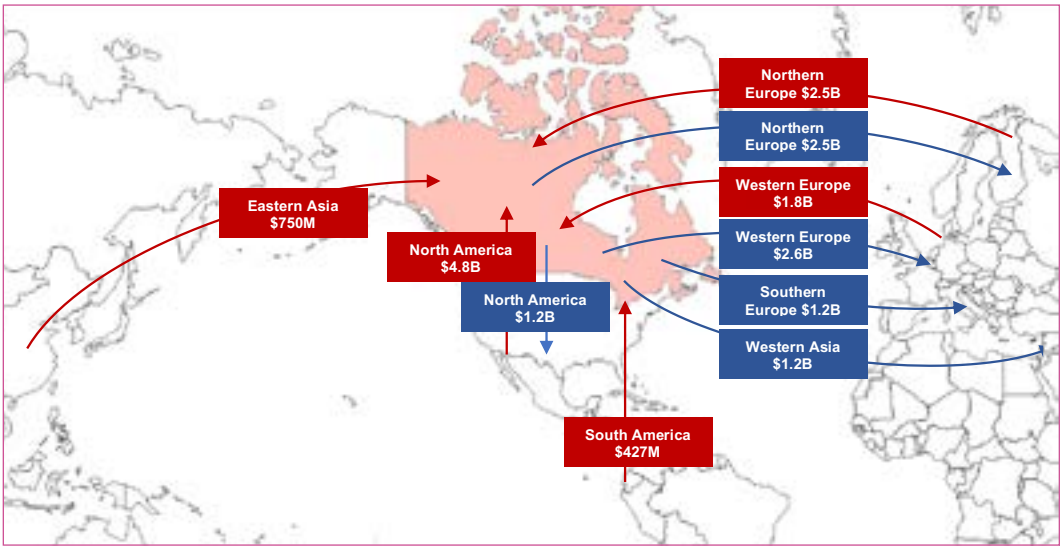
Estimated inflows and outflows for Canada

The gravity model also estimates money laundering inflows and outflows between country pairs. It shows that Canada is both a receiver and a sender of criminal money for laundering. The major estimated inflow comes from the United States, estimated at $4.9 billion, and from Europe ($1.6 billion from northern Europe, which includes the United Kingdom, and $1.9 billion from western Europe, mainly countries like Switzerland and Luxembourg).

Inflows from South America are estimated at $0.4 billion and from Eastern Asia, including China, at $0.8 billion. The result for Eastern Asia seems surprisingly low given the perception in BC that a lot of dirty money in the province flows from China. As suggested earlier in relation to limitations of the gravity model, if the incidence of crime in China is under-reported even after the data is adjusted by the United Nations, then inflows from China to Canada will be underestimated. As BC has particularly close ties to China as a result of long-term migration flows, this will disproportionately affect the BC money laundering estimate.

Estimated outflows of laundered money go mainly to North America and Europe, with less to Asia. For the same reasons as with inflows, the outflows associated with China may be underestimated.

Figure 12: Money laundering inflows and outflows, Canada, 2015



The standard practice when estimating inflows and outflows of money laundering for a country using the gravity model is to compare the model findings to the ranking of foreign countries in suspicious transaction reports (STRs) collected by the country's financial intelligence unit. It is generally expected that country rankings in the model results will overlap with the importance of these countries in STRs.

Canada is the only country for which the gravity model has been run that was unable to provide data about the proportion of STRs by country or a ranking of the money laundering threat posed by other countries. FINTRAC indicated that it cannot provide STR data by country because the country associated with a suspicious transaction is not collected in a way that can be analyzed using a database. The need for such data to be internally accessible for analytical purposes is addressed in Chapter 8: Analysis and Recommendations.

Estimated Money Laundering in BC Real Estate

This section discusses how much of the money laundering activity in BC may involve real estate and what effect that could have on real estate prices. The caveats discussed earlier, in terms of the limitations on the gravity model due to the absence of accurate measurements of the actual amount of money laundering or the allocation of laundered monies to specific asset classes or economic sectors, apply equally to this section.

In the absence of data measuring actual money laundering activity, identifying the portion of the estimated monies that are invested in real estate in the justification and integration stages of money laundering is subject to considerable margins of error. Given that the total volume of money laundering is itself an estimate subject to prediction error, any effort to predict the volume of money laundering in real estate is compounding uncertainty with uncertainty.

It is nevertheless instructive to consider possible methodologies for estimating this flow and what they imply for the possible volumes of laundered funds invested in real estate.

Share of money laundering allocated to real estate

Income/savings versus wealth portfolio allocation approaches

The monies involved in BC money laundering reflect the proceeds of local crime that need to be laundered plus net flows of money from elsewhere in Canada or the world sent to BC as part of money laundering activities. To consider how much of each of those flows may involve real estate, the concepts of savings from income and the portfolio allocation of wealth are discussed below.

Locally generated money laundering flows represent the net revenues from local criminal activity and the net income of locally based criminals. These local flows can be analyzed in terms of the proportion of income that is consumption and the proportion saved. Inflows from other places, both domestic and international, are sent to BC for the layering, justification and integration phases of money laundering, largely by investing those funds. These inflows, together with the locally generated funds that are allocated to "savings," can be analyzed using wealth portfolio allocation concepts. One additional complication is that of this wealth, the allocation to real estate decision for locally generated funds may be different than for out-of-BC monies sent to BC specifically to be laundered through investment in real estate.

These differences matter for estimating the extent of money laundering in real estate. Local criminals will fund their own consumption expenditures from their net income. Only a portion of their net income is saved and invested, whether in real estate or other assets. Some part of the locally generated proceeds of crime[30] will be used for real estate as an input rather than investment and thus not even be part of the money laundering estimate: most criminal activities need real estate for their ongoing operations. This suggests that using an income and savings analysis can be useful to identify the funds that will end up in real estate as the result of laundering local criminal proceeds.

30 Some inflows associated with money laundering could also be used to purchase real estate for the purpose of a criminal activity as opposed to investment purposes.

In contrast, if the funds flowing into BC are explicitly intended primarily for investment as part of the layering, justification and integration phases of money laundering, then they are more akin to wealth. That suggests using portfolio allocation analysis when considering how much inflow funds are invested in real estate. Real estate is only one possible type of asset those funds could be invested in for money laundering purposes. This same analysis also applies to the portion of the locally generated monies that are invested, as criminals also face a portfolio allocation decision for the monies they have not used for consumption.

There are many unknowns. The proportion of funds from local sources and inflows is unknown. The behaviour of criminals in terms of choosing to use these flows for consumption and investment is unknown. To the extent that the funds are invested, the portfolio allocation behaviour of criminals is unknown and whether or not it is the same for two types of flows is unknown.

Given this uncertainty, two extremes have been used in the analysis below to generate a range for how much of the estimated money laundering flows are invested in BC real estate. The lower end of the range assumes that all money laundering flows are income subject to decisions about consumption and investment. The upper end of the range assumes that money laundering flows are all intended to be invested.

The underlying approach is to use the behaviour of the Canadian public as benchmarks. Proportional savings/investment decisions and wealth portfolio allocation decisions made by the general population are used as benchmarks for what criminals might do.

The following applies data for the income/savings and wealth portfolio allocation decisions for segments of the population to generate a range of possible levels of money laundering in BC real estate. The estimates are based on an assumption of $7.4 billion of money laundering flows in BC in 2018, as reported above.

Investment proportion of money laundering

How much money laundering is dedicated to consumption and how much to investment?

At one extreme, laundered funds can be considered as income alone. For the Canadian public, most income goes to consumption. On average in 2017 Canadian households saved only 3.6 percent of their net disposable income. The savings rate is significantly larger for higher-income households, increasing to 28 percent for the highest income quintile.[31]

Treating all money laundering as income provides an extremely conservative estimate of the proportion of monies available for laundering because only part of that money is generated by criminal activity in the province. There are also money laundering inflows sent to BC specifically for investment purposes. Even for the domestic criminal activity, investment arising from net criminal revenues is likely to be higher than the rate of saving in the general population because invested proceeds of crime will generate laundered investment returns that, in turn, provide income more suitable for consumption than dirty proceeds of crime.

This leads to the conclusion that the portion of monies available for laundering that is invested is very unlikely to be lower than the proportion of income invested by the highest income quintile of

31 Statistics Canada, Distributions of household economic accounts, income, consumption and saving, by characteristic, https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3610058701

the Canadian population – 28 percent or $2.1 billion of the $7.4 billion in total estimated for BC at the extreme lower bound.

The upper bound is that 100 percent of the monies available could be invested, if inflows are fully dedicated to investment purposes and domestic criminal consumption is funded by investment returns.

Wealth portfolio allocation

To the extent that money laundering flows are invested, those investing laundered funds have a choice of assets in which to invest. The question is, what proportion of the investment portfolio, and of the flow of money laundering funds into the portfolio, is allocated to real estate. It should be noted there is reason to expect that criminals will invest more in real estate than is the case for non-criminal wealth portfolios because of the attractiveness of real estate investment for money laundering, described earlier in the report, but there is no way to estimate how much more.

Using portfolio allocation decisions of the general public as a benchmark, on average real estate accounts for 40.6 percent of wealth across the entire Canadian population, including the household's primary residence as well as all other domestic and international holdings of real estate.[32] The portfolio allocation to real estate varies considerably depending on the characteristics of the household, from 37 percent among all household without pensions to 72 percent among all households without pensions that own real estate. The remainder of the wealth portfolios are invested in the full range of financial assets available to the public for investment purposes, and there is every reason to believe that criminals invest in a wide range of assets for money laundering purposes as well.

Money laundering in BC real estate estimate: $5.3 billion

At the upper bound of potential investment – assuming that 100 percent of the estimated $7.4 billion in money laundering funds in BC is invested – and using the full range of portfolio shares (37 percent to 72 percent), the amount invested in real estate would be between $2.7 and $5.3 billion.

At the other extreme – assuming that all money laundering flows are treated as income and that 28 percent is invested – the amount invested in real estate would be much lower, at $0.8 to $1.5 billion.

This wide range serves to highlight the fact that, in the absence of actual data on money laundering flows and the behavior of criminals, depending on a set of assumptions about flow types and criminal savings and investment behaviour leads to a very wide range of results.

For the purpose of assessing the effect of money laundering on BC housing prices, the Panel based its estimate on the $5.3 billion upper limit figure, assuming that all money laundered funds in BC are invested and that 72 percent of these funds are allocated to real estate. This is consistent with the view that local and inflow money laundering activity is predominantly related to the layering, justification and integration phases of money laundering, which generally involves investment activities. To some extent this choice of using an upper bound offsets some part of the likely underestimation of overall money laundering because of under-reporting in the global crime statistics.

32 Wealth is defined here as gross asset values excluding debt. Source: Statistics Canada, Survey of Financial Security, 2016. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110004901

Effect of money laundering on real estate prices

How money laundering affects prices

The primary negative effect of money laundering on real estate markets in general, and on housing affordability in particular, results from the wedge it creates between local incomes and local real estate prices.

Dirty money invested in real estate is a source of market demand that is not linked to local incomes, and the investments are made for reasons other than the pursuit of normal expected rates of return. It causes prices for all real estate asset classes to rise above the levels that are supported by local household incomes for the rental and ownership of residential real estate. The same effect is observed for commercial tenants and properties, where money laundering demand is not linked to revenues from legitimate business activities.

The magnitude of the effect on market prices depends on the share of real estate money laundering investment in total real estate market activity. It also depends on the extent to which money laundering demand competes at "the margin," in which case it would have a larger effect than its share would indicate.[33] Where the money laundering activity is at the margin, the effect of buying a small number of very expensive properties would, under most market behaviour assumptions, have a smaller aggregate effect on the market than if the funds were used to buy a large number of less-expensive condominium units. Even though the dollar amounts are the same, the effect on housing prices in the different market segments differs.

Challenges in estimating impacts

How money laundering affects real estate prices is well understood in theory, but the actual impact is empirically difficult to estimate. The increase in demand is the difference between demand with money laundering and without. The effect that increase has on prices depends on the supply response in reaction to the demand increase.

The first empirical complication is that the demand increase is not the entire amount of the laundered funds invested. That is because, if criminal activities ceased, those involved would end up instead acquiring housing for personal use funded by legitimate income, which would also be a source of housing demand. It is just the demand strictly arising from money laundering investment that would disappear.

Another challenge is that the supply response to demand is likely to vary considerably across geography and by product type: in the Lower Mainland, entry-level suburban condo units have a more elastic supply than high-end single-family detached units.[34] Thus, the effect of money laundering demand on prices will be greater for single-family homes than for condominium units.

It is also not clear how much demand would fall if significant inroads were made into reducing money laundering. The effect on prices from money laundering comes from a permanent change

33 Unlike demand by local residents for real estate for their own occupation, money laundering demand can be invested elsewhere and as such should be more "at the margin" and thus have a larger effect on prices that indicated by its share alone.

34 That is, for a given increase in prices, more condominium units will be built than single-family detached homes, for a number of reasons, not the least of which is the lack of developable land.

in demand for real estate. The question is, how much would not be invested here were there a stricter regulatory regime and more successful and frequent civil and criminal actions taken against money launderers? It is assumed that there would still be criminal activity here and those criminals would still have monies retained locally. It is the difference in the amounts between the current situation and what would we see under an improved AML regime that would be the most reasonable estimate of the impact of money laundering on real estate prices.

Share of transaction volume

The first approach used to gauge the extent to which money laundering affects the real estate market is to estimate money laundering's share of transactions. Table 4 shows the estimated volume of transactions for 2018 in BC for residential and select non-residential land uses.[35]

The estimated $5.3 billion in money laundering investment flowing into real estate is 4.6 percent of the total volume of transactions in the province. If money laundering investment is distributed throughout BC based on property values, then 83 percent would be in residential properties and 17 percent in identified non-residential property types.[36] At 4.6 percent of the volume of transactions for each property type, that would imply amounts of $4.6 billion for residential property and $0.7 billion for identified non-residential property.

Table 4: Real estate transaction volumes, British Columbia, 2018

Land use type	Sales volume ($ million)
All identified classes	115,564
Residential	100,410
Single-family detached	52,907
Townhouse	11,481
Condo	21,514
Non-residential	15,154
Lower Mainland/Fraser Valley	
Residential	72,317
Single-family detached	35,874
Townhouse	9,393
Condo	18,522

Source: Calculations using 2018 BC Assessment transactions (keeping only one transaction per property per day). Non-residential is limited to commercial, farm and warehouse/storage uses.

35 BC Assessment provided the Panel with transaction data for 2018 for all residential uses, and for farms, commercial uses, and warehouse and storage uses, excluding other industrial properties. In the event of multiple transactions on a single property registered on the same day, only the highest-priced transaction is included here (this drops the total from $117.6B to $115.6B).

36 Calculated using BC Assessment 2019 roll year assessed values for all residential, farm and commercial properties, and for warehouse and storage and parking based on BC Assessment actual use codes.

If instead all money laundering investment were in residential property, then it would represent 5.3 percent of total provincial transactions. As another possible alternative, if all the investment were residential property in the Lower Mainland and Fraser Valley, $5.3 billion of investment would represent 7.4 percent of 2018 transaction volumes. Shares of transactions in the 4.6 percent to 7.4 percent range are sufficiently large to have an observable impact on real estate prices.

In the aggregate, the effect of money laundering investment representing on the order of 5 percent of total transaction volume would not necessarily translate into a price effect of the same magnitude.[37] The effect on prices depends on elasticities of demand and supply, which are discussed further below.

Share of new construction volume

Comparing money laundering with total transactions may underestimate the effect of money laundering on real estate markets. Many transactions do not represent an increase in demand but are just households moving between houses within the same area because of changes in household income, age, and family size and structure.

These transactions are not growth, but churn. With churn, a decline in transaction volume may not reflect a reduction in equilibrium demand, but a timing decision by households. This only results in price declines when it is not matched with a decline in the number of units offered for sale on the market.

With net inflows and new monies to be laundered, the effect of money laundering on long-run demand is likely to be more than just the estimated 4.6 percent of transaction volume. Rather than total transactions, money laundering flows could be compared with total net new demand for real estate. The highest bound for the effect of money laundering on real estate would be if net money laundering investment in real estate were entirely growth in demand. In that case, a simple measure of its importance would be the size of money laundering investment relative to new construction.

Using BC Assessment data, the value of properties on which new construction occurs has been estimated for 2018 for the same property types and geographies as were used in Table 4. The results are presented in Table 5. Because money laundering can operate through financing construction for a property, both new construction that is sold and that which is retained are included.

37 This suggests that about one in 20 houses are affected in the long run, which would be one house out of every block in a city like Vancouver.

Table 5: Estimated value of properties with new construction, British Columbia, 2018

Land use type	Sales volume ($ million)
All identified classes	71,434
Residential	55,940
Single-family detached	25,262
Townhouse	3,956
Condo	8,259
Non-residential	15,494
Lower Mainland/Fraser Valley	
Residential	43,264
Single-family detached	18,482
Townhouse	3,187
Condo	7,537

Source: Calculations using 2018 BC Assessment data. Calculated based on value of properties with an increase in the value of improvements from previous year of at least 60 percent. Non-residential is limited to commercial, farm and warehouse/storage uses. Not all properties with newly constructed structures are sold.

The $5.3 billion estimate of money laundering investment in real estate represents 7.5 percent of all new construction in the province and 9.5 percent of new construction related to residential properties. These are levels that are substantive and would be associated with higher housing prices, with the effect depending on the elasticity of supply.

Using elasticities to estimate price effects

The recent decline in demand in the Lower Mainland offers an example of why movements in transaction volume do not track price changes on a one-for-one basis. The decline in total residential sales between 2017 and 2018 for the Lower Mainland and Fraser Valley is estimated to be $23 billion, approximately five times the size of estimated money laundering real estate investment. The Real Estate Board of Greater Vancouver reports that benchmark single-family detached home prices in the Lower Mainland fell 5 percent between December 2017 and December 2018, a period associated with the $23 billion decline in transactions.

Translating the share of housing activity associated with money laundering investment into possible price effects depends on estimates of the elasticities of demand and supply. It also depends on whether by supply one means the total stock of real estate, transactions or new construction. To complicate the task, there is no robust academic work on either demand or supply elasticities for non-residential real estate, and even for housing these estimates can vary, particularly for housing supply, which is location specific.

For simplicity, housing elasticities used have been based on estimates reported by Saiz[38] for land and regulatory constrained cities in the United States and more general estimates for the price elasticity of housing summarized in Whitehead.[39] Saiz estimates a range of 0.65 to 0.90 for the supply elasticity in US West Coast cities. This is the best available approximation for BC in general and the Lower Mainland in particular, as both have greater geographic and regulatory constraints than does the average North American metropolitan area. For housing demand elasticity, the consensus estimate of -0.35 reported by Whitehead is used.

These estimated elasticities imply that a 4.6 percent shock to housing demand (the effect of adding money laundering to the system) would have a 3.7 percent to 4.6 percent effect on prices.[40]

If instead we benchmark money laundering to new construction, then the 7.5 percent shock to housing demand would cause a 6.0 percent to 7.5 percent increase in house prices.

Estimated housing price impact

Housing price impact: estimated at 3.7% to 7.5% higher

On the whole, after making a large number of assumptions, the Panel's best estimate is that the effect of money laundering is to make house prices in BC 3.7 percent to 7.5 percent higher than they would be in the absence of all money laundering.

If money laundering in real estate targeted certain geographies or product types, then the effect on prices in these sub-markets would be higher, rising with the share of demand.

As noted throughout this discussion, there is considerable uncertainty surrounding these estimates. This results from:

- the model, with uncertainty introduced both by estimation error in the predicted amount of money laundering in BC and gaps in the underlying data on proceeds of crime by country;
- the absence of benchmarks for allocating the predicted total money laundering amount to real estate investment and within real estate, into which type of real estate in which locations;
- the inability to determine the net change in demand between the current AML enforcement regime and a more effective regime to know the aggregate change in demand associated with money laundering; and
- the lack of robust, accepted real estate demand and supply elasticity estimates for BC.

Other evidence of price impacts

Recent research demonstrates how actions consistent with a stricter AML regime can result in less inflamed housing markets. Hundtofte and Rantala showed that the volume of capital flows into high-end real estate can be reduced, at least in the short run, by beneficial ownership

38 A. Saiz, "The Geographic Determinants of Housing Supply," *Quarterly Journal of Economics*, 2010, 125(3), 1253–1296, https://doi.org/10.1162/qjec.2010.125.3.1253

39 C. Whitehead, "Urban Housing Markets: Theory and Policy," in P. Cheshire and E. S. Mills, eds., *Handbook of Regional and Urban Economics, Vol. 3*, (Amsterdam: North-Holland, 1999).

40 For convenience, it is assumed that both supply and demand have a simple exponential form, so that for a given demand shock (money laundering demand), the effect on prices is the inverse of the difference between the elasticities. Assuming the form of QD=aPb for housing demand and QS=cPd for housing supply, then the effect of a shock to demand on prices will be 1/(d-b). For the listed elasticities, this suggests that a 1.0 percent shock to demand would have a 0.81 percent to 1.0 percent effect on prices.

disclosure requirements.[41] They studied the 2016 US FinCEN introduction of geographic targeting orders that required the disclosure of beneficial ownership for high value (above $1 million) residential properties in select US counties. They found a decline in shell company, no-mortgage transaction volumes of 66 percent, when compared with sales volumes of properties not covered by these rules because of price level or location, between the period before and after the change. Accompanying this was a 4.2 percent decline in house prices for the affected property types, relative to the prices of unaffected properties, by price and location.

While this covers purchases that include non-money laundering activity by buyers who prefer anonymity, the geographic targeting order also directly targets money laundering techniques. It suggests that even simple beneficial ownership registry requirements can limit capital inflows and make housing more affordable, or at least yield short-run declines in the prices of affected houses.

Using Existing Datasets to Identify Money Laundering

Another approach sometimes suggested to identify money laundering is the use of "money laundering flags" related to known money laundering techniques that can be used to identify occurrences in broader data sets. This has been suggested as both a way to estimate the amount of money laundering and as a way to identify suspicious transactions.

Earlier in this report the reasons why money laundering is difficult to identify were outlined. In essence, money laundering is difficult to find because the objective of money laundering is to make transactions look normal and legitimate. Any type of real estate transaction that can be used for money laundering purposes, can and is also carried out for legitimate and perfectly legal personal and business reasons. Consequently, knowing the identity of the beneficial owner is the most important step towards identifying money laundering in real estate because if the beneficial owner is a criminal the transaction is much more suspect. This is precisely why disclosure of the beneficial ownership of land, for example through the *Land Ownership Transparency Act* (LOTA) registry, is so important.

Applying broad indicators associated with money laundering to existing data sets is also difficult because the details of transactions, ownership, financing terms, immigration status, wealth, income and other data needed to identify all of the characteristics that might indicate money laundering are often found in disparate data sources or are not readily identifiable. If data are available, they may not be easily shared among agencies.

Red flag analysis shows why more information is needed

As well, there is the absence of a data bank of money laundering activities and characteristics of transactions proven to be related to money laundering, from which predictive models can be developed. At present, there is not even any central accounting for how much anti-money laundering activity is taking place, or even how many prosecutions there are, let alone data collection about the characteristics of proven and suspected money laundering transactions. It is this state that motivates the Panel's recommendations for increased data collection, analysis, and sharing among regulatory and enforcement agencies, as they relate to money laundering and other abuses.

41 S. Hundtofte and V. Rantala, "Anonymous Capital Flows and U.S. Housing Markets" (University of Miami Business School Research Paper No. 18-3, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3186634

To highlight the challenges in using indicators to identify potential circumstances of money laundering, the Panel conducted some simple tabulations using publicly available land data from the Land Title Registry provided by the Land Title and Survey Authority (LTSA) and from the BC Property Assessment Roll provided by BC Assessment. The results are reported in Appendix I.

Drawing on over 40 real estate money laundering flags identified by FATF and excerpted in Appendix I, these tabulations use four indicators that could be easily identified in the LTSA and BCA data. These four also reflect areas of regulatory vulnerability because the transaction or its financing is less likely to pass through a conventional regulatory filter. These four criteria are:

- the ownership of real estate by legal persons,[42]
- ownership by foreign (non-Canadian) persons,
- the purchase or ownership of properties without a mortgage, and
- the financing of real estate with mortgages from individuals or unregulated lenders.

One of these indicators, foreign ownership, was not possible to reliably use. While foreign ownership in the LTSA data accounted for very low proportions of properties – less than 1 percent of single family homes and less than 5 percent of condominiums[43] – Statistics Canada has reported that 3 percent to 10 percent of single family homes and 8 percent to 15 percent of condominiums are owned by non-residents of Canada.[44] The Statistics Canada work, which linked data from several sources that are not available to the public including immigration, taxation and other data, is more accurate. This further demonstrates the need for effective data sharing and putting the data into a form conducive to accurate analysis.

The other indicators, while not without data limitations, could be reliably measured with the data. What is most notable is that across property types and geographies the prevalence of all of the indicators was significant in every case.

In 2018, legal persons purchased between 4 percent and 9 percent of residential property in the areas and property types examined. For those who purchase residential real estate for investment purposes, the use of corporations can have tax and other business advantages. Other legal persons, such as trusts, also have legitimate uses. Some of these properties are also likely involved in money laundering, but beneficial ownership disclosure is needed to make this a useful indicator.

Between 23 percent and 42 percent of residential properties were purchased without a mortgage and over 40 percent of residential properties in all categories have no current mortgage. This is such a common characteristic in BC real estate that it unlikely to be useful in identifying money laundering, especially as money laundering transactions are known to involve all of the possible financing statuses: 100 percent equity (no mortgage), high loan-to-value mortgages and low loan-to-value mortgages.

42 A "legal person" is an entity that has the legal ability to own property but that is not an individual (i.e. not a human being).

43 See Table J-5 in Appendix I.

44 See Table J-6 in Appendix I. Source: Statistics Canada, Canadian Housing Statistics Program (CHSP) 2019, using 2017 data.

Between 3 percent and 12 percent of properties were purchased with mortgages from unregulated lenders. Once again, unregulated lenders account for small but significant proportion of the market and are often used for legitimate purposes, from lending to a family member to obtaining financing where regulated lenders are unwilling to accept the level of risk involved. Mixed in to that will undoubtedly be money launderers.

Even combining indicators (legal person together with unregulated lender) found significant proportions of properties. These incidence rates are higher among more valuable properties. This suggests that combining indicators, especially using data to which the Panel did not have access, is necessary to narrow results.

Whistler, where residential properties are overwhelmingly vacation homes and investment properties, also had much higher rates for all indicators, due to the unique nature of that high-value resort community. Finally, commercial properties (including rental apartment buildings and storage and warehouse properties) had higher incidences of ownership by legal persons and mortgages from unregulated lending sources than was the case for residential properties. That again reflects the characteristics of the market and cannot be interpreted as an increased likelihood of money laundering. See Appendix I for further details.

This analysis highlights just how prevalent ownership and financing characteristics often associated with money laundering are among the universe of BC properties. Without more detailed data on beneficial ownership, cross-matching with suspicious transaction reports (STRs) from a variety of sources in real estate and access to other data sources, it is very challenging to flag suspicious activity in broad data sets.[45] Incidence rates are high because there are many legitimate owners and purchasers who also trigger the flags.

In the absence of accurate beneficial ownership data there can easily be money laundering transactions that trigger no flags at all. For example, dirty money could be used as a down payment to purchase a property: for market value; with a mortgage that is neither high or low in comparison to the value of the property; from a mortgage lender that is a bank; and, that is registered in the name of an individual with no criminal record who resides in the house and who qualified for the mortgage with conventional underwriting but where the beneficial owner and source of funds are part of laundering money. Or money laundering could take the form of any of a wide variety of "normal" transactions that trigger no flags.

It is crucial, in combatting money laundering, that as much data as possible be shared and made available to those fighting money laundering. The data needs to be in a form that makes it easy to use. Successes and failures, whether from administrative sanctions or provincial offenses or criminal prosecutions, in taking AML action, and the characteristics of the suspect transactions, must be tracked in a central and comprehensive way to create analytical approaches that perform better in the future. And, finally, the data will be optimally useful only if there is effective cooperation and coordination among the various agencies.

45 Once a property is identified, detailed property specific investigations through transactions, company, and banking records can yield fruitful outcomes.

Conclusion

The empirical work presented in this chapter shows the following:

- BC has significant challenges around housing affordability in several markets, with housing in Vancouver the least affordable in Canada and among the least affordable internationally.
- A significant level of funds is associated with money laundering from domestic criminal activity and inflows, estimated at $7.4 billion in 2018.
- Almost certainly a significant part of the money laundering flow is invested in real estate, estimated to be up to $5.3 billion in 2018, almost 5 percent of real estate transactions in the province.
- Money laundering investment in real estate has increased housing prices, with house prices estimated to be in the range of 3.7 percent to 7.5 percent higher due to money laundering.
- There are clear gains in housing affordability, even if they are not large in magnitude, to be had from a more effective, comprehensive AML regime in BC and Canada.

It is important for these results to be used in the proper context. The price increase estimates presented here explain only a relatively small part of the housing affordability problem in the Lower Mainland and other BC markets. There are many other factors affecting housing affordability that are beyond the scope of the Panel's mandate. The housing affordability problem cannot be solved by reducing money laundering but reducing money laundering can certainly help. Improving housing affordability is only one of the benefits of reducing money laundering activity. As noted throughout this report, money laundering damages society in many different ways. A strong government response is clearly required, regardless of the precise effect of money laundering investments on house prices.

Chapter 5: The Regulatory/Anti-Money Laundering System in Canada

A complex set of federal and provincial agencies and private sector actors makes up the broadly defined "regulatory/anti-money laundering system" related to real estate activity in British Columbia and anti-money laundering activity. As a necessary first step in finding ways to improve the BC regulatory system to combat money laundering in real estate, it is important that the roles and interactions of the various government and regulatory agencies involved be understood. It is equally important to understand the roles of all the different private sector actors that touch the real estate sector, including whether and how they are currently regulated and whether and how anti-money laundering efforts apply to them. This chapter provides that context.

