

**COMMISSION OF INQUIRY  
INTO MONEY LAUNDERING IN BRITISH COLUMBIA**

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**CLOSING SUBMISSIONS  
OF THE GOVERNMENT OF CANADA**

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## TABLE OF DEFINITIONS

As used herein, the following terms shall be defined as follows:

| TERM      | DEFINITION   |
|-----------|--|
| 2015 NIRA | 2015 National Inherent Risk Assessment                             |
| ACE       | Anti-Money Laundering Action, Coordination and Enforcement         |
| AML       | Anti-Money Laundering  |
| AMP       | Administrative Monetary Penalties                                  |
| ATF       | Anti-Terrorist Financing   |
| ATM       | Automated Teller Machine   |
| BCFSA     | BC Financial Services Authority                                    |
| BCLC      | British Columbia Lottery Corporation                               |
| BCREA     | British Columbia Real Estate Association                           |
| BCSC      | British Columbia Securities Commission                             |
| BC        | British Columbia   |
| Canada    | Government of Canada   |
| CARM      | CBSA Assessment and Revenue Management                             |
| CBCA      | Canada Business Corporations Act                                   |
| CBSA      | Canada Border Services Agency                                      |
| CFO       | Civil Forfeitures Office   |
| CFSEU     | Combined Forces Special Enforcement Unit                           |
| CIF       | Counter Illicit Finance Initiative                                 |
| CIFA-BC   | Counter Illicit Finance Alliance                                   |
| CISBC/YT  | Criminal Intelligence Service British Columbia and Yukon Territory |
| CISC      | Criminal Intelligence Service Canada                               |
| CMAA      | Customs Mutual Assistance Agreements                               |
| CMHC      | Canada Mortgage and Housing Corporation                            |
| CPA       | Chartered Professional Accountant                                  |
| CRA       | Canada Revenue Agency  |
| CREA      | Canadian Real Estate Association                                   |
| CROPS     | Criminal Operations  |

| <b>TERM</b>    | <b>DEFINITION</b>  |
|----------------|--|
| CSIS           | Canadian Security Intelligence Service                       |
| DOJ            | Department of Justice  |
| DRAP           | Deficit Reduction Action Plan                                |
| FAMG           | Forensic Accounting Management Group                         |
| FATF           | Financial Action Task Force                                  |
| FBI            | Federal Bureau of Investigation                              |
| FC3            | Financial Crime Coordination Centre                          |
| Federal Regime | Canada's AML/ATF regime                                      |
| FINA           | House of Commons Standing Committee on Finance               |
| FINTRAC        | Financial Transactions and Reports Analysis Centre of Canada |
| FIU            | Financial Intelligence Units                                 |
| FLSC           | Federation of Law Societies Canada                           |
| FRFI           | Federally Regulated Financial Institutions                   |
| FSOC           | Federal Serious and Organized Crime                          |
| GAC            | Global Affairs Canada  |
| GDP            | Gross Domestic Product                                       |
| GIG            | Gaming Integrity Group                                       |
| GIIU           | Gaming Intelligence and Investigation Unit                   |
| GIU            | Gaming Intelligence Unit                                     |
| GPEB           | Gaming Policy and Enforcement Branch                         |
| GCGC           | Great Canadian Gaming Corporation                            |
| IIGET          | Integrated Illegal Gaming Enforcement Team                   |
| IMET           | Integrated Market Enforcement Team                           |
| IMLIT          | Integrated Money Laundering Investigative Team               |
| IPOC           | Integrated Proceeds of Crime                                 |
| ISED           | Innovation, Science and Economic Development Canada          |
| JIGIT          | Joint Illegal Gaming Investigation Team                      |
| LCTR           | Large Cash Transaction Report                                |
| ML             | Money Laundering   |
| MOU            | Memorandum of Understanding                                  |

| <b>TERM</b>            | <b>DEFINITION</b>  |
|------------------------|--|
| MSB                    | Money Services Businesses  |
| NCIE                   | National Criminal Intelligence Estimate  |
| NHQ                    | National Headquarters  |
| OCG                    | Organized Crime Group  |
| OSFI                   | Office of the Superintendent of Financial Institutions   |
| PCMLTFA                | <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17</i>                                      |
| PCMLTF Regulations     | <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184</i>                                  |
| PCMLTF STR Regulations | <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations, SOR/2001-317</i> |
| PEP                    | Politically Exposed Person   |
| POC                    | Proceeds of Crime  |
| PPSC                   | Public Prosecution Service of Canada   |
| PS                     | Public Safety  |
| PSB                    | Policing and Security Branch   |
| PSPC                   | Public Services and Procurement of Canada  |
| PSSG                   | Public Safety and Solicitor General  |
| RCMP                   | Royal Canadian Mounted Police  |
| RECBC                  | Real Estate Council of British Columbia  |
| SBML                   | Service Based Money Laundering   |
| SCC                    | Supreme Court of Canada  |
| SIU                    | Sensitive Investigations Unit  |
| SPMD                   | Seized Property Management Directorate   |
| SROI                   | Social Return On Investment  |
| STR                    | Suspicious Transaction Report  |
| TBML                   | Trade-Based Money Laundering   |
| TF                     | Terrorist Financing  |
| TNOC                   | Transnational Organized Crime  |
| TOR                    | Terms of Reference   |
| VPD                    | Vancouver Police Department  |

| <b>TERM</b> | <b>DEFINITION</b>                    |
|-------------|--------------------------------------|
| VIR         | Voluntary Information Records        |
| WLATM       | White Label Automated Teller Machine |

## **PART I – OVERVIEW**

1. In order to assist the Commissioner in the preparation of his final report, the closing submissions of the Government of Canada (“Canada”) provides the following:

(a) a summary of Canada’s participation in the Cullen Commission of Inquiry (the “Commission”);

(b) a factual overview of Canada’s assessment of money laundering (“ML”) risks and the federal government’s response to those risks;

(c) a factual overview of Canada’s anti-money laundering regime / anti-terrorist financing (“AML/ATF”) regime (the “Federal Regime”) and the application of that regime to the specific sectors that the Commission is tasked with addressing, namely: gaming and horse racing; real estate; financial institutions and money service businesses (“MSBs”); luxury goods; and, professionals, including lawyers and accountants;

(d) a factual overview of the historical and current ML enforcement activities of the Royal Canadian Mounted Police (“RCMP”) in BC and the role of the Public Prosecution Service of Canada (“PPSC”) with respect to ML prosecutions; and,

(e) Canada’s legal submissions, in response to the Commissioner’s invitation, on the limits of the constitutional jurisdiction of the Commission to make findings and recommendations in respect of the federal government, federal legislation, and federal institutions.

2. Canada’s closing submissions adhere to the constitutional limitations of the Commission and, as such, do not address opinion evidence regarding federal entities, including opinions on the efficacy, capacity, composition, or activities of these entities. Similarly, as a matter of comity and out of respect for the Government of BC and its constitutional jurisdiction, Canada does not set out recommendations for changes to provincial anti-money laundering (“AML”) efforts.

3. Canada is grateful to have been accorded the opportunity to participate in the Commission’s proceedings and looks forward to the Commissioner’s final report.

## PART II – CANADA’S PARTICIPATION AT THE INQUIRY

4. Canada applied for and was granted status as a full participant in the Commission, with standing in respect of all matters set out in the Commission’s Terms of Reference (“TOR”).<sup>1</sup>

5. A broad range of federal institutions have been engaged in Canada’s participation in the Commission. Canada initially identified three federal institutions with information that may be relevant to the Commission’s TOR: the RCMP, Office of the Superintendent of Financial Institutions (“OSFI”), and the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”).<sup>2</sup> As the scope of the inquiry became clearer, Canada provided the Commission with documents, data, presentations, and witnesses from nine additional federal institutions, including the Department of Finance, Public Safety Canada (“PS”), Canada Border Services Agency (“CBSA”), Canada Revenue Agency (“CRA”), PPSC, Public Services and Procurement Canada (“PSPC”), Statistics Canada, the International Assistance Group at the Department of Justice, and the Canada Mortgage and Housing Corporation (“CMHC”).

6. Prior to and throughout the Commission’s hearings, Canada produced over 1,800 relevant documents and facilitated presentations by and interviews with 53 federal officials.<sup>3</sup> During the Commission’s overview and evidentiary hearings, 32 witnesses from federal institutions testified in order to provide the Commissioner with information related to the

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<sup>1</sup> Commission of Inquiry into Money Laundering in British Columbia, Applications for Standing – Ruling #1, 24 September 2019 [**“Commission Ruling #1”**] [at 10](#).

<sup>2</sup> Commission Ruling #1 [at 9](#).

<sup>3</sup> **RCMP**: Sgt. Ben Robinson, S/Sgt. David Gray, Supt. Peter Payne, Supt. Brent Taylor, Insp. Tony Farahbakhchian, Insp. Lavinder Mangat, Cpl. Aaron Gilkes, Sgt. Adrienne Vickery, Supt. Paul Dadwal, S/Sgt. Joel Hussey, Bryanna Gateley, Sgt. Sushile Sharma, Ben Granger, Melanie Paddon, Randy Mortensen, C/Supt. Rob Gilchrist, Insp. Leslie Stevens; Ryland Wellwood, Retired Cst. David Au, S/Sgt. Diane Doyle, Jeff Morris, Melissa Martineau, Chris Briffett, Cpl. Karen Best, Sgt. Warren Krahenbil, Cpl. Mel Chizawsky, and Megan Nettleton; **Finance**: Lynn Hemmings, Tamara Trotman, Charlene Davidson, and Gabriel Ngo; **FINTRAC**: Bruce Wallace, Murray Dugger, Dan Lambert, Donna Achimov, Annette Ryan, and Barry MacKillop; **OSFI**: Judy Cameron and Angie Radiskovic; **Public Safety**: Carrie Hagerman; **CBSA**: Joel Gibbons and Sara D’Ambrogio; **CRA**: Harry Gill, Biagio Carrese, and Jason Rauh; **CMHC**: Aled ab lowerth, Bert Pereboom, Wahid Abdallah, and Elisabeth Koulouris; **Statistics Canada**: Haig McCarell, Ellen Bekkering, and Jean-Phillippe Deschamps-Laporte; **PPSC**: a senior official.



Federal Regime.<sup>4</sup> Four of those witnesses testified twice, returning to provide information on additional topics of interest to the Commission.<sup>5</sup> In addition, five federal officials provided the Commissioner with sworn evidence in the form of affidavits that present data and details about different aspects of the Federal Regime.<sup>6</sup>

7. Canada has always sought to provide the Commission with as many relevant documents and details as possible, while respecting statutory limitations on information sharing and the constitutional limits of this Commission's mandate. Logistical issues arising from the impacts of the COVID-19 pandemic at times affected the speed with which information was provided.