Types of Government and Regulatory Agencies

For the purposes of this report, seven types of regulatory and anti-money laundering activity have been defined, most of which include both federal and provincial agencies. As noted below, only a few of the agencies currently have a specific AML mandate:

Complex set of agency silos

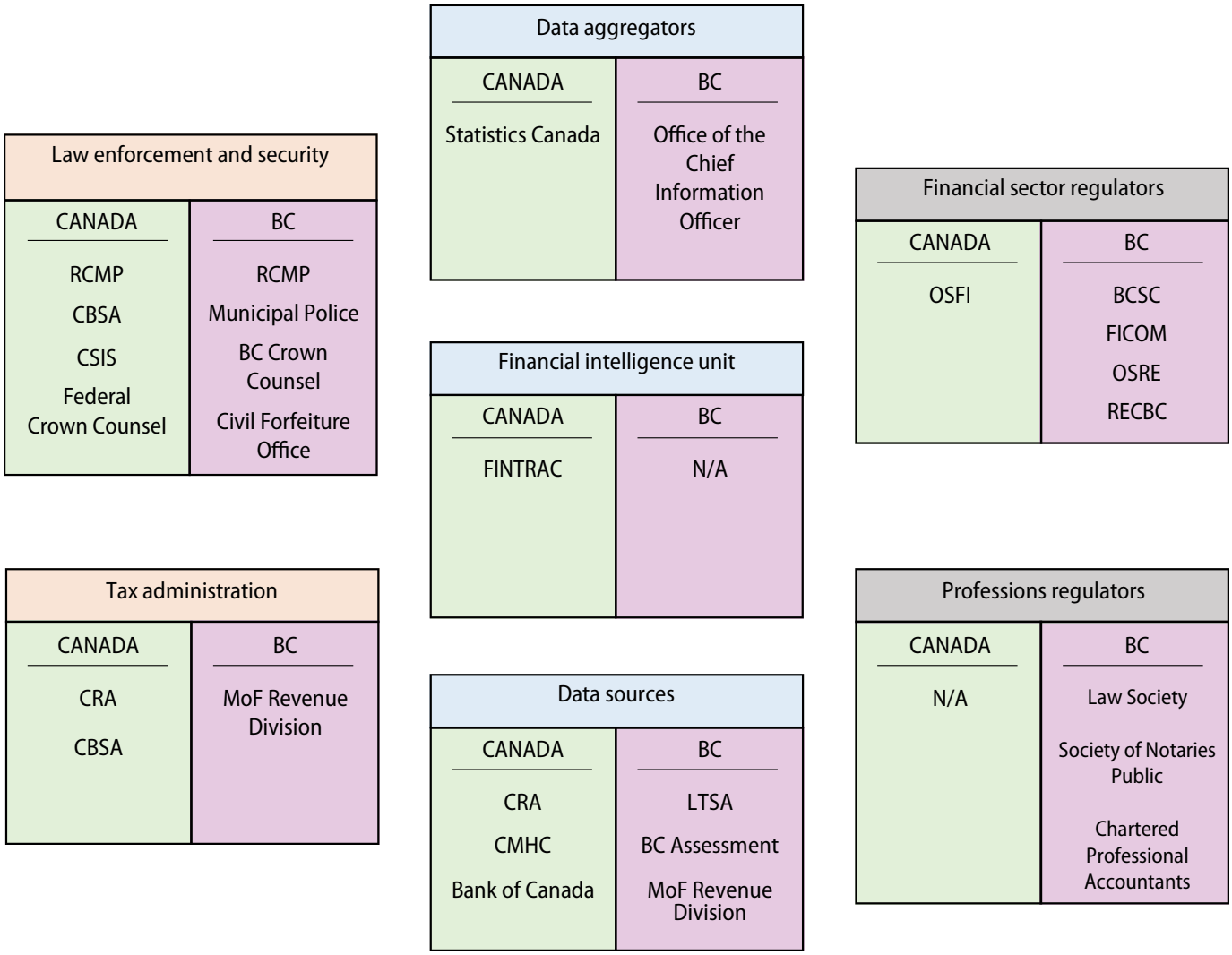
- **Law enforcement and security** – This is the set of agencies with responsibility for investigating and prosecuting the crime of money laundering and protecting national security. All of these agencies have a specific AML mandate, but AML is a small part of a broad criminal justice and national security mandate.
- **Tax administration** – Money laundering is frequently associated with the evasion and avoidance of taxation, and the administration of taxation provides an important source of information that can help identify money laundering activity. Tax administration agencies do not have a specific AML mandate.
- **Financial intelligence unit** – The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is the only Canadian agency in this category and the only Canadian agency primarily devoted to AML. FINTRAC has the unique role of collecting and assessing information about financial transactions and activities as the basis for identifying money laundering activity.
- **Financial sector regulators** – Several federal and provincial regulators have responsibility for administering a range of regulatory provisions related to financial activity in the economy, all of which relate to actors that touch the real estate sector and have the potential to be directly or indirectly involved in AML activities. This includes regulators with direct responsibility for real estate brokers and salespeople. None have a specific AML mandate at this time.
- **Professions regulators** – These are self-regulatory organizations established by provincial legislation that operate independently from government and regulate professions whose members are actors in the real estate sector, among other activities. None have a specific AML mandate at this time.
- **Data sources** – Several federal and provincial agencies, in the course of their activities, collect information about real estate and the owners of real estate that can help to illuminate

and potentially identify money laundering activity, as distinct from the AML-specific intelligence mandate of FINTRAC.

- **Data aggregators** – These are agencies that have a mandate to collect and analyze data, which may be useful in identifying and combatting money laundering.

Ten federal agencies and 14 provincial agencies fall into one or more of these categories, as shown in Figure 13.

Figure 13: Agencies involved in AML activities



The federal agencies involved in AML activities are:

- Bank of Canada (BOC) – responsible for monetary policy and financial sector stability;
- Canada Border Services Agency (CBSA) – controlling the flow of people, goods and currency across the border;
- Canada Mortgage and Housing Corporation (CMHC) – mortgage insurer and affordable housing lender;
- Canada Revenue Agency (CRA) – federal tax administration, including provincial income tax administration for most provinces under Tax Collection Agreements;
- Canadian Security Intelligence Service (CSIS) – national security and intelligence;
- FINTRAC – Canada's financial intelligence unit (FIU);
- Office of the Superintendent of Financial Institutions (OSFI) – federal financial sector regulator;
- Public Prosecution Service of Canada (PPSC) – federal Crown counsel;
- RCMP – law enforcement at federal, provincial and municipal levels;
- Statistics Canada – federal statistical agency.

The BC agencies that are or should be involved in AML activities are the following:

- BC Assessment (BCA) – agency responsible for property assessment for property tax purposes;
- BC Prosecution Service (BCPS) – provincial Crown counsel;
- BC Securities Commission (BCSC) – BC securities regulator;
- Chartered Professional Accountants of BC (CPABC) – self-regulatory organization for the accounting profession;
- Civil Forfeiture Office – administers BC civil forfeiture legislation;
- Financial Institutions Commission (FICOM) – BC financial sector regulator;
- Law Society of BC – self-regulatory organization for the legal profession;
- Land Title and Survey Authority of BC (LTSA) – agency responsible for BC land title registry;
- Municipal police – law enforcement in select municipalities;
- Office of the Chief Information Officer (OCIO) – agency responsible for government information;
- Office of the Superintendent of Real Estate (OSRE) – BC regulator to oversee RECBC, regulate develop marketing and unlicensed activity;
- Real Estate Council of BC (RECBC) – BC real estate industry licensee regulator;
- Revenue Division, Ministry of Finance – responsible for tax administration;
- Society of Notaries Public of BC – self-regulatory organization for BC notaries.

These agencies are described in more detail in Appendix J. One other agency involved in BC that doesn't fit into any of the categories identified above is the BC Lottery Corporation, which is involved in AML activity as part of its business activities as the monopoly provider of legal gambling in the province.

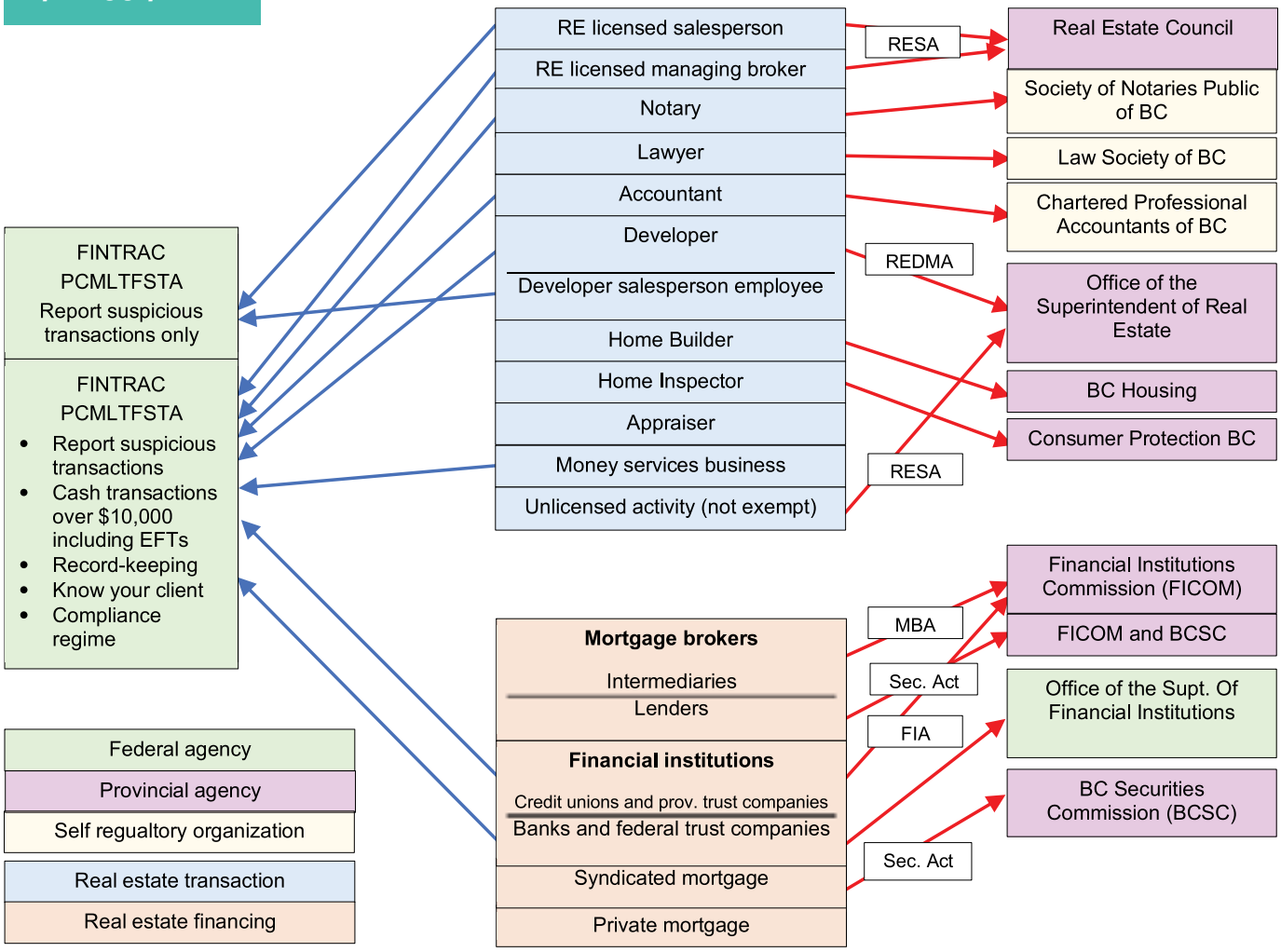
Players in Real Estate and Related Regulators

The list of agencies with a role in the AML system includes several regulators that oversee the activities of various types of players in the real estate industry. FINTRAC also interacts with several types of actors involved in real estate.

The purpose of this section is to describe the complex relationships between the various players and the regulators, as well as their relationship with FINTRAC. At least as important as those relationships are the gaps in regulatory application and application of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) that are revealed by this analysis.

Significant regulatory and FINTRAC reporting gaps

Figure 14: Players in real estate and related regulators



FINTRAC reporting entities

Information is collected by FINTRAC under the PCMLTFA from a set of reporting entities that includes the following actors involved in either the purchase and sale or the financing of real estate:

- financial institutions;
- insurers;
- BC notaries;
- real estate brokerages;
- accountants;
- property developers;
- money service businesses.

Actors that play a role in the real estate industry but are not reporting entities are lawyers, mortgage brokers, mortgage lenders that are not federally or provincially regulated financial institutions, home builders, home inspectors and real estate appraisers.

Reporting entities are required to report suspicious transactions, cash transactions and incoming or outgoing electronic funds transfers of over $10,000, as well as suspected terrorist financing activity. Reporting entities are also required to have AML policies and procedures in place, including a designated compliance officer, to ensure that reports are filed when warranted, recognizing the need to use judgment in determining when a transaction is suspicious. Employees of some reporting entities, such as real estate salespeople, developer salespeople and employees of BC notaries, are required to file suspicious transaction reports when warranted.

According to data provided by FINTRAC for the period 2014–2017, 98 percent of suspicious transaction reports related to real estate come from regulated financial institutions, indicating severe under-reporting by other actors in the real estate industry, particularly real estate brokerages.

FINTRAC also receives reports on cross-border currency flows from the Canadian Border Service Agency and can receive voluntary information from anyone who observes something that they believe should be reported, whether in the public sector or private sector.

Real estate industry actors

Real estate licensees

The BC *Real Estate Services Act* establishes the regulation of real estate services, including trading services, property management and strata property management. There are two levels of trading services licence. The first level is for salespeople, who act as agents to buyers and sellers of real estate. Salesperson licensees must be associated with a licensed real estate broker, often referred to as a managing broker, which is the second level of licensure. This is a common source of misunderstanding, as the terms “real estate salesperson” and “real estate broker” are often used interchangeably.

Licensees are primarily regulated by the Real Estate Council of BC. Real estate licensees have traditionally been regulated primarily to protect buyers and sellers of residential real estate, by ensuring that they have access to and can trust the advice provided by real estate agents acting with integrity in their best interests and that trust accounts are appropriately managed. Licensees must meet educational standards as well as standards related to their activities, including their duty to their clients and their use of trust accounts.

Inappropriate unlicensed activity falls under the jurisdiction of the Office of the Superintendent of Real Estate (OSRE) and is subject to regulatory action by the Superintendent.

Exempt real estate industry actors

The *Real Estate Services Act* has exemptions for several actors involved in the real estate industry, and some actors are not covered by the scope of the Act. Actors not covered by licensure includes developers, salespeople who are employed by developers, home inspectors, real estate appraisers and home builders.

Some of these actors are supervised by different regulators. Home builders are regulated by BC Housing to ensure that they meet educational and training standards and comply with the requirement in the *New Home Protection Act* to provide qualifying new home warranties. Home inspectors are regulated by Consumer Protection BC. Developers are regulated by OSRE under the *Real Estate Development Marketing Act*, which requires buyers of multi-resident developments to be provided with a prospectus approved by OSRE. There is no registration or licensing requirement for developers or their salespeople employees. Real estate appraisers in BC are unregulated but professional certification is provided through the Appraisal Institute of Canada.

Professionals involved in real estate transactions – notaries, lawyers and accountants – are also exempt under the *Real Estate Services Act*. Each of the professions is regulated by a self-regulatory organization.

Real estate financing actors

Financial institutions

Most mortgage lending in Canada is undertaken by regulated financial institutions. Financial institutions include banks, trust and loan companies and credit unions, which are all authorized by the federal or provincial government to engage in the business of taking deposits and providing related financial services, including making loans. Mortgages made by financial institutions are subject to mortgage insurance requirements if they exceed 20 percent of the purchase price of the property, and also a stress test, regardless of the loan-to-value ratio, to ensure that the mortgage can still be paid if interest rates rise. As noted, financial institutions also all have reporting requirements under the PCMLTFA.

Mortgage brokers

Under the *Mortgage Broker Act* (MBA) there are two groups that are required to register. The term "mortgage brokers" seems to most directly refer to intermediaries who help borrowers arrange mortgages with third-party lenders, whether they are regulated financial institutions or

other lenders. The MBA also applies to all others in the business of mortgage lending. Financial institutions and insurers are exempt from the MBA.

In practice, most registrants under the MBA are intermediaries or a specific type of mortgage lender known as a mortgage investment corporation (MIC). Many, but not all, mortgage lenders that are not financial institutions organize themselves as MICs because net income can flow through a MIC directly to investors, providing a tax advantage. Mortgage brokers, both intermediaries and lenders, are regulated primarily for market conduct purposes, with no focus on solvency or financial stability. Investment in mortgage lenders is regulated separately by the BC Securities Commission in the context of its regulation of capital-raising activities.

Other entities in the business of mortgage lending that may be technically required to register under the MBA have not been the focus of attention by the Superintendent, based on lower historical risk or inappropriate market conduct, together with vagueness in the wording of the legislation.

Other lenders

Other mortgage lenders include monoline lenders or mortgage finance corporations. These are generally lenders approved by the Canada Mortgage and Housing Corporation for mortgage insurance purposes, and many are publicly traded entities. Their securitized mortgage loans are subject to Office of the Superintendent of Financial Institutions (OSFI) regulations covering mortgage lending (OSFI B-290 and B-21 guidelines), but unless they are organized as a bank or trust company, they are not themselves OSFI-regulated. They are not organized as MICs.

Two additional types of mortgage lenders are syndicated mortgages and private mortgage lenders. Syndicated mortgages are essentially partnerships where investors band together to provide mortgages but not through a corporate entity. Syndicated mortgages are securities to which the *Securities Act* applies and for which the BC Securities Commission has jurisdiction. Private mortgages are where one or more persons lend money to another, without crossing the line of being in the business of mortgage lending. Private mortgages are unregulated.

Summary

The description above of the real estate regulatory/AML system in Canada shows a landscape with many regulators and government agencies, dealing with many different types of private sector actors providing services related to real estate.

The result is a complex of siloed responsibilities across two levels of government. Not surprisingly, the result is gaps in both the AML system and the regulatory system, along with cases of regulatory overlap and cases where different regulators have responsibility for apparently similar or identical activities. Discussions with several of these agencies also showed that in many cases, they do not fully know or understand the mandates, objectives and powers of other agencies operating in the same regulatory/AML system.

Chapter 6: Recent Developments

Recent developments relating to federal and provincial anti-money laundering and real estate regulatory and taxation activities include the following:

- **Mortgage lending** – October 2017 changes to the eligibility rules for mortgage lending by federally regulated financial institutions, including the introduction of stress tests to ensure that funds available for debt service can accommodate interest rate increases, have reduced housing demand.[46] The changes also affect lending by other mortgage lenders, since they also limit the ability to qualify for mortgage insurance and for mortgages to be eligible for securitization. Since mid-2017 the Bank of Canada has raised its benchmark interest rate five times, from 0.5 percent to 1.75 percent, which has increased retail mortgage rates, also dampening demand.
- **Provincial real estate tax measures** – In Budget 2018 the BC government announced that:
  - properties with a fair market value over $3 million would pay an additional 2 percent in Property Transfer Tax (PTT);
  - the additional rate paid by foreign entities in certain locations under the PTT increased from 15 percent to 20 percent, and the locations where the tax applies were expanded to urban areas outside the original Greater Vancouver Regional District area of application;
  - beneficial ownership information would be collected under the PTT;
  - a new speculation tax would apply in certain urban areas on the assessed value of properties, beginning in 2019 (home ownership as of December 31, 2018), to vacant properties, with a tax rate of 0.5 percent in the first year and in subsequent years a rate of 0.5 percent for Canadian resident owners and 2.0 percent for foreign owners;
  - higher school tax rates would apply on properties assessed at over $3 million.
- **Beneficial ownership** – Budget 2018 also announced the creation of a beneficial ownership registry for land. A discussion paper and draft *Land Ownership Transparency Act* (LOTA) legislation were released for consultation in fall 2018. LOTA is scheduled to be introduced in the legislature in spring 2019.
- **Condo and Strata Assignment Integrity Register (CSAIR)** – Effective January 1, 2019, developers must collect and submit to the Ministry of Finance data on all assignments of condominium pre-sale purchase agreements, to reduce tax evasion and for regulatory purposes, including anti-money laundering (AML) efforts.
- **FICOM restructuring** – The government announced in fall 2018 that it would introduce enabling legislation in the spring of 2019 to restructure the Financial Institutions Commission (FICOM), removing it from the Ministry of Finance and establishing it as an independent

The time is ripe for fundamental change based on these initial steps

46 Office of the Superintendent of Financial Institutions, *Guideline B-20: Residential Mortgage Underwriting Practices and Procedures*, http://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b20_dft.aspx.

Crown agency. The new agency will maintain responsibility for regulation of mortgage brokers, insurance and trust companies, pensions and credit unions.

- **Restructuring of real estate regulation** – In fall 2018 the Minister of Finance released the *Real Estate Regulatory Structure Review* report (the Perrin Report),[47] which recommended that the regulation of real estate be restructured by, among other things, moving the policy development function back into the Ministry of Finance and amalgamating the Office of the Superintendent of Real Estate and the Real Estate Council of B with the Financial Institutions Commission (FICOM).
- **Federal interagency cooperation** – The federal government has created an interagency group that includes the federal government agencies involved in AML efforts, and an advisory committee that includes government agencies and industry associations.
- **Canada-BC Ad Hoc Working Group** – The federal and BC Ministries of Finance created a joint working group with representatives of most of the agencies involved in real estate regulation and AML efforts in both governments. The group met for the first time in January 2019.
- **Changes to PCMLTFA regulations** – In May 2018 the federal government published proposed changes to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) regulations that take effect in 2019.[48] The changes include, among other things, changes to know-your-customer and beneficial interest due diligence requirements for reporting entities under the Act and changes to include crypto-currency exchange and payment businesses, prepaid credit card businesses and foreign money service businesses within the definition of money services businesses under the Act, making them subject to registration and compliance requirements.
- **Standing Committee on Finance report** – In November 2018 the Standing Committee on Finance reported on its statutory five-year review of the PCMLTFA, and the government submitted its response in February 2019. This represents a detailed, comprehensive review of the legislation and its administration by FINTRAC as the front line of AML activity in Canada. As discussed in Chapter 8: Analysis and Recommendations, it is clear that significant improvements to Canada's AML framework are under consideration.

Together, these actions demonstrate that both the BC and federal governments are engaged in the issues related to AML and real estate. It is in the context of this set of actions that the Panel considered ways to further these efforts by improving the regulatory framework.

47 D. Perrin, *Real Estate Regulatory Structure Review* (BC Ministry of Finance, 2018), https://news.gov.bc.ca/files/Real_Estate_Regulatory_Structure_Review_Report_2018.pdf.

48 See http://www.gazette.gc.ca/rp-pr/p1/2018/2018-06-09/html/reg1-eng.html.

Chapter 7: What the Panel Heard

During the course of its work, the Panel met with 26 federal and provincial agencies, self-regulatory organizations and groups representing actors in the real estate industry (see Appendix C) and received several written submissions from industry groups. A total of 275 written submissions were also received on the Panel's public engagement website.

The following is a summary of the key messages that the Panel heard, in many cases from multiple participants.

Importance of Money Laundering Issue

The damage resulting from money laundering was raised by several participants, who described effects including the following: Money laundering facilitates criminal activity generally, including drug crime. It damages the social fabric of the country. It hurts Canada's reputation. It reduces tax revenues. It contributes to housing unaffordability.

The Panel also received feedback that the current federal and provincial response to money laundering is not sufficient and a more effective, coordinated response is needed.

Beneficial Ownership

There was a broad consensus that beneficial ownership disclosure is the most important measure that can be taken to fight money laundering, and there was broad support for the proposed Land Ownership and Transparency Registry.

AML Mandate, Investigative Resources and Data Sharing

Several provincial regulators and self-regulatory organizations pointed out that they face barriers to being effective in their anti-money laundering activities. Each regulator has a mandate to protect the public in a specific area, but none of those mandates include combatting money laundering. As a result, at best their anti-money laundering efforts are limited to situations that they come across in the course of other business. Some also indicated that they lack both the specialized investigative resources needed to investigate complex financial cases and access to the data needed for their efforts to be effective.

The Panel heard that the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is engaging with more regulators and that there are cooperation mechanisms among regulators and with law enforcement, but that more needs to be done to coordinate among agencies.

Cash Transactions

Several associations representing actors in the real estate industry emphasized that cash real estate transactions where significant amounts of currency are used at any point in the transaction do not occur in real estate. This repeated observation by multiple groups reinforced for the Panel the importance of changing attitudes across the real estate sector about the importance of money laundering, what money laundering in real estate looks like and the importance of actors in the industry playing an active role in AML efforts. Real estate licensees, notaries, lawyers and mortgage lenders need to be able to identify money laundering and understand why it is important that they report their suspicions.

Supervision of AML Compliance

Several industry representatives indicated that FINTRAC's supervision of compliance with the AML requirements imposed by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) on reporting entities are designed and work best for financial institutions, especially banks. Industries with different business models find it difficult to understand and comply with the requirements and, in general, to understand what makes a transaction suspicious. This is supported by FINTRAC suspicious transaction reporting data, which shows that 98 percent of real estate related suspicious transaction reports are submitted by financial institutions.

Several industry associations and regulators suggested that the use of regulators as part of the supervision process could help to correct that issue and improve the quality of reports and overall compliance by reporting entities. That would include the regulators providing AML training and education as well as monitoring compliance with PCMLTFA requirements, as part of both regulatory audits and enforcement. FINTRAC would also have AML compliance supervisory responsibility, but that should be undertaken cooperatively with the regulators.

Regulation of Mortgage Brokers

Regulators and industry representatives alike expressed support for enhanced regulation of mortgage brokers, especially non-financial institution mortgage lenders. There is a consensus that the current *Mortgage Broker Act* should be replaced by modern, effective regulatory legislation to oversee mortgage lending in BC.

Regulation of Developers

While mixed views were expressed about whether there is a need to increase the regulation of real estate developers in BC, some participants suggested that the current exemption for employees of developers from *Real Estate Services Act* licensing requirements should be eliminated. Some also suggested that developers should be regulated under the Act.

Chapter 8: Analysis and Recommendations

Overarching Themes

The Panel's mandate was to investigate and recommend improvements to provincial corporate and financial sector regulation to address money laundering and market abuse related to real estate in British Columbia.

Prosecution follows a rabbit hole to a crime – regulators can act above ground

This report explores why money laundering matters and why it is so difficult to prosecute successfully, examines international best practices and gaps in the Canadian system, and estimates how much money laundering there might be. The report also describes and reviews the federal and provincial regulatory and anti-money laundering system. Based on the work it has done, the Panel concluded that there are obvious and important improvements that can be made to the regulatory/AML system and that will make a real difference. The Panel's analysis is structured around the following overarching themes:

- provincial regulatory improvements
- federal anti-money laundering legislation and practice
- data-sharing framework
- investigation and collaboration
- involvement of other provinces.

Provincial regulatory improvements

Arising from its mandate to improve the BC regulatory system as it applies to real estate, the Panel recommends changes that will create comprehensive and effective regulation of all actors in the financial and real estate sectors. The recommendations also ensure that regulators are appropriately equipped to combat money laundering through beneficial ownership disclosure, Unexplained Wealth Orders and mandates to fight money laundering.

A forthcoming C.D. Howe Institute paper[49] uses a metaphor for money laundering: a rabbit hole that is dug ever deeper to hide the proceeds from connection with the crime, preventing successful prosecution. The paper suggests attacking the problem above ground, disrupting the activity by using tools that do not require finding the end of the rabbit hole. Regulatory improvements can provide those tools.

But improved provincial regulatory requirements and structure will be effective in combatting money laundering only if regulators have the information and capacity they need and if they work effectively together. Changes are therefore needed in the following four additional areas.

Federal anti-money laundering legislation and practice

Provincial regulators must be appropriately integrated into core federal AML legislation and practice established under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

49 K. Comeau, "Why We Fail to Catch Money Launderers 99.9% of the Time," (C.D. Howe Institute e-brief, 2019), forthcoming.

(PCMLTFA) and operated by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). The ability of the BC regulatory system to play an effective role in AML efforts depends on the effectiveness of core federal AML legislation and practice. Accordingly, the Panel has recommended changes to improve and integrate the regulation of real estate into the system.

Data-sharing framework

Regardless of the improvements made to BC's regulatory system and core federal AML legislation and practice, access to relevant information throughout the regulatory/AML system is imperative if the system is to be truly effective.

Investigation and collaboration

Broadening and improving access to information further requires systems and experts with the skills and capacity to effectively investigate complex financial arrangements and take action against those involved in money laundering. In addition, effective coordination is needed to ensure that the multiple agencies work together as a system rather than as isolated silos.

Involvement of other provinces

Money laundering in real estate has become a hot topic in BC public debate, for good reason. Despite many other parts of Canada having fewer concerns about housing affordability, money laundering presents an important risk across Canada that should be addressed as a priority in every province, not just federally and in BC.

The rest of this chapter explores each of the themes identified above and makes specific recommendations for change.

Provincial Regulatory Improvements

The Panel concluded that the BC regulatory regime should be actively engaged in detecting, preventing and deterring money laundering. The province should not rely primarily on law enforcement to prosecute criminal money laundering cases. However, to be effective, new regulatory tools must be added to the system, several gaps must be closed, and other improvements must be made to the structure of the BC regulatory system.

Beneficial ownership

There is a clear, long-standing and widely shared understanding, supported by evidence, that the ability to easily hide the identity of asset owners through corporations, trusts and other arrangements facilitates money laundering and tax evasion. Virtually every industry group and government agency that participated in the Panel's process emphasized the importance of beneficial ownership disclosure.

As discussed in Chapter 3: International Anti-Money Laundering Practices, the Financial Action Task Force's 2012 recommendations 24 and 25 require countries to have accurate and timely beneficial ownership information available to AML agencies and reporting entities (see Appendix F). Best practices exist for beneficial ownership disclosure. And yet there are few examples worldwide of corporate beneficial ownership registries and no examples of beneficial ownership registries for land currently in place.

The first priority for improving the regulatory system is to put requirements for beneficial ownership disclosure in place.

Beneficial ownership of land

Legal persons, such as companies, partnerships and trusts, can operate and own property in most jurisdictions, and most jurisdiction do not have corporate beneficial ownership registries. Therefore, the single most effective measure that a government can take to combat money laundering is a beneficial ownership registry for real property.

New Tool:
LOTA makes BC less attractive for money laundering

The 30-point housing affordability plan released with the 2018 BC provincial budget[50] promised the creation of a beneficial ownership of land registry. A draft *Land Owner Transparency Act* (LOTA) was released in fall 2018 for consultation, with final legislation being developed for introduction in the legislature in spring 2019.

The Panel reviewed the draft legislation and advised the Minister of Finance in a letter dated January 24, 2019 (see Appendix D) that the draft LOTA meets almost all of the best practices for beneficial ownership. The letter made two recommendations:

- The threshold for disclosure of beneficial ownership of land of 25 percent of the ownership should be reduced to 10 percent.
- The compliance mechanism in the draft LOTA should enable external agencies, including tax authorities, FINTRAC and regulators, to undertake cross-checks through full access to the information and to take appropriate action when discrepancies are found (i.e., to be able to initiate regulatory action against those not in compliance – for example, by lying about beneficial ownership of real property).

It is only through the effective use of beneficial ownership information about real estate in AML and regulatory activities and the deterrent effect of actively prosecuting compliance breaches that an accurate and timely database will be maintained. Not only will LOTA allow money laundering and market manipulation to be more easily detected, but that will reduce the attractiveness of BC as a jurisdiction for money laundering, especially in real estate. Nonetheless, unless other provinces also implement similar registries, it is likely that money laundering in real estate will migrate from BC to other provinces to some extent.

Recommendation 1

The BC government should implement the Land Owner Transparency registry as quickly and effectively as possible.

Recommendation 2

The BC Minister of Finance should encourage other provincial finance ministers across the country to implement beneficial ownership of land registries that are consistent with best practices.

50 Province of British Columbia, *Homes for B.C.: A 30-Point Plan for Housing Affordability in British Columbia*, 2018, https://www.bcbudget.gov.bc.ca/2018/homesbc/2018_homes_for_bc.pdf.

Beneficial ownership of corporations and trusts

It is widely recognized, including in FATF recommendations and directives issued by the European Union, that all jurisdictions that allow legal persons to own property should ensure accurate and timely disclosure of beneficial ownership. Unfortunately, that approach will only be effective if most jurisdictions participate, and at present most do not.

New Tool:
Full corporate beneficial corporate ownership registry needed

Canada and all of the provinces have committed to increasing beneficial ownership disclosure, as set out in the Agreement to Strengthen Beneficial Ownership Transparency announced by federal, provincial and territorial finance ministers in December 2017.[51] Under the agreement, as a first step, corporations will be required to maintain beneficial ownership records, and bearer shares will be eliminated,[52] with implementation targeted for July 1, 2019. The federal government has introduced legislation to implement the agreement, and BC has committed publicly to proceeding. Alberta has indicated that it does not intend to proceed.

The next step in achieving transparency would be to create searchable, public corporate beneficial ownership registries meeting the same best practices as LOTA does and including all legal persons, particularly trusts and partnerships. Creating and maintaining such a database is not a trivial matter and requires careful consideration of the legal and public policy implications, fiscal resource implications, compliance costs and potential competitiveness implications if the approach is not adopted by other jurisdictions.

Recommendation 3

The BC government should proceed with its commitment to require corporations to maintain beneficial ownership information and require existing bearer shares to be converted to shares compliant with the *Business Corporations Act* within a specified, reasonable time frame.

Recommendation 4

The BC Minister of Finance should encourage other finance ministers across the country to implement the Agreement to Strengthen Beneficial Ownership Transparency and enhance the disclosure of beneficial ownership for corporations, as soon as possible.

Recommendation 5

The BC government should develop a discussion paper with draft legislation for consultation about the implementation of a full corporate beneficial ownership registry covering all legal persons that is consistent with best practices and that integrates with the *Land Owner Transparency Act*.

Improvements to real estate regulation

The Panel identified three concerns related specifically to the regulation of real estate licensees that should be addressed. First, a report prepared for the Ministry of Finance in 2018[53] found that the structure of the real estate regulatory system itself has introduced systematic barriers to

51 See https://www.fin.gc.ca/n17/17-122-eng.asp.

52 BC does not permit bearer shares to be issued but has yet to move to eliminate existing bearer instruments.

53 D. Perrin, *Real Estate Regulatory Structure Review* (2018).

effective regulation that should be resolved. Second, the regulatory model that imposes primary compliance responsibility on managing brokers is not consistent with the business model of real estate agencies. Third, some important real estate industry actors are not required to be licensed.

Restructure real estate regulation

Improvement: ***Restructure real estate regulators and plug regulatory gaps***

The *Real Estate Regulatory Structure Review* report (the Perrin Report)[54] was released in September 2018. Commissioned by the Minister of Finance as a result of concerns about the effectiveness of real estate regulation in BC, the review found that the current structure has resulted in systemic barriers to effective regulation.

The report recommended, among other things, that:

- the Office of the Superintendent of Real Estate and the Real Estate Council of BC should be merged into the Financial Institutions Commission (FICOM) as the single regulator, with FICOM having full responsibility for public education, education of licensees, complaints and enforcement related to licensee professional conduct, enforcement related to unlicensed activity and market conduct generally, and associated administrative policy, including rule-making;
- the Ministry of Finance should control real estate public policy development, in collaboration with the regulator; and
- government should consider whether there should be oversight for regulators in BC and, if so, what form that oversight should take.

Making FICOM the sole regulator for financial services at the provincial level in BC, with the exception of securities, would help to reduce the number of silos and provide for a regulatory overview of the entire financial market. Restructuring the regulation of real estate, when combined with the recommendations below proposing a specialized financial investigations unit, replacing the *Mortgage Broker Act*, regulating money services businesses and eliminating the *Real Estate Services Act* (RESA) exemptions, would plug the current regulatory gaps and provide a broad-based regulatory platform for the real estate sector in the context of the broader financial sector.

Recommendation 6

> The BC government should implement the recommendations of the *Real Estate Regulatory Structure Review* report (2018).

Place more onus on licensed salespeople

Under RESA, each real estate brokerage is required to have a designated managing broker that is responsible for the compliance of all the licensees within the brokerage with the legislation. FINTRAC's compliance supervision of real estate licensees focuses on a compliance officer (often the managing broker) responsible for ensuring that the entire brokerage is compliant.

This regulatory model was developed when the predominant real estate brokerage business model was brokerages owned and managed by senior real estate practitioners who employed a group

54 D. Perrin, *Real Estate Regulatory Structure Review* (2018).

of salespeople working under their direction. Although there were often multiple owners, with a clear distinction between owners and employees, designation of one owner as the "managing broker" for regulatory purposes was nevertheless an effective way to enforce compliance for the entire brokerage.

Today the business models common in the real estate industry are based on salespeople not being employees but rather operating independently and sharing certain business costs and services with other licensees. For them, having a managing broker is a business cost that they are forced by the regulatory structure to share. The managing broker works for the licensees, not the other way around, and there is an incentive to have as many salespeople as possible under a given managing broker in order to reduce costs. In practice, these business models, together with large numbers of salespeople, give the managing broker little or no authority to oversee the activities of the licensees or ensure that they comply with RESA or PCMLTFA. Reportedly, the Superintendent of Real Estate is considering options to address this issue.

The Panel concluded that, at a minimum, greater onus must be placed on individual licensees for RESA and PCMLTFA compliance.

Recommendation 7

> The BC Minister of Finance should take the steps necessary to place the onus for compliance with the *Real Estate Services Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* directly on individual real estate licensees.

Eliminate RESA exemptions

The *Real Estate Services Act* is the primary statute under which the real estate market is regulated, primarily to counter market abuse. Several actors in the industry are either not covered by the requirement to be licensed or are explicitly exempted.

This regulatory gap reduces the effectiveness of RESA in dealing with market abuse. For example, *Real Estate Development Marketing Act* enforcement is limited by the fact that developers in contravention of marketing requirements cannot be banned from the industry because they are not subject to licensing. It also creates a gap in the ability to use regulatory enforcement to fight money laundering when real estate industry participants are involved directly or as enablers in money laundering. Even if a regulatory investigation related to money laundering reveals no wrongdoing by a licensee, information useful to another AML agency could be generated to assist in another investigation. In the case of an unlicensed enabler, the requirement to be licensed could be used to apply administrative or provincial offence sanctions.

Regulatory gaps include developers and developer salespeople, appraisers and home inspectors, although inspectors are regulated under the *Business Practices and Consumer Protection Act*.

Developers do not fall within the definition of real estate services under RESA because their business is fundamentally different from that of real estate agents. Real estate agents are primarily regulated to ensure that consumers get competent advice and honest services from someone acting as their agent to buy or sell real estate. Developers are selling real estate that they own, ranging from large multi-residence strata developments to developments consisting of custom single-family homes. Specific regulatory provisions would have to be designed to apply to developers if they were regulated under RESA, taking their business models into account.

Employees of developers are specifically exempted from RESA licensing requirements. Eliminating that exemption, together with creating a developer licensing requirement, would enhance public protection in the sale of residential developments, as well as providing additional regulatory tools useful for AML activities.

Recommendation 8

The BC Minister of Finance should take the steps necessary to:

- require that real estate developers be licensed under a regulatory regime designed specifically for that segment of the real estate industry within the *Real Estate Services Act*;
- eliminate the exemption for salespeople who are employees of developers; and
- consider whether appraisers and home inspectors should also be licensed under the *Real Estate Services Act*.

Mortgage brokers

The *Mortgage Broker Act* (MBA) is not a modern statute and does not provide a solid basis for the regulation of the industry, especially mortgage lenders that are not financial institutions. Currently it is unclear exactly which lenders are subject to the Act, and many that should be regulated are not registered. The Act should be replaced.

Improvement:
Mortgage lender regulation in BC is antiquated

New legislation would:

- establish business authorization requirements for all mortgage lenders except individuals lending to a small number of friends and family;
- include modern regulatory powers and requirements;
- establish a governance structure with designated management responsible for compliance within mortgage intermediaries and mortgage lenders, as well as compliance requirements placed on employees within the organization; and
- make a distinction between regulation of the intermediary function and the lending function, with appropriate provisions for both aspects of the industry.

Those using mortgages as a money laundering tool either directly or through currently unregulated lenders should be subject to regulatory action under the new act, which would also enhance the market conduct public protection that the MBA was originally intended to provide.

A modern MBA would require additional regulatory resources to be effective, and this should be funded on a user-pay basis by regulated entities. The Panel recognizes that FICOM is currently undergoing considerable change. Implementing a new MBA would place additional change-management responsibilities on the organization. A new MBA would also place additional compliance costs on those currently registered under the MBA and those who would be regulated for the first time.

Recommendation 9

The BC government should replace the *Mortgage Broker Act* with a modern regulatory statute that is effective in regulating all those in the business of mortgage lending, with few exceptions.

Money services businesses

Money services businesses (MSBs) are businesses that provide payment, money transfer and foreign exchange services. While many regulated financial institutions provide these services, other businesses also provide them, often combined with some credit services (lending) and sometimes other services. They include so-called "white label" ATM machines, prepaid credit cards, currency exchanges, crypto-currency exchanges and businesses that transfer funds internationally, often for immigrants sending money home.

While there are many legitimate businesses providing these services, businesses providing money laundering services to criminals also provide the same services and undertake the same functions.

At present, MSBs are not regulated businesses in any province except Quebec. Quebec regulates them for market conduct reasons and enforces standards related to who can own and operate a MSB. MSBs are regulated in Quebec as part of a comprehensive financial regulatory framework that also covers other financial businesses, similar to the way the FICOM regulates a range of financial sector businesses under its jurisdiction.

FATF Recommendation 14 (see Appendix F) requires that MSBs be designated as reporting entities and included in the AML framework. Canada does this under the PCMLTFA. Because MSBs are not regulated across Canada, unlike all other reporting entities, the PCMLTFA establishes a registry for MSBs, which is in effect a regulatory regime. At present, over 800 MSBs are registered by FINTRAC, and MSBs are the largest source of suspicious transaction reports submitted to FINTRAC. However, regulation of financial businesses is not FINTRAC's core mission, and concerns have been raised about the effectiveness of the FINTRAC registry as a regulatory regime.

New Tool:
Regulating MSBs would regulate significant money laundering activities

Having a positive requirement for MSBs to apply for and be granted a business authorization in a province could serve several useful purposes. Licensed MSBs undertaking money laundering are susceptible to detection by an active regulator with effective investigative resources. Money laundering businesses operating without licensing would also be susceptible to being detected. Either way, a MSB regulatory regime could provide significant administrative and provincial offence sanctions that could be utilized, regardless of whether a criminal case can be developed and successfully prosecuted.

There are valid consumer protection reasons for regulating the market conduct of MSBs as well. Regulation of MSBs would fill a significant gap in the existing provincial financial regulatory system.

It would make the most sense for such a regulatory regime to be operated by FICOM, broadening its view of activities across the entire financial sector. Using FICOM as the MSB regulator would also ensure that the specialized financial investigation unit proposed in Recommendation 26 would be applied to MSB-related investigations. The Panel recognizes that creation of a new regulatory regime imposes costs on regulators and regulated business alike, and that other added responsibilities are being proposed for FICOM, which will be disruptive.

Recognition within the PCMLTFA of the fact that MSBs in BC will be regulated by a BC regulator would help to reduce unnecessary regulatory overlap. All BC MSBs should be reporting entities, but there should not be a requirement to register federally if regulated provincially.

Recommendation 10

The BC government should consider developing a regulatory regime for money services businesses to be operated by the Financial Institutions Commission.

Unexplained Wealth Orders

In 2017 the UK government introduced Unexplained Wealth Orders as a mechanism to address money laundering in cases where it is not possible to tie assets to a specific crime. An enforcement agency can apply to the high court for an Unexplained Wealth Order to confiscate property where three tests are met:

New Tool:
Unexplained Wealth Orders allow confiscation without finding the crime

- the person is a foreign politically exposed person (PEP) or there are reasonable grounds to suspect that the person is or has been involved in serious crime
- there is a clear discrepancy between their apparent legal income and their visible assets in the UK, and
- the value of the assets is greater than £50,000.

The onus is on the person to show that the source of the wealth is legitimate in order to avoid confiscation.

While Unexplained Wealth Orders are similar in principle to BC's civil forfeiture legislation, which allows proceeds of crime to be seized in a civil law proceeding, they are specifically focused on questionable sources of wealth.

In BC, Unexplained Wealth Orders could apply beyond cases of money laundering to address money that may not be specifically associated with a crime. For example, it could apply in cases where a person, especially a PEP, may be moving wealth to a safe haven such as BC and would rather not reveal the source of funds because of requirements in their home country, even though there is no crime recognizable in Canada involved. It should be noted that Unexplained Wealth Orders would deter the use of BC as a safe haven even for people hiding wealth from legitimate sources.

Unexplained Wealth Orders are also a useful tool in cases where the difficulty of gathering evidence in a foreign jurisdiction effectively precludes a criminal prosecution or the use of civil forfeiture.

Recommendation 11

The BC government should consider introducing Unexplained Wealth Orders in BC.

Oversight of provincial regulators

One of the recommendations in the Perrin Report is that consideration should be given to supervisory and accountability mechanisms for regulators. Common standards of regulation

would help ensure that all regulators maintain rigorous practice levels and improve their ability to cooperate and collaborate.

The UK has such oversight bodies for self-regulatory organizations in the health and professional sectors. The use of self-regulatory organizations has been debated around the world. On one hand, they can be highly motivated to hold their profession to a high standard to prevent issues arising that would bring the profession into disrepute. They also have the advantage of detailed knowledge about the industry and its business models. On the other hand, there are concerns about regulatory capture and a potential tendency in some cases to downplay problems that do arise to protect the reputation of the profession. It was lack of trust of the Real Estate Council of BC in 2016, then a self-regulatory organization, that led to changes in how real estate regulation is structured.

The 2018 Standing Committee on Finance report recommends an oversight body for professional self-regulatory organizations (see recommendation 6 in Appendix E). Such an approach might help ensure the competence and effectiveness of government regulators as well, requiring them to meet overarching standards related to regulatory practice.

Recommendation 12

> The BC government should consider options for setting regulatory practice standards for all government regulators, including both self-regulatory organizations and other regulatory authorities, and for holding regulators to account for operating in accordance with established standards.

Federal Anti-Money Laundering Legislation and Practice

New Tool:
Integrate regulators into the national AML framework

The PCMLTFA creates the core federal legal framework to combat money laundering and terrorist financing, including establishing FINTRAC as Canada's financial investigation unit and the agency charged with administering the legislation.

Standing Committee on Finance report

The PCMLTFA must be reviewed every five years. The most recent review was undertaken by the Standing Committee on Finance, which released its report in November 2018.[55] Appendix E provides a list of the recommendations contained in that report.

The federal government's response to the report was released on February 21, 2019.[56] It indicates support for many of the recommendations, with a few caveats related to practical difficulties with specific recommendations or concerns that some recommendations are not consistent with the principles and legal framework within which the PCMLTFA was created.

55 Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward* (Government of Canada, 2018), http://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf.

56 Government of Canada, "Government Response to the Twenty-Fourth Report of the Standing Committee on Finance" (2019), https://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/report-24/response-8512-421-468.

The Panel also generally endorses the recommendations made by the Standing Committee on Finance and suggests that the BC Minister of Finance encourage her federal counterpart to implement as many of the recommendations as possible.

However, there are two specific aspects of the recommendations that the Panel does not fully agree with:

- Recommendation 1 – The Panel believes that any beneficial ownership registry should, like the *Land Ownership and Transparency Registry Act*, be transparent, public and easily accessible, consistent with best practices, rather than access being limited to law enforcement and regulators as the Committee recommends;
- Recommendation 9 – The list of additional reporting entities to be added under the PCMLTFA should not be limited to mortgage insurers and land registry and title insurers, as the Committee recommends, but should be expanded, as set out in Recommendation 13, below.

Integrating FINTRAC with an improved regulatory regime

The Panel heard from FINTRAC, regulators and organizations representing players in the real estate sector about the PCMLTFA and how it is implemented by FINTRAC. In summary, the Panel concluded that changes to the PCMLTFA and FINTRAC operational practices are required to make the regulation of real estate sector players more effective in fighting money laundering.

The Panel considered several areas in relation to PCMLTFA amendments and changes to FINTRAC practice, including:

- the reporting entities designated under PCMLTFA
- the legal profession AML regime under PCMLTA
- beneficial ownership due diligence and the 25 percent ownership threshold in PCMLTFA
- sharing of information by FINTRAC under PCMLTFA
- the ability to get additional information from FINTRAC under PCMLTFA
- FINTRAC practices related to feedback and reporting of general intelligence and statistical information
- FINTRAC compliance enforcement practices
- FINTRAC practices related to suspicious transaction report information collected.

The Standing Committee on Finance recommended that the PCMLTFA designate mortgage insurers and land registry and title insurance companies as reporting entities. As illustrated in the earlier analysis of the regulatory/AML system, there are other important players in real estate that also have an opportunity to detect suspicious transactions. Most important among these are mortgage lenders and mortgage intermediaries (brokers), which should also be better regulated for market conduct purposes, as discussed below.

Recommendation 13

The BC Minister of Finance should recommend to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* be amended to add mortgage lenders

and mortgage intermediaries to the list of reporting entities, in addition to the entities recommended by the Standing Committee on Finance.

Members of the legal profession are not reporting entities under the PCMLTFA because of a Supreme Court of Canada decision. As a result, Canada's AML regime does not comply with FATF recommendations, and the 2016 mutual evaluation report indicated that this is a significant loophole in Canada's AML framework.

The BC Law Society has put in place rules and practices to improve its members' AML activities; it also intends to be the first provincial law society to adopt additional model rules recently passed by the Federation of Canadian Law Societies. Nevertheless, legal professionals will still not have a positive obligation to report suspicious transactions to anyone.

Given the investigatory powers that law societies have, their ability to use those powers without violating solicitor-client privilege and the importance of including the legal profession within the AML framework, an alternative would be to require legal professionals to report suspicious transactions to their professional regulatory body, the law society in each province. This could be done, for example, by putting the obligation to report to the appropriate law society within the PCMLTFA, with appropriate limitations on the law societies' ability to use that information in investigations, analogous to the obligations placed on FINTRAC.

Where a lawyer properly reports a suspicious transaction and withdraws from representing the client, as required by law society rules, the law society would not be able to take action or share the information. But where the suspicious transaction report (STR) provides reasonable grounds to investigate another lawyer who did not report or withdraw, it could become clear that solicitor-client privilege does not apply, in which case there could be further investigation and information sharing by the law society. If implemented, law societies should be required to report statistical information about STRs to FINTRAC, to combine with information about STRs submitted by reporting entities.

New Tool:
Lawyers to report suspicious transactions to the Law Society

Recommendation 14

The BC Minister of Finance should suggest that her federal counterpart consider incorporating legal professionals in the anti-money laundering framework by requiring them to report suspicious transactions to the appropriate law society under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Under the PCMLTFA regulations, financial institutions, securities dealers, life insurance companies and brokers, and money services businesses must verify the beneficial ownership associated with accounts and transactions that must be reported. The beneficial ownership verification requirement does not apply to real estate brokers or to developers. Especially with the creation of the Land Ownership and Transparency Registry, looking beyond legal ownership to beneficial ownership related to real estate transactions seems to be a reasonable know-your-customer (KYC) requirement, given concerns about money laundering in real estate. It would also make sense to extend that requirement to any additional real estate-related businesses to which the PCMLTFA requirements are extended.

The threshold for disclosure of beneficial ownership under the PCMLTFA and its regulations is 25 percent ownership by one individual. The best practice is a 10 percent ownership threshold, consistent with securities regulation standards.

Recommendation 15

> The BC Minister of Finance should suggest to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* be amended to require reporting entities in the real estate sector to conduct know-your-customer due diligence on beneficial ownership, as is required for several other types of reporting entities, and that the disclosure threshold for a beneficial ownership interest held by an individual be reduced from 25 percent to 10 percent.

FINTRAC's ability to share information gathered under the PCMLTFA is carefully limited to balance two considerations. The first is the right of people to be secure against unreasonable search and seizure, set out in Section 8 of the *Charter of Rights and Freedoms*. The second is FINTRAC's core mission of collecting and disseminating information to facilitate investigation of money laundering and terrorist financing activity. In particular, FINTRAC's core purpose is to collect information on suspicious transactions and financial flows and to determine whether the information gives rise to a reasonable suspicion that can be appropriately shared with law enforcement agencies, federal agencies such as the Canada Revenue Agency, and designated regulators.[57]

To maintain this balance, FINTRAC's mandate explicitly excludes investigation, which is the mandate of law enforcement and regulatory agencies with which FINTRAC has authority to share information. As a result, the information that is shared is quite limited, the threshold for sharing information is relatively high and the group of agencies with which the information may be shared is narrow. FINTRAC is also restricted in seeking additional information from reporting entities.

Together, these limitations are not consistent with FATF recommendations or International AML best practices. FINTRAC should be authorized to undertake more intelligence analysis and disseminate it to designated recipients, in a way that is compliant with the *Charter of Rights and Freedoms* and consistent with Canadian cultural norms.

In particular, effective use of regulators as part of the AML system, by enabling them to take AML actions beyond prosecution for money laundering as a crime, requires access to suspicious transaction report information. There should be a mechanism for disseminating FINTRAC intelligence to regulators and AML investigative agencies regarding transactions and patterns that meet the standard for disclosure. Securities regulators are already authorized recipients of FINTRAC information.

Recommendation 16

> The BC Minister of Finance should recommend to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* be amended to authorize FINTRAC to provide information to specified provincial regulators and anti-money laundering investigative agencies.

57 Section 55 (3) of the PCMLTFA provides for disclosure of information by FINTRAC if it "has reasonable grounds to suspect that designated information would be relevant to investigating or prosecuting a money laundering offence."

It is difficult for law enforcement and other AML agencies to get full information from FINTRAC about transactions that have been reported. FINTRAC discloses minimal information when it finds that the standard for dissemination of information has been met. The PCMLTFA specifically prohibits a search warrant from being directed at FINTRAC. However, there is a process whereby the Attorney General of Canada can seek judicial authorization for specific agencies to get additional information from FINTRAC, as set out in sections 60, 60.1 and 60.3 of the Act.

Given the requirement for judicial approval and the process set out in the Act, it would be beneficial to expand these processes to authorize more AML agencies to access this process.

Recommendation 17

> The BC Minister of Finance should recommend to her federal counterpart that the list of agencies in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* for which judicially authorized disclosure of additional FINTRAC information can be sought be expanded.

The PCMLTFA permits FINTRAC to provide feedback to reporting entities and to disclose general intelligence and statistics about money laundering, provided the confidentiality of its information on specific transactions is not compromised. Reporting entities do not feel that they generally get effective feedback, especially in terms of the typologies of money laundering constructions that they should be looking for. FINTRAC also reports little publicly that would help the public and policy makers understand the risk imposed by money laundering, the nature of money laundering or the effectiveness of AML activities.

Recommendation 18

> The BC Minister of Finance should recommend to her federal counterpart that FINTRAC enhance:
>
> - the level of feedback provided to reporting entities about the quality of their reporting and the typology of money laundering constructions that may be suspicious, and
> - the reporting of intelligence and statistics to better inform the public about the nature and extent of money laundering and the effectiveness of the full range of efforts to combat it.

Improvement: ***FINTRAC to report fully on all AML activity, not just STRs and resulting convictions***

As discussed in "International AML Best Practices" in Chapter 3: International Anti-Money Laundering Practices, as the sole agency responsible for reporting entity compliance, with due diligence, reporting and compliance policy requirements imposed by the PCMLTFA, FINTRAC is in the minority among financial intelligence units. In other countries, sole FIU responsibility for compliance usually indicates that the regulators of reporting entities either do not exist or cannot be trusted.

While a wholesale change to the compliance enforcement model would be disruptive and may have adverse unintended consequences, there is an opportunity to introduce some sharing of compliance enforcement responsibility. That could be accomplished by requiring, in addition to FINTRAC, each regulator of reporting entities to enforce compliance with PCMLTFA requirements as part of its regulatory due diligence.

Several non-financial institution industry groups representing reporting entities reported that FINTRAC's lack of understanding of their businesses and business models has resulted in poor

compliance by some of their members. A shared compliance enforcement model could address that issue and contribute to higher rates of suspicious transaction reporting. Use of regulatory agencies who better understand the specific industries could enable the regulators to provide better education and training tailored to the specific industry, and to better enforce compliance of the industry members.

Recommendation 19

> The BC government should require BC regulators of reporting entities to enforce compliance with *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* requirements and provide training and education to assist them in doing so, in cooperation with FINTRAC.

It is also important that FINTRAC develop education, training, and reporting processes, methods and requirements that reflect the realities of the different industries that are obligated to report. For example, one comment made to the Panel was "Why can't we have an app for reporting?" This reflects the reality that people who conduct their business primarily not from an office do so using smartphones and laptops. Suspicious transaction reporting compliance would likely be improved if it were easier to do within their business model.

Recommendation 20

> The BC Minister of Finance should recommend to her federal counterpart that FINTRAC develop education, training, and reporting processes, methods, and requirements that reflect the realities of the different industries that are obligated to report.

FINTRAC STR reporting

The Panel asked FINTRAC to provide data on the number of suspicious transaction reports submitted to FINTRAC by province and type of reporting entity, and by whether the transactions involved real estate. The Panel also asked FINTRAC to report by country for international transactions.

FINTRAC was unable to provide information about STRs by country because that information is not included its database, although it is available on the individual reports.

FINTRAC did provide the other requested information, which is summarized in Figures 15, 16 and 17.

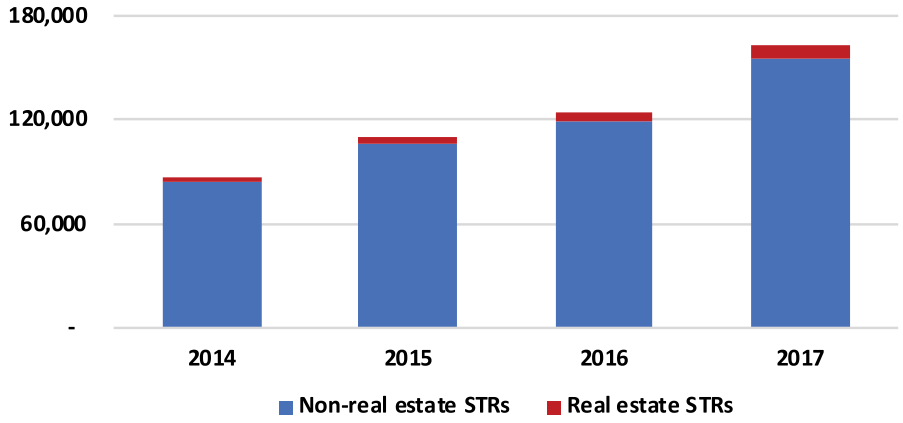
For the purposes of these figures, real estate STRs are defined as:

(a) STRs received from the real estate sector; or,

(b) STRs where the detail of funds involved in initiating the transaction is 'real estate'; or the disposition of funds is 'real estate purchase/deposit'; or the description of the suspicious activity contain at least one of the following keywords: 'paiement d'hypothèque','mortgage payment', 'mortgage down payment'.

Figure 15 shows that the number of STRs grew at an average annual rate of almost 25 percent over the period to over 160,000 in 2017. Of those, only about 4 percent were real estate STRs.

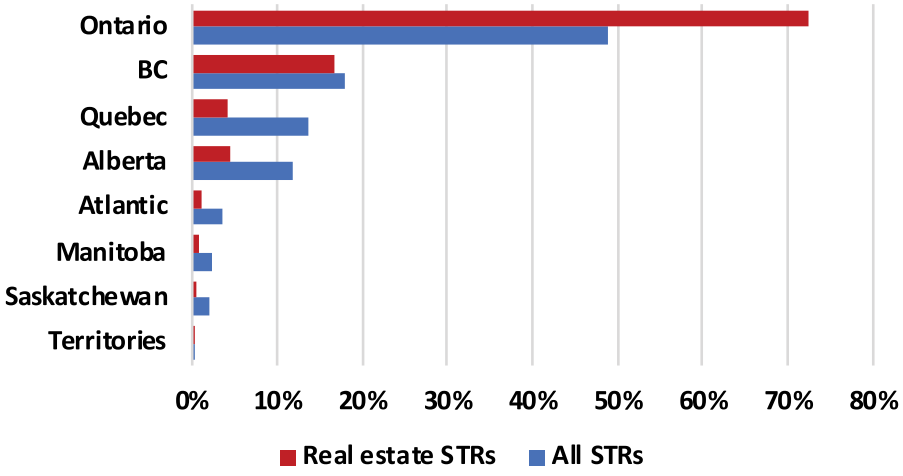
Figure 15: STRs by year, 2014–2017



Source: Calculated from data provided by FINTRAC, March 2019, published with permission.

As shown in Figure 16, Ontario accounts for more STRs submitted than any other province, about 50 percent in total and over 70 percent of real estate STRs. BC is second, with close to 20 percent of real estate and total STRs, greater than BC's share of GDP or population in Canada.

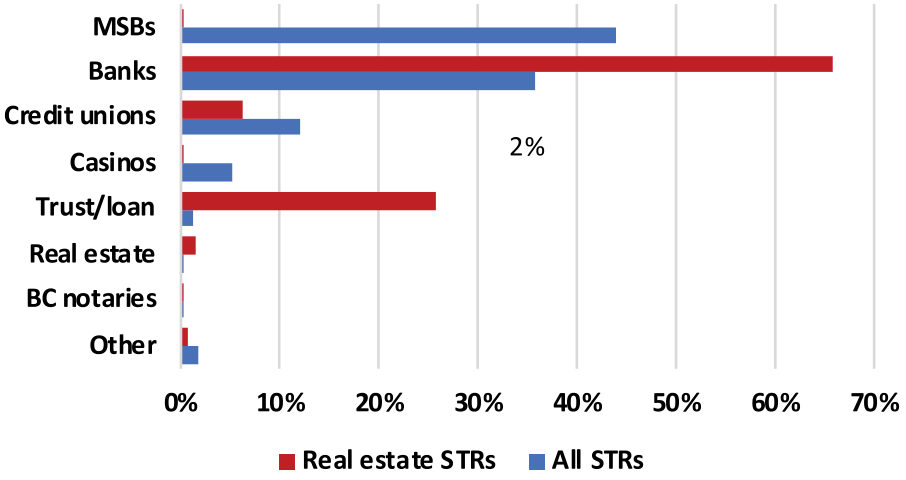
Figure 16: STRs by Province, 2014–2017



Source: Calculated from data provided by FINTRAC, March 2019, published with permission.

Over-reporting for Ontario real estate STRs arises because over 65 percent of real estate STRs reported by banks and almost 100 percent of real estate STRs reported by trust and loan companies are attributed to Ontario. This is probably explained by the fact that most trust and loan company and bank head offices are located in Toronto.

Figure 17: STRs by reporting entity, 2014–2017



Source: Calculated from data provided by FINTRAC, March 2019, published with permission.

Figure 17 shows that financial institutions (banks, credit unions, and trust and loan companies) account for 98 percent of real estate STRs. Money services businesses submit the largest number of STRs of any type of reporting entity, but almost no real estate STRs.

The Panel concluded that FINTRAC must improve the geographic data included in its database in order to permit better intelligence analysis of the threats and risks it faces. It also concluded that measures are required to improve STR reporting by the real estate industry and BC notaries. The same things that limit reporting by these entities will also apply to the additional reporting entities the Panel recommends.

Both the location of the activity within Canada associated with a suspicious transaction and the country involved with foreign transactions are basic and essential information that FINTRAC should have available for use in statistical analyses of STRs to help set priorities and to provide intelligence to AML agencies.

Recommendation 21

The BC Minister of Finance should recommend to her federal counterpart that FINTRAC collect information in suspicious transaction reports sufficient to analyze the geographic location of those transactions, including both the location within Canada where the transaction occurred and, where suspicious transactions have a foreign component, the countries involved.

Anti-money laundering mandates

The BC legislation that establishes regulatory regimes for the financial sector and related professions does not mention anti-money laundering activity as part of the mandate for regulators. Doing so would provide a solid basis for these regulators to use their regulatory authority to fight money laundering when they encounter it and to share information collected with others involved in AML efforts.

Providing a specific AML mandate to provincial regulators of PCMLTFA reporting entities would also be consistent with the recommendation that these regulators share responsibility to provide education and training related to, and enforce compliance with PCMLTFA requirements, in cooperation with FINTRAC.

New Tool:
Regulator AML mandates

Recommendation 22

The BC government should specifically add anti-money laundering to the mandates of relevant BC regulators, including the Real Estate Council of BC, the Office of the Superintendent of Real Estate, FICOM, the BC Securities Commission, the Society of Notaries Public of BC, the Law Society of BC and the Chartered Professional Accountants of BC.

Data-Sharing Framework

BC collects a significant amount of information about land. The Modified Torrens System for land title registry has created land ownership record that extends back to the establishment of private land ownership in the 19th century. The land registry is a government-guaranteed authoritative source for information about the legal ownership of, and charges against, privately held title to land in BC. BC also has a long-standing independent market-value-based property assessment system for property taxation that provides detailed information about property characteristics and values. Once implemented, LOTA will represent a significant enhancement to information on land by disclosing beneficial ownership.

Much of the information in all of these land data sources is public, although they also include information that for various reasons is not readily available to the public. The Panel received bulk data files of certain information from both the Land Title and Survey Authority and BC Assessment and combined the data for use in its quantitative research. However, some data is not readily available in bulk data form, such as the LTSA Form B, which reports mortgage details, because of the way the data is collected and stored.

Land data made available in a linked, constantly updated searchable database that is structured to make it easy to analyze would provide a powerful AML tool for regulators. It would be especially useful if, for example, it included mortgage detail information that is not as readily accessible as legal title ownership.

Such a database could be used for two purposes:

- analysis to inform public policy decisions, including allocating resources and setting operating priorities; and
- provision of information useful in specific investigations to trace linkages between properties, legal and beneficial owners, and actors in the financial and real estate industries.

This kind of tool could be extended in three ways:

- Other public-domain data sources (for example, court data) could also be accessed through the tool to make it even more effective.
- Agencies with additional proprietary data collected for specific purposes, such as tax administration and regulatory purposes, could combine their confidential data with the database of land and other public-domain information in a way that gives them direct access

to their information so it is more useful for analysis and investigation, while still maintaining the integrity of their confidentiality requirements.

- Data-sharing arrangements could be enhanced to the extent that is possible and appropriate among agencies to provide increased access to confidential data that has been collected for or is usable for AML purposes.

Beyond the use of public-domain data, proprietary confidential data and data that can be shared under agreements with other agencies, there is also confidential information that cannot be shared without a warrant or other judicial oversight. As discussed in "International AML Best Practices" Chapter 3: International Anti-Money Laundering Practices, there are technologies that allow agencies to determine where information that may be useful to an investigation may be held without either agency revealing confidential data, in order to seek authorization to access the data.

Taken all together, this represents a vision of a data framework within which regulators, law enforcement and other AML agencies would have consistent access to as much useful data as possible in a way that makes analysis and investigation more efficient and effective. It would also use data access and sharing as a basis for interagency cooperation and coordination.

It is beyond the scope of the Panel's work to determine the best institutional structure within which to establish this kind of data framework, or what data is available and how, with whom and under what circumstances it can be shared. However, this kind of data-sharing framework is a crucial element of a more comprehensive and coordinated approach to AML and to the regulation of the financial and real estate sectors. As such, it would also help to address market abuse.