8. Statutory provisions and common law privilege doctrines prohibit the disclosure of certain information, especially information with respect to sensitive law enforcement and intelligence-gathering activities that is contained in documents held by Canada and other participants in this Commission. Canada took measures to ensure that sensitive information that could not be disclosed was appropriately redacted from documents produced by Canada and other participants. For example, from July - November 2020, the Department of Justice (“DOJ”) reviewed over 17,000 Great Canadian Gaming Corporation (“GCGC”)

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<sup>4</sup> **RCMP**: C/Supt. Rob Gilchrist, Insp. Leslie Stevens, Ryland Wellwood, Sgt. Adrienne Vickery, Sgt. Warren Krahenbil, Cpl. Aaron Gilkes, Bryanna Gateley, Sgt. Sushile Sharma, Melanie Paddon, Megan Nettleton, Cpl. Karen Best, Cpl. Mel Chizawsky, Supt. Stephen Cocks, S/Sgt. Joel Hussey, Sgt. Ben Robinson, Insp. Tony Farahbakhchian, S/Sgt. Kurt Bedford, Supt. Brent Taylor, and Supt. Peter Payne; **Department of Finance**: Gabriel Ngo and Justin Brown; **FINTRAC**: Bruce Wallace, Donna Achimov, Annette Ryan, and Barry MacKillop; **CBSA**: Joel Gibbons; **CMHC**: Aled ab Iorwerth, Bert Pereboom, Wahid Abdallah; **Statistics Canada**: Haig McCarell, Ellen Bekkering, and Jean-Phillippe Deschamps-Laporte.

<sup>5</sup> Donna Achimov, Annette Ryan and Barry MacKillop (FINTRAC) testified on January 18, 2021 regarding MSBs, and returned on March 12, 2021 to testify about FINTRAC and real estate. Melanie Paddon (RCMP) testified on January 15, 2021 regarding white label ATMs and returned on April 14, 2021 to testify about CIFA-BC.

<sup>6</sup> Ex. 990: Affidavit of Annette Ryan, affirmed on April 27, 2021 [[“Ryan Affidavit”](#)]; [Ex. 991: Ex. A. to the Ryan Affidavit – FINTRAC CBCR Reports Data.](#); Ex. 993: Affidavit #1 of Joel Rank, affirmed April 14, 2021 [[“Rank Affidavit”](#)]; Ex. 1000: Affidavit of Sara D’Ambrogio, affirmed on May 3, 2021 [[“D’Ambrogio Affidavit”](#)]; [Ex. 1001: Ex. A to the D’Ambrogio Affidavit – CBCR Seizures 2015-2016](#); [Ex. 1002: Ex. B to the D’Ambrogio Affidavit – CBCR Seizures 2016-2017](#); [Ex. 1003: Ex. C to the D’Ambrogio Affidavit – CBCR Seizures 2017-2018](#); [Ex. 1004: Ex D to the D’Ambrogio Affidavit – CBCR Seizures 2018-2019](#); [Ex. 1005: Ex. E to the D’Ambrogio Affidavit – CBCR Seizures 2019-2020](#); [Ex. 1006: Affidavit of Sherri-Lynn Foran, affirmed on April 6, 2021](#); Ex. 1019: Affidavit of Lesley Soper, affirmed on May 11, 2021 [[“Soper Affidavit”](#)].

documents to ensure appropriate redactions were made to sensitive FINTRAC information, the disclosure of which was prohibited by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (“PCMLTFA”).<sup>7</sup> During the same period, the RCMP reviewed over 28,000 GCGC documents to ensure appropriate redactions were made to any information that, if disclosed, could adversely affect the public interest in protecting ongoing investigations or police investigative techniques, and other sensitive police information.

9. As described in more detail in Annex “A”, constitutional limits on the Commission's mandate also impacted the scope of information Canada was able to provide to the Commission. Canada provided documents and information to assist the Commissioner in making factual observations about the Federal Regime, rather than observations about the internal management or administration of the Federal Regime.

10. Finally, the COVID-19 pandemic significantly impacted Canada's ability to participate in the Commission. Canada continued to support the Commission's work throughout all stages of the pandemic; however, urgent work related to the federal government's response to the pandemic impacted the timeliness of Canada's responses to requests from the Commission, especially during the initial stages of the pandemic. In March 2020, all federal government departments were required to transition to a remote work environment. Accessing documents necessary to respond to requests from the Commission was difficult or, at times, impossible due to policies restricting workplace entry and remote connectivity issues that prevented access to documents held on government servers. Despite these challenges, Canada made best efforts to respond to requests from the Commission as soon as practicable. As the Commissioner noted in his interim report,<sup>8</sup> the pace of Canada's document production accelerated as the federal workforce adapted to the workplace changes and pressures that resulted from the COVID-19 pandemic.

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<sup>7</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (“PCMLTFA”), [s. 55\(1\)](#).

<sup>8</sup> Commission of Inquiry into Money Laundering in British Columbia, Interim Report, November 2020 [“**Interim Report**”] [at 10](#).

## PART III – SUBMISSIONS

### **A. Money Laundering is a Problem**

11. ML is a criminal threat of both domestic and global proportions. In the decades since the establishment of the Financial Action Task Force (“FATF”) in 1989, academic experts, private institutions, and public sector organizations have undertaken work to understand the nature and extent of ML around the world. Though a precise quantification of the threat has proven elusive, there remains a strong international consensus that ML is an important policy problem requiring a coordinated international response.<sup>9</sup>

12. The Assessment of Inherent Risk of Money Laundering and Terrorist Financing in Canada 2015 (“2015 NIRA”) conducted by the Department of Finance noted that a number of Canada’s social, economic, political and geo-political attributes make it attractive to criminal actors seeking to launder illicit funds. These attributes include a sophisticated financial system, an open and stable economy, strong democratic institutions, a multicultural environment with a high volume of international migrants and visitors, and a well-developed international trading system with proximity to the United States. Canada’s appeal as an investment setting also makes it an attractive destination for foreign proceeds of crime (“POC”).<sup>10</sup>

13. The 2015 NIRA also confirmed that there is a broad range of profit-oriented crime conducted by a variety of threat actors in Canada generating billions of dollars in POC annually that might be laundered. Threat actors who perpetrate such crimes in Canada range from unsophisticated, criminally inclined individuals, including petty criminals and street gang members, to criminalized professionals and Organized Crime Groups (“OCGs”).<sup>11</sup> The criminal activities in Canada that were found to represent the biggest ML

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<sup>9</sup> Interim Report, [at 63](#) (Citing to Ex. 19, Expert Report of Professor William Gilmore Report at [para. 14](#)).

<sup>10</sup> Ex. 396: Department of Finance Canada, Assessment of Inherent Risk of Money Laundering and Terrorist Financing in Canada 2015 [“**2015 NIRA**”] [at 35](#); Ex. 4: Overview Report – Financial Action Task Force [“**OR – FATF**”], [Appendix N at 17-18](#); Ex. 6: Money Laundering in British Columbia: A Review of Literature, May 11, 2020 [“**Schneider Report**”] [at 136-137](#).

<sup>11</sup> Ex. 396: 2015 NIRA [at 18](#).

threat included different types of fraud, third-party ML, illicit drug trafficking, corruption and bribery, and illegal gambling.<sup>12</sup>

14. OCGs pose the greatest domestic ML risk because they are involved in multiple criminal activities generating large amounts of POC.<sup>13</sup> According to the Criminal Intelligence Service Canada (“CISC”), there are more than 1,850 OCGs believed to be operating in Canada. Of these, 680 were assessed as part of the integrated threat assessment process carried out by CISC in 2019.<sup>14</sup> In CISC’s 2020 “National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud” (“CISC’s 2020 Report”), 176 of the 680 assessed OCGs operating in Canada were identified as being involved in ML, though the actual number is believed to be much greater than reported. The highest concentrations of these groups are found in Ontario, BC and Quebec, with all three provinces collectively representing more than 76 percent of the groups identified nationally as being involved in ML.<sup>15</sup> Approximately 50 percent (89) of the 176 assessed OCGs maintained international links, with the top five countries being the United States, Mexico, China, Colombia, and Australia.<sup>16</sup>

15. The most powerful transnational OCGs in Canada are often involved in multiple lines of profit-oriented crime and have the infrastructure and network to launder large amounts of POC on an ongoing basis through multiple sectors using a diverse set of methods to avoid detection and disruption. Some of these groups not only launder their own POC but also provide laundering services for other crime groups.<sup>17</sup> At least one high-level network based in BC and in Ontario represents several key service providers nationally and internationally, conducting self-laundering, and providing third-party ML services to OCGs. They are known to conduct complex ML operations through their exploitation of casinos, underground

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<sup>12</sup> Ex. 396: 2015 NIRA [at 19](#); Ex. 4: OR – FATF, [Appendix N at 14](#).

<sup>13</sup> Ex. 396: 2015 NIRA [at 18, 42](#); Ex. 4: OR – FATF, [Appendix N at 14](#).

<sup>14</sup> Ex. 3: Overview Report – Documents Created by Canada [**OR – Canada’s Documents**], [Appendix E at 3](#).

<sup>15</sup> Ex. 1017: Overview Report: Criminal Intelligence Service Canada National Criminal Intelligence Estimate on the Canadian Criminal Marketplace: Money Laundering and Fraud (2020) [**OR – NCIE ML/Fraud**], [Appendix A at 8-9](#).

<sup>16</sup> Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 10](#).