Recommendation 23

The BC government should implement the principle of a data-sharing framework that provides each anti-money laundering agency with access to public-domain data, including land data, together with data that can be shared from other agencies, including federal agencies and agencies from other provinces as appropriate, and proprietary confidential data in a way that facilitates analysis and investigation.

Recommendation 24

The BC government should conduct a comprehensive review of data sharing and confidentiality related to anti-money laundering activities to ensure that the best use is made of government data in combatting money laundering and market manipulation while respecting privacy and confidentiality principles.

Mortgage lending data

The majority of mortgages are provided by federally or provincially regulated financial institutions. Most of these mortgages are subject to Office of the Superintendent of Financial Institutions rules about mortgage lending that include stress tests and minimum levels of equity to make mortgages eligible for mortgage insurance and to be securitized. Compliance with those rules, together with the fact that these financial institutions are reporting entities under PCMLTFA with required know-your-customer (KYC) due diligence, ensures that significant information is collected by these lenders about the borrower.

However, mortgage lending businesses that are not financial institutions are not subject to the same due diligence requirements. Also, for "equity lending" with low loan-to-value ratio mortgages, less due diligence is sometimes undertaken even by banks and other financial institutions regarding the source of funds to service the mortgage because that is not required for mortgage underwriting purposes.

One way to fill this gap would be to establish requirements on more mortgage lenders to conduct due diligence regarding:

- KYC, either under PCMLTFA or as an additional requirement for those not subject the Act; and
- source of funds to service the mortgage, regardless of the loan-to-value ratio.

This data would be collected and retained by the lender along with the information it already collects and would only be available to regulators in the course of their regulatory oversight. That would give law enforcement and regulators access to better information about mortgages from non-financial institution lenders with appropriate authorization, such as a warrant. It would also give regulators the ability to use regulatory action to enforce compliance, including both taking administrative action and pursuing provincial offences related to these requirements.

The development of specific requirements should take into account the compliance costs this type of requirement would place on lenders and borrowers.

Requirements for non-financial institution lenders to undertake due diligence in terms of source of funds could be part of the rewrite of the *Mortgage Brokers Act*. KYC due diligence could be imposed by the federal government designating more lenders as reporting entities under the PCMLTFA. In the meantime, KYC due diligence requirements could also be added in provincial regulatory requirements where PCMLTFA does not apply.

Recommendation 25

> The BC government should ensure that all those in the mortgage lending business should be required under provincial legislation to conduct and maintain know-your-customer records and records of the source of mortgage payment funds from borrowers, until such requirements are placed on mortgage lending businesses by the federal government.

Investigation and Collaboration

Enhanced access to and the ability to share information among the various agencies operating in the regulatory/AML system, including law enforcement and financial regulators, can assist in the investigation of money laundering and market abuse by providing tools that do not currently exist. However, two factors limit the effectiveness of improved access to information: lack of investigation capacity and coordination mechanisms, and the inability to share key information.

Enhancing investigation capacity

Investigative capacity across the regulatory/AML system is uneven, and there is a lack of coordinating mechanisms.

As Chapter 5: The Regulatory/Anti-Money Laundering System in Canada shows, federal and provincial AML activity cuts across a wide variety of organizations. All of these agencies, except

FINTRAC, were created to deal with other problems and have mandates focused on areas beyond AML. While there is synergy and overlap between fighting money laundering and regulating real estate agents, mortgage brokers, notaries and lawyers, there will always be silos devoted to specific actors. The question is, how can the efforts of a wide variety of agencies with a variety of mandates, authorities and investigative capacities best be coordinated to more effectively combat money laundering and abusive practices?

Regulatory action is easier to pursue than criminal prosecution because of less rigorous burden of proof and evidentiary requirements. The difficulties in prosecuting money laundering were described earlier in the report; they include the lack of sufficient police resources and financial investigative expertise, the complexity and international nature of the crimes, the difficulty in linking the money laundering to a specific predicate crime and the standard of proof and evidence required. Rather than digging all the way to the crime at the bottom of the money laundering rabbit hole, regulatory action can disrupt the activity on the surface, whether that is sidelining enablers, pursuing actions for unlicensed activity or lying on a LOTA filing, or pursuing civil forfeiture or an Unexplained Wealth Order.

There are two levels of regulatory action:

- One is administrative action, such as suspending or cancelling a licence or levying a relatively small fine, which is relatively easy to do from an evidentiary perspective but may have relatively small consequences.
- The other is pursuit of provincial civil offences in court, with more significant consequences. Provincial offences generally have evidentiary standards that are less onerous than criminal prosecutions but more onerous than administrative actions.

The ability to investigate money laundering in general and to prepare cases that can be used to pursue provincial offences in court in particular requires a level of investigative capacity in terms of resources and expertise that is not available to most regulatory agencies or law enforcement. That unevenness in investigative capacity is also a barrier to effective cooperation among regulatory agencies and with law enforcement. At present, the lack of capacity to investigate and prepare cases, and the lack of resources to bring the cases, means that few provincial offences are pursued.

> Although policing is beyond its mandate, the Panel notes that one of the reasons for the difficulty in prosecuting money laundering crimes in Canada is the lack of a stand-alone police unit with the skills and resources to investigate financial crimes, including money laundering, and therefore to make effective use of the suspicious transaction report information that is available from FINTRAC. Such a unit would be separate from and be required in addition to the financial investigation unit recommended below (see Recommendation 26).

A best practice identified earlier in the report is the FIOD, housed in the Dutch finance ministry. The FIOD is a combined regulatory investigative unit focused on financial malfeasance. Such a unit

in BC would be able to work effectively with a range of regulatory bodies, taking referrals from them and, where appropriate, providing them with information and law enforcement.

The objective would be to have sufficient investigative capacity to utilize the whole range of tools, including administrative action and prosecution of both provincial and criminal offences. On a case-by-case basis, the most effective set of actions could be determined and applied in a coordinated way by a variety of agencies using the fruits of an investigation, each using their own authority and additionally making use of their own proprietary information.

Such an investigative unit would be a hub in a coordinated approach, enhancing cooperation. Individual regulators would still have investigative capacity, but they could also access dedicated resources and capacity. There would be a multidisciplinary team, with legal, forensic accounting and database analysis skills as well as specialized skills in gathering and conserving evidence.

An investigation unit on its own could create another silo that could spawn competition among the various agencies and generate barriers to action. Effective coordination mechanisms are required to increase coordination generally and to ensure that the additional investigative resources are used to maximum effect through ongoing two-way communication and referral.

Recommendation 26

The BC Ministry of Finance should create a specialized, multidisciplinary financial investigations unit that can make effective use of the available information and provide the basis for use of administrative sanctions and prosecution of provincial and criminal offences.

New Tool:
Specialized, multi-disciplinary investigations unit

Recommendation 27

The BC Ministry of Finance should create institutional coordination mechanisms among the financial investigation unit and the various federal and provincial regulators and other agencies involved in the regulatory/anti-money laundering system.

New Tool:
Formal interagency coordination forums

Using the agency with the information

There are appropriate limitations on the sharing of confidential information that cannot and should not be breached. These include limits imposed by the *Charter of Rights and Freedoms*, privacy legislation and public acceptability of confidential information collected for one reason being used to enforce laws and regulatory requirements in a different administrative area. This includes strict limitations on the use of tax data.

These limitations on sharing information usually apply only in one direction. Tax authorities may not be able to share tax data with AML agencies, but those agencies may be able to share suspicions of money laundering with tax authorities. That is already common between law enforcement and the Canada Revenue Agency.

The role of lawyers is a particular concern in AML efforts because of the ability to use transactions involving lawyers as witting or unwitting enablers to disguise beneficial ownership behind the veil of solicitor-client privilege. This inhibits the ability of law enforcement and other investigative

agencies to gather information and evidence. However, as the regulator of the legal profession the Law Society of BC has strong powers to investigate individual lawyers' activities. Other agencies can share suspicions with the Law Society, which may prompt it to investigate. A Law Society investigation can result in many different outcomes, depending on the particular case, including ultimately sharing information and making referrals where solicitor-client privilege is determined not to apply.

Referrals of suspicions to the agency with the proprietary information and investigative authority to act already happens in practice, but not commonly enough. That should be a central principle of coordinating mechanisms, to ensure that limitations on information sharing do not prevent effective action against money laundering and market abuse.

Recommendation 28

> Coordination mechanisms should adopt the principle that investigations be referred to the agency best able to apply its own proprietary information and investigative powers to the case, including tax authorities and the Law Society of BC.

Involvement of Other Provinces

The Panel's estimate of money laundering activity suggests that money laundering activity in other provinces is in excess of $35 billion annually. Money laundering does the same type of damage to society in every other province as it does in BC, even if housing affordability is not currently a local issue. The impacts of money laundering on crime, social integrity and tax evasion are significant everywhere.

The Panel expects that the effect of its recommendations will be to more effectively detect, take enforcement action against and therefore deter money laundering in BC. If that is the case, it will shift some international and interprovincial inflows currently coming to BC to other jurisdictions. It will also encourage BC's domestic criminals to launder their money elsewhere.

If other provinces do not want to be the recipients of this redirected flow, they should also make AML efforts a priority and take similar measures to use regulatory mechanisms to fight money laundering. If this is done in a coordinated way, it will help to reduce money laundering across Canada.

Recommendation 29

> The BC Minster of Finance should make every effort to convince her provincial colleagues of the importance of making combatting money laundering a provincial priority and using provincial finance and real estate-related regulatory changes in coordination with federal and other provincial agencies to combat money laundering, consistent with the Panel's recommendations.

Money laundering is everywhere – other provinces must also take action

Conclusion: The Panel's Vision for an Effective AML System

The 29 recommendations outlined above represent the Panel's vision for an effective system to combat money laundering and control market abuse in real estate. The vision is that the fight against money laundering will be a priority across Canada, both federally and provincially.

The anti-money laundering (AML) system will include renewed criminal justice efforts supported by more effective intelligence from the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the regulators and actors involved in the real estate market.

More fundamentally, though, provincial regulatory efforts related to the financial and real estate sectors will be explicitly included as part of the AML system, bringing a full range of investigative and enforcement authorities to bear on money laundering. Improvements in several areas will enhance the effectiveness of regulators in terms of their core responsibilities and their ability to fight money laundering.

Public beneficial ownership disclosure for land and for legal persons, such as corporations, trusts and partnerships, will add valuable information that is vital in undertaking investigations. The combination of a wide range of publicly available relevant information within an investigatory toolkit and increased data sharing where possible will be essential. In particular, FINTRAC will be able to provide suspicious transaction information to regulators, as well as to law enforcement and designated federal agencies. Where crucial data cannot be shared – for example, by tax administrators and law societies – the investigation will be referred to the agency best able to conduct the investigation. The use of new technologies related to encryption will also make data sharing without violating confidentiality requirements easier.

The investigative functions throughout the regulatory domain will be better equipped to utilize the available information. Specialized investigative skills, targeted at the complex financial constructions encountered in AML activities, will be utilized. Institutionalized coordination mechanisms will ensure that all of the available resources can be utilized, and that the agencies are able to work together efficiently and effectively.

The regulatory framework for real estate will also be more effective in dealing with market abuse, not only because of better information and investigation, but also because the framework itself will be more complete. Current gaps related to mortgage lenders, developers and possibly others will be plugged. Requiring all these real estate sector entities to report suspicious transactions to FINTRAC will also help, especially with better education and training to ensure that the quality of suspicious transaction reports is high.

Will money laundering be eliminated? No. Criminals will always exist. But more money laundering will be detected, more enforcement action will be taken and, as long as AML efforts remain a priority, some money laundering will be deterred. Market abuse will also be reduced. British Columbia and Canada will no longer be attractive places for money laundering, stemming but not eliminating the international flow into BC. Domestic proceeds of crime will be encouraged to flow elsewhere. With all provinces treating combatting money laundering as a priority, they will avoid those monies flowing to another province.

Will housing become more affordable? Will the already softening real estate market be subject to further downward pressure? If the result of improving the regulatory/AML system is that money laundering flows are redirected outside of BC, housing demand and therefore house prices will be reduced to some extent. The effect will differ depending on the type and location of the property. But no single recommended measure will have a large, immediate impact across the whole market. The measures recommended will take time and resources to implement, making change gradual. Other market forces will have a much greater impact on housing prices than the Panel's recommendations in the short term, but there will be a long-term modest improvement in housing affordability.

Improving housing affordability is an important benefit of reducing money laundering activity, but clearly not the only benefit. Money laundering damages society in many negative ways including its corruptive contagion, facilitation of crime, including drug crimes and their associated violence, and the association between money laundering and tax evasion. To make the Panel's vision a reality, a strong government response is urgently required.

More agencies directly involved + regulatory improvements + new tools + more data + better investigation & coordination = less money laundering

Appendix A: Panel Terms of Reference

Ministry of Finance's Terms of Reference: Expert Panel on Money Laundering in Real Estate

The Government of British Columbia is committed to tackling speculation, fraud and money laundering in real estate to ensure the housing market works for people.

A fair, secure and affordable real estate market is dependent on government acting to regulate the industry and boldly taking on issues of speculation, fraud and money laundering.

The Minister of Finance has announced the appointment of an independent chair and expert panel to lead a review of systemic money laundering risks in the real estate market.

This review is designed to uncover the nature, and if possible, the extent of money laundering in real estate and make improvements to market manipulation and abuse policies, procedures and practices within the broader real estate industry in British Columbia.

The experts will:

- Consider B.C.'s existing legislative framework and financial oversight:
  - Identify gaps in B.C. legislation with respect to the impact of foreign investment and money laundering in B.C. real estate;
  - Review the compliance regime, with a focus on integrity of the system and public confidence; and
  - Evaluate work underway or completed by the provincial government that may address some of these systemic challenges.
- Review best practices adopted by other jurisdictions.
- Provide recommendations on:
  - Prevention of market manipulation and abuse;
  - Monitoring and reporting on activities of the real estate market and regulators;
  - Aligning federal policy and enforcement with B.C.'s regime; and
  - Improving standards in financial services.

In order to complete this review, the independent panel may meet with any individual or organization that will assist in addressing the areas of review.

The outcome the Province expects from the work of the expert panel is next steps to ensure a world-class standard in the oversight and compliance of anti-money laundering policy in general.

The Minister of Finance is responsible for regulating the province's financial and real estate sectors (including overseeing the Office of the Superintendent of Real Estate) and representing the Province in negotiations with the federal Minister of Finance, who is responsible for Canada's anti-money laundering/anti-terrorist financing regime.

Appendix B: Key Definitions, Abbreviations, and Organizations

Key Definitions

beneficial owner: the natural person (individual) who ultimately enjoys the benefits of ownership of property

legal owner: the legal or registered owner of property, which may be an individual, corporation, partnership or trust

legal person: a corporation, partnership or trust that is not an individual and that is able to own property

natural person: an individual

reporting entity: a regulated entity, either a financial institution, MSB or DNFBP, that is required to report suspicious transactions to an FIU such as FINTRAC

Key Abbreviations

AML – anti-money laundering: efforts to prevent, identify, investigate and prosecute or take other action against money laundering

CDD – customer due diligence (also known as know your customer): rules that require businesses to undertake due diligence to indemnify their clients and their business interests

DNFBP – designated non-financial business or profession: a reporting entity that is not a financial institution, such as real estate broker, mortgage broker, lawyer, accountant or notary public

FIU – Financial Intelligence Unit: a government agency responsible for collecting and disseminating STRs and other information and intelligence related to money laundering and terrorist financing

KYC – know your customer (also known as customer due diligence): rules that require businesses to undertake due diligence to identify their clients and their business interests

LOTA – *Land Ownership Transparency Act*: BC legislation creating a registry of the beneficial ownership of land

MBA – *Mortgage Broker Act*: BC legislation regulating mortgage lending

MFC – Mortgage finance corporations, also known as monoline lenders, who are in the business of mortgage lending but are generally unregulated

MIC – Mortgage investment corporation: lenders in the business of mortgage lending, generally regulated under the MBA

MSB – money services business: a business providing payment and money transfer services, including currency exchange, crypto-currency exchange, white label ATM, pre-paid credit cards, pay-day loans and similar businesses

PEP – politically exposed person: a domestic or foreign individual who is or has been entrusted with prominent public functions, and their family members and close associates, who are given additional consideration under KYC to determine if they are at risk of being corrupt

PCMLTFA – *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*: federal AML legislation

REDMA – *Real Estate Development Marketing Act*: BC legislation regulating the sale of real estate developments

RESA – *Real Estate Services Act*: BC legislation regulating real estate activities

SRO – self-regulatory organization: a government-mandated regulator of a profession or industry that is governed and controlled by the regulated group

STR – suspicious transaction report: a suspicious transaction report is submitted to FINTRAC in respect of a financial transaction that occurs or is attempted, and for which there are reasonable grounds to suspect that the transaction in related to the commission or attempted commission of a money laundering or terrorist activity financing offence – unlike all other reporting obligations, there is no monetary threshold associated with the reporting of a suspicious transaction[58]

Key Organizations

BC Assessment (BCA): the independent authority established to maintain BC's property assessment system for property taxation purposes

BC Securities Commission (BCSC): the BC regulator of securities activities

Canada Mortgage and Housing Corporation (CMHC): a federal Crown corporation providing mortgage insurance and financing for affordable housing

Canada Revenue Agency (CRA): the agency responsible for administering federal tax statutes in Canada

Canadian Border Services Agency (CBSA): responsible for the flow of goods and people across Canada's borders

Canadian Security Intelligence Service (CSIS): Canada's national security intelligence agency

Condo and Strata Assignment Integrity Register (CSAIR): a registry of the assignment of condominium pre-sale purchase agreements for tax administration and AML purposes

Federal Serious and Organized Crime (FSOC): an RCMP unit that investigates serious crimes

Financial Action Task Force (FATF): the international G7-led body responsible for anti-money laundering and terrorist financing standards internationally

Financial Institutions Commission (FICOM): a BC financial sector regulator

Financial Transaction Reporting and Analysis Centre (FINTRAC): federal financial intelligence unit

Fiscale Inlichtingen- en Opsporingsdienst (FIOD): the criminal investigation service of the Tax and Customs Administration in the Netherlands

58 Definition provided by FINTRAC

Land Title and Survey Authority (LTSA): the independent authority that operates and maintains the land title registry and the Condo and Strata Assignment Integrity Register, and that will operate the *Land Ownership Transparency Act* registry, among other things

Office of the Superintendent of Financial Institutions (OSFI): federal financial sector regulator

Office of the Superintendent of Real Estate (OSRE): BC regulator responsible for overseeing RECBC and unlicensed real estate activity

Real Estate Council of BC (RECBC): regulator responsible for real estate licensees

Royal Canadian Mounted Police (RCMP): Canada's national police service, which also provides provincial and some municipal police services in BC

Appendix C: Participants

The Panel met with representatives of and/or received submissions from the following organizations.

BC Government Agencies

- BC Assessment
- BC Housing
- BC Lottery Corporation
- BC Prosecution Service
- BC Securities Commission
- Financial Institutions Commission
- Land Title and Survey Authority
- Office of the Superintendent of Real Estate
- Real Estate Council of BC

Self-Regulatory Organizations

- Law Society of BC
- Society of Notaries Public of BC

Federal Agencies

- Bank of Canada
- Canada Mortgage and Housing Corporation
- Canada Revenue Agency
- Department of Finance
- Financial Transaction Reporting and Analysis Centre
- Public Prosecution Service of Canada
- Royal Canadian Mounted Police
- Statistics Canada

Industry Groups

- BC Real Estate Association
- Fraser Valley Real Estate Board
- Greater Vancouver Real Estate Board
- Urban Development Institute
- Mortgage Brokers Association
- Vancity
- Home Builders Association of BC
- Business Council of BC

The Panel also received 275 submissions through its public engagement website.

Appendix D: Panel's Letter on LOTA

Expert Panel on Anti-Money Laundering in BC Real Estate

Professor Maureen Maloney *Professor Tsur Somerville* *Professor Brigitte Unger*

January 24, 2019

Honourable Carole James
Minister of Finance and Deputy Premier
PO BOX 9048 STN PROV GOVT
Victoria BC V8W 9E2

Dear Minister,

I am writing to follow-up from your meeting with the three members of the Expert Panel on Anti-Money Laundering in BC Real Estate on January 16, 2019, at which we indicated that one of the areas the Panel is pursuing is best practices in beneficial ownership disclosure.

Our work to date has indicated that the disclosure of the beneficial ownership of real estate is one of the most important measures of a regulatory nature that can be taken to combat money laundering in real estate. Such disclosure is also important to combat tax avoidance and evasion. Without it, the actual ownership can be easily and effectively obscured by using a corporation or a trust.

The BC government was the first government in Canada to commit to creating a beneficial ownership disclosure registry for land and released a discussion paper in the Fall of 2018 that included draft legislation for consultation. We understand that preparation of the final legislation is nearing completion but that any recommendations from the Panel would be given consideration.

Best Practices

The Tax Justice Network, a non-governmental organization, has proposed best practices based on a review of real estate beneficial ownership disclosure in 112 countries.[1] Using this work, the Panel supports the following best practice standards:

- The registry should be public, available in an open data format and available for free or at a minimal cost;
- Registry disclosures should be updated whenever there is a change in beneficial ownership, whenever a transfer is made and at least annually;

[1] Financial Secrecy Index Methodology, Chapter 3,4 Other Wealth, Tax Justice Network, June 2018 https://www.financialsecrecyindex.com/PDF/FSI-Methodology.pdf

- The registry should apply to all "legal vehicles" that can own real estate (anything other than a natural person);
- There should be full disclosure of the ownership chain up to the natural person(s) (individual) who is the ultimate beneficial owner;
- For companies, the ownership threshold for reporting should be no greater than 10% - that is if any person owns 10% or more of shares, the company would be required to report;
- For trusts, beneficial owners should include settlor, beneficiaries, protectors and other parties to the trust;
- There should be a signed declaration that no legal vehicle in the ownership chain has issued bearer shares;
- Beneficial ownership disclosure should include the nationality and residence of both beneficial owners and legal owners; and
- Information on the beneficial ownership registry should be cross-checked against relevant information held by tax authorities, corporate registries, the country's Financial Intelligence Unit (i.e. FINTRAC in Canada) and any other relevant regulatory authorities, with the cross-checking done by the regulators.

Comparison of LOTA to Best Practices

In our final report, the Panel will include a comprehensive analysis of the most recently available public version of LOTA available using best practices. In the meantime, we have compared the consultation draft of the legislation against the best practices described above.

Our analysis indicates that the public consultation draft of LOTA is almost fully consistent with these best practices. In particular, LOTA will be a public registry, it will cover all legal vehicles and require disclosure of the ownership chain to the point where the individuals who are the ultimate beneficial owners can be identified. It will require ongoing updating of the information and land transfers will not be accepted without completed LOTA disclosure. These are among the most important best practices.

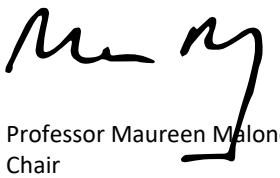
Recommendations

One difference from the best practices is that the threshold for disclosure by a company is a shareholder owning 25% or more of the shares. The 25% threshold is equal to the threshold recommended by the Financial Action Task Force (FATF), the agency that establishes international anti-money laundering standards. The Panel believes that in many cases control of a corporation can be exercised by a shareholder owning much less than 25% of shares, and notes that it would take only 4 people to conspire to avoid disclosure in LOTA. **Therefore, the Panel recommends that the threshold in LOTA be reduced from 25% to 10% of shares.**

The draft LOTA also requires that the Land Title and Survey Authority (LTSA), which will operate LOTA in conjunction with the Land Title Registry, enforce compliance and conduct the cross-checks described in the best practices. LTSA is not a regulatory body and does not have access to the information needed to undertake those cross-checks. **Therefore, the Panel recommends that LOTA clarify that external agencies including tax authorities, FINTRAC and regulators be enabled to undertake cross-checks through full access to the information and to take appropriate action when discrepancies are found.**

Thank you for the opportunity to contribute to the development of this important legislation.

Sincerely,



Professor Maureen Maloney
Chair

Appendix E: Recommendations from the Report of the Standing Committee on Finance[59]

Chapter 1 Recommendations

Recommendation 1

That the Government of Canada work with the provinces and territories to create a pan-Canadian beneficial ownership registry for all legal persons and entities, including trusts, who have significant control which is defined as those having at least 25 percent of total share ownership or voting rights.

- Such a registry should include details such as names, addresses, dates of birth and nationalities of individuals with significant control.
- The registry should not be publicly accessible, but it can be accessed by certain law enforcement authorities, the Canada Revenue Agency, Canadian Border Services Agency, FINTRAC, authorized reporting entities and other public authorities.
- To ensure that the registry is accurate and properly performing its function, it should have the capability to follow up on information submitted to it.
- The registry should take into account the best practices and lessons learned from other jurisdictions. In particular, the Committee was interested in the United Kingdom's dual system of registration, which can be done through a legal professional or through direct online registration, as seen in the U.K.'s Companies House.
- Authorities should be granted appropriate powers to apply proportionate and dissuasive sanctions for failure to fully comply in the prescribed time frame.
- Beneficial owners of foreign companies that own property in Canada should be included in such a registry.
- That subject to Canadian law, requests by foreign governments for information sharing under a Canadian beneficial ownership registry should be considered by the Government of Canada, in cases where tax treaties or other lawful agreements or protocols exist for potential or existing money laundering, terrorist financing or criminal activity.

Recommendation 2

That the Government of Canada review, refine, and clarify through training, the statutory definition of politically exposed persons (PEP). In particular, the notion of 'association with a PEP' under this definition creates ambiguity and inconsistency among institutions in regard to who exactly constitutes a PEP.

59 Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward* (Government of Canada, 2018), http://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf

Recommendation 3

That the Government of Canada move to a risk-based model of compliance for politically exposed persons, softening the requirements for those with transparent and unsuspicious financial portfolios.

Recommendation 4

Given that the legal professions in the U.K. are subject to the same AML/ATF reporting requirements as other reporting entities in all non-litigious work that is performed, the Government of Canada and the Federation of Law Societies should adopt a model similar to the U.K.'s Office of Professional Body Anti-Money Laundering Supervision.

The Government of Canada request Reference from the Supreme Court of Canada as to whether solicitor-client privilege exists when a client requests advice on how to either launder money or structure finances for the purposes of illegal activity.

Recommendation 5

That the Government of Canada bring the legal profession into the AML/ATF regime in a constitutionally compliant way with the goal of ensuring that the Canadian standards set by the PCMLTFA protect against money laundering and terrorist financing.

Recommendation 6

That the Government of Canada consider implementing a body similar to the U.K.'s Office of Professional Body Anti-Money Laundering Supervision with respect to Canadian self-regulated professions.

Recommendation 7

That the Government of Canada amend the PCMLTFA so that the armoured car and white label ATM sector be subject the AML/ATF regime, as is the case in the United States and the province of Quebec, respectively.

Recommendation 8

That the Government of Canada amend the PCMLTFA to require all reporting entities, including designated non-financial businesses and professions, such as the real estate sector (brokers and lenders), that are now exempt from the obligation of identifying beneficial ownership, to do the following:

- determine and verify the identity of the beneficial owners;
- determine if their customers are politically exposed persons, or if they are the family members or associates of politically exposed person;
- prohibit opening accounts or completing financial transactions until the beneficial owner has been identified and their identity verified with government-issued identification.

* Consideration of the above should also be applied to foreign beneficial owners.

Recommendation 9

That the Government of Canada amend the PCMLTFA to extend the requirements for real estate brokers, sales representatives and developers to mortgage insurers, land registry and title insurance companies.

Recommendation 10

That the Government of Canada make it a criminal offence for an entity or individual to structure transactions in a manner designated to avoid reporting requirements. These provisions would be modeled on Title 31 of U.S. code section 5324.

Recommendation 11

That the Government of Canada require companies selling luxury items to be subject to reporting requirements under the PCMLTFA and report large cash transactions to FINTRAC if those transactions are not already reported through other means.

Recommendation 12

That the Government of Canada amend Canadian privacy laws with the sole purpose of permitting security regulators to fully and appropriately examine the professional record of conduct of security dealers and their employees.

Recommendation 13

That the Government of Canada develop a national view of AML by partnering with provinces and territories to train local regulators on best practices in order to prevent securities firms from being overlooked.

Chapter 2 Recommendations

Recommendation 14

That the Government of Canada examine the U.S. Government's "third agency rule" for information sharing and determine whether this rule would assist in investigation / detection of money laundering and terrorist financing in Canada

Recommendation 15

That the Government of Canada expands FINTRAC's mandate to allow for:

- a greater focus on building actionable intelligence on money laundering and terrorist financing, akin to FinCEN in the United States, and provide FINTRAC with the necessary resources to effectively undertake the corresponding analysis;
- the retention of data for 15 years;
- an operational model to allow for two-way information sharing system (rather than strictly being an information gathering system);
  - FINTRAC should be able to share feedback, best practices and long-term trends, so that reporting entities can properly assist FINTRAC.
- the ability to request more information from specific reporting agencies to clarify reported suspicious activity or to build a stronger case before referring it to law enforcement;
- the ability to release aggregated data, subject to Canadian law, about a group of specific reporting agencies or a sector for statistical, academic or government purposes.

Recommendation 16

That the Government of Canada establish a round table partnership with industry leaders who are investing significantly in technology that more efficiently tracks suspicious activities and transactions, so as to promote best industry practices.

Recommendation 17

That the Government of Canada take steps to emulate the U.K.'s model of a Joint Money Laundering Intelligence Taskforce in Canada

Recommendation 18

That the government of Canada consider tabling legislation that would allow information that is limited to AML/ATF subject matter to be shared between federally regulated financial institutions such as banks and trust companies, provided that FINTRAC is notified upon each occurrence of such sharing.

Recommendation 19

That the Government of Canada implement the necessary requirements to banking to determine a "low-risk threshold" and establish exemptions to ensure the most vulnerable Canadians are not being denied a bank account due to lack of adequate identification.

Chapter 3 Recommendations

Recommendation 20

The Committee recommends, in recognizing the difficulty prosecutors have in laying money-laundering charges due to the complexity of linking money laundering to predicate offences, that the Government of Canada:

- bring forward *Criminal Code* and *Privacy Act* amendments in order to better facilitate money laundering investigations;
- any necessary resources be made available to law enforcement and prosecutors to pursue money-laundering and terrorism financing activities.

Recommendation 21

That the Government of Canada expand FINTRAC oversight to ensure that all casino operators, employees, and frontline gaming personnel are trained in anti- money laundering legislation.

Recommendation 22

That the Government of Canada establish an information sharing regime through FINTRAC and provincial gaming authorities to ensure more accurate and timely reporting.

Recommendation 23

That the Government of Canada amend the PCMLTFA to enable law enforcement agencies to utilize geographic targeting orders similar to those used in the United States.

- Federal, provincial, and territorial governments should collaborate to close the loophole regarding the transaction of sales between parties who are not subject to PCMLTFA reporting requirements, which creates vulnerability for money laundering to occur.

Recommendation 24

That the Government of Canada follow the example of the Netherlands, which gives holders of bearer shares – now prohibited – a fixed period of time to convert them into registered instruments before they are deemed void.

Chapter 4 Recommendations

Recommendation 25

That the Government of Canada regulate crypto-exchanges at the point that fiat currency is converted so as to establish these exchanges as money service businesses (MSB).

Recommendation 26

That the Government of Canada establish a regulatory regime for crypto-wallets so as to ensure that proper identification is required, and that true ownership of wallets is known to the exchanges and law enforcement bodies if needed.

- Ensure that bitcoin purchases of real estate and cash cards are properly tracked and subjected to AML regulation;
- Law enforcement bodies must be able to properly identify and track illegal crypto-wallet hacking and failures to report capital gains.

Recommendation 27

That the Government of Canada establish a license for crypto-exchanges in line with Canadian law, which includes an anti-money laundering program and look to the State of New York's program as a model for best practices.

Recommendation 28

That the Government of Canada consider prohibiting nominee shareholders. However, if nominee shareholders are permitted, they should be required to disclose their status upon the registration of the company and registered as nominees. Nominees should be licensed and subject to strict anti-money laundering obligations.

Recommendation 29

That the Government of Canada include clearer directions and streamline the reporting structure of Suspicious Transaction Reports, such as through the use of 'drop-down boxes,' to increase ease of use by specific reporting entities and ensure better compliance.

Recommendation 30

That the Government of Canada change the structure of FINTRAC's Suspicious Transaction Report to resemble the Suspicious Activity Reports used in the United Kingdom and the United States in order to focus on suspected violations rather than an arbitrary monetary threshold.

Recommendation 31

That the Government of Canada enhance the direct reporting system of casinos to FINTRAC through the suspicious transaction reports to include suspicious activities.

Recommendation 32

That the Government of Canada update reporting regulations for financial institutions to include bulk online purchasing of store gift cards or prepaid credit cards.

Appendix F: FATF Recommendations

The following is a brief summary of some of the Financial Action Task Force recommendations that are most relevant to the work of the Panel:

- **Recommendation 2 – National Cooperation and Coordination** – Countries should have national AML policies and ensure that policy makers and operational agencies including the FIU, law enforcement, regulators and other operational agencies with AML responsibilities have effective mechanisms for cooperation and coordination, including the exchange of information, consistent with data protection and privacy rules and similar provisions.
- **Recommendation 4 – Confiscation and Provisional Measures** – Countries should adopt measures that allow proceeds of crime and instruments of crime to be provisionally seized or frozen and ultimately confiscated, including measures that allow confiscation without a criminal conviction or which require an offender to demonstrate the lawful origin of property.
- **Recommendations 24 and 25 – Transparency and Beneficial Ownership of Legal Persons and Arrangements** – Countries should have accurate and timely information about the beneficial ownership of legal persons (e.g. corporations and partnerships) and legal arrangements (trusts) that is available to the FIU, law enforcement, regulators and reporting entities, and bearer shares should not be allowed to be used to disguise beneficial ownership.
- **Recommendation 29 – Financial Intelligence Units** – Countries should establish an FIU to receive suspicious transaction reports (STRs) and other relevant information, be able to obtain additional information from reporting entities and have access to financial, administrative and law enforcement information (i.e. relevant government databases).
- **Recommendations 20 and 23 – Suspicious Transactions Reports** – Financial institutions, MSBs and DNFBPs should be required to report suspicions that funds may be the proceeds of crime or related to terrorist financing to the FIU (i.e. be "reporting entities").
- **Recommendations 10 to 13, 22 and 23 – Customer Due Diligence –** Financial institutions, MSBs and DNFBPs be required to conduct sufficient customer due diligence to identify and verify the identity of the customer, identify and verify the identity of the beneficial owner, understand the business relationship and conduct ongoing due diligence to ensure transactions are consistent with expectations given knowledge of the customer and where necessary to identify the source of funds, and maintain records of transactions and customer due diligence activity.

- **Recommendation 18 – Internal Controls** – Financial institutions, MSBs and DNFBPs should be required to establish effective internal AML controls and systems.
- **Recommendation 26 – Regulation of Financial Institutions** – Financial institutions should be regulated by competent regulators with both a prudential and AML focus.
- **Recommendation 14 – Money or Value Transfer Services** – Businesses that provide money transfer and currency exchange services (Money Services Businesses (MSBs)) should be regulated and subject to AML requirements.
- **Recommendation 28 – Regulation and Supervision of DNFBPs –** Designated Non-Financial Businesses and Professions (DNFPBs) should be regulated to ensure compliance with AML standards along with regulation for market conduct and prudential purposes.
- **Recommendation 27 – Power of Supervisors** – regulators should have adequate power to supervise and ensure compliance with AML requirements.
- **Recommendation 30 – Responsibilities of Law Enforcement and Investigative Authorities** – There should be a designated law enforcement unit for money-laundering with dedicated multi-disciplinary groups specialized in financial investigations.
- **Recommendation 34 – Guidance and Feedback** – FIUs and regulators should establish guidelines for and provide feedback to reporting entities to assist them in AML activities, especially detecting and reporting suspicious transactions.
- **Recommendation 33 – Statistics** – Countries should maintain comprehensive AML statistics, including: STRs received and disseminated; investigations, prosecutions and convictions; property frozen, seized and confiscated; and international cooperation.

Appendix G: Estimating Money Laundering

By Professor Brigitte Unger with the support of Alexander van Saase and Joras Ferwerda

Estimating the Immeasurable

Money laundering is a largely secretive phenomenon. *The exact number of launderers that exist every year, how much money they launder in which countries and sectors, and which money laundering techniques they use is not known. Apart from recent spectacular media coverage such as the Panama Papers or large money laundering scandals around banks, money laundering remains largely in the dark.[60] It only comes to light when it is detected.

Money laundering can occur in many forms and, therefore, can appear in different economic transactions. Some examples include official figures and statistics such as in the capital balance as capital transfers or in the trade balance as over- or underpriced exports and imports using transfer-pricing methodologies. Other forms include "off book balance sheet: entries as:

- cash smuggled across borders,
- non-traceable intra- and intercompany transfers,
- in the real estate sector, a sudden increase in real estate purchases or flipping with unusual fluctuation in sales prices, and
- in the precious gemstone (particularly diamonds) industry, and in the natural resources sector (especially timber), a sudden increase in demand.

It can appear as unusual bank transactions, or as phone calls made between an underground banker in country A and an underground banker in country B who pays the money out in cash without it having to physically cross the border. Similarly, it can be done with shares as a "mirror trade." It can be in the shadow of the hidden economy and it can be disguised as fake transactions in the formal economy. The huge variety of ways in which money laundering can occur make it difficult to trace, even when the transactions are observed.

Some, like the Financial Action Task Force (FATF) in its 2005 report, suggest that the large variety of money laundering techniques makes it impossible to estimate laundering. However, there is a distinction between "measuring" and "estimating." Measuring money laundering is impossible, since shrouding the original source of funds is its fundamental characteristic. By its very nature, money laundering stays in the dark.

But estimating money laundering is not impossible. It is a challenge, but continued efforts to estimate money laundering are crucial to shed light on the magnitude of the problem. It is important to develop and improve estimation techniques over time, even if the estimates are subject to significant margins of error.

60 Examples include an 800 million Euro fine levied against ING bank for non-compliance with Dutch AML regulations in 2019, a 620 million Euro fine for Deutsche Bank, and the billions of Russian money being laundered through Danske Bank.

Ways of Estimating Money Laundering

Attempts to estimate money laundering began with the Financial Action Task Force's Working Group on Statistics and Methods report *Narcotics Money Laundering: Assessment of the Scale of the Problem* (1989), which noted the lack of reliable data to measure money laundering. In 1990, the European Union introduced its Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the FATF's *Forty Recommendations* on the prevention of money laundering were published. In 1995, AUSTRAC, the Australian Financial Intelligence Unit, commissioned *Estimates of the Extent of Money Laundering in Australia*, which led to Walker's (1995, 1999) efforts to apply economic models to quantifying money laundering worldwide. His model suggested $US 2.85 trillion in global money laundering.

The "Walker model" was heavily criticized. Criticism focused on the poor quality of the data and the methodology's reliance on "expert knowledge." However, it was generally conceded that expert knowledge was a reasonable approach so long as it was used only to fill in gaps in statistical evidence.

Rather than an economic model, criminologists used a different approach, constructing estimates of money laundering using financial data such as suspicious transaction reports (STRs) to construct aggregate amounts. But adding up the volume of STRs heavily underestimated money laundering (see for example Levi and Gold 1994).

In the Netherlands, criminologists studied criminal cases where property had been confiscated from criminals, related to money laundering (Meloen et al 2003). But while instructive, the 52 money laundering cases shown in the work of Meloen et al (2003) does not indicate what part they are of the total. Van Dunye (2006) argues that the approach of relying on observed offences also leads to a significant underestimation of the problem. The same problem affects estimates using police files. Surveys also suffer from biases related to representativeness, perception and aggregation (see Unger 2007).

Money laundering can also be estimated using proxy variables. Vito Tanzi (1997) used the difference between money supply and money circulating in the US economy in order to estimate money laundering. He estimated that US$5 billion per year was being taken out of the US in cash through the illegal drugs trade in 1984 and thus missing from the money supply. He warned that this creates a potential instability for the world financial system because of the possibility that these dollars could be exchanged for foreign currency, affecting exchange rates. However, his analysis just includes drug crimes and ignores other crimes, restricts itself to the money which leaves a country in cash, and does not take into account using the regular financial system or trade to transfer illicit funds.

Another way to measure money laundering is to use approaches from measuring the shadow economy. Shadow economy models, such as DYMIMIC (dynamic multiple-indicators multiple-causes), use two sets of observable variables and assumes that they are linked to the unobservable variable, the shadow economy or money laundering. One set of observable variables represent the causes (for the shadow economy or for money laundering) such as regulations, taxation and prosecutions. The other set of observable variables is called indicators and include the growing demand for money, less official growth and/or increases corruption and in crime rates. The assumption is that both are linked with money laundering. An increase in a cause variable

leads to less money laundering and to a decrease of the observed indicators. If, for example, money laundering prosecution increases by x percent, and the crime rate goes down by y percent, the model would conclude that money laundering has declined by z percent. The coefficients of the regression of causes and indicators (x and y) are used to estimate the unknown coefficient of money laundering (z). Schneider (2006) uses this approach to estimate the shadow economy for 145 countries and later for money laundering (Schneider, 2007).

One problem with this approach is that the choice of cause and indicator variables and the assigned "sign" of their coefficients – the assumed positive or negative relation with money laundering - is arbitrary and not reinforced theoretically.[61]

The DYMIMIC model uses factor analysis to determine how well the different cause variables explain the unobservable variable and those that can be grouped together. The same is then done for the indicator variables. This means statistics decide which indicators form the relevant bundle of causes of the shadow economy (or money laundering) and which are relevant for the parallel indicators of a shadow economy (or money laundering). Indicators are classified into sub-groups that are supposed to represent parts of the unobservable variable. But, again, statistics cannot replace theory. Nevertheless, the method identifies the variables that are highly correlated and measure the same part of the proxy variable, reducing redundancies in the choice of proxy variables.

Estimating Money Laundering with the 2% to 5% of GDP Formula

Multilateral organizations have also been engaged in determining ways to measure money laundering.

In 1998, the Managing Director of the International Monetary Fund (IMF), Michel Camdessus, stated in an address to the FATF that "2 to 5 percent of global GDP would probably be a consensus range," thus about $US 1.5 trillion of global annual money laundering at that time. No methodology underlying this estimate has ever been identified, even by academics doing intensive studies within the IMF (see Walker and Unger 2009).

In 2008, the International Monetary Fund (IMF) (2008) estimated that the magnitude of money laundering is about 3 to 5 percent of world GDP, but again without a clear well-documented methodology.

The UN provided similar benchmarks, again without detailed empirical support.

> The estimated amount of money laundered globally in one year is 2 to 5 percent of global GDP, or $800 billion–$2 trillion in current US dollars. Though the margin between those amounts is huge, even the lower estimate underlines the seriousness of the problem governments have pledged to address (United Nations Office of Drugs and Crime UNDOC, 2019).

61 Will corruption increase money laundering through easier access to the banking system or will it decrease money laundering through higher costs for bribes?

Using these accepted, though unsupported, benchmarks and applying them to Canada results in large numbers. For 2017, using expenditure based nominal GDP of $C 2,138B, the amount for Canada would be between $C 42.7B and $C 106.8B. For British Columbia, 2017 money laundering would be between $C 5.6B and $C 14.1B.

Others have suggested different numbers for Canada, but without providing detailed methodologies. The Mutual Evaluation Report of Canada (FATF 2016), mentions estimates made by the RCMP for 2011 of $C 5B to $C 15B and by the Criminal Intelligence Service CISC of $C 50B for 2007.[62]

For BC, there are media reports suggesting $C 1B, well below the IMF formula numbers.[63]

No studies were provided to the Panel showing how either the Canadian or BC numbers were estimated.

For the Netherlands, where much better data is available in order to estimate money laundering, predictions using clearer methodologies are possible. Using a gravity model, Unger et al (WODC Study 2018) estimated 16B Euro ($C 24B). At 2.2 percent of Dutch GDP these estimates are near the lower bound of the 2 to 5 percent of GDP IMF rule of thumb. The Netherlands suffer from significant international money laundering since they are a popular through-flow country of criminal proceeds and have about half the population of Canada.

Estimating Money Laundering with a Gravity Model

Gravity models in economics have their roots in models of gravity from physics. Newton's law of universal gravitation states that the gravitational force between any two bodies is proportional to the product of the two masses, and inversely proportional to the square of the distance between them:

$$F = G\frac{m_1 \times m_2}{d^2}$$

where m_1 and m_2 are the respective masses of the bodies, d is the distance between their centers of mass, and G is the gravitational constant.

The Dutch Nobel prize winner Jan Tinbergen (1962) applied Newton's gravity model to international trade relationships. In this treatment, the masses are the size of the economies and the distance reflects the cost of trading, primarily physically-based distance costs of transportation, but also costs imposed by tariffs and other trade barriers. Tinbergen's specific estimating equation is:

$$T_{i,j} = \frac{(GDP_i)^{\beta_1} \times \left(GDP_j\right)^{\beta_2}}{\left(Dist_{i,j}\right)^{\beta_3}} \eta_{i,j}$$

62 Canadian estimates are supposedly discussed in Wigley and Geary (1999). However, this report could not be traced. Also, when one enters the search term "money laundering, publications at the federal Ministry of Justice (https://www.justice.gc.ca/eng/rp-pr/index.html) no publication on money laundering is retrieved.

63 D. Meissner, "Money Laundering in B.C. Estimated at $1B a Year – But Reports Were Not Shared with Province, AG Says," *CBC News*, January 18, 2019, https://www.cbc.ca/news/canada/british-columbia/money-laundering-billions-bc-david-eby-1.4983471.

A meta-analysis by Disdier and Head (2008) shows that the coefficients of this equation are close to 1 and very stable over time. Through criticized for lacking a theoretical, microeconomic underpinning, Tinbergen's gravity model has performed extremely well in predicting trade volumes across and within countries.

A large body of literature has developed applying gravity models to various types of bilateral flows, such as traffic, migration, and foreign direct investment. It is used by tourism agencies to predict tourist flows, education departments to predict student flows. In general, the gravity model has performed very well in all of the areas to which it has been applied

Walker (1995) first used the gravity model for money laundering, generating an estimate of $US 2.85 trillion for annual global money laundering . Since then, the application of the model to money laundering has been further refined by Unger et al (2006) for the Netherlands and Unger et al (2018) for the world.

Unlike other applications, where robust measured actual data on trade flows and sources of in and out flows are available, the gravity model for money laundering relies on expert knowledge to determine the specification when empirical data on international criminal financial flows is not available.

Applying the gravity model to money laundering

The basic idea behind the model is that there are worldwide proceeds of crime, stemming from drugs, corruption, theft, fraud etc. A portion of these proceeds must be laundered to make them useable in the legitimate economy and a portion is reinvested in criminal activities through the purchase of inputs and other business costs, without being laundered. For drugs, for example, 80 percent of the proceeds of crime need laundering and the rest is invested in new drugs.

Laundering is necessary to hide the proceeds of crime from the police. Laundering often involves international capital flows. The launderer has a choice about how much money to launder domestically and how much to transfer to another country for laundering.

Some countries are more attractive than others for launderers due to their high GDP which makes it easier to hide criminal proceeds in lucrative businesses or assets, or due to the financial expertise and low corruption generally associated with high GDP which makes such countries safe havens for the money.

But, the cultural "distance" between countries also matters for the launderer. How familiar is the foreign country? Is he or she a migrant, knowing the other country very well, or do the countries share the same religion, language or colonial history? Countries where the launderer feels less cultural distance will be preferred.

The gravity model assumes that total world proceeds of crime set aside for laundering will be allocated around the world according to the attractiveness of countries according to both affinity and physical distance. This is formalized in (Unger et al., 2006; Unger et al., 2018) as an attractiveness and a cultural distance index . The attractiveness index measures how attractive a country is for money laundering, while the cultural distance captures the distance between any two countries, both in physical and cultural terms.

Estimating sub-national money laundering within Canada required some adjustments to the modelling approach as gravity models are normally not used to explain flows within countries. The estimates here use a step procedure. The first step is the standard application of the model to allocate global money among countries, which generates an estimate for Canada. In the second step, Canada is replaced by six regions, compromised of some individual provinces and some groups of provinces as though they were individual countries in the world gravity model. A such, the model estimates money laundering amounts for British Columbia, Alberta, Prairies, Ontario, Quebec and Atlantic Canada including internal proceeds of crime designated for money laundering and money laundering flows among these regions as well as inflows and outflows with all of the other countries in the model.[64]

Attractiveness index

The attractiveness index measures how attractive a country is for money launderers. A higher attractiveness index means that a country is more attractive to criminal money that needs to be laundered.

For this study we used the formula for the attractiveness index from (Unger et al., 2006). This formula is specified as follows:

$$attractiveness_{j,t} = GDPpc_{j,t} \times (3BS_{j,t} + GA_{j,t} + SWIFT_{j,t} + BD_{j,t} - 3CF_{j,t} - CR_{j,t} - EG_{j,t} + 10)$$

where subscripts and each time refer to country and year respectively.

$GDPpc_{j,t}$ is the GDP per capita. Countries with higher incomes have the advantage for money launderers that is it easier to hide their transactions. Furthermore, in general they have better developed financial markets and higher prices for real estate. As in Unger et al (2018), we use the prorated GDP per capita, meaning that we divide each country's GDP per capita by the Dutch GDP per capita in the specific year. GDP per capita data was retrieved from the (World Bank, 2019). For Canadian regions we use Statistics Canada GDP at basic prices in current dollars and their quarterly population estimates using year end values (all Canadian data sources are listed in the references, and except for Credit Union deposits are from Statistics Canada).

$BS_{j,t}$ is the bank secrecy of a country. With stricter bank secrecy it is easier for money laundered to hide money laundering transactions, making the country more attractive for money laundering. For this variable we used the bank secrecy sub indicator of the Financial Secrecy Index (Tax Justice Network, 2018). This index is published biennially, so we interpolated the intervening years. We rescaled the original variable to a range from 1 to 4 for consistency with earlier research. We used the index value for Canada for all Canadian provinces and regions.

$GA_{j,t}$ is government policy towards money laundering. Government policy towards money laundering can have a large impact on the attractiveness of a country for money launderers. In line with Unger et al (2018) we use a 4 for the viable if a country is on the black list of the Financial Action Task Force (FATF) and a 2 if ever was on this black list, but has since been removed. If a

64 The Prairies are comprised of Saskatchewan and Manitoba. Atlantic Canada is comprised of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador. The less populated territories of Yukon, Northwest Territories and Nunavut were omitted because they have such small populations that they are swamped by the other parts of the country in the data.

country was never on the black list, it gets a zero. This information has been retrieved from several FATF reports and we use the same value (0) for all Canadian provinces.

$SWIFT_{j,t}$ is a dummy variable with a value of 0 if a country is not a member of Swift and 1 if a country is a member. Swift membership makes a country more attractive, as membership facilitates bank transactions.

$BD_{j,t}$ is the ratio of bank deposits to GDP and serves as a proxy for the size of the financial sector in a country. A large and well-developed financial sector has the expertise to facilitate money laundering transactions. Furthermore, a large financial sector processes for transaction, making it easier to hide money laundering. This data was retrieved from the IMF 'World Economic Outlook' (2018) for countries. Provincial data was from Statistics Canada (2018) and the Canadian Credit Union Association (2018). Canadian data is the sum of personal and non-personal deposits (excluding deposits of banks). Deposits unallocated in Canada are distributed among provinces based on share of reported deposits. All are 4th quarter data. Credit Union deposits are added to the bank deposits for years 2015-2018. For prior years, credit union deposits by region are estimated using their average of bank deposits for 2015-2018.

Armed conflict and corruption decreases a country's attractiveness for money laundering because they impose costs for the money launderer (see Chaikin & Sharman (2009) for a theoretical discussion on the relationship between corruption and money laundering). $CF_{j,t}$ is a categorical variable where 0 indicated no conflict and 4 indicates a current war. $CR_{j,t}$ is a continuous variable from the World Bank (2017) that ranges from 0 (no corruption) to 5 (high corruption), that measure the level of corruption in a country, relative to the Netherlands. As for most other variables, the value for Canada is applied to all Canadian provinces.

Egmont Group countries exchange information on money laundering. This makes countries that are members of the Egmont Group less attractive for money laundering. $EG_{j,t}$ is a dummy for Egmont Group membership. Canada has been a member of the Egmont Group since 2001, so a 1 is used for all Canadian provinces.

To make the attractiveness index positive for all countries 10 is added.

Cultural distance

The flow of money laundering between two countries is not only a function of the attractiveness index of the destination country, but also of the distance between the origin and destination country. It is easier to create and maintain the necessary personal connections for money laundering transfers with a country that is close than one that is far. However, not only is the physical distance important but also cultural connections determine whether or not two countries are close to each other. Therefore, Unger et al (2018) uses the cultural distance between country and country , which we extend here to include migrant stocks:

$$cultdist_{i,j,t} = comlang_{i,j} + colony_{i,j} + trade_{i,j,t} + distance_{i,j} + migrants_{i,j}$$

$comlang_{i,j}$ is a dummy for common language (CEPII, 2019). Having a common language decreases the cultural distance between countries, so 0 indicates two countries share a common official language and 1 means that they do not. We used French as the official language of Quebec and English for the remaining provinces/regions.

$colony_{i,j}$ is a dummy that shows if two country have a colonial history ($0 = yes, 1 = no$), which is zero for all Canadian regions with all other countries.

$trade_{i,j,t}$ is a variable for the relative importance of trade with country j for country i. This variable is between zero and one, where it has a value of 0 if country j is country i's most important trading partner and if they do not trade with each other it has a value of This is variable is constructed from bilateral trade data from the Correlates of War project (Barbieri & Keshk, 2016; Barbieri, Keshk, & Pollins, 2009). For provinces the data is from Statistics Canada (2018) and is Trade in goods by exporter characteristics, by country of destination (Provincial exports) and Trade in goods by importer characteristics, by country of export (Provincial imports).

$distance_{i,j}$ measures the physical distance between country i and country j (CEPII, 2019). We rescaled this variable to a range of 1 to 7 for consistency with earlier research (B. Unger et al., 2006; Brigitte Unger et al., 2018). For provinces we used the great circle route distance between provincial capitals (Manitoba for Prairies region and Halifax for Atlantic region) and other national capitals.

$migrants_{i,j}$ is a variable that measures the relative number of migrants from country i in country j and vice versa. It is defined as:

$$migrants_{i,j} = \frac{\text{migrants from } j \text{ in } i}{\text{population of } i} + \frac{\text{migrants from } i \text{ in } j}{\text{population of } j}$$

The variable has been rescaled to a range from -2.5 (highest migrants) to 2.5 (no migrants) to account for the large effect migrant links have on the cultural distance. Having large mutual migrant stocks decreases the cultural distance, while having no migrant relations increases it.

Data on countries is from the United Nations (2015). For Canadian regions and provinces, we use 2016 census counts of the number of people by country of birth. For interprovincial counts we use estimates of interprovincial migrants by province or territory of origin and destination. Data for the number of migrants from each Canadian province living in all other countries was not available, so this is assumed to be zero. We expect this to have a negligible effect on our results, because the number of Canadians living abroad will only be a minor part of the population of the foreign country, especially when considering each province separately.

In line with earlier research we apply a cultural distance of 0.1 for a country to itself.

Gravity formula

Money can be laundered in the country where it is earned with criminal activities, or it can be sent to another country and laundered there. We use the attractiveness index and cultural distance to calculate the proportion $F_{i,j,t}$ of all money generated for laundering in country i in year t that flows to country j using the gravity formula from (B. Unger et al., 2006):

$$F_{i,j,t} = \frac{attractiveness_{j,t}}{cultdist_{i,j,t}} \times \frac{1}{\sum_{i=1}^{N}\left(\frac{attractiveness_{j,t}}{cultdist_{i,j,t}}\right)}$$

The more attractive country j is for money laundering, the more money will flow there from country i, but the larger the cultural distance between them the smaller the flow. The first term in the equation above calculates an index number for the flows from country i to country j. By

dividing this number by the total of all index numbers of country i (the second term), we arrive at the fraction of money that flows to each country j. Note that if $i = j$, this formula gives the fraction of money laundering that stays in the same country as the money is generated in.

Amount of money to be laundered

In order to calculate the actual amounts that flow between countries we first need to know how much money is generated in each country that needs to be laundered. We calculate this using data on the number of crimes per country from UNODC (2019) and the amount of money that needs to be laundered per crime from Walker (1995). For Canadian provinces and regions, we use Incident-based crime statistics, by detailed violations. The total amount that needs to be laundered in each country is then given by:

$$ML\text{-}requirement_{i,t} = \sum_{k=1}^{K} \left(number\ of\ crimes_{i,k,t} \times ML\text{-}requirement\ per\ crime_{i,k,t} \right)$$

where $number\ of\ crimes_{k,t}$ refers to the number of crimes registered of crime type k in year t and $ML\text{-}requirement\ per\ crime_{k,t}$ is the amount of money that needs to be laundered per registered crime of type k.

We adjust the money laundering requirement per crime from Walker (1995) to account for differences in wealth between countries and over time.

Calculating Money Laundering Results

Given the above formulae, the money laundering flow ($f_{i,j,t}$) from country i to country j is:

$$f_{i,j,t} = F_{i,j,t} \times ML\text{-}requirement_{i,t}$$

The total amount of money laundered in country j is the sum of all incoming money laundering flows (including from itself, when $i = j$):

$$laundered_{j,t} = \sum_{i=1}^{N} f_{i,j,t}$$

The total outflow of money laundering from country is:

$$outflows_{i,t} = \sum_{j=1}^{N} f_{i,j,t}\,, for\ i \neq j$$

And the total inflow to country is:

$$inflows_{j,t} = \sum_{i=1}^{N} f_{i,j,t}\,, for\ i \neq j$$

Model Improvements

The specification of the gravity model has been gradually improved over time. Walker (1995) used only physical distance, but the physical distance between two countries is not very important for electronic funds transfers. Therefore, Unger (2006) included cultural distance as an important determinant for laundering abroad. Later developments improved the specification of the gravity model and estimated the weight of the coefficients of the different variables, which originally had

been arbitrary assumptions. There is still room for improvement to the specification of the gravity model, as discussed below.

Problems of data availability

The gravity model calculates money laundering flows between all countries in the world, which are then used to calculate the total amount of money laundering in each country. For this calculation to be valid it is important that as many countries as possible are used in the calculation of the money laundering flows. However, international data on countries often has many missing values, especially for developing countries. Therefore, for all variables we impute variables for countries that have missing data for some but not all years based on time trends. Furthermore, if a country has no data for a variable in any year, we impute the missing value based on regional medians.

Enormous improvements have been made by UNODC regarding the availability of illicit drug prices. In the first Unger (2006) study, only Australian drug prices were available. To assume that a drug is sold at the same price in the US and in Afghanistan, was highly unrealistic. The Walker model was rightly criticized as overestimating money laundering because of using drug prices that were too high for many countries, which sometimes implied a mark-up of 1000 percent from Afghanistan to the US (see Reuter 2007). Currently the UNODC publishes illicit drug prices for all countries of the world. However, problems still occur when comparing drug prices. The purity of heroin, for example, varies considerably and affects prices. Cocaine prices are easier to compare.

An even larger problem concerns fraud data. Though fraud is the most important and fastest increasing crime worldwide, there are no comparative fraud data. The UNODC doesn't publish fraud data. Our study uses Australian, Dutch and Canadian fraud data, which are very comprehensive and reliable, but are still not fully comparable due to the different definitions of fraud in each country. We extrapolate the available fraud data to other countries by correcting for differences in GDP.

Once there are reliable proceeds of crime for each country in the world available, especially for all drugs and for fraud which create the lion share of proceeds of crime, the estimates will become much more accurate. A large hole exists in the poor reporting of corruption and tax avoidance. Countries with low GDP per capita can still yield significant flows from corruption if they are sufficiently large. With this variable there are issues both of unobserved incidence and large possible variations in magnitude. Compounding this is the possible correlation of low reporting and volume of crime.

Income distribution of criminals in money laundering estimation models[65]

The Walker (1995; 1999) and Unger et al (2006) methodologies have been criticized for ignoring the income distribution of criminals and using just the average income (see e.g. Reuter (2007) and Van Duyne (2011)). A different income distribution does not always have an effect on the results of the estimations as it depends on assumptions about what share of the proceeds of crime need to be

65 Translation from B. Unger, J. Ferwerda, I. Koetsier, B. Gjoleka, A.T.L. van Saase, B. Slot, and L. de Swart, *Aard en omvang van criminele bestedingen* (*Types and Amounts of Criminal Spending in the Netherlands*), Report for Research and Documentation Centre of the Dutch Ministry of Justice (WODC) (Utrecht/ Rotterdam, Netherlands: Utrecht University, 2018), pp. 69–70.

laundered and whether this changes with an individual's proceeds (i.e. whether the percentage is a fixed share of income or nonlinear). Under the former the distribution of income among criminals has no effect on money laundering volumes.

Future improvements to the gravity model

The Walker (1995) and Walker-Unger (2006) gravity models rely on expert knowledge to determine the exact specification. As such, they are not econometric models that follow from empirical data on money laundering (since this data is either not available or not accessible to researchers).

Ferwerda et al (2013) improved the gravity model by using data for Trade Based Money Laundering. This allowed for the first time the gravity model to be used as an econometric model. The left side of the model was trade based money laundering allowing the right side of the model and model specification to be tested. Tests showed which variables were more or less important, which was their correct sign of the variables, and which model specification (linear, log-linear) was most appropriate. This Ferwerda – Unger (2013) model was further improved in 2019.

The new Ferwerda – Saase – Unger (2019) model includes Dutch Suspicious Transaction Reports provided by the Dutch FIU and iCOV in the gravity model. This will allow us to better understand international money laundering flows and which country characteristics make a country more or less attractive for money laundering.

Another limitation of the gravity model discussed here is that it provides no insight in the flow-throughs of money laundering. The original Walker and Unger-Walker model only could estimate the first step of laundering. If money changed places several times, this would have been a double counting in the model so only the first laundering transaction (leaving the money in the country or sending it to another country) was estimated. Pumping the money around the globe several times, could not be included. But international money laundering flows often pass through financial hubs and off-shore banking centres, which is not accounted for in the Walker model.

Limitations of the gravity model

The estimates of money laundering in this report are the Panel's effort to apply academic rigor and widely accepted empirical economic methodologies to estimate the extent of money laundering in BC and Canada. However, the nature of money laundering presents significant challenges in developing such estimates.

The actual extent of money laundering is hidden by the very nature of the activity, making accurate measurement extremely difficult. Conventional economic analysis relies on accurate data representing actual results for the activity being analyzed, at least for some place and time, to generate estimates that provide insight into questions of interest.

Efforts to estimate money laundering activity must be conducted without the benefit of accurate measurements of actual flows in any jurisdiction, let alone data about the sectors of the economy and the classes of assets into which these funds flow. The accuracy of any empirical data-based estimating methodology is limited when clear examples based on measured data are not available.

In addition, as with any modelling exercise, the accuracy of the model depends on both the model's mathematical specification and the quality and coverage of the underlying data. Both factors

could contribute to a divergence between the estimates reported here and the actual amounts of laundered monies in BC.

A model will understate the extent of money laundering if the data does not completely cover all sources of funds that are then laundered. The gravity model used to estimate money laundering in BC bases the aggregate amount of monies to be laundered on crime statistics reported to the UN. It uses assumptions about the proportion of crime proceeds used directly by criminal enterprises and the proportion that is laundered. The laundered fund flows are then allocated between the amount that stays in the host country and the amount that flows to other jurisdictions.

If the underlying crime statistics completely included all crimes committed, including bribery, corruption and tax avoidance, and included the full magnitude of monies involved in each type of crime, then the base amount of crime proceeds worldwide would be accurate. However, crime reporting is highly uneven across countries, particularly for bribery, corruption, and tax avoidance. Under-reporting of crimes and proceeds by some countries will result in a lower estimate of the total amount of money to be laundered, which would result in generally under-estimated money laundering for all countries.

If the incidence of under-reporting is more acute in countries with stronger attraction factors for those funds to flow to a particular jurisdiction, like BC, then the amount of money laundering estimated for that jurisdiction will be lower relative to other regions where this attraction factor is weaker. Estimated money laundering in BC will be particularly underestimated if crime reporting, especially for tax avoidance and corruption, by some East Asian countries that have close ties with BC through its Asia-Pacific location and demographic makeup, is incomplete. That effect is above and beyond the more general lower estimate from global under-reporting.

The second aspect of modelling that may result in systematic inaccuracies in the estimate of money laundering in BC and Canada results from the model's mathematical specification. This is a general problem with models and reflects the unavoidable trade-off between model parsimony and accuracy.