<sup>17</sup> Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 11](#).

banking systems, illegal gaming houses/sites, nominees/shell companies, trade-based money laundering (“TBML”), and real estate investments.<sup>18</sup>

16. The ML activities carried out by domestic and international threat actors in Canada exact substantial costs to individuals and institutions and can have devastating impacts on society. By laundering illicit funds, serious and other organized criminals are able to profit from some of the most damaging crimes, and operate and expand their criminal empires.<sup>19</sup> This profiteering can fuel other criminal activities that pose a pre-eminent threat to public safety such as drug trafficking, human trafficking, and violent gang crime, as well as the opioid crisis that has harmed communities across the country.<sup>20</sup> In CISC’s 2020 Report, CISC found that there is a particularly strong correlation between OCGs involved in ML and those involved in two priority drug markets in Canada: cocaine and methamphetamine.<sup>21</sup>

17. In addition to these significant social consequences, ML can also create microeconomic and macroeconomic distortions that undermine the integrity of the financial system and thereby harm the legitimate Canadian economy. Canada’s 2015 NIRA listed a number of adverse economic consequences of ML, including distorted market prices, reduced domestic and international investment, unfair private sector competition, distortions related to consumptions, savings and investment and increased bank liquidity and solvency issues, as well as reputational damage to the financial sector.<sup>22</sup> These findings are supported by the weight of the academic literature, as described in Professor Stephen Schneider’s literature review report.<sup>23</sup>

18. Finally, ML can have a number of negative political or geo-political consequences. These impacts may include the erosion of public institutions and the rule of law, greater perceived attractiveness for illicit ML activities, a loss of credibility and influence

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<sup>18</sup> Ex. 3: OR – Canada’s Documents, [Appendix E at 11](#).

<sup>19</sup> Ex. 396: 2015 NIRA [at 9](#).

<sup>20</sup> Ex. 3: OR – Canada’s Documents, [Appendix E at 3](#); Ex. 396: 2015 NIRA [at 67](#).

<sup>21</sup> Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 9](#).

<sup>22</sup> Ex. 396: 2015 NIRA [at 67](#).

<sup>23</sup> Ex. 6: Schneider Report [at 128-133](#).

internationally, lower government revenues, and a negative public perception in the government's ability to deal with criminal elements.<sup>24</sup>

19. Canada agrees with the sentiment conveyed in the Commission's interim report that, "as a society, we must resist threats that strike at the heart of our collective values". Federal government studies have described the symbiotic relationship between ML and some of society's most destructive criminal activities such as human smuggling, corruption, fraud, and the trafficking of illicit drugs. Taking steps to deter ML is essential because it "thwarts those for whom the crime is motivated by profit and repudiates the evils of the offences that produce the demand for it".<sup>25</sup>

## **B. Quantification**

20. The Commission's interim report raised the issue of quantification and the difficulties associated with quantifying the amount of money being laundered through the BC economy each year.<sup>26</sup> Canada's submissions on this issue address the fact that the quantification of ML has a number of aspects.

21. Primarily, the question of quantification addresses the economic scope of ML and the related question of what impact that may have on the legitimate market. However, other important aspects of ML also beg quantification. In particular: quantifying the impact of ML on the justice system (ML investigations, charges, convictions and related resourcing expenditures); and, quantifying the social impact of ML.

22. Quantification of these three aspects of ML is important because it assists decision makers in assessing whether AML practices are effective and where to concentrate future resources. However, quantification of any aspect of ML is inherently challenging and

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<sup>24</sup> Ex. 396: 2015 NIRA [at 67](#).

<sup>25</sup> Interim Report [at 68](#).

<sup>26</sup> Interim Report [at 68](#).

because ML cannot be measured directly, quantification will likely always be an exercise in estimation rather than in precise measurement.<sup>27</sup>

23. The Commission heard from a number of witnesses that the criminal nature of ML makes it inherently difficult to quantify.<sup>28</sup> The existence and extent of ML is actively hidden from those seeking to investigate it and, therefore, there is often little reliable data to draw on. Tangential impacts of ML, such as social impacts, are also challenging to measure given that these types of impacts do not necessarily correspond to a specific dollar value.

24. While quantifying any aspect of ML is fraught with challenges, the lack of an exact dollar value assigned to ML should not prevent taking action to combat this criminal activity. Canada continues to pursue AML measures and seeks feedback and verification of the impact of its AML measures through a range of data sources, not limited only to economic impact or dollar value.

25. Estimates on the economic scope of ML are wide ranging. Canadian agencies and organisations have sometimes adopted the IMF 1998 estimate of 2-5% of global gross domestic product (“GDP”).<sup>29</sup> Based on Canada’s 2018 GDP, approximately \$45 billion to \$113 billion CAD was estimated to have been laundered per year.<sup>30</sup> However, the methodology behind this estimate is unknown and likewise it is unclear where this globally-focused estimate can be appropriately applied to a current domestic context without adjustment.<sup>31</sup> In 2013, the RCMP estimated that \$5-15 billion is laundered per year.<sup>32</sup>

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<sup>27</sup> Ex. 322: Overview Report - Simplified Text on Quantification of Money Laundering [“**OR – Simplified Quantification**”] at paras [2](#), [5](#), [86](#); Ex. 328: Estimating Money Laundering Flows with a Gravity model Based Simulation (Unger et al 2020) [“**Estimating ML Flows**”] [at 1](#); Ex. 330: Combatting Money Laundering in BC Real Estate [at 45](#).

<sup>28</sup> Transcript of B. Unger, December 4, 2020 [at 9:24 to 10:2](#), [55:16-19](#); Transcript of CMHC Panel, March 11, 2021 [“**CMHC Panel Transcript**”], testimony of B. Pereboom [“**B. Pereboom**”], [at 29:15-20](#); Transcript of STC Panel, March 11, 2021 [“**STC Panel Transcript**”], testimony of H. McCarrell [“**H. McCarrell**”], [at 114:17-21](#).

<sup>29</sup> Ex. 322: OR – Simplified Quantification [at paras 7-8](#).

<sup>30</sup> Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 3](#).

<sup>31</sup> Ex. 322: OR – Simplified Quantification [at paras. 7-8](#).

<sup>32</sup> Ex. 322: OR – Simplified Quantification [at para 8](#).

26. Each proposed methodology for estimating the economic scope of ML (including but not limited to: using POC as proxy, using suspicious transaction reports (“STRs”) as proxy, economic modeling including the Walker Gravity Model, and the Multiple-Indicators Multiple-Causes Procedure<sup>33</sup>) has its own challenges, limitations, and benefits. To date, no single method has provided a clear and uncontested estimate for either the global, national, or local economic scope of ML. Cutting edge models are still based on assumptions and generally lack empirical data.<sup>34</sup>

27. The difficulties inherent in quantifying the economic scope of ML extend to quantifying ML’s impact in particular regions and on particular markets. For example, the Commission heard from Dr. Aled ab Iorwerth, Chief Economist for CMHC, about the potential impact of ML on the real estate market in BC. Dr. Aled ab Iorwerth testified that it is “extremely difficult to quantify” the effect of ML on real estate.<sup>35</sup> Similarly, Bert Pereboom, Senior Manager at CMHC testified that this is in part because there is little firm data on the extent of ML in BC, which makes it difficult to measure ML in real estate directly.<sup>36</sup> Haig McCarrell, Director of Investment in the Science and Technology Division of Statistics Canada, testified that additional economic research is required in order to determine the impact of ML in real estate.<sup>37</sup> There was agreement among the witnesses that regardless of the ability to quantify the impact of ML, mortgage fraud, and other illicit activities on the housing market, they may all contribute to housing unaffordability and increase market and mortgage vulnerability to various risks.<sup>38</sup>

28. Various methods of quantification also look to policing and court statistics to estimate the extent of ML.<sup>39</sup> These statistics are also used by some experts to assess whether law enforcement is adequately addressing the ML problem.<sup>40</sup> The Commission heard evidence,

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<sup>33</sup> [See generally Ex. 322: OR – Simplified Quantification.](#)

<sup>34</sup> Ex. 328: Estimating ML Flows [at 9-10](#).

<sup>35</sup> Transcript of A. ab Iorwerth, February 18, 2021 [at 39:16 to 42:12](#).

<sup>36</sup> CMHC Panel Transcript, B. Pereboom [at 29:16 to 29:17](#), [30:10-12](#).

<sup>37</sup> STC Panel Transcript, H. McCarrell [at 175:23-25](#).

<sup>38</sup> Ex. 719: Defining a Housing Market Integrity Index (MII): A Methodology and Application to Quebec's Housing Market – Draft, February 19, 2021 (CAN-001756) [at 3](#).

<sup>39</sup> Ex. 322: OR – Simplified Quantification [at paras 36 – 42](#).

<sup>40</sup> Ex. 341: Final Statement by John A. Cassara, 2020 [at 5](#), [8](#), & [35](#).



however, that neither of these approaches fully captures the extent of ML or the extent to which an AML regime is addressing ML because of the way in which the offence of ML is often addressed within the justice system. Those involved in ML are often charged with and convicted on the more serious predicate offence, rather than the offence of laundering the POC.<sup>41</sup> As a result, court records may not accurately capture each instance where ML was an element of the incident, making them an unreliable source for quantification.<sup>42</sup> Court proceedings are generally “objective indicators” but they do not “reflect the full extent of AML efforts in Canada”.<sup>43</sup>

29. Quantification of ML may also include an examination of the social and human impacts of ML. The Commission heard and received evidence that financial crime, and in particular ML, has a harmful and adverse effect on the social well-being of communities, may damage a country’s reputation, and fuels drug trafficking and its associated violence and social harms including firearms trafficking, human trafficking, the overdose crisis, and violence between gangs and OCGs.<sup>44</sup> These impacts are challenging to quantify. As Doug LePard and Catherine Tait stated in the November 2020 Review of the Joint Illegal Gaming Investigation Team (the “JIGIT Review”), “while the actual amount of proceeds of crime seized is important for accounting purposes, it is considered a poor measure of its social impact.”<sup>45</sup>

### **C. Overview of the Federal Regime**

30. To assist the Commission in setting out a factual description of the Federal Regime, Canada outlines below the primary aspects of the Federal Regime. A more comprehensive

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<sup>41</sup> Ex. 725: Work Stream 1 - Data Collection and Sharing Work Stream Report Executive Summary, September 7, 2020 (CAN-001759) [**“WS1 Executive Summary”**] [at 3](#).

<sup>42</sup> Ex. 725: WS1 Executive Summary [at 3](#); Ex. 322: OR – Simplified Quantification [at paras 36](#) and [41](#).

<sup>43</sup> Ex. 725: WS1 Executive Summary [at 3](#).

<sup>44</sup> Ex. 821: A Resourcing Overview of Major Money Laundering Investigations in BC, prepared by RCMP E-Division in partnership with CFSEU-BC's Strategic Research Office (CAN-001800) [**“Resourcing Overview of Major ML Investigations in BC”**] [at 7](#) [at 6](#); Ex. 803: Review of the Joint Illegal gaming Investigation Team (JIGIT) - D. LePard, C. Tait, November 2020 (GPEB5699) [**“JIGIT Review”**] [at 131](#).

<sup>45</sup> Ex. 803: JIGIT Review [at 135](#).

overview of the roles and responsibilities of Federal Regime partners, as well as an overview of Canada's participation in international AML organizations, is set out in Exhibit 1019.