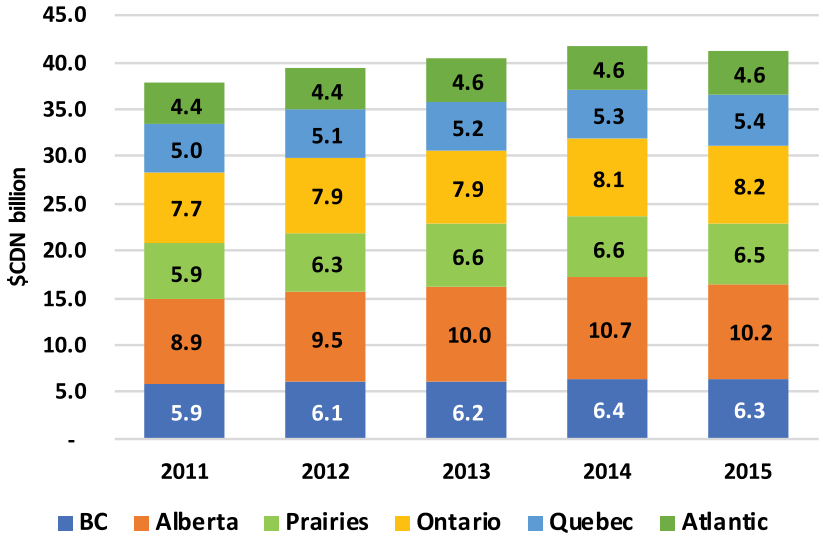
A model must be simple enough to be estimable with the data that is available for all countries, which limits accuracy. This can result in estimated model parameters that are unbiased predictors of the large variations in outcomes between the range of countries in the world, but that are less accurate when applied to a subset of similar countries or regions.

Within Canada, while economic data varies by region many other characteristics that affect attractiveness for money laundering purposes are constant across the whole country. For example, Canada as a whole is a rule-of-law country with a stable banking system and no beneficial ownership disclosure. This lack of variability effectively places a greater weight on within-Canada variation in GDP and crime rates than would otherwise be the case, introducing bias. How such bias might affect the estimate of money laundering in BC is beyond the scope of this report but is a caveat worth remembering as a general rule.

Money laundering estimates

The following chart sets out the estimated amounts of money laundering for Canada and each of the regions used by the model.

Figure G-1: Money laundering in Canada by region



Money laundering in Canada is estimated to have increased from $37.8 billion in 2011 to $41.7 billion in 2015. That amount has remained at a constant 2.1 percent of GDP for the period, near the lower bound of the IMF 2 percent to 5 percent of GDP rule of thumb. Given the model limitations described above, it is reasonable to conclude that money laundering in Canada is currently in the tens of billions of dollars, likely in excess of the approximately $40 billion estimated by the model.

The chart shows that BC is the fourth highest region in Canada, behind Alberta, Ontario and the Prairies. The $6.3 billion estimated for BC in 2015 represents about 2.5 percent of GDP.

The relatively high estimates of money laundering in Alberta and the Prairies may be surprising. Based on the discussion of limitations to the model set out earlier, these results likely arise from the importance placed on crime rates and GDP levels. Relative crime rates have been rising in Alberta and the Prairies while falling in some other jurisdictions and, until oil prices fell in 2015, Alberta and Saskatchewan GDP were also relatively high. If money laundering in Alberta and the Prairies have been overestimated by the model, that implies that money laundering in BC, Ontario and Quebec have likely been underestimated.

The Panel concludes from this analysis that, regardless of limitations of the model and available data, money laundering is an important issue across Canada, in BC and even in provinces with more affordable housing prices than BC.

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Appendix H: BC Housing Affordability

By Professor Tsur Somerville

A major concern driving interest in money laundering in real estate is that it may worsen housing affordability.

This concern is particularly acute if the monies originated elsewhere and BC real estate is the final investment of the funds. As noted later in this section, worsening housing affordability in other international cities is also commonly associated with rapidly rising house prices, capital inflows in general, and concerns about the investment of criminal and corrupt monies in real estate.

Households throughout British Columbia grapple with problems of housing affordability. This is a particularly acute problem in the more expensive areas of the province, especially the Lower Mainland, Fraser Valley, Capital Region and Kelowna. The challenge of finding appropriate shelter, located within a reasonable commute of workplaces and commensurate with household income, is a challenge for many households looking for accommodation regardless of whether they plan to rent or own.

This section highlights the scope of the problem, which has been a long-term challenge in BC that has worsened dramatically since 2000, and in particular over the last five years. The discussion here focuses on the cost of ownership, because money laundering that flows into residential real estate through the purchase of properties would have its most direct effect on prices rather than rents.

A frequently cited benchmark for affordability is the house price-to-income ratio, where in North America a value of 3.0 is referenced as affordable. This benchmark has weaknesses as a measure because it can rise during a period of falling interest rates, even though mortgage payments may be falling. As a measure of affordability, the price-to-income ratio best measures the degree of difficulty households face in saving for a down payment. Assuming a constant savings rate, the time to save for the down payment will rise as the price-to-income ratio rises.

Table H-1 shows the variation across assessment areas in British Columbia of the average assessed value for the 2019 assessment year of different types of housing. The distinctive feature of this table is the high price levels across all property types in the Fraser Valley, Capital District, and the assessment areas that make-up Greater Vancouver.[66]

Table H-2 reports price-to-income ratios for the same areas and property types. Compared to the price-to-income ratio benchmark of 3.0, affordable home ownership remains a challenge across most of the province, with the exception of the north.

66 The Fraser Valley includes Langley, Abbotsford, and Chilliwack. The Capital District covers the Victoria CMA. The Vancouver CMA includes all of the Vancouver, North Fraser, Richmond-Delta, and Surrey-White Rock assessment areas along with parts of the North Shore-Squamish Valley and Fraser Valley assessment areas.

Table H-1: Average assessed values by area and property type, 2019 assessment year

Assessment Area	Single-family	Townhouse	Condo
Vancouver	2,368,570	1,238,510	946,710
North Shore-Squamish Valley	1,873,650	1,043,590	810,280
Richmond-Delta	1,406,240	861,930	649,010
North Fraser	1,396,990	746,680	586,970
Surrey-White Rock	1,184,500	633,710	479,740
Capital	882,680	592,010	462,590
Fraser Valley	843,040	523,910	375,980
Kelowna	741,770	517,740	366,510
Central Vancouver Island	533,710	379,180	291,390
Vernon	506,820	321,860	255,200
Penticton	503,020	317,800	300,710
Courtenay	455,250	301,600	240,890
Kamloops	433,190	325,450	224,880
East Kootenay	408,130	314,850	168,370
Nelson/Trail	335,510	292,160	267,910
Prince George	299,560	183,890	148,280
Peace River	285,370	229,540	122,920
Northwest	267,520	178,030	99,880
Cariboo	253,480	133,590	90,590

Source: Calculations using BC Assessment data

Table H-2: House price-to-income ratios by area and property type, 2018

Assessment Area	Single-family	Townhouse	Condo
Vancouver	26.9	14.1	10.8
North Shore-Squamish Valley	19.9	11.1	8.6
Richmond-Delta	16.0	9.8	7.4
North Fraser	15.9	8.5	6.7
Surrey-White Rock	14.5	7.8	5.9
Capital	11.8	7.9	6.2
Fraser Valley	11.4	7.1	5.1
Kelowna	9.8	6.8	4.8
Penticton	8.3	5.2	4.9
Central Vancouver Island	8.0	5.7	4.4
Vernon	7.5	4.8	3.8
Courtenay	7.0	4.6	3.7
Kamloops	5.9	4.4	3.0
Nelson/Trail	5.5	4.8	4.4
East Kootenay	5.0	3.8	2.1
Cariboo	3.7	2.0	1.3
Northwest	3.6	2.4	1.4
Prince George	3.6	2.2	1.8
Peace River	2.8	2.3	1.2

Source: Calculations using BC Assessment data for property values and Statistics Canada 2016 Census data for household income (See Data Sources and Methodology below).

The income used for Table H-2 is median household income by regional district from the 2016 Census data. The incomes from 2015 reported income are inflated to 2018 estimated using the average growth in weekly average wages in BC over this period.[67]

The scope of the affordability challenge in BC can be better understood by seeing its evolution over time, especially when compared against other Canadian cities. What follows below is a

67 Assessment areas are matched to regional districts, except in the Lower Mainland where municipality level data is used for more granularity (though the Vancouver CMA median income value is used for the Vancouver, North Fraser, and Richmond-Delta assessment areas). Median values for constituent areas are weighted by the number of households to form the assessment area values when regional districts and census areas are not coterminous.

breakdown of the evolution of the problem with affordability in Vancouver compared to the path in Calgary, Montreal, and Toronto.

This presentation focuses on the ownership of single family detached housing. Eighty percent of owner households occupy this type of structure in Canada, though the figure is only 50 percent in Vancouver, where ownership of condominium and townhouse units is more common than elsewhere.[68] In order to compare affordability across Canadian cities and over time, single family detached units are the most consistent ownership form.

Homeownership is less affordable in Vancouver than all other Canadian cities because local house prices are high relative to local incomes.[69] Within Canada mortgage rates and terms are similar, so cross-city differences in affordability are entirely a function of differential changes in prices and incomes.

Using price levels or the ratio of prices to incomes, Vancouver remains one of the most expensive and least affordable cities among those in advanced economies. The other cities that face similar challenges to affordability are, like Vancouver, outliers within their own countries, and are also cities that enter into the discussion of illegal capital flows and investment in real estate.[70]

The price of a single family detached house in house in Vancouver is higher than in all other major Canadian metropolitan areas. As Figure H-1 highlights, this was true for both 2005 and 2017.[71] Prices increased over this period in all of the highlighted cities, but the dollar increase was largest in Vancouver. The price level for each city shown in Figure H-1 is the benchmark price reported by Brookfield RPS. Looking over a longer period, Figure H-2 shows the evolution of house prices in Canada's largest cities: the price indexes for Vancouver and Toronto have risen much more dramatically than is the case for Calgary and Montreal.

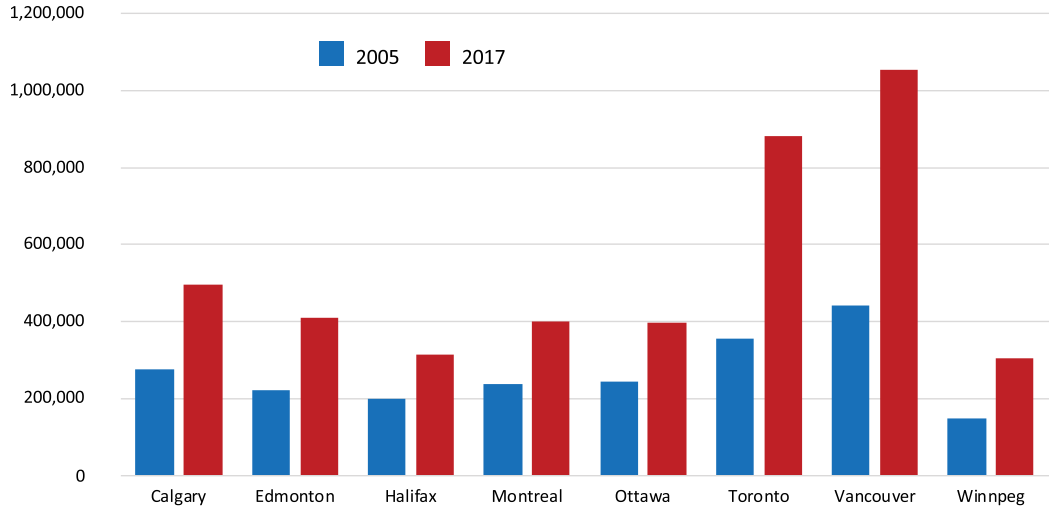
68 Statistics Canada, 2016 Census of Population, Dwelling Type. Single-family detached share among these, townhouse and apartment (condominium) units in buildings with five or more and fewer stories.

69 By city, the implication is metropolitan area, so the Vancouver CMA (identical to the Greater Vancouver Regional District) and not the City of Vancouver. This is true for all other cities as well, where the implication and definition are metropolitan areas.

70 Here advanced economies are treated as all OECD countries plus Hong Kong and Singapore.

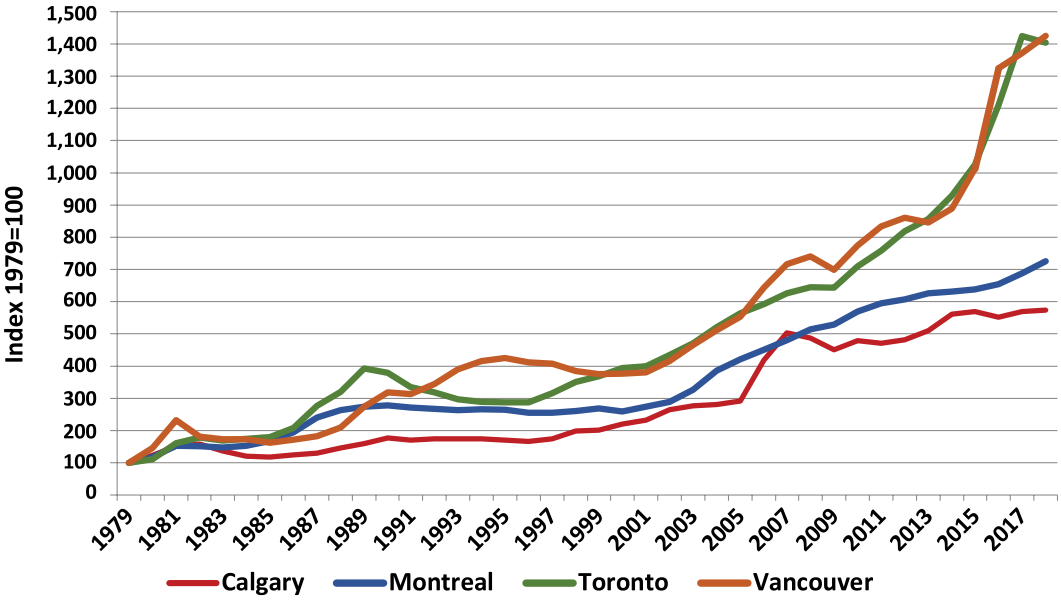
71 Detailed descriptions of the methodologies used in all tables as well as links to the data sources are provided in a methodology section at the end of this analysis section.

Figure H-1: Canadian single-family house prices, 2005 and 2017



Price increases were not uniform over this period. Prices rose during the middle part of the last decade, before falling during the Great Recession in late 2008 and 2009. House prices in Vancouver, and Canada more generally, did recover quickly compared with those in the United States after 2009. However, the price dynamic in Vancouver that is most notable over the last decade is the explosion of single-family house prices between mid-2015 and mid-2016. By July 2016, the annual rate of house price inflation for single family detached units reached nearly 30 percent. The path of monthly Vancouver house price appreciation is shown below in Figure H-2, which highlights the rapid appreciation in Vancouver (and Toronto) house prices.

Figure H-2: Canadian single-family house price index

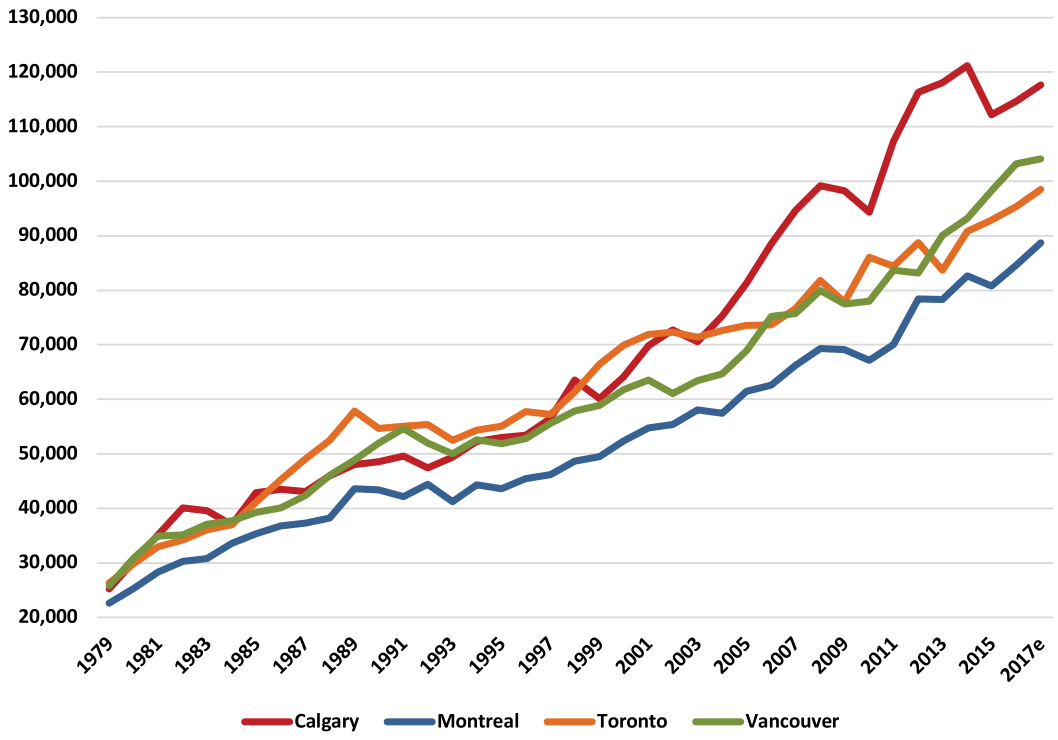


Sources: Brookfield RPS (2005-2018) and calculations using data from Royal LePage house price survey

If incomes had kept pace with house price increases, then the run-up in house prices would have been much less likely to aggravate problems with affordability. But, the high rate of price growth in Vancouver has not been matched with a similar growth in incomes.

Figure H-3 shows estimated median family income among non-elderly families in select Canadian cities. The trend across all four cities is positive growth, with Calgary showing the effects of the decline in oil prices on the Alberta economy after 2013. This measure of median income in Vancouver has grown at rates similar to those in Toronto and Montreal, while lagging behind Calgary. The fourfold increase in income is dwarfed by the over ten-fold increase in house prices shown above.

Figure H-3: Median family income, non-elderly economic families

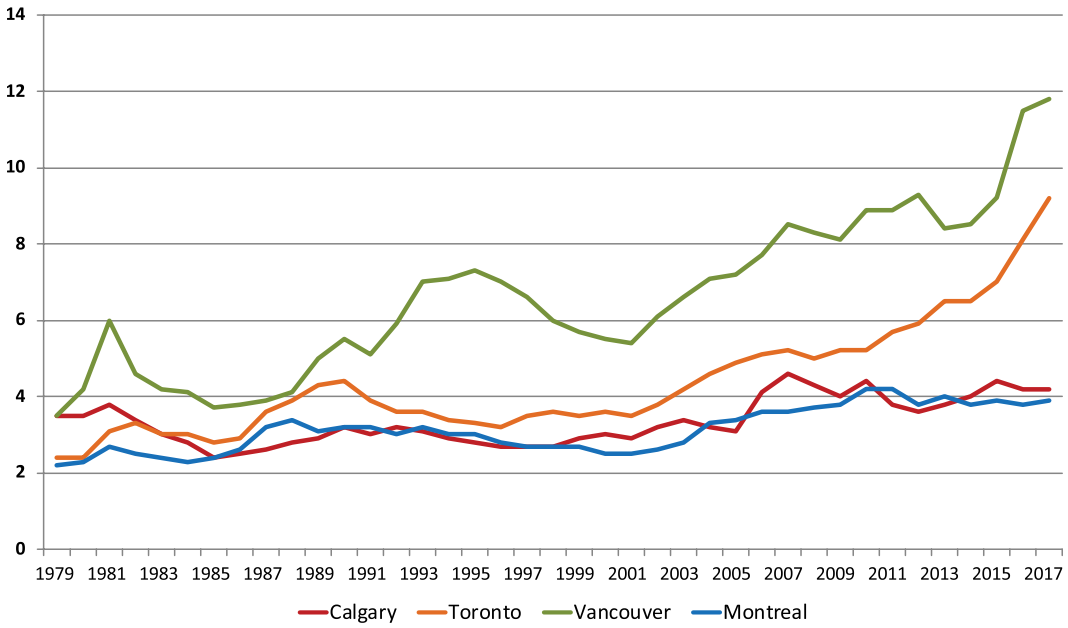


Source: Statistics Canada, CANSIM Table 206011 (non-elderly family median income) and CANSIM Table 2820071 (weekly provincial earnings).

Putting together house price and incomes yields the house price-to-income ratio described earlier. The level of the ratio depends on the choice of house price, which can vary by unit type and location, and in particular the income measures.

The measure charted below in Figure H-4 uses the benchmark Brookfield RPS single family house price values and the median family income for non-elderly families presented above. Other measures of income (median household income, per capita income, etc.) yield a similar path over time in results, but the level of the ratio at any point in time would be different.

Figure H-4: Canadian house price-to-income ratio (single-family house price and median family income)



Sources: Calculations using Brookfield RPS and CUER series from Royal LePage (house prices), CANSIM Table 206011 (non-elderly family median income), and CANSIM Table 2820071 (weekly provincial wage earnings).

As expected, given the data presented above on house prices and incomes, the price-to-income ratio rises over time in Vancouver. Figure H-4 shows a clear worsening over time in Vancouver in this measure. It also shows that the problem is worse in Vancouver than it is for other Canadian cities.

While this measure of affordability is incomplete because it does not address conditions in mortgage markets, within a country the change over time in the ratio will still capture more general affordability trends. Mortgage rules and interest rates, which this measure does not address, are essentially similar across Canada, so the effects of any changes to these variables will have close to identical relative effects in all Canadian cities. Though the absolute magnitude of this measure is only a partial measure of affordability, its change over time does capture the essential differences in the evolution of affordability among Canadian cities.

The price-to-income ratio in Vancouver rose significantly after 2014, both in absolute terms, and when compared with other Canadian cities. Between 2014 and 2016 the ratio for Calgary rose by 0.2 points and was flat in Montreal but increased by 1.6 points in Toronto and by 3 points in Vancouver.

Of the total change in the price-to-income ratio for Vancouver between 2005 and 2016, 70 percent of the change occurred after 2014, as compared to 20 percent in Calgary and 50 percent in Toronto. That was not the result of some adjustment process where Vancouver had lagged changes in other Canadian cities. Between 2005 and 2014, the 1.3 point increase in Vancouver exceeded those in Calgary and Montreal, 0.9 and 0.4 points respectively, but lagged slightly the larger 1.6 point rise in Toronto.

The values for Vancouver are high in an international context as well. International comparisons of housing affordability are challenging because of differences in the data and definitions used for measuring housing and incomes in different countries. There are difficulties in standardizing housing quantity and quality because, for example, in some cities the typical residential unit is an apartment while in other cities it may be a row house or detached single family unit. As well, income measures are inconsistent and irregularly reported across countries. They are available with different periodicities across countries which also use differing definitions of income and use different household constructs. However, simple comparisons, even with flawed data, can still provide insight.

Table H-3: Global cities, median house price-to-income ratios

City	Rank 2016	Median price-to-income ratio 2016	2015	2012	2010	Change 2015-16
Hong Kong	1	18.1	19.0	13.5	11.5	-0.9
Sydney	2	12.2	12.2	8.3	9.6	0.0
Vancouver	3	11.8	10.8	9.5	9.5	1.0
Auckland	4	10.0	9.7	6.7	6.4	0.3
San Jose	5	9.6	9.7	7.9	6.7	-0.1
Melbourne	6	9.5	9.7	7.5	9.0	-0.2
Honolulu	7	9.4	9.2	9.3	8.5	0.2
Los Angeles	8	9.3	8.1	6.2	5.9	1.2
San Francisco	9	9.2	9.4	7.8	7.2	-0.2
London	12	8.5	8.5	7.8	7.2	0.0
New York	21	5.7	5.9	6.2	6.1	-0.2
Seattle	24	5.5	5.2	4.8	5.0	0.3
US		3.6	3.7	3.1	3.3	-0.1
Canada		3.9	4.2	3.6	4.6	-0.3
Australia		5.5	6.4	5.6	7.1	-0.9
UK		4.6	4.6	5.1	5.1	0.0

Source: Demographia Affordability Survey, Annual Reports.

Table H-3 provides median house price-to-income ratios among a set of English speaking countries that are British Commonwealth members or former British colonies,[72] as reported by Demographia, which has been reporting these estimated ratios for over a decade.[73] Vancouver has consistently been among the least affordable cities measured in the annual Demographia surveys.

The final significant piece in housing affordability beyond house prices and household incomes is the cost of mortgage debt. Since peaking in 1990 at levels above 13 percent, the nominal interest rate on Canadian mortgages has been falling fairly steadily, making a mortgage of a given size more affordable to Canadian households. This decline helps to offset the worsened ratio of prices to income by lowering monthly payments. However, it does not address the challenge in saving for a down payment when house prices are rising faster than incomes.

The per year cost of home ownership is best measured by comparing the regular periodic cost of homeownership with incomes. The fullest measure would include all aspects of ownership including mortgage payments, property insurance, property tax, maintenance, and utilities. However, Canadian underwriting criteria for lenders only relates the mortgage payment, property taxes, and the cost of heating to household income levels. There is a requirement for *National Housing Act* insured loans that these costs be less than 32 percent of income. Therefore, that is the set of annual homeownership expenses used here.

Mortgage costs are based on the standard 5-year fixed rate mortgage with an 80 percent loan to value (LTV) ratio using the discounted mortgage rate and the longest permitted amortization under NHA guidelines to minimize the annual payment.[74] This mortgage cost is combined with annual estimates of property tax and heating costs and divided by the median family income. This generates a time series measure of the annual cash cost of owning a home in major Canadian cities, which is shown below in Figure H-5. The ratio here reflects the first-year cost, ignoring how a household's income might grow over time.

Figure H-5 highlights two important facts regarding homeownership affordability in Vancouver.

First, over this period the annual cost of owning a single-family house in Vancouver exceeds that of the other three major Canadian cities by a significant margin, on average 22 percentage points higher than in Calgary and Montreal and 11 percentage points higher than in Toronto.

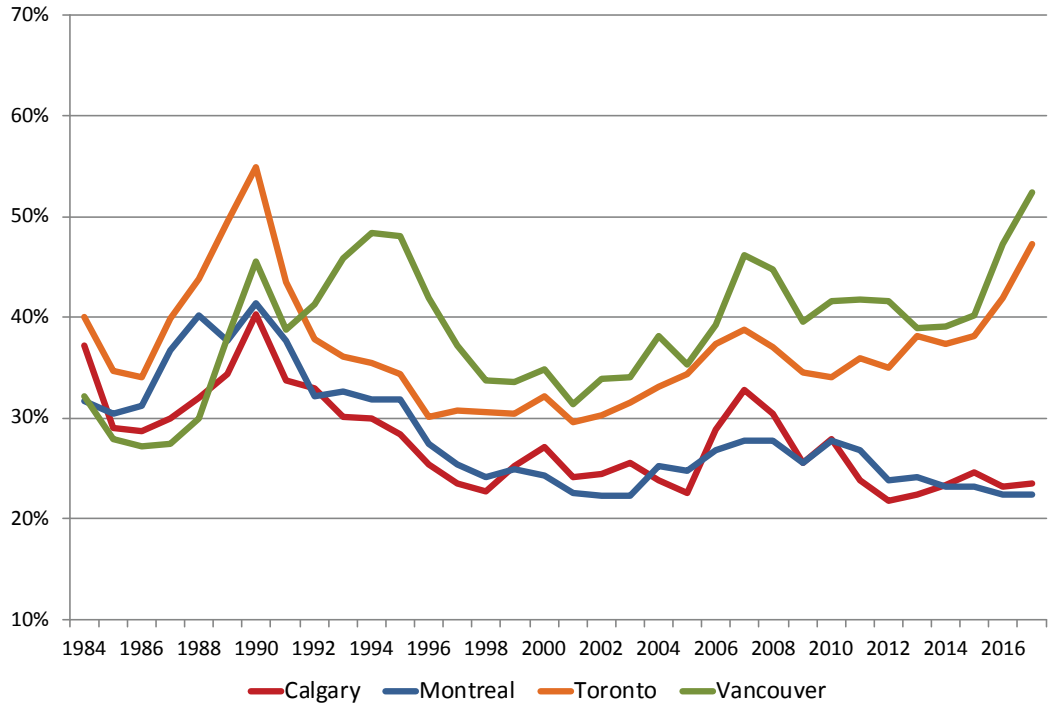
Second, affordability in Vancouver dramatically worsened after 2014, with payments as a percentage of median family income rising from 43 percent in 2014 to 53 percent in 2016. This increase was not matched in the other major cities. The share essentially did not change in either Calgary or Montreal, and rose by five percentage points in Toronto, half of the increase in Vancouver. Most of this increase came between 2015 and 2016. These calculations show a clear and dramatic worsening of housing affordability in Vancouver after 2014, both in general, and relative to other Canadian cities.

72 which excludes most OECD countries.

73 The survey has consistently included the Australia, Canada, Ireland, New Zealand, and the UK, with Hong Kong, Japan and Singapore added over the years of the survey's existence (www.demopgraphia.org).

74 Strictly, the mortgage amount is the level that gives an LTV of one dollar less than 80 percent to avoid the requirement for mortgage insurance, which obviates the need to add the mortgage insurance fee.

Figure H-5: Owner-occupied housing affordability – Mortgage and other expenses as a percentage of median family income



Sources: Brookfield RPS and CUER calculations on Royal LePage data (house prices), Statistics Canada (Cansim Table 2060011, (non-elderly family median income, and Cansim Table 2820071, weekly provincial wage earnings (median family income), and Bank of Canada and ratehub.ca (mortgage rates).[75]

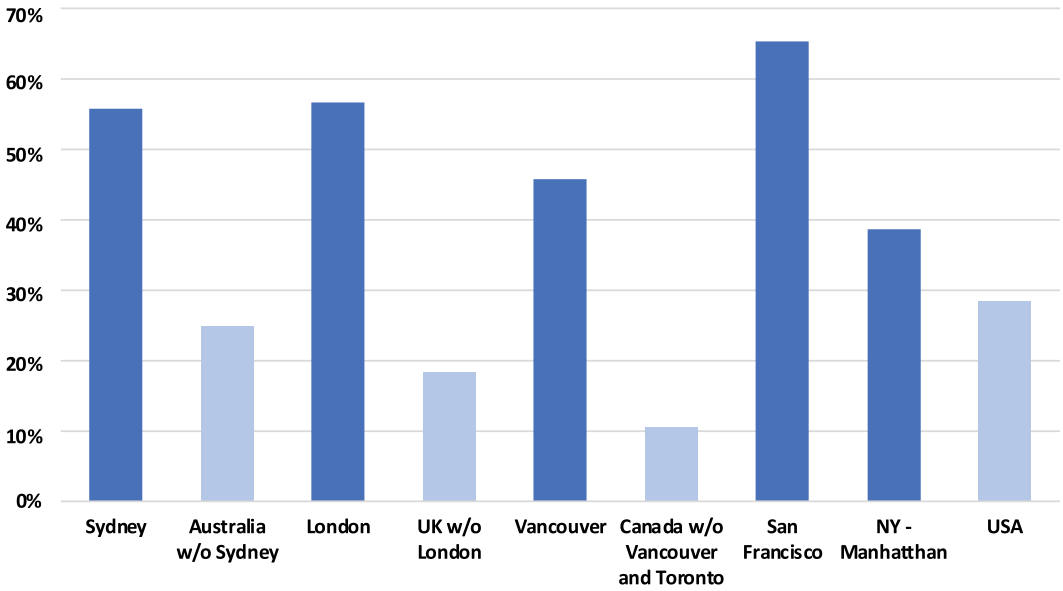
The concerns with worsening affordability are not unique to Vancouver. There are a number of global cities that were also grappling with the challenges of rising house prices that dramatically exceeded those elsewhere in the country. Figure H-6 presents these growth rates for a select group of cities, comparing their price appreciation between 2012 and 2016 with the rates for either other major cities in the country (Australia, Canada, and the UK) or the country as a whole (US).

These cities are similar to Vancouver in the sense that their house price appreciation greatly outstripped the rate of appreciation in the remainder of the country. Discussions around rapidly rising house price appreciation and affordability have been linked to concerns about money laundering and foreign capital inflows into residential real estate in the popular media and policy discussions in all of these cities.[76]

75 The mortgage is a five-year term, 25-year amortization mortgage at the longest amortization period allowed for NHA insured loans. The rate is calculated using the discount mortgage rate and includes estimated property tax and heating costs.

76 Credit Suisse, 3/4/14; SFGATE, 11/29/14; New York Times, 2/7/15; Globe and Mail, 4/20/15; Evening Standard,10/21/15; *Bloomberg*, 11/2/15.

Figure H-6: House price appreciation, 2012–2016: City versus national



Sources: Australia Bureau of Statistics, UK Office of National Statistics, Brookfield RPS, New York City Dept of Finance, and S&P CoreLogic Case-Shiller Index.