31. The operation of the Federal Regime is based on three independent pillars:

- (i) policy and coordination – assessing ML and terrorist financing (“TF”) risks, domestic and international policy development, and coordination;
- (ii) prevention and detection – promoting, supervising, and enforcing AML/ATF compliance, and collecting, analyzing, and disseminating financial and other intelligence; and
- (iii) investigation and disruption – identifying, investigating, prosecuting and sanctioning ML and TF offences.<sup>46</sup>

32. As described in the affidavit of Lesley Soper, a number of federal statutes comprise Canada's AML/ATF framework and set out the roles and responsibilities of the Federal Regime partners.<sup>47</sup> This legislative framework also contains regulations and guidance documents that clarify expectations, and treaties and conventions that support international efforts to combat ML and TF.

33. The PCMLTFA is the primary piece of legislation that establishes Canada's AML/ATF framework. The overarching objective of the PCMLTFA is to prevent, detect and deter ML and TF activities, while facilitating the investigation and prosecution of these crimes.<sup>48</sup> Part 1 of the PCMLTFA requires reporting entities to identify their clients, keep records, and have an internal compliance program in place, and establishes a regime for the registration of MSBs. The Act and regulations require that a compliance program must contain five key elements: a compliance officer, formalized policies and procedures, training, risk assessment, and a two-year program review. The Act also outlines mandatory reporting for suspicious financial transactions and terrorist property, and prescribed transactions, such as large cash transactions, large virtual currency transactions and international electronic funds transfers.<sup>49</sup>

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<sup>46</sup> Ex. 1019: Soper Affidavit, [Ex. B at 3](#).

<sup>47</sup> Ex. 1019: Soper Affidavit, [Ex. B at 3](#).

<sup>48</sup> Ex. 1019: Soper Affidavit, [Ex. B at 10](#).

<sup>49</sup> Ex. 1019: Soper Affidavit, [Ex. B at 10](#); PCMLTFA, Part 1, [ss. 6](#), [6\(1\)](#), [9\(6\)](#), [11.1](#).

34. The PCMLTFA establishes FINTRAC and authorizes it to receive and analyze financial transaction reports and to disclose designated information to law enforcement, intelligence agencies, and other disclosure recipients. The PCMLTFA prescribes the information that FINTRAC can receive and disclose and sets out the specific entities to which FINTRAC may disclose its financial intelligence. The PCMLTFA limits the circumstances in which FINTRAC can disclose this information. FINTRAC must have reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a ML or a TF offence, or relevant to threats to the security of Canada.<sup>50</sup>

35. The Federal Regime consists of 13 primary partners and the expertise of additional Departments and Agencies is drawn on as relevant and appropriate. A brief description of the roles and responsibilities of each of the 13 partners is as follows:

- (i) **Department of Finance Canada:** The Department is the policy lead for the Federal Regime. It is responsible for developing AML/ATF policy for the PCMLTFA and its regulations and advising the Minister of Finance on domestic and international policy and developments related to combatting ML and TF and supporting the Minister's responsibility for the oversight of FINTRAC.<sup>51</sup>
- (ii) **Canada Border Services Agency:** The CBSA is responsible for the administration and enforcement of Part 2 of the PCMLTFA which requires reporting on the cross-border movement of currency or monetary instruments valued at \$10,000 or more and any associated seizures. The CBSA administers both the monetary penalty regime for failing to report more than \$10,000 in currency and the concomitant review processes.<sup>52</sup>
- (iii) **Canada Revenue Agency:** The CRA's role in the Federal Regime is twofold: to minimize the impact ML and TF have on the Agency's ability to collect and protect

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<sup>50</sup> Ex. 1019: Soper Affidavit, [Ex. B at 10](#); PCMLTFA, [ss. 5\(a\)-5\(m\)](#).

<sup>51</sup> Ex. 1019: Soper Affidavit, [Ex. B at 5](#).

<sup>52</sup> Ex. 1019: Soper Affidavit, [Ex. B at 4-5](#).

taxes and duties; and, to protect the integrity of Canada’s charitable registration system from the risk of TF abuse.<sup>53</sup>

- (iv) **Canadian Security Intelligence Service (“CSIS”)**: CSIS is a designated recipient from FINTRAC of financial intelligence relevant to threats to the security of Canada and provides Voluntary Information Records (“VIR”) to FINTRAC. CSIS may, in accordance with legislation and the common law jurisprudence, disclose and make requests for information from stakeholders such as CRA and the RCMP.
- (v) **Department of Justice Canada**: DOJ provides legal and policy advice on ML and TF offences to regime partners and aids policy development by providing legal opinions with respect to legal challenges.
- (vi) **Financial Transactions and Reports Analysis Centre of Canada**: FINTRAC is Canada’s designated financial intelligence unit (“FIU”), and AML/ATF regulator operating within the scope of the PCMLTFA and its regulations. FINTRAC is an independent agency, operating at arm’s length from police and other departments and agencies of the Government to which is it authorized to provide financial intelligence. Its mandate and powers were designed to safeguard individual privacy and respect for the *Charter*. FINTRAC reports to the Minister of Finance who is accountable to Parliament for FINTRAC’s activities. FINTRAC represents Canada internationally on the Egmont Group of FIUs and is a member of Canada’s delegation to the FATF.<sup>54</sup>

FINTRAC has a dual mandate: producing financial intelligence and ensuring compliance of reporting entities with the PCMLTFA and regulations. Each of these roles is described below.

### ***FINTRAC’s Financial Intelligence Mandate***

FINTRAC analyzes and assesses reports and information from a variety of sources in order to assist in the detection, prevention, and deterrence of ML and TF activity

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<sup>53</sup> Ex. 1019: Soper Affidavit, [Ex. B at 5](#).

<sup>54</sup> Ex. 1019: Soper Affidavit, [Ex. B at 6](#).

by disclosing financial intelligence that is suspected to be relevant to a ML, TF or threats to the security of Canada investigation, or prosecution of a ML or TF offence.<sup>55</sup>

The number of reports submitted to FINTRAC by reporting entities has been increasing over the last decade. In 2019-2020, FINTRAC received 386,102 STRs, which represents a 558% increase over 2010-2011.<sup>56</sup> The total number of all reports (EFTRs, large cash transaction reports (“LCTRs”), CDRs, STRs, CCRs) submitted to FINTRAC by reporting entities in 2019-2020 was 31,417,429, which represents a 63% increase from 2010-2011.<sup>57</sup> The number of VIR received by FINTRAC has also generally been increasing over the past decade. In 2019-2020, FINTRAC received 2,519 VIR, which represents a 112% increase over 2010-2011.<sup>58</sup>

When FINTRAC meets specific legal thresholds set out in the PCMLTFA, it must disclose financial intelligence to the appropriate police force and to other disclosure recipients named in the PCMLTFA.<sup>59</sup> In 2019-2020, FINTRAC provided intelligence disclosures as follows: RCMP (2,405); Municipal Police (914); CSIS (436), Provincial Police (703); Foreign FIUs (234); CBSA (500); CRA (287); Provincial Securities Regulators (66); and, CSE (12). The total unique intelligence disclosures provided by FINTRAC in 2019-2020 was 2,057, which represents an increase of 124% from 2012-2013.<sup>60</sup> The total number of police, law enforcement, national security and other partner agency major and project-level investigations supported by FINTRAC financial intelligence disclosures in 2019-2020 was 393.<sup>61</sup>

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<sup>55</sup> Ex. 1019: Soper Affidavit, [Ex. B at 6](#).

<sup>56</sup> Ex. 1021: Overview Report – Miscellaneous Documents [“**OR - Miscellaneous Documents**”], [Appendix 9 at 2](#).

<sup>57</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 9 at 2](#).

<sup>58</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 9 at 3](#).

<sup>59</sup> Ex. 1019: Soper Affidavit, [Ex. B at 7](#).

<sup>60</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 9 at 2-3](#).

<sup>61</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 9 at 3](#).

## ***FINTRAC's Compliance Mandate***

FINTRAC ensures that reporting entities comply with their obligations under the PCMLTFA and its regulations, including obligations related to customer identification, reporting, and record keeping. The three pillars of FINTRAC's compliance framework are assistance, assessment and enforcement.<sup>62</sup>

FINTRAC has over 24,000 reporting entities.<sup>63</sup> The following businesses are considered reporting entities: accountants, agents of the Crown, British Columbia ("BC") notaries, casinos, dealers in precious metals and stones, financial entities, life insurance companies, brokers and agents, MSBs including foreign and virtual currency MSBs, real estate, and securities dealers.<sup>64</sup>

FINTRAC provides assistance to reporting entities to help them implement an effective compliance program. This assistance comprises online guidance, outreach and engagement with stakeholders, and technical support.<sup>65</sup> Ms. Achimov testified that FINTRAC's compliance department monitors trends, examines areas with reporting gaps and develops outreach and education responses.<sup>66</sup> FINTRAC engages with reporting entities, industry associations, provincial regulators and other government departments.<sup>67</sup>

FINTRAC also provides policy interpretations and targeted outreach in response to questions.<sup>68</sup> In the 2019-20 fiscal year, FINTRAC received 6,600 inquiries from

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<sup>62</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 2](#).

<sup>63</sup> Transcript of Money Services Business (MSB) – Financial Transactions and Report Analysis Centre of Canada (FINTRAC) Panel, January 18, 2021 [**"MSB FINTRAC Panel Transcript"**], [at 185:13-16, 185:21-22](#); Ex. 620: FINTRAC Overview – slide presentation to RECBC, May 2019 (CAN-001319) [**"FINTRAC presentation to RECBC"**] [at 4](#).

<sup>64</sup> Ex. 620: FINTRAC presentation to RECBC [at 4](#).

<sup>65</sup> Ex. 620: FINTRAC presentation to RECBC [at 4](#).

<sup>66</sup> Transcript of FINTRAC Real Estate Panel, March 12, 2021 [**"FINTRAC Real Estate Panel Transcript"**] [at 18:12-24](#).

<sup>67</sup> Ex. 449: List of Compliance Engagement Activities 2017-18 to 2019-20 (CAN-001316) [**"Compliance List"**]; Ex. 736: FINTRAC's Engagement and Compliance Activities in the Real Estate Sector (CAN-001317) [**"FINTRAC's Engagement and Compliance"**]; Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 5-6](#).