Data Sources and Methodology

Table H-1- Average Assessed Values by Area and Property Type, 2019 Assessment Year. British Columbia Assessment roll data for the 2019 roll year. Averages by property type, defined using property actual use codes and assessment areas.

Table H-2- House Price-to-Income Ratios for 2018 By Area and Property Type. Values from table 1 divided by estimated median household income. Median household income for 2015 as reported by Statistics Canada by geographic area (regional district or municipality). British Columbia regional districts are matched to assessment areas, except for select areas in the Vancouver CMA where municipality values are used (Fraser Valley, North Shore, and Surrey-White Rock assessment areas). The overall Vancouver CMA median is applied to North Fraser, Richmond-Delta, and Vancouver. 2015 median income values are inflated to 2018 using the growth in average weekly earnings for BC as reported by Statistics Canada.

Figure H-1- Canadian House Prices. Brookfield RPS values for July 2005 and July 2016.[77]

Figure H-2 – Canadian Single Family House Price Index. Index values constructed using Brookfield RPS data for 2005-2016 and UBC Centre for Urban Economics and Real Estate calculations from estimated standardized house type values reported in Royal LePage *House Price Survey*.

Figure H-3 - Median Family Income: Non-Elderly Economic Families. Income is calculated as follows from Statistics Canada data: for 1979-2015 we use median income of recipients (total income) for all non-elderly economic families as reported in Cansim Table 2060011. Constant 2015 dollar are converted to nominal values using CPI all urban consumers price index. For 2016-2017, we increase

77 Brookfield RPS, https://www.rpsrealsolutions.com/house-price-index/house-price-index

2015 values by the 2015-2016 and 2016-2017 percentage increase in the provincial median weekly wage rate for full time employees (Cansim Table 2820072). The increase in the weekly wage rate is scaled by the average difference between 1997 and 2015 in the annual growth rate of median family income and the weekly wage rate.

Figure H-4 – Canadian House Price: Income ratio. House price numbers are taken from Brookfield RPS data and UBC Centre for Urban Economics and Real Estate (CUER) Canadian CMA house price series as described above. Divided by median family income as described above.

Table H-3 – Global Cities: Median House Price-to-Income Ratios. Median house price-to-income ratios as reported by Demographia. Ranking is of major cities from least to most affordable as defined by the house price-to-income ratio. http://www.demographia.com/

Figure H-5 – Owner Occupied Housing Affordability. House price and income data as described above. Mortgage payments are calculated assuming a 5-year term fixed rate mortgage with an 80 percent loan-to-value ratio (LTV) using the discounted rate series described above. The amortization period varies between 25 and 40 years as per the maximum allowed for NHA mortgage insurance eligible loans. Other expenses included in housing costs are property taxes and heating. Property taxes are estimated for 2014 using the house prices and mill rates from Real Property Association of Canada Property Tax Report, 2014 for residential property.[78] The tax amount is inflated using provincial average expenditure per household for property and school taxes for owned living quarters (Statistics Canada Survey of Household Spending per Cansim Tables 2030003 and 2030021). Heating is calculated from the same source using series for average expenditure per household for electricity, natural gas, and other fuel for principal accommodation by province.

Figure H-6 – House Price Appreciation 2012-16: City vs. National Select Global Cities: House Price Indexes. Compares house price appreciation from 2012-2016 between the identified city and a national measure. Data sources are Sydney: Australia Bureau of Statistics data cell 6416.0 Residential Property Price Indexes: Eight Capital Cities. London: UK Office of National Statistics, House Price Index. San Francisco: S&P CoreLogic Case-Shiller Index. Vancouver is the price index described above.[79] Median prices from annualized sales for condo and coop apartments in Manhattan as reported by the New York City Department of Finance.[80] For Australia, the non-Sydney is calculated weighting the price indexes for the other seven state capital cities by population. For the UK, the non-London series is calculated from the London and UK indexes using London's share of UK population. For Canada: Brookfield RPS indexes for reported Canadian cities excluding Vancouver and Toronto are weighted by 2016 CMA population. For the US, there is no adjustment to the S&P CoreLogic Case-Shiller US house price index to remove San Francisco or Manhattan.

78 Source: https://www.theglobeandmail.com/real-estate/the-market/property-tax-survey-could-cause-grumbling-among-home-business-owners/article20795900/

79 Sources: Australia: http://www.abs.gov.au/ausstats/abs@.nsf/mf/6416.0; London: https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/housepriceindex/previousReleases; San Francisco: http://ca.spindices.com/index-family/real-estate/sp-corelogic-case-shiller

80 Sources: Manhattan: http://www1.nyc.gov/site/finance/taxes/property-annualized-sales-update.page.

Appendix I: Prevalence of Regulatory Vulnerabilities to Money Laundering in BC Real Estate

By Professor Tsur Somerville

Money laundering red flags

As noted earlier in this report, identifying money laundering is challenging because, by its nature, it is hidden by making money laundering transactions look "normal." Experts in the field have defined money laundering red flags, which are specific features of transactions, such as ownership and financing arrangements that are associated with money laundering events in real estate.

"Red Flag Indicators" [81] prepared by the Financial Action Task Force (FATF) (excerpted in Appendix I-1) is one list of red flags. It lays out over forty aspects of ownership, transaction type, and financing that have been part of past incidents of money laundering in real estate. Both Unger et al (2011) and more recently Transparency International (2019) have used flags like these in different ways to assess money laundering in real estate.[82]

Unger et al (2011) used 17 red flags they were able to measure, based on the FATF list, related to the lender, the financing, the owner, the characteristics of the property and the purchase amount, and measured them for two Dutch cities. They found that for a red flag analysis, multiple red flags have to be combined for more accurate identification of suspicious properties, because of the overlap between any individual red flag and perfectly legal circumstances. In their work, most of the properties ultimately deemed to be suspicious had more than 4 red flags, which included identified foreign ownership, houses bought without mortgage, and large fluctuations in house prices.

Transparency International (2019) assessed properties in the Greater Toronto Area (GTA) purchased from 2008 to 2018 on the basis of red flags associated with corporate ownership, no mortgage and mortgages held by unregulated lenders. They found that that a substantial portion of the value of residential properties is registered to legal rather than natural persons and that a substantial share of these properties do not have a mortgage registered with a conventional lender charged against title. These results are similar to the results presented below for BC.

Most of the features on the FATF list are also elements of legal transactions commonly used for valid business or personal reasons. For example, FATF identifies "transactions involving recently created legal persons, when the amount is large compared to their assets" as a money laundering flag. Yet, it is more typical than not for a developer to establish separate stand-alone companies, often numbered companies, to hold land purchased for future developments, with assets primarily consisting of the property purchased, which would trigger this flag. And if it was purchased

81 FATF, Money Laundering & Terrorist Financing Through the Real Estate Sector (2008), http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf

82 Unger, et. al. *Money Laundering in the Real Estate Sector: Suspicious Properties*. Edward Elgar: Cheltenham, UK, 2011. and Transparency International. *Opacity; Why Criminals Love Canadian Real Estate*, 2019. http://www.transparencycanada.ca/wp-content/uploads/2019/03/BOT-GTA-Report-WEB-copy.pdf

without a mortgage it would trigger a second flag. For data analysis, the challenge is to separate legitimate from illegitimate transactions when they can share many of the same features.

For the purposes of this section, a few of the money laundering indicators identified by the FATF have been selected and their prevalence in British Columbia (BC) real estate has been calculated. These overlap with those in Unger et al and the Transparency International (2019) work. The choice here reflects what indicators are broadly available in the data and which coincide with existing areas of regulatory vulnerability. They highlight features of ownership or purchases where there is a less thorough engagement with the regulatory system. These indicators are:

i) the ownership of real estate by legal persons,[83]

ii) ownership by foreign (non-Canadian) persons,

iii) the purchase or ownership of properties without a mortgage, and

iv) the financing of real estate with mortgages from individuals or unregulated lenders.

The first indicator reflects the ease in the present system of hiding the identify of a property's beneficial owners through the use of legal persons. The second addresses individuals not likely to be part of tax or other administrative system oversight. The third would identify transactions or properties where no entity engaged in an underwriting process that subjected sources of funds and future repayment to any validation. The last focuses on lenders that are not themselves subject to regulatory oversight and that would be unlikely to have sufficient or any underwriting controls that relate to borrower identity and source of funds.

Neither time nor data availability allowed for a more fulsome analysis with a broader set of indicators. However, this analysis highlights how widespread these vulnerabilities are in real estate transactions, and how important better data, better analytical tools, and the sharing of these among entities charged with preserving the integrity of the system are if one wishes to differentiate among legitimate and illegitimate real estate transactions.

The overall findings are that the identified vulnerabilities occur with incidence across all geographies and property types. The incidence rate is typically higher for condominium units than for single family homes. Rates are also higher for properties with the highest assessed values. Whistler, where an extremely high share of properties are vacation properties and which draws skiers from all around North America, shows higher rates for all measures for all types of residential properties. In much the same way, commercial investment properties generally show demonstrably higher rates of incidence than do residential properties.

83 A "legal person" is an entity that has the legal ability to own property but that is not an individual (i.e. not a human being).

These results, together with other evidence gathered through discussions with various participants, contributed to the Panel's conclusion that more effective mechanisms are needed to:

- collect and share more and better information about real estate transactions,
- foster networks that create more and diverse opportunities for irregular activity to be identified, and
- make this information available to the agencies that enforce regulations and pursue criminal activity.

These improvements are needed to address money laundering generally and in particular to determine which transactions are illegitimate.

Data and analysis

The analysis focuses on the four indicators identified above, which are all among the identified FATF flags and are reflective of areas of current regulatory vulnerability. For each indicator the total assessed value of matching properties is calculated by property type, geography and value to capture differences in incidence and possible vulnerability across these classifications.

The incidence is calculated for three types of property:[84]

i) single family detached houses,

ii) strata apartment units (condominiums), and

iii) properties that are deemed to be investment properties, primarily comprised of commercial properties, warehouse space, and rental apartment buildings.

For the purpose of this analysis, "Investment properties" are defined as rental apartment buildings, commercial buildings and storage and warehouse properties, parking lots and parkades, and vacant land, excluding all properties designated as seniors housing, social halls, farms and industrial properties, with the exception of warehouse and storage, as assigned to these categories by BC Assessment actual use categories and codes. Among non-residential property types included in the data set, farms and non-warehouse industrial facilities are excluded as both are most likely to owned by the business operator and thus less well suited for money laundering than investment properties frequently owned to earn rental income or for speculative purposes. Some of these properties could be used for criminal purposes or the businesses used for money laundering, but the focus of this analysis is on properties most suitable for money laundering direct investment.

The three property types analyzed reflect the preponderance of real estate types and are sufficiently differentiated to reveal broad patterns. Houses differ from condos because they are generally more expensive and require more owner upkeep, and unusual use or ownership is potentially more noticeable. Condominium apartment units are both ubiquitous and a more affordable ownership form than the other residential property types. For new condos, pre-sale contracts and assignments offer additional approaches to acquiring ownership. Commercial

84 Townhouses have been excluded from the analysis as including them does not add additional insights beyond what can be garnered from the other residential property types. Duplexes, triplexes, fourplexes, and manufactured housing, all of which occur with very limited frequency in the data, are also excluded.

properties are sufficiently different in value, location, and the ability to blend dirty and clean money than are residential properties for the presentation to benefit from their inclusion.

Property markets differ geographically in the Province as do perceptions about the presence of money laundering. Much of the focus has been on the Lower Mainland in general and the City of Vancouver in particular. Data has been tabulated for four different geographical areas:

i) the Vancouver census metropolitan area (CMA), roughly the Lower Mainland,

ii) other metro areas, defined as the combination of Abbotsford-Mission, Kelowna and Victoria CMAs, and the Chilliwack, Kamloops, and Squamish census agglomerations (CAs),

iii) the City of Vancouver plus the University Endowment Lands (UEL), which is a subset of the Vancouver CMA, and

iv) the Whistler Resort Municipality.

Identifying patterns separately for these four areas helps to determine whether there is a particular geographic pattern of incidence related to possible regulatory vulnerability.

In order to examine whether the incidence of vulnerabilities in regulatory oversight differs for higher priced properties, samples limited to these properties have also been defined. The geography of property values is heavily skewed towards higher value properties being located in the City of Vancouver, the adjacent University Endowment Lands (UEL), and West Vancouver so defining high value across the whole sample would primarily pick up these areas.[85] Instead, categories of residential properties with assessed values above the highest 20, 10 and 5 percent of residential property valuations in Vancouver, the UEL, and West Vancouver have been defined for the purpose of the analysis.[86]

There are 1,160,601 land titles in the set of properties used in the analysis. Of these, there were 102,786 properties with transactions in 2018. Details are reported on the counts and assessed values (total and average) for the included properties by geographic area for both the stock of all properties and the subset of properties where there were transactions in 2018. A more precise listing of included and excluded properties can be found in Appendix I-2.

The general pattern of presentation is to have a set of four tables:

i) the total assessed value of properties with the indicator;

ii) the share of assessed value represented by properties with the indicator as a proportion of the total assessed value for the stock of properties in the sample;

iii) the total assessed value of properties that transacted in 2018 where the indicator is present, and

85 All have mean 2019 roll year single family detached assessed values over $2.3M, while other Lower Mainland municipalities have mean values below $1.8M (excluding the very small villages of Anmore and Belcarra).

86 The cut-offs for values for the top 20 percent are $3.27M for a single-family home and $1.1M for a condo, for the top 10 percent $4.2M and $1.55M respectively, and for the top 5 percent $5.36M and $2.1M.

iv) the share of assessed value for transacting properties with the indicator of total 2018 transacting property assessed value.[87]

Legal persons

The first area of vulnerability is in ownership registration. In the absence of beneficial ownership registration requirements on both properties and companies, those seeking to hide the ultimate source of funds and beneficiaries can hide behind a company veil by registering property ownership to a legal rather than natural person. At the same time, legal person ownership can be used for legitimate purposes. For example, there can be clear business, tax and financial planning benefits to owning property through a company or other legal person rather than directly as an individual. The extent of legal person ownership is highlighted by tabulating the assessed value and share of properties with a legal person as at least one of the registered owners.

Table I-1 shows the total assessed value of properties owned by legal persons and Table I-2 shows their share among all properties. Tables I-3 and I-4 repeat the analysis, but only for properties that had transactions in 2018, with share limited to the proportion among all 2018 transacting properties.

The land titles for a significant volume of property, even among residential properties, have no individuals (natural persons) on title, only "legal persons", including named and numbered companies, trusts and partnerships.

Broadly, the share of assessed value of residential properties owned by legal persons ranges from 2 percent to 7 percent. However, this is still a significant amount of property, accounting for nearly $16B worth of single family properties in the Vancouver CMA. Shares are roughly double for condominiums, with over $10B of condo apartment units in the Vancouver CMA owned by legal persons.

The shares across other urban areas are similar but are two to seven times higher among Whistler vacation properties. The rate is also higher for more valuable properties, as high as 11.6 percent among the most expensive condominium units. In comparison, corporate and other legal person ownership is the dominant form for commercial investment properties, with over $300B (81 percent) of investment properties in the Vancouver CMA having registered owners that are not natural persons.

87 We use assessed value rather than transaction prices because many properties, primarily commercial properties, may have mortgages that roll over from one owner to the other. In this case, the transaction prices will reflect property asset value net of debt on the asset, i.e. a blend of financing and property value.

Table I-1 – Total assessed value ($million) of properties with legal person ownership by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	15,959	10,904	319,591
Other Urban Areas	2,983	1,542	40,262
City of Vancouver & UEL	6,311	433	109,390
Whistler	1,048	776	1,879
Select High Value Properties			
Top 20% of value	4,867	2,966	
Top 10% of value	3,588	2,419	
Top 5% of value	2,838	1,988	

Notes: Properties have no natural persons listed as owners on title.

Table I-2 – Share of total assessed value of properties with legal person ownership by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	2.7%	6.2%	81.2%
Other Urban Areas	2.0%	7.0%	67.7%
City of Vancouver & UEL	3.5%	6.5%	85.0%
Whistler	14.6%	12.2%	42.8%
Select High Value Properties			
Top 20% of value	5.6%	8.0%	
Top 10% of value	6.5%	9.6%	
Top 5% of value	8.2%	11.6%	

Notes: Properties have no natural persons listed as owners on title.

The shares for 2018 transaction value are slightly different. The share of legal person ownership among the total value of 2018 transacting single family detached units is two to three times higher in the urban areas than it is for the stock of properties. Conversely, the share of legal person condo ownership in transacting properties is lower compared with the share of legal person ownership.

For investment properties in 2018, the share of legal person ownership of transaction value, at approximately 34 to 40 percent, is roughly half the rate for the stock of properties. Commercial

property transactions are very sensitive to the mix of high and low value properties that transact in any given year.

Table I-3 – Total assessed value ($million) of properties transacting in 2018 with legal person ownership by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	2,482	761	16,370
Other Urban Areas	485	132	2,325
City of Vancouver & UEL	758	433	5,165
Whistler	51	251	135
Select High Value Properties			
Top 20% of value	406	222	
Top 10% of value	223	160	
Top 5% of value	167	126	

Notes: Properties have no natural persons listed as owners on title.

Table I-4 – Share of total assessed value of properties transacting in 2018 with legal person ownership by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	8.2%	4.1%	34.1%
Other Urban Areas	4.6%	4.9%	39.1%
City of Vancouver & UEL	9.3%	5.6%	87.1%
Whistler	12.0%	9.5%	19.6%
Select High Value Properties			
Top 20% of value	9.8%	6.4%	
Top 10% of value	8.5%	6.6%	
Top 5% of value	9.7%	7.5%	

Notes: Properties have no natural persons listed as owners on title.

Foreign ownership

Foreign ownership of real estate has been a topic of considerable interest in BC. If the money to acquire a property comes from outside Canada, the checks on the source of funds and the knowledge of the owner will likely be laxer relative to monies and persons known domestically.

At the same time, both because of immigration, BC's status as a tourism destination, and general global investment flows in real estate, foreign ownership itself is not evidence of money laundering by itself but it is an area of interest and a potential vulnerability.

A simple comparison between foreign ownership as indicated on title documents and more detailed data work by Statistics Canada as part of the Canada Housing Statistical Program linking tax, immigration, census, and title records highlights the data challenges around determining foreign ownership in real estate.

Table I-5 details foreign ownership as listed in the LTSA title records. With the exception of Whistler, where there are large numbers of vacation properties owned by legal and natural persons listing a US address, the incidence of foreign ownership would appear to be low from this data, less than 1.0 percent for single family detached homes.

The Statistics Canada results from linking administrative data bases with census and land title information are shown in Table I-6. Statistics Canada reports the incidence of non-Canadian resident ownership, as opposed to citizenship. They find much higher rates of non-resident ownership of Vancouver CMA property than the count of a foreign owner address from land title data – ten times the rate for single family detached property in the Vancouver CMA, and five times the rate for condo properties. While these results are not directly comparable, the tremendous scale of the differences is best explained by owners not reporting their address of actual residence on title registration documents (which they are not obliged to do).

This highlights the challenges in data collection and consistency, where improvement is needed to effectively address money laundering in real estate. Foreign ownership measures are particularly important for being able to track the international flow of money laundering capital.

Table I-5 – Share of total assessed value of properties with a registered owner on title listing a foreign address

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	0.2%	1.8%	0.5%
Other Urban Areas	0.4%	1.6%	0.8%
City of Vancouver & UEL	0.3%	3.0%	0.4%
Whistler	13.7%	51.5%	26.5%
Select High Value Properties			
Top 20% of value	0.6%	4.1%	
Top 10% of value	0.8%	4.3%	
Top 5% of value	0.9%	4.5%	

Table I-6 – Share of properties with a non-Canadian resident as at least one of the registered owners on title

Area	Single Family Detached	Condo Apt
All Properties		
Vancouver CMA	3.1%	7.8%
City of Vancouver	4.6%	10.1%
Properties Built 2016-17		
Vancouver CMA	5.8%	14.0%
City of Vancouver	9.9%	15.3%

Source: Statistics Canada, Canadian Housing Statistics Program (CHSP) 2019, using 2017 data.

No mortgage

In discussions of money laundering in real estate, attention is often paid to cash purchases of real estate where there is no mortgage registered on title in the acquisition. No mortgage transactions are less likely to have been checked by a "reporting entity"[88] charged with a regulatory requirement to validate the information provided by the purchaser. No mortgage purchases allow for faster placement of more funds into real estate.

At the same time, the absence of a mortgage may be expected for many properties. It is likely for any properties that have been owned for longer than the standard loan amortization period. It is also to be expected for properties purchased by downsizers from the equity in a previously owned property, for a second property where a mortgage might be charged instead against a principal residence, or for purchases by those with significant wealth. Again, the absence of a mortgage does not signal money laundering, but it signals the vulnerability of reduced oversight.

The following results show the value and share of real property in the select areas of BC that are likely unencumbered by a registered mortgage. Identification here is problematic because information was not provided as to whether a mortgage charge was cancelled. For the purposes of this analysis, a property is considered mortgage free if there is no mortgage charge registered against title within the last 10 years. The overwhelming share of mortgages have terms of ten years or less including essentially all residential mortgages.[89]

Over 40 percent of residential properties in the studied areas, representing over $400B in assessed value, have had no mortgage charge applied within the last ten years. Table I-7 shows the total assessed value of these properties and Table I-8 their share. For commercial investment properties, the total is over $175B and the share is similar to that for residential properties, except

88 A regulated financial institution or other body required to report suspicious transactions and otherwise comply with anti-money laundering requirements.

89 Mortgage Professionals Canada, *Annual State of the Residential Mortgage Market in Canada, Year-end 2018*, https://mortgageproscan.ca/docs/default-source/membership/annual-state-of-res-mtge-mkt-2018.pdf Note that the term of a mortgage is the time to renewal, not the amortization period.

for the small $3.3B in Whistler. Also, the share of no recent mortgage charge is slightly higher for high value condo units, relative to all condo properties, by about 7 to 12 percentage points.

These figures are consistent with the *Survey of Financial Security (SFS), 2016* (results for Canadian homeowners without mortgages), which reports 43.1 percent of BC owners saying they have no mortgage on their primary residence, compared to 42.6 percent for owner-occupiers in the rest of Canada.

Table I-7 – Total assessed value ($million) of properties with no mortgage recent listed on title by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	247,793	71,040	145,580
Other Urban Areas	59,580	10,123	27,023
City of Vancouver & UEL	87,385	35,186	55,712
Whistler	4,199	5,660	3,381
Select High Value Properties			
Top 20% of value	36,584	18,914	
Top 10% of value	22,184	13,372	
Top 5% of value	14,412	9,040	

Notes: No mortgage is defined as no mortgage charge registered within last ten years that remains on title.

Table I-8 – Share of total assessed value of properties with no mortgage recent listed on title by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	42.1%	40.4%	36.8%
Other Urban Areas	40.0%	45.6%	45.4%
City of Vancouver & UEL	48.7%	42.1%	43.3%
Whistler	58.6%	89.3%	77.0%
Select High Value Properties			
Top 20% of value	42.1%	50.9%	
Top 10% of value	40.4%	52.8%	
Top 5% of value	41.8%	52.6%	

Notes: No mortgage is defined as no mortgage charge registered within last ten years that remains on title.

Reporting on the share of properties without mortgages is more instructive for recent purchases, as this eliminates those properties that have been held long enough for the owners to fully amortize their mortgage debt. Tables I-10 and I-11 present the total assessed value and share of assessed value for 2018 properties purchased without a mortgage charge being registered.

For both types of residential properties, the overall share of total assessed value of 2018 transactions is lower than for all properties but remains significant. In 2018 in the Vancouver CMA, $9B of single family detached units and $5.8B of condo units were purchased (30 and 31 percent of the total value of transactions) without mortgages (Tables I-9 and I-10). This rises to 44-50 percent for high value properties. And over all, almost $21B in residential property was purchased in the studied areas without a mortgage. There is considerable variation in the commercial values, but for the Vancouver CMA over 50 percent of the value of 2018 transactions (nearly $25B) was purchased without a mortgage.

Care in interpretation of these results is warranted. According to the SFS, in BC 62 percent of buyers of a principal residence without a mortgage were aged 65 and up, suggesting a large number of downsizers purchasing with wealth.

While detailed tables are not provided here, reporting the breakdown between natural and legal persons is also instructive. For the Vancouver CMA, for natural persons the shares of the value of 2018 purchases without mortgages are 30, 31, and 60 percent for single family detached, condo apartment units, and investment properties respectively. For legal persons, including named and numbered companies, trusts and partnerships, the shares for the same property types and geography are 28, 40, and 36 percent. Both are higher for the high value residential properties.

Table I-9 – Total assessed value ($million) of properties transacting in 2018 with no mortgage recent listed on title by geography and type.

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	9,043	5,778	24,919
Other Urban Areas	2,398	993	1,607
City of Vancouver & UEL	3,425	2,453	1,354
Whistler	242	2,576	624
Select High Value Properties			
Top 20% of value	1,823	1,557	
Top 10% of value	1,198	1,193	
Top 5% of value	780	847	

Notes: No mortgage is defined as no mortgage charge registered within last ten years that remains on title.

Table I-10 – Share of Total assessed value of properties transacting in 2018 with no mortgage recent listed on title by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	29.7%	31.2%	51.9%
Other Urban Areas	22.7%	36.5%	27.0%
City of Vancouver & UEL	42.0%	31.6%	22.8%
Whistler	56.6%	97.5%	89.0%
Select High Value Properties			
Top 20% of value	44.2%	44.5%	
Top 10% of value	45.5%	49.0%	
Top 5% of value	45.5%	50.5%	

Notes: No mortgage is defined as no mortgage charge registered within last ten years that remains on title.

Unregulated lenders

Conventional mortgages must pass through a lender's underwriting process. Regulated lenders have incentives for robust underwriting procedures to ensure compliance with financial system regulatory requirements. The same does not apply to unregulated lenders or to loans made by individuals. This is one of the reasons these loans are flagged as a potential mechanism for money laundering in real estate.

Mortgages are determined to be from an unregulated source if they are not from:

- an Office of the Superintendent of Financial Institutions (OSFI) regulated lender (banks, trust companies, and life insurance companies),
- a credit union subject to provincial regulation by the Financial Institutions Commission (FICOM), or
- a Canada Mortgage and Housing Corporation (CMHC) approved lender for National Housing Act (NHA) insured loans.

The latter includes monoline lenders that are not regulated by a federal or provincial financial sector regulator, but which are obligated to have rigorous underwriting procedures to validate borrowers as part of the CMHC approved lender status.

All remaining entities with a charge against title are classified as unregulated. This likely overcounts unregulated lenders as regulated mortgage investment companies (MICs) or regulated lender using a company name not easily associated with the lender's primary corporate identity cannot be identified. These results do not distinguish among senior or junior loans, just the presence of a mortgage charge registered by an unregulated or individual lender.

Tables I-11 and I-12 provide the total assessed value of properties with a mortgage charge from an unregulated lender on title and the share of these properties of total assessed value by area and property type.

Table I-11 – Total assessed value ($million) of properties with mortgage from unregulated lender by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	18,643	6,333	37,550
Other Urban Areas	3,233	466	6,902
City of Vancouver & UEL	6,216	2,694	17,700
Whistler	241	26	131
Select High Value Properties			
Top 20% of value	4,469	1,361	
Top 10% of value	3,148	1,001	
Top 5% of value	2,183	765	

Notes: At least one mortgage charge registered within last ten years that remains on title from a lender that is neither OSFI regulated, a credit union, or a CMHC approved lender.

Table I-12 – Share of total assessed value of properties with mortgage from unregulated lender by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	5.5%	6.0%	15.0%
Other Urban Areas	3.6%	3.9%	21.3%
City of Vancouver & UEL	6.8%	5.6%	24.3%
Whistler	8.1%	3.8%	12.9%
Select High Value Properties			
Top 20% of value	8.9%	7.5%	
Top 10% of value	9.6%	8.4%	
Top 5% of value	10.9%	9.4%	

Notes: At least one mortgage charge registered within last ten years that remains on title from a lender that is neither OSFI regulated, a credit union, or a CMHC approved lender.

As with company ownership, there is considerable property value with charges from these lenders: over $18B single family properties in the Lower Mainland and among the highest value properties

(top 5 percent), over $2B in properties by assessed value have a mortgage charge registered from an unregulated lender. These represent 5.5 percent and 10.9 percent respectively of overall property value in these groups, which while not a large share, is nonetheless significant. They are present in a greater share of commercial/investment properties, with a 13 to 24 percent share depending on area. Other than apartment building acquisition, there are no NHA programs for the investment property category, so the unregulated share should be higher.

Tables I-13 and I-14 show total assessed value and share of properties that transacted in 2018 with a mortgage charge from an unregulated or individual lender.

Among recent transactions, the percentages of residential properties purchased with a mortgage from an unregulated lender or individual are similar to the share among the stock of all properties – $2.5B of single family detached and condo apartments were purchased in 2018 in the Vancouver CMA with at least some funding from one of these lenders (5.5 percent of transaction value). The difference between all properties and 2018 transactions is among higher valued properties, including single family detached properties in the City of Vancouver. For those categories, the share was 9.4 to 18.7 percent. It is likely that changes to guidelines for regulated lenders on NHA loans and equity lending over the last few years pushed some buyers of high-priced properties into the unregulated market.

Table I-13 – Total assessed value ($million) of properties transacting in 2018 with mortgage from unregulated lender by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	1,816	699	4,030
Other Urban Areas	365	58	2,652
City of Vancouver & UEL	598	350	860
Whistler	8	3	23
Select High Value Properties			
Top 20% of value	370	212	268
Top 10% of value	268	160	
Top 5% of value	198	121	

Notes: At least one mortgage charge registered within last ten years that remains on title from a lender that is neither OSFI regulated, a credit union, or a CMHC approved lender.

Table I-14 – Share of total assessed value of properties transacting in 2018 with mortgage from unregulated lender by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	5.5%	5.5%	17.5%
Other Urban Areas	4.5%	3.4%	61.0%
City of Vancouver & UEL	12.6%	6.6%	18.8%
Whistler	4.1%	3.8%	29.7%
Select High Value Properties			
Top 20% of value	16.1%	10.9%	
Top 10% of value	18.7%	12.9%	
Top 5% of value	10.9%	9.4%	

Notes: At least one mortgage charge registered within last ten years that remains on title from a lender that is neither OSFI regulated, a credit union, or a CMHC approved lender.

Multiple indicators: no natural person owners and no regulated lender

Identifying properties with multiple indicators will lower the incidence rates as few properties include multiple indicators. To obtain some sense of the overlapping presence of regulatory vulnerabilities tabulations of properties are included where there is no natural person among the listed owners, the property has at least one mortgage charge on title within the last ten years, and the mortgage charge(s) is registered to an unregulated lender or an individual. Unlike above, in this case properties that have multiple mortgage charges on title where at least one of those is from a regulated lender are excluded, which further reduces the incidence.

Table I-15 presents the total assessed value of properties where these conditions hold. Table I-16 shows this share as a percentage of total property assessed value by property type and area.

Over $1.5B of single family detached properties in the Vancouver CMA have both of these flags in evidence. The figure is approximately ten times higher for investment properties, where the incidence of legal person ownership is higher. Even using two indicators, the value of properties that exhibit both flags is substantial, though the overall incidence is quite low. Of note is that the incidence rate, though still small, is up to ten times higher for the higher value residential properties.

Limiting the analysis to 2018 transactions, the values are lower. Across the Vancouver CMA and the other included urban areas approximately $0.5B of residential property and $1.9B of commercial investment property was purchased in 2018 by legal persons, with no natural persons among registered owners, using only mortgages from unregulated lenders or individuals.

Table I-15 – Total assessed value ($million) of properties owned by a legal person with only mortgages from unregulated lenders by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	1,537	464	15,468
Other Urban Areas	173	36	2,142
City of Vancouver & UEL	778	281	6,947
Whistler	68	3	43
Select High Value Properties			
Top 20% of value	621	196	
Top 10% of value	441	173	
Top 5% of value	380	153	

Notes: Properties with no natural persons on title. Only mortgage charges registered within last ten years that remain on title are from a lender that is neither OSFI regulated, a credit union, or a CMHC approved lender.

Table I-16 – Share of assessed value of properties owned by a legal person with only mortgages from unregulated lenders by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	0.3%	0.3%	3.9%
Other Urban Areas	0.1%	0.2%	3.6%
City of Vancouver & UEL	0.4%	0.3%	5.4%
Whistler	2.4%	0.1%	0.6%
Select High Value Properties			
Top 20% of value	3.6%	1.1%	
Top 10% of value	5.1%	1.9%	
Top 5% of value	8.7%	3.3%	

Notes: Properties with no natural persons on title. Only mortgage charges registered within last ten years that remain on title are from a lender that is neither OSFI regulated, a credit union, or a CMHC approved lender.