<sup>68</sup> FINTRAC Real Estate Panel Transcript [at 118:3-19](#).

businesses and published 357 policy interpretations to help reporting entities fulfill PCMLTFA obligations and better understand legislative and regulatory amendments.<sup>69</sup>

In 2018-2019, FINTRAC shifted from an audit-based review to an assessment framework.<sup>70</sup> Under this framework, FINTRAC creates an annual examination plan under which reporting entities are selected for examinations using a risk-based assessment.<sup>71</sup> Risk is generally assessed based on both the likelihood of an entity's non-compliance and the consequence or potential impact of any non-compliance on ML or TF.<sup>72</sup> The approach is dynamic; risks identified for one year may change in the next.<sup>73</sup> FINTRAC creates an examination plan for the year that determines how many examinations will take place according to sector and geographic location.<sup>74</sup>

Once it has evaluated a reporting entity's risk, FINTRAC selects the methods it will use to evaluate how it complies with the legal requirements of the PCMLTFA and associated regulations.<sup>75</sup> FINTRAC uses various assessment tools, including desk and onsite examinations and compliance assessment reports.<sup>76</sup> Technical non-compliance is verified and noted, however, FINTRAC's examinations place emphasis on the overall soundness and effectiveness of the reporting entity's compliance program.<sup>77</sup> FINTRAC also considers the effects of a reporting entity's non-compliance on the objectives of the PCMLTFA and on FINTRAC's mandate.<sup>78</sup> After an examination, FINTRAC provides guidance to reporting entities on how to

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<sup>69</sup> FINTRAC Real Estate Panel Transcript [at 119:24 to 120:1, 120:7-11](#); Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 6](#).

<sup>70</sup> MSB FINTRAC Panel Transcript [at 137:22-25 to 138:1-12](#).

<sup>71</sup> FINTRAC Real Estate Panel Transcript [at 110:4-8](#); Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 13-14](#).

<sup>72</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 13-14](#).

<sup>73</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 13-14](#).

<sup>74</sup> FINTRAC Real Estate Panel Transcript [at 110:4-8](#).

<sup>75</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 14](#).

<sup>76</sup> Ex. 620: FINTRAC presentation to RECBC [at 4](#).

<sup>77</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 14-15](#).

<sup>78</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 15](#).

address identified shortcomings or deficiencies and may follow up to ensure the reporting entity has addressed any identified deficiencies.<sup>79</sup>

In some circumstances, an enforcement action may also be considered. FINTRAC uses a variety of enforcement tools to address non-compliance, including compliance meetings, action plans and follow-up examinations, Administrative Monetary Penalties (“AMPs”) and non-compliance disclosures.<sup>80</sup> FINTRAC’s compliance program aims to ensure reporting entities understand their obligations, have good reporting and adjust their behaviour where necessary.<sup>81</sup> The overarching objective is behavioural change: AMPs are a last resort rather than a goal.<sup>82</sup>

In 2019-20, FINTRAC conducted 399 examinations against all reporting entity sectors, including 44 follow-up examinations.<sup>83</sup> The chart below sets out these examinations by sector.

| <b>Examinations per Sector<sup>84</sup></b>                            |  |
|--|--|
| <i>Sector</i>  | <i>Number of examinations completed in 2019-20</i> |
| Casinos  | 5  |
| Financial Entities (i.e., banks, credit unions and caisses populaires) | 47   |
| Money Services Businesses  | 114  |
| Real Estate Sector   | 146  |
| Securities Dealers   | 58   |
| Dealers in Precious Metals and Stones                                  | 16   |
| Accountants  | 1  |
| Life Insurance Companies, Brokers, Agents                              | 1  |
| British Columbia Notaries  | 10   |
| Trust and Loans  | 1  |
| <b>Total</b>   | <b>399</b>   |

<sup>79</sup> Ex. 740: Sample FINTRAC Letter re Compliance Examination Findings (CAN-001377) [[“Sample FINTRAC Letter”](#)]; FINTRAC Real Estate Panel Transcript [at 69:2-24](#); Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 14](#).

<sup>80</sup> Ex. 620: FINTRAC presentation to RECBC [at 4](#); [Ex. 740: Sample FINTRAC Letter](#).

<sup>81</sup> [Ex. 740: Sample FINTRAC Letter](#); FINTRAC Real Estate Panel Transcript [at 87:21 to 88:1-7, 104:15-23](#).

<sup>82</sup> [Ex. 740: Sample FINTRAC Letter](#); FINTRAC Real Estate Panel Transcript [at 87:21 to 88:1-7, 104:15-23](#).

<sup>83</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 14](#) and [24](#).

<sup>84</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 16](#).



Of the follow up examinations, four resulted in enforcement action and were recommended for AMP consideration and 13 were considered for a follow-up activity.<sup>85</sup>

- (vii) **Global Affairs Canada (“GAC”)**: GAC is the lead department for the United Nations crime conventions that Canada has ratified.<sup>86</sup>
- (viii) **Innovation, Science and Economic Development Canada (“ISED”)**: ISED is responsible for the regulation and oversight of Canada’s marketplace framework, which includes corporate governance and federal incorporation under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 (“CBCA”).<sup>87</sup>
- (ix) **Office of the Superintendent of Financial Institutions**: Following the 2019/2020 – 2021/2022 transition, FINTRAC will assume primary responsibility for conducting independent assessments of Federally Regulated Financial Institutions (“FRFIs”) to ensure compliance with the PCMLTFA and associated Regulations.<sup>88</sup>
- (x) **Public Prosecution Service of Canada**: PPSC is responsible for initiating and conducting federal prosecutions, including fraud, ML and TF offences.
- (xi) **Public Safety Canada**: PS is the lead policy Department responsible for combating transnational and serious and organized crime and terrorism.<sup>89</sup>
- (xii) **Public Services and Procurement Canada**: PSPC, through the Seized Property Management Directorate (“SPMD”), is responsible for managing assets seized or restrained by law enforcement or by any person employed in the federal public administration or by a provincial or municipal authority in relation to seizure, restraint, custody, management, forfeiture or disposal of property in connection with designated offences or property that is or may be POC or offence-related property.<sup>90</sup>

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<sup>85</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 24-25](#).

<sup>86</sup> Ex. 1019: Soper Affidavit, [Ex. B at 6](#).

<sup>87</sup> Ex. 1019: Soper Affidavit, [Ex. B at 7](#).

<sup>88</sup> Ex. 1021: OR - Miscellaneous Documents, [Appendix 15 at 3](#).

<sup>89</sup> Ex. 1019: Soper Affidavit, [Ex. B at 7-8](#).

<sup>90</sup> Ex. 1019: Soper Affidavit, [Ex. B at 8](#).

- (xiii) **Royal Canadian Mounted Police:** The RCMP investigates ML, including predicate offences, and TF cases, makes arrests, and seizes funds or assets suspected of being POC or used in support of terrorist activity. The RCMP acts as a liaison in exchanging criminal intelligence with domestic and international police forces and liaison officers assist in pursuing AML/ATF cases.

#### **D. Money Laundering Techniques**

i.) General

36. ML is a criminal offence in Canada. Section 462.31 of the *Criminal Code*, R.S.C., 1985, c. C-46, defines the offence of laundering the POC:

##### **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, or being reckless as to whether, all or a part of that property or of those proceeds was obtained or derived directly or indirectly 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.

37. Commodity-based offences, such as trafficking drugs or firearms make it illegal to possess certain products, but these products are not, in and of themselves, worth anything unless sold.<sup>91</sup> Laundering the POC is a substantially different offence because possessing or transferring money is not illegal.<sup>92</sup> The offence of laundering the POC requires proof that the offender had knowledge that the proceeds are derived from criminal activity or that the offender was willfully blind or reckless as to the origin of the proceeds.<sup>93</sup> Prior to 2019,

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<sup>91</sup> Transcript of JIGIT Panel, April 7, 2021, Session 2 [**“JIGIT Transcript”**], testimony of S/Sgt. J. Hussey [**“J. Hussey”**] [at 98:19 to 99:11](#).

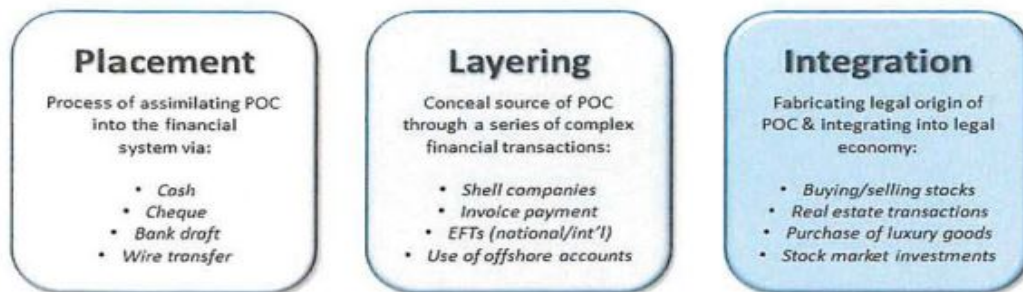
<sup>92</sup> JIGIT Transcript, J. Hussey [at 98:7-11](#).

<sup>93</sup> Ex. 818: Presentation – Money Laundering Enforcement CFSEU-BC JIGIT, April 7, 2021 (CAN-001802) [**“JIGIT ML Enforcement Presentation”**] [at 10](#); JIGIT Transcript, J. Hussey [at 98:19 to 99:11](#).

recklessness was not part of the *mens rea* of the offence.<sup>94</sup> In 2019, the *Criminal Code* was amended to include recklessness as part of the mental element of the offence, an alternative to knowledge or belief, to support the fight against third party or professional money launderers.<sup>95</sup>

38. The process of ML has three general stages: placement, layering, and integration.<sup>96</sup> The first stage is the initial placement of the POC into the financial system. The second stage is the layering of the proceeds, which involves disguising the funds through financial transactions and making it difficult to follow the money's trail. The third stage integrates the illegal proceeds into the legitimate economy.<sup>97</sup>

Figure 2 –FINTRAC's Three Stages of the Money Laundering Process



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39. All forms of criminal enterprise, both large and small, may launder the POC.<sup>99</sup> ML schemes cross borders, both domestically and internationally.<sup>100</sup> ML can occur on a small scale, performed by individuals seeking to hide the proceeds of a criminal act, or on a much larger scale. Organized criminal groups may self launder their proceeds or use the services of professional or third party money launderers to launder the proceeds of their illicit activities.<sup>101</sup>

<sup>94</sup> *Criminal Code*, R.S.C., 1985, c. C-46 as it appeared on June 20, 2019 [[“Criminal Code”](#)].

<sup>95</sup> *Budget Implementation Act*, S.C. 2019, c 29, [s. 103](#).

<sup>96</sup> Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 9](#).

<sup>97</sup> Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 8](#).

<sup>98</sup> Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 9](#).

<sup>99</sup> Ex. 3: OR – Canada’s Documents, [Appendix E at 11](#); Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 8-9](#).

<sup>100</sup> Ex. 818: JIGIT ML Enforcement Presentation [at 12](#); Transcript of TBML Panel, December 10, 2020 [[“TBML Panel Transcript”](#)], testimony of J. Gibbons [at 38:4 to 39:1](#).

<sup>101</sup> Ex. 3: OR – Canada’s Documents, [Appendix E at 11](#).

40. Professional money launderers are skilled facilitators of laundering.<sup>102</sup> Professional money launderers are often not members of the OCG or involved in the predicate offence<sup>103</sup> but rather sell their services to organized criminal groups and other criminals.<sup>104</sup> The organization of professional money launderers is often highly compartmentalized and they can facilitate the entire operation electronically with limited physical presence.<sup>105</sup> RCMP Staff Sgt. Hussey testified, “professional money launderers, organized crime at the highest level, will always go out of their way ... to distance themselves from the predicate crime”.<sup>106</sup> Likewise, those who hire professional money launderers are themselves distanced from the act of laundering.<sup>107</sup>

41. The techniques used to launder money are diverse and complex and may include the exploitation of casinos, underground banking systems, illegal gaming houses/sites, nominees/shell companies, TBML, virtual assets, and real estate investments.<sup>108</sup>

ii.) Trade-Based Money Laundering

42. TBML is the process of disguising illicit financial flows and moving their value through the use of trade transactions in an attempt to legitimize their origins.<sup>109</sup> TBML is distinguished from trade-related predicate offences because its ultimate aim is not the movement of goods but the movement of money which the trade facilitates.<sup>110</sup> TBML

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<sup>102</sup> Ex. 345: Presentation: Government of Canada, *Trade-Based Money Laundering Overview*, April 1, 2020 [“**Canada TBML Presentation**”] [at 14](#).

<sup>103</sup> Ex. 339: Overview Report: Trade-Based Money Laundering Publications and Records [“**OR – TBML Records**”], [Appendix P at 1](#).

<sup>104</sup> Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 3](#).

<sup>105</sup> Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 3](#).

<sup>106</sup> JIGIT Transcript, J. Hussey [at 99:4-10](#).

<sup>107</sup> Ex. 818: JIGIT ML Enforcement Presentation [at 12](#).

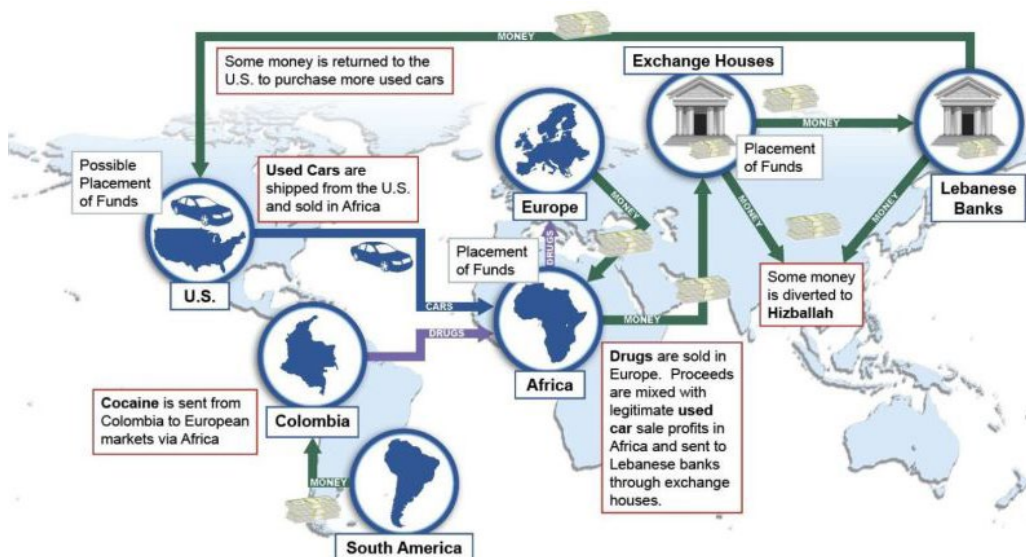
<sup>108</sup> Ex. 3: OR – Canada’s Documents, [Appendix E at 11](#).

<sup>109</sup> Ex. 345: Canada TBML Presentation [at 2](#); Ex. 1020: Overview Report - Information Relating to the FATF & Egmont Group Trade-Based Money Laundering Report [“**OR – FATF TBML Report**”], [Appendix A at 11-12](#); Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 14](#).

<sup>110</sup> Ex. 1020: OR – FATF TBML Report, [Appendix A at 11-12](#).

generally occurs at the layering stage of ML.<sup>111</sup> TBML schemes require a complicit seller and buyer, or dual presence across jurisdictions.<sup>112</sup>

43. Basic forms of TBML involve the transfer of goods to finance illicit products or activities. For example: illicit narcotics are provided from Africa to North America; the illicit narcotics are sold in North America; the revenue from the illicit narcotics is used to buy vehicles, which are then shipped back to Africa as payment for the illicit narcotics.<sup>113</sup> This example is illustrated below.



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44. Moderately complex schemes of TBML involve various forms of customs fraud.<sup>115</sup> For example: to move capital from Canada to another jurisdiction, a money launderer could use a phantom shipment, where the criminal in Canada pays for a product from another jurisdiction and transfers the funds to that jurisdiction, but no product is actually shipped to Canada.<sup>116</sup> Another mechanism is under invoicing. In this case, product is shipped but it is discounted so more capital moves than is paid. The criminal in Canada will ship \$3 million

<sup>111</sup> Ex. 339: OR – TBML Records, [Appendix BB, at slide 3](#); TBML Panel Transcript, testimony of B. Gateley [**B. Gateley**] [at 16:6-20](#).

<sup>112</sup> Ex. 339: OR – TBML Records, [Appendix Z at 4](#); Ex. 345: Canada TBML Presentation [at 6](#).

<sup>113</sup> Ex. 339: OR – TBML Records, [Appendix Z at 3](#); Ex. 345: Canada TBML Presentation [at 3](#).

<sup>114</sup> Ex. 345: Canada TBML Presentation [at 19](#).

<sup>115</sup> Ex. 339: OR – TBML Records, [Appendix Z at 3](#).

<sup>116</sup> Ex. 339: OR – TBML Records, [Appendix Z at 4](#); Ex. 339: OR – TBML Records, [Appendix P at 1](#).

worth of product but only charge \$1 million, resulting in the movement of \$2 million worth of capital once the product is then sold in the receiving jurisdiction.<sup>117</sup>

45. Complex TBML schemes may involve the techniques described above, as well as shell companies, offshore accounts, nominees, legal trusts, third-party payment methods, transit through free trade zones or non-cooperative jurisdictions, the use of crypto currencies or the co-mingling of proceeds with real estate purchases.<sup>118</sup> At its most complex, TBML schemes become a “tangled web”, as RCMP Sgt. Sharma, NCO Federal Serious and Organized Crime (“FSOC”), described in testimony.<sup>119</sup> A TBML scheme involves multiple criminal actions conducted in numerous locations around the world. Investigators not only have to unravel these complicated schemes and extrapolate how they are interconnected, but also prove knowledge and control to an entity or a number of entities.<sup>120</sup>

46. Most forms of TBML are typically broken down into two schemes: those involving falsified customs, shipping and trade finance documents, or those involving a type of unregistered foreign currency exchange (the Black Market Peso Exchange model).<sup>121</sup> The most complex schemes, however, may involve both. FINTRAC’s Operational Alert for “Professional money laundering through trade and money services businesses” illustrates a number of indicators of TBML by professional money launderers.<sup>122</sup>

47. Not all forms of TBML involve the abuse of the customs process. Service based money laundering (“SBML”) is payment for the transfer of services across borders, such as international consulting or research fees. The value of these services or the determination of whether they are provided is difficult to detect.<sup>123</sup>

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<sup>117</sup> Ex. 345: Canada TBML Presentation [at 4](#); Ex. 339: OR – TBML Records, [Appendix Z at 3](#).

<sup>118</sup> Ex. 345: Canada TBML Presentation [at 5](#); Ex. 339: OR – TBML Records, [Appendix Z at 3-4](#).

<sup>119</sup> TBML Panel Transcript, testimony of Sgt. S. Sharma [**S. Sharma**], [at 107:12 to 108:21](#); Ex. 345: Canada TBML Presentation [at 20-21](#).

<sup>120</sup> TBML Panel Transcript, S. Sharma [at 108:6-21](#).

<sup>121</sup> Ex. 346: FINTRAC Operational Alert - *Professional money laundering through trade and money services businesses*, July 18, 2018 (CAN-000172) [**FINTRAC Operational Alert TBML**] [at 1](#).

<sup>122</sup> Ex. 346: FINTRAC Operational Alert TBML [at 2](#).

<sup>123</sup> Ex. 339: OR – TBML Records, [Appendix Z at 4](#).

48. TBML is cross-jurisdictional in nature and primarily involves trade between nation states. As such, the federal government, who has the exclusive delegated jurisdiction to enter into international treaties,<sup>124</sup> participates in a number of international agreements and Memorandums of Understanding (“MOUs”) with other national governments. Examples of Customs Mutual Assistance Agreements (“CMAA”) and other international agreements and memoranda of understanding between Canada and its partners are found in the Overview Report on Customs Mutual Assistance Agreements.<sup>125</sup>

49. RCMP Sgt. Sharma testified that TBML is not “an alien entity”, rather it is just one more, highly complex, ML technique.<sup>126</sup> As with all other forms of ML, many federal agencies and organizations are involved in addressing TBML, including FINTRAC, CBSA, RCMP, CRA, and Criminal Intelligence Service BC and Yukon Territory (“CISBC/YT”). Given the inter-jurisdictional and cross-sectional nature of TBML, the Interagency TBML Working Group was formed in the summer of 2018, and includes the RCMP, CBSA, CSIS, and the CRA.<sup>127</sup> The group convenes to discuss TBML issues and collaborative opportunities between agencies.