The nature of money laundering is such that simple cross-tabulations cannot determine whether a property was purchased with dirty money or not. The indicators in Appendix I-1, only a few of which are used here, are features that can be associated with money laundering through real estate in any of the stages of money laundering, but none need be present. Documenting the incidence of these flags in the broader universe of properties highlights the challenges in regulation and enforcement of an effective money laundering regime. More than anything else the results show that the system must be able to gather information broadly, have an ability to

make links between different data elements, and have this information available to regulatory, investigative, and enforcement bodies.

Appendix I-1 - Financial Action Task Force - Red Flag Indicators[90]

Building on the cases and other information analyzed, the participants in this study also identified a number of common characteristics that, when detected individually or in combination, might indicate potential misuse of the real estate sector for money laundering purposes. These "red flag" indicators when available can assist financial institutions and others in the conduct of customer due diligence for new and existing clients. They also may help in performing necessary risk-analysis in the more general sense for the sector. Thus, valid indicators may help in identifying suspicious activity that should be reported to competent national authorities according to anti-money laundering legislation.

These indicators are not intended to represent an exhaustive list of all the possible types of transactions that might be linked to money laundering or terrorist financing. Nor should it in any way be implied that the transactions listed here are *necessarily* linked to such activities. It should be remembered that activities related to money laundering or terrorist financing are always carried out with the aim of appearing to be "normal". The criminal nature of the activity derives from the origin of the funds and the aim of the participants.

Natural persons

- Transactions involving persons residing in tax havens or risk territories, when the characteristics of the transactions match any of those included in the list of indicators.
- Transactions carried out on behalf of minors, incapacitated persons or other persons who, although not included in these categories, appear to lack the economic capacity to make such purchases.
- Transactions involving persons who are being tried or have been sentenced for crimes or who are publicly known to be linked to criminal activities involving illegal enrichment, or there are suspicions of involvement in such activities and that these activities may be considered to underlie money laundering
- Transactions involving persons who are in some way associated with the foregoing (for example, through family or business ties, common origins, where they share an address or have the same representatives or attorneys, etc.).
- Transactions involving an individual whose address is unknown or is merely a correspondence address (for example, a PO Box, shared office or shared business address, etc.), or where the details are believed or likely to be false.
- Several transactions involving the same party or those undertaken by groups of persons who may have links to one another (for example, family ties, business ties, persons of the same nationality, persons sharing an address or having the same representatives or attorneys, etc.).

90 FATF/OECD. 2008. *Money Laundering & Terrorist Financing Through the Real Estate Sector.*

Legal persons

- Transactions involving legal persons or legal arrangements domiciled in tax havens or risk territories, when the characteristics of the transaction match any of those included in the list of indicators.
- Transactions involving recently created legal persons, when the amount is large compared to their assets.
- Transactions involving legal entities, when there does not seem to be any relationship between the transaction and the activity carried out by the buying company, or when the company has no business activity.
- Transactions involving foundations, cultural or leisure associations, or non-profit-making entities in general, when the characteristics of the transaction do not match the goals of the entity.
- Transactions involving legal persons which, although incorporated in the country, are mainly owned by foreign nationals, who may or may not be resident for tax purposes.
- Transactions involving legal persons whose addresses are unknown or are merely correspondence addresses (for example, a PO Box number, shared office or shared business address, etc.), or where the details are believed false or likely to be false.
- Various transactions involving the same party. Similarly, transactions carried out by groups of legal persons that may be related (for example, through family ties between owners or representatives, business links, sharing the same nationality as the legal person or its owners or representatives, sharing an address, in the case of legal persons or their owners or representatives, having a common owner, representative or attorney, entities with similar names, etc.).
- Formation of a legal person or increases to its capital in the form of non-monetary contributions of real estate, the value of which does not take into account the increase in market value of the properties used.
- Formation of legal persons to hold properties with the sole purpose of placing a front man or straw man between the property and the true owner.
- Contribution of real estate to the share capital of a company which has no registered address or permanent establishment which is open to the public in the country.
- Transactions in which unusual or unnecessarily complex legal structures are used without any economic logic.

Natural and legal persons

- Transactions in which there are signs, or it is certain, that the parties are not acting on their own behalf and are trying to hide the identity of the real customer.
- Transactions which are begun in one individual's name and finally completed in another's without a logical explanation for the name change. (For example, the sale or change of ownership of the purchase or option to purchase a property which has not yet been handed

over to the owner, reservation of properties under construction with a subsequent transfer of the rights to a third party, etc.).

- Transactions in which the parties:
  - Do not show particular interest in the characteristics of the property (*e.g.* quality of construction, location, date on which it will be handed over, etc.) which is the object of the transaction.
  - Do not seem particularly interested in obtaining a better price for the transaction or in improving the payment terms.
  - Show a strong interest in completing the transaction quickly, without there being good cause.
  - Show considerable interest in transactions relating to buildings in particular areas, without caring about the price they have to pay.
- Transactions in which the parties are foreign or non-resident for tax purposes and:
  - Their only purpose is a capital investment (that is, they do not show any interest in living at the property they are buying, even temporarily, etc.).
  - They are interested in large-scale operations (for example, to buy large plots on which to build homes, buying complete buildings or setting up businesses relating to leisure activities, etc.).
  - Transactions in which any of the payments are made by a third party, other than the parties involved. Cases where the payment is made by a credit institution registered in the country at the time of signing the property transfer, due to the granting of a mortgage loan, may be excluded.

Intermediaries

- Transactions performed through intermediaries, when they act on behalf of groups of potentially associated individuals (for example, through family or business ties, shared nationality, persons living at the same address, etc.).
- Transactions carried out through intermediaries acting on behalf of groups of potentially affiliated legal persons (for example, through family ties between their owners or representatives, business links, the fact that the legal entity or its owners or representatives are of the same nationality, that the legal entities or their owners or representatives use the same address, that the entities have a common owner, representative or attorney, or in the case of entities with similar names, etc.).
- Transactions taking place through intermediaries who are foreign nationals or individuals who are non-resident for tax purposes.

Means of payment

- Transactions involving payments in cash or in negotiable instruments which do not state the true payer (for example, bank drafts), where the accumulated amount is considered to be significant in relation to the total amount of the transaction.
- Transactions in which the party asks for the payment to be divided into smaller parts with a short interval between them.
- Transactions where there are doubts as to the validity of the documents submitted with loan applications.
- Transactions in which a loan granted, or an attempt was made to obtain a loan, using cash collateral or where this collateral is deposited abroad.
- Transactions in which payment is made in cash, bank notes, bearer cheques or other anonymous instruments, or where payment is made by endorsing a third-party's cheque.
- Transactions with funds from countries considered to be tax havens or risk territories, according to anti-money laundering legislation, regardless of whether the customer is resident in the country or territory concerned or not.
- Transactions in which the buyer takes on debt which is considered significant in relation to the value of the property. Transactions involving the subrogation of mortgages granted through institutions registered in the country may be excluded.

Nature of the Transaction

- Transactions in the form of a private contract, where there is no intention to notarise the contract, or where this intention is expressed, it does not finally take place.
- Transactions which are not completed in seeming disregard of a contract clause penalising the buyer with loss of the deposit if the sale does not go ahead.
- Transactions relating to the same property or rights that follow in rapid succession (for example, purchase and immediate sale of property) and which entail a significant increase or decrease in the price compared with the purchase price.
- Transactions entered into at a value significantly different (much higher or much lower) from the real value of the property or differing markedly from market values.
- Transactions relating to property development in high-risk urban areas, in the judgement of the company (for example, because there is a high percentage of residents of foreign origin, a

new urban development plan has been approved, the number of buildings under construction is high relative to the number of inhabitants, etc.).

- Recording of the sale of a building plot followed by the recording of the declaration of a completely finished new building at the location at an interval less than the minimum time needed to complete the construction, bearing in mind its characteristics.
- Recording of the declaration of a completed new building by a non-resident legal person having no permanent domicile indicating that the construction work was completed at its own expense without any subcontracting or supply of materials.
- Transactions relating to property development in high-risk urban areas based on other variables determined by the institution (for example, because there is a high percentage of residents of foreign origin, a new urban development plan has been approved, the number of buildings under construction is high relative to the number of inhabitants, etc.).

Appendix I-2 – Data Universe

The data are the universe of titles from the Capital, North Shore-Squamish Valley, Vancouver, North Fraser, Richmond-Delta, Surrey-White Rock, Fraser Valley, Kelowna, and Kamloops assessment areas along with BC Assessment Roll data for the same properties in these assessment areas. Included are the Abbotsford, Kelowna, Vancouver, and Victoria census metropolitan areas (CMAs) and the Chilliwack, Kamloops, and Squamish census agglomerations (CAs), as well as the Whistler Resort Municipality.

From a total of 1,277,418 titles for residential and commercial properties (based on BC Assessment actual use codes and categories), the following properties are excluded:

- properties missing property identification number (PID),
- properties classified in the following BC Assessment actual use categories: air parcel, farm, marine lot, senior housing, or strata self-storage or strata parking,
- parcels with assessed values for the 2019 Roll Year of less than $10,000 or those with no listed assessed values,
- properties where the title is registered to crown corporations, governments, or societies (this includes all properties with a pre-paid ground lease at SFU and UBC, and
- properties not in the identified urban areas, either in one of the four CMAs or three CAs, and Whistler.

The remaining parcels include residential, commercial, and storage and warehouse land uses, both with structures and vacant.

This leaves 1,160,601 titles. These properties are classified as single family detached, row/townhouses, strata residential apartment (condo), other non-purpose built rental residential, and investment. The latter includes all the included non-residential land uses along with rental apartment buildings, and vacant land.

The data is geographically categorized as in the Vancouver CMA, other metro areas (the other three CMAs and the three CAs), Whistler, and the City of Vancouver and the University Endowment Lands (UEL).

For the City of Vancouver, University Endowment Lands, and West Vancouver, we identify a subset of "High Value Properties", which are either the 20 percent, 10 percent, or 5 percent of units with the highest assessed values in each of the single family detached and condos land use categories. Table I-2.1 indicates the minimum value cut-offs for each of these groups of high value properties.

Table I-2.1 - Minimum value for high value property percentiles

Area	Single Family Detached	Condo Apt
Top 20% of value	3,268,000	1,115,000
Top 10% of value	4,189,000	1,550,000
Top 5% of value	5,356,000	2,100,000

Notes: All data is from LTSA and BC Assessment files. "High Value Properties" are those in the top percentiles of all single and condo properties by type by value in Vancouver, UEL, and West Vancouver

Tables I-2.2 to I-2.4 below provide the details on the data universe. They show the total number of titles (Table I-2.2) and 2019 roll year total assessed value of these titles in $M (Table I-2.3), and average assessed value (Table I-2.4)

Table I-2.2 – Total number of selected titles by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	371,918	243,885	69,866
Other Urban Areas	191,399	56,040	34,068
City of Vancouver & UEL	75,778	88,782	22,159
Whistler	2,834	5,795	6,907
Select High Value Properties			
Top 20% of value	17,453	18,299	
Top 10% of value	8,727	9,155	
Top 5% of value	4,361	4,580	

Table I-2.3 – Total assessed value ($million) of selected titles by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	588,635	175,890	393,967
Other Urban Areas	149,004	22,181	59,067
City of Vancouver & UEL	179,503	83,553	127,789
Whistler	7,170	6,341	4,390
Select High Value Properties			
Top 20% of value	86,881	37,154	
Top 10% of value	54,905	25,311	
Top 5% of value	34,483	17,171	

Table I-2.4 – Average assessed value of selected titles by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	1,582,700	721,200	5,638,900
Other Urban Areas	778,500	395,800	1,733,800
City of Vancouver & UEL	2,368,800	941,100	5,766,900
Whistler	2,530,000	1,094,300	635,600
Select High Value Properties			
Top 20% of value	4,978,000	2,030,400	
Top 10% of value	6,291,400	2,764,700	
Top 5% of value	7,907,100	3,749,200	

The transacting properties have the same definitions by property type and geography. Transactions are limited to no more than one per day for any given property. The period is for January-December 2018. Below we present the total number of transacting titles (Table I-2.5) and 2019 roll year total assessed value of these transacting titles in $M (Table I-2.6), and average assessed value (Table I-2.7), all by geography and property type.

Table I-2.5 – Total number of 2018 transacting titles by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	19,565	26,212	4,462
Other Urban Areas	13,879	7,181	3,205
City of Vancouver & UEL	3,416	8,383	695
Whistler	171	2,093	1,288
Select High Value Properties			
Top 20% of value	829	1,703	
Top 10% of value	418	880	
Top 5% of value	222	456	

Table I-2.6 – Total assessed value ($million) of 2018 transacting titles by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	30,449	18,490	47,982
Other Urban Areas	10,544	2,717	5,951
City of Vancouver & UEL	8,162	7,762	5,929
Whistler	427	2,642	701
Select High Value Properties			
Top 20% of value	4,127	3,492	
Top 10% of value	2,630	2,427	
Top 5% of value	1,714	1,673	

Table I-2.7 – Average assessed value of 2018 transacting titles by geography and type

Area	Single Family Detached	Condo Apt	Investment
Vancouver CMA	1,556,300	705,400	10,753,500
Other Urban Areas	759,700	378,400	1,856,800
City of Vancouver & UEL	2,389,300	925,900	8,530,800
Whistler	2,497,700	1,262,300	544,200
Select High Value Properties			
Top 20% of value	4,978,200	2,050,700	
Top 10% of value	6,292,600	2,758,400	
Top 5% of value	7,718,900	3,669,800	

Appendix J: Federal and Provincial Agencies Involved in Anti-Money Laundering Activities

The Federal Ministry of Finance has provided the following list of federal laws related to combatting money laundering:

AML policy is implemented at the legislative level by:

- *the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) (2000),*
- the *Criminal Code of Canada (1985),*
- the *Mutual Legal Assistance in Criminal Matters Act (1985),*
- the *Income Tax Act (1985),*
- the *Office of the Superintendent of Financial Institutions Act (1985),*
- the *Canada Business and Corporations Act (1985),*
- the *Seized Property Management Act (1993)* and
- the *United Nations Act (1985).*

AML policy is implemented at the regulatory level by:

- *Cross-border Currency and Monetary Instruments Reporting Regulations (2002)*
- *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations (2007)*
- *Proceeds of Crime (Money Laundering) and Terrorist Financing Registration Regulations (2007)*
- *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (2001)*
- *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations (2001)*
- *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (2001)*
- *United Nations Al-Qaida and Taliban Regulations (1999)*

The following are descriptions of all of the federal and provincial agencies which are, or should be, involved in AML efforts.

Law Enforcement and Security

The mandate of the Expert Panel is focused on regulatory measures to address money laundering rather than on criminal justice measures. Nevertheless, the following brief description of the law enforcement and security agencies is provided as context since collaboration and cooperation between law enforcement and regulators is a necessary part of an effective and comprehensive AML approach.

Policing

Policing in BC is undertaken by a combination of the RCMP and municipal police forces.

Uniquely, the RCMP appear in Figure 13 in the body of the report as both federal and provincial agencies. That reflects the fact that the RCMP is Canada's national police force, which accounts for part of its function in every Canadian province and territory. The national policing role relates to enforcement of federal law and national security, including drug enforcement, border security and protective services, among other functions.

In addition, in BC and all other provinces except Ontario and Quebec, the RCMP acts as the provincial police force, undertaking law enforcement across all parts of the Province on behalf of the provincial government. Under the provincial police function, the RCMP provides criminal law enforcement and traffic safety outside of organized municipalities.

Finally, the RCMP also provides police services within municipalities in most of BC. In addition to the RCMP, there are currently 11 municipal police forces (five in Metro Vancouver, four in the Capital Region, one in the Fraser Valley and one in the Kootenays).[91]

There are several integrated police units that bring together officers from different police forces and RCMP detachments to provide for cross-jurisdiction coordination and collaboration in a number of different areas. One such organization relevant to AML is the Combined Forces Special Enforcement Unit (CFSEU) comprised of municipal police, RCMP, and the Canadian Border Services Agency (CBSA). This unit is targeted at reducing organized crime, and includes a group dedicated to reducing illegal gaming and money laundering related to casinos, the Joint Illegal Gaming Investigation Team (JIGIT). It is notable as well that there is a financial crimes unit as part of the RCMP's national policing responsibility, located at the RCMP BC headquarters. As part of that, officers will be embedded with the BC Securities Commission (BCSC), a provincial regulator, to integrate law enforcement and regulatory enforcement related to securities.

Canadian Border Services Agency

CBSA is the federal agency responsible for the flow of people and goods across Canada's borders. As such it has two roles related to AML: the flow of currency across the border, whether or not it is accompanying a traveler; and the use of false invoices related to exports and imports as a way to launder money through trade. CBSA collaborates with the RCMP, CSIS and Immigration and Citizenship Canada in fulfilling its mandate.

Canadian Security Intelligence Service

The role of the Canadian Security Intelligence Service (CSIS) is to investigate threats to the security of Canada and to report on these to the Government of Canada. CSIS may also take measures to reduce threats to the security of Canada in certain circumstances. As Canada's primary national intelligence agency, CSIS is not a law enforcement agency and does not undertake law enforcement activities. Nevertheless, work undertaken by CSIS puts them in the position to observe criminal activities in some cases, including money laundering.

91 Other police agencies in BC include one First Nations police force, Transit Police covering TransLink in Metro Vancouver, and railway police.

Crown counsel

In BC, decisions about the prosecution of crimes are made by Crown Counsel, either federal or provincial.

Federal Crown Counsel are part of the Public Prosecution Service of Canada (PPSC) within the Ministry of Justice. PPSC makes prosecutorial decisions independently under the *Director of Public Prosecutions Act*. Federal prosecutors usually only prosecute cases related to a limited number of *Criminal Code* offences, such as those related to terrorism, criminal organizations, and money laundering. They also prosecute offences under federal laws such as the *Controlled Drugs and Substances Act*, *Income Tax Act*, *Fisheries Act*, *Excise Tax Act, Customs Act*, *Canada Elections Act*, *Canadian Environmental Protection Act*, and *Competition Act*.

Provincial Crown Counsel are part of the BC Prosecution Service (BCPS) within the Ministry of Attorney General. Crown Counsel make prosecutorial decisions independently as set out in the *Crown Counsel Act*. Their responsibilities include approving and conducting criminal prosecutions, pursuing offences established in provincial legislation, initiating and responding to appeals, and providing criminal law advice to the Attorney General.

Civil Forfeiture Office

Civil forfeiture is a process under provincial law which allows the proceeds of crime and instruments of crime to be confiscated by the government. Eight of 10 provinces and Nunavut have civil forfeiture legislation. While related specifically to unlawful activity, these are civil rather than criminal actions and are brought forward by the Civil Forfeiture Office in BC, unlike criminal cases that are conducted by the BC Prosecution Service.

The standard of proof in civil forfeiture cases is the "on a balance of probabilities" standard that applies to civil cases rather than the "beyond a reasonable doubt" standard applied in criminal cases. Police bring cases to the Civil Forfeiture Office for consideration. A criminal conviction is not required for the case to proceed. Under law the case is against the property itself rather than the owner, although it is the owner who must defend the action. A case can proceed against a property where the owner was not involved in unlawful activity, but the court believes they should have known about it.

Tax Administration

Tax administrators have a role to play in AML for two reasons. First, tax evasion is a crime that by definition is financial in nature and is a predicate offence to money laundering under the *Criminal Code*. Use of the proceeds of tax evasion is thus money laundering and administration of taxes is a source of evidence for some money laundering cases. In addition, tax administrators, while subject to strict confidentiality requirements, have access to considerable information that may be useful in determining the scope of money laundering and potentially identifying money laundering not associated with tax evasion.

Canada Revenue Agency

The Canada Revenue Agency is the primary federal agency for the assessment and collection of taxation. Taxes administered include personal and corporate income tax, value added taxes in the

form of GST and HST, excise taxes and duties including the federal fuel tax and customs tariffs and duties on imports, among others.

CRA administers provincial income taxes on behalf of the province of BC under the Canada-BC Tax Collection Agreement (TCA). The agreement limits provincial flexibility in the design of income taxes to make administration of provincial income taxes together with federal taxes relatively efficient.

Under the TCA, data collected for the purpose of income tax administration is fully subject to the confidentiality provisions of the federal *Income Tax Act*, as well the provincial *Income Tax Act* and other applicable privacy legislation.

Canadian Border Services Agency

In addition to its responsibilities related to the flow of people and goods across Canada's borders, CBSA plays an important role related to the collection of customs tariffs and duties that are applied at the border, in conjunction with CRA. CBSA also collects GST/HST and provincial sales taxes (PST), as applicable, at the border.

Revenue Division

Revenue Division is part of the BC Ministry of Finance charged with the administration of BC tax statutes. That includes Provincial Sales Tax, Motor Fuel Tax, Carbon Tax, Property Transfer Tax and Foreign Buyer Tax, provincial property taxes, including the School Tax, Speculation and Vacancy Tax, and the Home Owner Grant.

Financial Intelligence Unit

FINTRAC

FINTRAC is Canada's financial intelligence unit (FIU), created in 2001 in compliance with recommendations made by the Financial Action Task Force (FATF), an international body focused on AML and terrorist financing, of which Canada was a founding member. FINTRAC is one of 159 national FIUs in countries across the world that comprise the Egmont Group.

FINTRAC operates under the *Proceeds of Crime (Money Laundering) and Terrorism Financing Act* (PCMLTFA). FINTRAC assists in the detection, prevention and deterrence of money laundering and the financing of terrorist activities by collecting and analyzing information and providing the resulting intelligence to approved users in the law enforcement community. FINTRAC also shares intelligence internationally through the Egmont Group and other international intelligence sharing arrangement. FINTRAC is not a law enforcement agency and operates independently from law enforcement. As discussed in the body of the report under "International AML Best Practices," FINTRAC does not undertake investigations, although FIUs in some other countries are structured with police powers.

Because FINTRAC collects significant amounts of highly confidential private information, most of which does not on its own provide any direct evidence of inappropriate or criminal activity, FINTRAC has significant constraints about how it can use and distribute the information it collects. Those constraints arise primarily from Section 8 of the *Charter of Rights and Freedoms*, which provides protection against unreasonable search and seizure.

Financial Regulation

Financial regulators supervise the various players in the financial services sector. There are generally two reasons for regulating financial activities. The first is that having an efficient and trusted financial sector is crucial to the efficient functioning of the economy. Prudential regulation of financial institutions is largely aimed at maintaining stability in the sector. The second reason is that sometimes in financial transactions there is an imbalance in information and power. Market conduct regulation is focused on protecting consumers from exploitation.

Office of the Superintendent of Financial Institutions

The Office of the Superintendent of Financial Institutions (OSFI) is the federal agency responsible for regulating:

- banks including domestic banks and branches of foreign banks operating in Canada;
- federally incorporated trust and loan companies;
- federally incorporated life and property and casualty insurers;
- certain financial cooperatives; and
- private pension plans.

OSFI is an independent agency of the federal government reporting to the federal Minister of Finance. Its focus is on prudential regulation to protect the safety and soundness of the Canadian financial system.

Financial Institutions Commission

The BC Financial Institutions Commission (FICOM) is part of the BC Ministry of Finance and is the primary provincial financial services regulatory agency. It is responsible for the regulation of:

- provincially incorporated financial institutions (credit unions and trust companies);
- insurers (including life and property and casualty insurers) and plays a role together with the Insurance Council of BC in regulating insurance sales and claims activity;
- mortgage brokers, including intermediaries who arrange mortgages and non-financial institution mortgage lenders; and,
- provincially registered pension plans.

FICOM's regulatory activities include both a focus on the prudential regulation to maintain the safety and soundness of the financial system and market conduct regulation to protect consumers. The government announced in 2018 that FICOM would be restructured as an independent Crown agency.

BC Securities Commission

The BC Securities Commission (BCSC) is an independent provincial agency responsible for regulating the issuance of and trading in securities in BC. Their focus is on ensuring a fair market in which there is public confidence and an effective securities industry that provides investment opportunities and access to capital. As such, BCSC is focused on both prudential regulation

to ensure the integrity and soundness of the overall market and market conduct regulation to maintain public trust and to protect the public.

The regulation of securities is not limited to publicly traded securities but extends in principle to virtually all activities that raise capital. There are exemptions related to activities that are regulated by other regulators, such as taking deposits for example. However, it is noted that securities regulation *does* apply to a wide range of capital activities related to real estate including capital raising by some non-financial institution mortgage lenders, some of whom are also regulated by FICOM in relation to their mortgage lending activities.

BCSC is the only provincial regulatory agency that is authorized to receive information about transactions from FINTRAC. The RCMP is also preparing to embed officers in BCSC to collaborate in combatting commercial and financial crime.

Office of the Superintendent of Real Estate

The Office of the Superintendent of Real Estate (OSRE) is one of two regulators dedicated to regulating the real estate industry in BC, along with the Real Estate Council of BC (RECBC). OSRE is responsible for:

- Under the *Real Estate Services Act* (RESA), overseeing the activities of RECBC, regulating unlicensed real estate activity, especially trading services and developing Rules related to the activities of real estate licensees; and
- Administering the *Real Estate Development Marketing Act* (REDMA), which regulates the sales practices of residential real estate developers, including requiring disclosure statements to be filed and provided to prospective buyers.

Real Estate Council of BC

RECBC regulates real estate licensees under RESA, focusing on market conduct to protect consumers from inappropriate practices and to ensure that they have fair, informed, unbiased advice available for the important but, in the lives of many people, rare purchase and sale of residential real estate.

RECBC is a council appointed by the government though Order-in-Council and is not a self-regulatory organization. It has responsibility for adjudicating complaints about real estate licensees, which are investigated and brought forward to hearings by RECBC staff. RECBC is also responsible for issuing real estate licenses, which requires the completion of an education program provided on behalf of the Council by the UBC Sauder School of Business, and for providing continuing education.

Regulation of Professions

There are three types of professions frequently involved in real estate transactions and related activities, each of which is regulated by a self-regulatory organization that is established by provincial legislation. A self-regulatory organization is a body that regulates a group of service providers and that is governed by and accountable to the members of that group or profession.

Law Society of BC

The Law Society of BC is a self-regulatory organization responsible for regulating the legal profession in the province. It is also a member of the Federation of Law Societies of Canada, comprised of the 14 provincial and territorial law societies in Canada.

Lawyers are in a unique position because of the strong legal, and in Canada, constitutional protection given to solicitor-client privilege. That affects all aspects of the regulation of the legal profession and has a particular impact on anti-money laundering activities related to the legal profession.

Around the world, FIUs are important elements of AML activities, including in Canada. Application of the PCMLTFA and activities under that Act by FINTRAC provides a valuable source of information and intelligence to combat money laundering. Many money laundering transactions, including those related to real estate, require legal expertise. As a result, many such transactions are enabled by lawyers, whether they are aware of it or not.

In Canada, lawyers are exempt from the application of PCMLTFA as a result of a 2015 Supreme Court of Canada decision.[92] The Court held that application of PCMLTFA to lawyers violates the *Charter of Rights and Freedoms* because it results in violations of solicitor-client privilege. Protection of solicitor-client privilege also affects how the Law Society regulates the profession.

The Law Society has regulatory provisions that establish AML measures such as know your customer rules, prohibitions against accepting cash and requirements related to the use of trust accounts. The Law Society also has rigorous auditing practices under which it can examine documents and records under an extension of solicitor-client privilege to the Law Society and extensive investigation powers including the power to copy evidence including electronic data to ensure it is preserved.

Solicitor-client privilege places constraints on what the Law Society can share with other regulators and the police. However, when others in the AML community have concerns about lawyers and their relationships with clients, the Law Society does have the ability to receive and act on information, which may ultimately generate information and evidence that can legally be shared and acted on by others depending on the circumstances.

It is noted that the Law Society does not require lawyers to report suspicious transactions analogously to the STR provisions of the PCMLTFA, which may or may not be possible in a way that is consistent with solicitor-client privilege.

Society of Notaries Public of BC

The Society of Notaries Public is a self-regulatory organization that regulates BC notaries. Notaries in BC are unique among common-law provinces in Canada in terms of their role in real estate conveyancing. Notaries public are able to provide the same services with respect to real estate title transfers and charges that lawyers can provide. Notaries can also provide other services such as drafting and witnessing wills and notarizing documents.

Solicitor-client privilege does not apply to notaries, which is why the PCMLTFA fully applies to BC notaries.

92 Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401.

Chartered Professional Accountants of BC

The Chartered Professional Accountants of BC is a self-regulatory organization regulating the accounting profession in BC. Accountants often provide advice related to real estate transactions and charges, among other services.

Data Sources

Data sources are organizations that have significant data resources related to real estate, public or private. Tax administrators have useful data related to real estate that is generally bound by strict confidentiality constraints. In addition, there are other organizations whose role gives them access to important information about real estate, much of it in the public domain to provide transparency about land ownership and the assessed value of land for property taxation purposes, for example.

Canada Mortgage and Housing Corporation

The Canada Mortgage and Housing Corporation (CMHC) has a broad mandate related to housing and the affordability of housing. It operates mortgage insurance programs that also involve the private sector, provides financing for affordable housing and has a mandate to reduce mortgage fraud.

Bank of Canada

The Bank of Canada has roles related to the stability of Canada's financial sector and the economy generally. As such, it conducts important economic analysis including analysis relating to real estate markets and mortgage lending in Canada. The Bank also has extensive powers to collect information.

Land Title and Survey Authority

The Land Title and Survey Authority (LTSA) is an independent agency mandated by the BC provincial government to operate the Land Titles Registry. BC uses a Modified Torrens land title system. This type of land title system provides a government guaranteed authoritative public record of who legally owns the land, and the charges and interests that relate to land titles. It makes land ownership and transfer simple and certain, providing certainty to buyers, sellers and mortgage lenders. In addition to the Land Titles Registry, LTSA will also operate the LOTA Registry announced in 2018 which is expected to begin operating in 2020 and it administers the Condo and Strata Assignment Integrity Register (CSAIR) for pre-sale condominium contracts that began operating January 1, 2019.

BC Assessment

BC Assessment is a BC Crown agency that independently assesses the value of all properties in the province to create the tax base for property taxation. Property taxes are levied by the Province, local governments and other property taxation authorities in BC. Most types of property[93] are assessed based on market value. All properties are assessed annually as of July 1. As a result, BC

93 Exceptions from market value assessment include major industrial facilities and linear structures (e.g., railways and pipelines).

Assessment has data on the value and characteristics of every property in the province that covers several decades.

Together, the fact that BC has had for many decades market value assessment of properties combined with a Modified Torrens land title system puts BC is position that is unique in Canada. BC has the most accurate, centrally accessible, public databases about property characteristics, values and ownership of any province, especially when the time frame covered by the data is taken into account.

Data Aggregators

Data aggregators are agencies whose mandate has traditionally been to collect and analyze statistical data related to the economy, demographics and the labour force, public services and other areas where measurement of levels and changes are important for public policy and other public interest purposes. Recently, this relatively passive mandate has begun to expand into the area of aggregating data from disparate sources to provide a greater ability to analyze what is happening and to better make use of the wealth of data to which government has access. This must be done within the confidentially and privacy constraints related to the collection and use of the data. It has the potential to improve public administration in areas like taxation, regulation and law enforcement. Technological changes led by the private sector collection and use of large data sets has made it easier for governments to engage in this more extensive data analysis. Both federal and provincial statistical agencies have relatively recently begun to employ this analysis, which is referred to here as "data aggregation."

Statistics Canada

Statistics Canada is a federal agency with the mandate and authority to collect statistics in several different areas. It is already the public source for valuable economic and statistical information that can be utilized to help understand the economic processes associated with money laundering and that provide the demographic, economic and crime statistics basis for analysis. Statistics Canada also has extensive powers to gather information and well-developed protocols to protect the confidentiality of data as required. It has recently begun to focus specifically on housing and real estate under its "Canadian Housing Statistics Program" working in conjunction with CMHC. That gives it the potential to collect and link data into data bases that can be used under appropriate conditions by law enforcement and regulators for enforcement purposes. Statistics Canada is reportedly working towards providing this type of service.

Office of the Chief Information Officer

The BC Statistics division of the Ministry of Citizen Services is BC's official statistics agency, with a mandate consistent with that of Statistics Canada. The Office of the Chief Information Officer has also established the Innovative Data Division as a separate agency with a mandate to explore and implement ways to act as a data aggregator to improve public administration across government, and to find innovative ways to use emerging technology to solve issues and improve services.