50. While the CBSA has no mandate to enforce financial or ML crimes,<sup>128</sup> the Agency does have criminal investigative and enforcement authorities under the *Customs Act* where there is a nexus to trade fraud. Trade fraud is often both the predicate offence for TBML and the primary technique involved in TBML.<sup>129</sup> When CBSA officers at ports of entry, CBSA Intelligence Officers, CBSA foreign Liaison Officers or CBSA Trade Compliance Officers develop grounds to suspect ML activity in the course of their mandated responsibilities, they may refer the issue to the Centre of Expertise.<sup>130</sup>

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<sup>124</sup> Peter Hogg, *Constitutional Law of Canada*, 5<sup>th</sup> ed (Toronto, Canada: Thomson Reuters, 2019) at s. 11.2 “Power to make Treaties”.

<sup>125</sup> [Ex. 338: Overview Report – Canada’s Customs Mutual Assistance Agreements.](#)

<sup>126</sup> TBML Panel Transcript, S. Sharma [at 150:13-22.](#)

<sup>127</sup> TBML Panel Transcript, B. Gateley, [at 13:25 to 14:13.](#)

<sup>128</sup> Ex. 339: OR – TBML Records, [Appendix T at 1.](#)

<sup>129</sup> Ex. 339: OR – TBML Records, [Appendix T at 1.](#)

<sup>130</sup> Ex. 339: OR – TBML Records, [Appendix T at 1.](#)

51. In 2019, the Federal Budget provided funding to create a multi-disciplinary trade fraud and TBML Centre of Expertise.<sup>131</sup> The Centre of Expertise is part of the Intelligence and Enforcement Branch of the CBSA.<sup>132</sup> The mission of the Centre of Expertise is to create an integrated capability to enhance the CBSA's ability to identify, investigate and deter trade fraud and to support Canada's partners in advance the objectives of Federal Regime.<sup>133</sup> The Centre of Expertise provides the CBSA with intelligence and investigative staff across Canada who work on trade fraud and TBML files.<sup>134</sup> Referrals from CBSA personnel to the Centre of Expertise may result in CBSA Criminal Investigations for trade fraud offences or RCMP investigations for suspected TBML.<sup>135</sup> The Centre of Expertise also collaborates with and provides support (including intelligence leads) to other Federal Regime partners including FINTRAC, RCMP, and CRA.<sup>136</sup>

52. Most recently, the CBSA Assessment and Revenue Management Project ("CARM Project") was initiated. The CARM Project is a technology-enabled business solution, aimed at modernizing and streamlining the process of importing commercial goods into Canada.<sup>137</sup> The CARM Project enables various forms of data validation and analysis, including the CARM Risking Engine, which is an automated profiling system. This system will enable the CBSA to obtain a more comprehensive understanding of potential transaction risks or compliance issues.<sup>138</sup> The CARM Risking Engine will also be able to generate historical pricing models for commodities, enabling the potential detection of TBML through identifying abnormal product price manipulation.<sup>139</sup>

iii.) Virtual Assets

53. Canada has assessed virtual assets, and particularly convertible decentralized virtual currencies, as being among the sectors and products vulnerable to ML and TF

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<sup>131</sup> Ex. 339: OR – TBML Records, [Appendix H at 199](#).

<sup>132</sup> Ex. 339: OR – TBML Records, [Appendix R at 12](#).

<sup>133</sup> Ex. 339: OR – TBML Records, [Appendix FF at 5](#).

<sup>134</sup> Ex. 339: OR – TBML Records, [Appendix R at 15](#).

<sup>135</sup> Ex. 339: OR – TBML Records, [Appendix T at 1](#).

<sup>136</sup> Ex. 339: OR – TBML Records, [Appendix DD at 16](#).

<sup>137</sup> Ex. 993: Rank Affidavit [at para 4](#).

<sup>138</sup> Ex. 993: Rank Affidavit [at paras. 17-18](#).

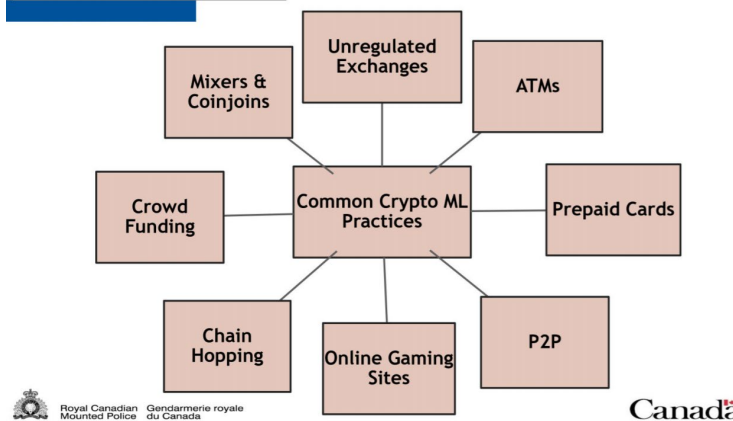
<sup>139</sup> Ex. 993: Rank Affidavit [at paras. 28 & 40](#).



threats.<sup>140</sup> Virtual assets are highly vulnerable because of their anonymity, ease of access and complexity.<sup>141</sup> These characteristics pose significant challenges for law enforcement in determining the beneficial ownership of the virtual currency involved in criminal activities.<sup>142</sup> Despite these vulnerabilities, Canada also recognizes the many opportunities presented by virtual assets and their legitimate use.<sup>143</sup>

54. Convertible virtual currencies can be used in all three stages of ML.<sup>144</sup> The table below shows some of the most common means of laundering money via the use of virtual assets:<sup>145</sup>

### Common Money Laundering Practices Using Crypto



55. One way in which Canada has responded to the ML threat posed by virtual assets is through amendments to the PCMLTFA and its Regulations. These amendments are in accordance with recommendations from the FATF.<sup>146</sup> The regime discussed below includes the amendments that came into force on June 1, 2021.

<sup>140</sup> Ex. 396: 2015 NIRA [at 41](#).

<sup>141</sup> Ex. 396: 2015 NIRA [at 41](#).

<sup>142</sup> Ex. 396: 2015 NIRA [at 41](#); see also Ex. 254: Senate Report - Digital Currency You Can't Flip this Coin! - June 2015 [**“Senate Report – Digital Currency”**] [at 42](#), [44-45](#).

<sup>143</sup> Ex. 254: Senate Report – Digital Currency [at 8](#), [32](#), [39](#).

<sup>144</sup> Ex. 396: 2015 NIRA [at 57](#).

<sup>145</sup> Ex. 253: RCMP Virtual Assets Presentation [at 46](#).

<sup>146</sup> Ex. 249: Overview Report: Federal Regulation of Virtual Currencies [**“OR – Virtual Currencies”**] [at para 8](#).

56. The PCMLTFA regulates virtual currency dealers, such as currency exchange and value transfer services, as MSBs. Since June 1, 2020, virtual currency dealers must register as MSBs and are required to record-keep, collect and verify client information, and report to FINTRAC. Many of these requirements also apply to virtual currency dealers located outside of Canada directing and providing services to people or entities in Canada, as a “foreign MSB”.<sup>147</sup>

57. The PCMLTF Regulations define “virtual currency” in alignment with the updated FATF recommendations.<sup>148</sup> The Regulations require reporting entities, including virtual currency dealers, to perform a risk assessment before using new technologies.<sup>149</sup> Virtual currency dealers must identify and verify customer information in respect of certain financial transactions when faced with a suspicious transaction, when issuing or redeeming money orders, traveller’s cheques or similar negotiable instruments of \$3,000 or more, when transmitting or remitting \$1,000 or more in funds, when initiating or receiving an electronic funds transfer of \$1,000 or more, when conducting a foreign exchange transaction of \$3,000 or more, when transferring or receiving \$1,000 or more in virtual currency or when conducting a virtual currency exchange transaction of \$1,000 or more in virtual currencies.<sup>150</sup> Virtual currency dealers must also keep certain records related to virtual currency exchange transactions as well as the transfer and receipt of virtual currency. Additionally, virtual currency dealers and all other reporting entity sectors, are required to report large cash transactions of \$10,000 or more, electronic fund transfers of \$10,000 or more, terrorist property, suspicious transactions, and large virtual currency transactions

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<sup>147</sup> *Economic Action Plan 2014 Act, No 1*, S.C. 2014, c-20, [s 298\(3\)](#); *Budget Implementation Act, 2017, No 1*, S.C. 2017, c-20, [s 441\(1\)](#); [Order Fixing the Coming into Force of Certain Provisions of \(1\) the Economic Action Plan 2014, No 1 on June 1, 2020; and \(2\) the Budget Implementation Act, 2017, No.1 on June 1, 2021 \(SI/2019-43\)](#); [Regulations Amending Certain Regulations Made under the Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act, 2019 \(SOR/2019-240\)](#); [Regulations Amending the Regulations Amending Certain Regulations Made under the Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act, 2019 \(SOR/2020-112\)](#).

<sup>148</sup> Ex. 249: OR – Virtual Currencies [at para 35](#). See also FATF, *Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*, (Paris: FATF, 2019) [at 13](#), online: <[www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf)>.

<sup>149</sup> Ex. 249: OR – Virtual Currencies [at para 18](#).

<sup>150</sup> Ex. 249: OR – Virtual Currencies [at para 37](#).

(that is: the receipt of virtual currency valued at \$10,000 CAD or more within 24 consecutive hours).<sup>151</sup>

58. Under the Regulations, financial entities, MSBs, and foreign MSBs are required to expand the travel rule to virtual currencies.<sup>152</sup> The travel rule is a longstanding customer due diligence requirement for banks and other financial institutions when sending each other money on the customer's behalf. The rule requires them to pass on certain pieces of identifying information to the next financial institution receiving the transaction.<sup>153</sup>

59. Canada has also responded to the ML threat posed by virtual assets through new law enforcement initiatives including, in BC, the creation of the Federal Cybercrime Operations Group whose mandate is to investigate cybercrime in accordance with Federal Policing strategic priorities.<sup>154</sup>

60. The RCMP has developed new policies, guidelines, training and working groups to address the evolving and dynamic nature of cryptocurrency.<sup>155</sup> The RCMP also has partnerships with the National Cybercrime Coordination Centre, the Canadian Anti-Fraud Centre and its Government of Canada regime partners to address this issue.<sup>156</sup> The National Police Service and the National Cybercrime Coordination Centre has provided Canadian law enforcement with software tracing tools<sup>157</sup> to assist investigators in interpreting publicly available data in order to provide identifying information for transactions on the blockchain.<sup>158</sup> The RCMP also has international partnerships that address the ML

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<sup>151</sup> Ex. 249: OR – Virtual Currencies [at paras 38-39](#).

<sup>152</sup> Ex. 249: OR – Virtual Currencies [at paras 43-44](#). See also Government of Canada, “Regulatory Impact Analysis Statement” (2020) Government of Canada, online: <<http://gazette.gc.ca/rp-pr/p1/2020/2020-02-15/html/reg1-eng.html>> [“[Regulatory Impact Analysis Statement](#)”].

<sup>153</sup> [Regulatory Impact Analysis Statement](#).

<sup>154</sup> Transcript of RCMP Virtual Assets Panel, November 23, 2020 [“**Virtual Assets Panel**”], testimony of Sgt. W. Krahenbil [“**W. Krahenbil**”], [at 10:5 to 10:12](#).

<sup>155</sup> Transcript of Virtual Assets Panel, testimony of Sgt. A. Vickery [“**A. Vickery**”] [at 137:7 to 141:12](#).

<sup>156</sup> Transcript of Virtual Assets Panel, A. Vickery [at 139:11 to 141:4](#).

<sup>157</sup> Transcript of Virtual Assets Panel, A. Vickery [at 139:19-25, 182:1-8](#).

<sup>158</sup> Transcript of Virtual Assets Panel, W. Krahenbil [at 162:14-18](#).

threat of virtual assets through its participation in the Five Eyes Cryptocurrency Operational Readiness Group.<sup>159</sup>

iv.) Bulk Cash Smuggling

61. Bulk cash smuggling across Canada's borders is a ML method that is frequently used as the first step in the ML process.<sup>160</sup> Canada has a cross-border currency reporting and seizure regime that is designed to monitor the currency and monetary instruments (collectively, "funds") crossing Canada's borders and to identify POC that travellers may try to bring into or out of Canada. Travellers carrying, importing or exporting funds across Canada's borders must report those funds to the CBSA if the funds are equal to or exceeding \$10,000 Canadian dollars (or the equivalent amount in a foreign currency).<sup>161</sup> The funds must be reported to the CBSA using one or more currency reporting forms.<sup>162</sup>

62. The CBSA shares all completed currency reporting forms with FINTRAC for further analysis.<sup>163</sup> The total value of funds that were reported entering or leaving Canada through BC ports of entry for each of the last five years is as follows: \$1,380,679,435.88 (2016); \$1,463,351,600 (2017); \$1,879,120,057.97 (2018); \$923,734,249.37 (2019); \$161,761,260.26 (2020).<sup>164</sup>

63. CBSA Border Services Officers stationed at border ports of entry receive currency reporting forms and detect undeclared funds. These ports of entry include those that can be accessed by motor vehicles, as well as airports, rail and maritime ports, and three international mail-processing centers.<sup>165</sup>

64. If a CBSA officer has reasonable grounds to suspect that a person has concealed and failed to declare funds totaling \$10,000 or more, the officer can search that person, or

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<sup>159</sup> Transcript of Virtual Assets Panel, A. Vickery [at 141:5-12](#).

<sup>160</sup> Ex. 396: 2015 NIRA [at 42](#).

<sup>161</sup> PCMLTFA, [s. 12](#); *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412, [s. 2](#) [**"CCMI Reporting Regulations"**].

<sup>162</sup> Ex. 1000: D'Ambrogio Affidavit [at paras 16-25](#).

<sup>163</sup> Ex. 1000: D'Ambrogio Affidavit [at paras 29-30](#).

<sup>164</sup> Ex. 990: Ryan Affidavit [at para 8](#); Ex. 991: [Ex. A](#) to the Affidavit of Annette Ryan – FINTRAC CBCR Reports Data.

<sup>165</sup> Ex. 1000: D'Ambrogio Affidavit [at para 9](#).

the vehicle on which the funds may be concealed,<sup>166</sup> and may seize those funds.<sup>167</sup> Similarly, a CBSA officer may open any international mail if there are reasonable grounds to suspect that the mail contains \$10,000 or more of undeclared funds<sup>168</sup> and those funds may be seized.<sup>169</sup>

65. Once an officer has seized undeclared funds, the funds will be forfeited if the CBSA officer has reasonable grounds to suspect that the funds are POC or funds for use in the financing of terrorist activities (collectively, “illicit funds”).<sup>170</sup> This is referred to as a Level 4 seizure. Similarly, even if funds have been reported in compliance with PCMLTFA reporting rules, or the funds are below the \$10,000 reporting threshold, the CBSA can seize suspected illicit funds as evidence for RCMP investigations.<sup>171</sup> If there are no reasonable grounds to suspect that undeclared funds are illicit, the funds will be returned upon payment of a penalty.<sup>172</sup> That penalty will be \$250 (Level 1), \$2,500 (Level 2), or \$5,000 (Level 3) depending on the circumstances of the concealment.<sup>173</sup>

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<sup>166</sup> PCMLTFA, [ss. 15, 16](#); Ex. 1000: D’Ambrogio Affidavit [at para 27](#).

<sup>167</sup> PCMLTFA, [s. 18\(1\)](#); CCMI Reporting Regulations, [s. 18](#); Ex. 1000: D’Ambrogio Affidavit [at para 31](#).

<sup>168</sup> PCMLTFA, [s. 17](#); Ex. 1000: D’Ambrogio Affidavit [at para 28](#).

<sup>169</sup> PCMLTFA, [s. 18\(1\)](#); CCMI Reporting Regulations, [s. 18](#); Ex. 1000: D’Ambrogio Affidavit [at para 31](#).

<sup>170</sup> PCMLTFA, [s. 18\(2\)](#); Ex. 1000: D’Ambrogio Affidavit [at paras 37](#) and [40](#).

<sup>171</sup> Ex. 1000: D’Ambrogio Affidavit [at para 41](#).

<sup>172</sup> PCMLTFA, [s. 18\(1\)](#).

<sup>173</sup> CCMI Reporting Regulations, [s. 18](#); Ex. 1000: D’Ambrogio Affidavit [at paras 33-36](#).

66. The table below provides a summary of the number and total value of seizures of undeclared funds in BC from 2016-2020, separated by the four PCMTLFA seizure levels discussed above:<sup>174</sup>

| The Number and Value of Seizures in British Columbia |      |           |      |           |      |           |      |           |      |           |
|--|------|-----------|------|-----------|------|-----------|------|-----------|------|-----------|
|  | 2016 |           | 2017 |           | 2018 |           | 2019 |           | 2020 |           |
|  | #    | \$        | #    | \$        | #    | \$        | #    | \$        | #    | \$        |
| <b>Level 1</b>                                       | 597  | 9,190,847 | 496  | 7,511,148 | 564  | 8,637,316 | 365  | 5,459,126 | 103  | 1,551,367 |
| <b>Level 2</b>                                       | 74   | 1,588,271 | 60   | 1,370,590 | 68   | 1,540,858 | 40   | 858,817   | 8    | 157,565   |
| <b>Level 3</b>                                       | NIL  | NIL       | 2    | 148,734   | NIL  | NIL       | 3    | 30,049    | NIL  | NIL       |
| <b>Level 4</b>                                       | 47   | 926,878   | 50   | 771,527   | 48   | 1,006,079 | 57   | 973,455   | 16   | 207,367   |

v.) Corporations

67. The use of corporations to launder money is a threat recognized by, and of concern to Canada. Canada has assessed corporations, especially private for-profit corporations, as being among the sectors and products most vulnerable to ML and TF threats.<sup>175</sup>

68. Corporations can potentially be used to facilitate the disguise and conversion of illicit proceeds by concealing beneficial ownership of the corporation.<sup>176</sup> Beneficial owners are the real persons who own or control, directly or indirectly, 25% or more of the shares of a corporation.<sup>177</sup> Discovering the identity of a beneficial owner can be further complicated if that owner holds bearer shares, which are corporate shares that are payable to the bearer or endorsed in blank such that their ownership is based on physical possession.<sup>178</sup>

69. Beneficial ownership of illicit funds is often concealed through very complex structures that can deter authorities from identifying the beneficial owner. These structures can include chains of ownership of corporations and trusts in multiple jurisdictions and the use of

<sup>174</sup> Ex. 1000: D’Ambrogio Affidavit [at para 44](#).

<sup>175</sup> Ex. 396: 2015 NIRA [at 32](#) and [38](#).

<sup>176</sup> Ex. 396: 2015 NIRA [at 32](#).

<sup>177</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [“**PCMLTF Regulations**”], s. 41.4 [s. 138](#).

<sup>178</sup> *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 [“**CBCA**”], [s. 48\(2\)\(6\)](#).

nominees and offshore services.<sup>179</sup> Local company services providers can quickly establish offshore corporations that can be used as part of an illicit scheme.<sup>180</sup>

70. The most common technique used to conceal beneficial ownership is the creation and use of shell companies.<sup>181</sup> Shell companies are legal entities with no significant assets that do not perform any significant operations. They can be used to launder money by purporting to perform a service that would reasonably require customers to pay with cash and creating fake invoices to account for that cash. Illicit funds can be integrated into the legitimate economy when these shell companies deposit the cash in financial institutions and make withdrawals.<sup>182</sup> Other characteristics that make corporations a high risk for ML include the ability to commingle illicit funds with legitimate business revenue and to use corporations as fronts so that funds can be transferred between multiple business bank accounts in various transactions.<sup>183</sup>

71. Canada has responded to the threat posed by the use of corporations to launder money in primarily two ways: first, Canada has implemented statutory changes to enhance the collection and availability of beneficial ownership information and explicitly prohibit the issuance of bearer instruments; second, Canada has conducted consultations and committed funding for the implementation of a publicly accessible corporate beneficial ownership registry.

72. Regulatory amendments that came into force on June 1, 2021, expanded the application of beneficial ownership measures to cover all PCMLTFA reporting entities. Previously, certain reporting entities, including financial entities, MSBs, securities dealers, and life insurance agents/brokers/companies, were required to collect beneficial ownership information from corporations and trusts and take reasonable measures to confirm the accuracy of that information.<sup>184</sup> These requirements now apply to all PCMLTFA reporting

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<sup>179</sup> Ex. 396: 2015 NIRA [at 55-56](#).

<sup>180</sup> Ex. 396: 2015 NIRA [at 38](#) and [56](#).

<sup>181</sup> Ex. 396: 2015 NIRA [at 56](#).

<sup>182</sup> Ex. 396: 2015 NIRA [at 56](#).

<sup>183</sup> Ex. 396: 2015 NIRA [at 38](#) and [55](#).

<sup>184</sup> PCMLTF Regulations, [s. 11.1](#), as amended by *Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2013-15, [s. 3](#).

entities, including casinos, real estate professionals, and other non-financial businesses and professions.<sup>185</sup>

73. In December 2017, federal, provincial, and territorial ministers of finance entered into an "Agreement to Strengthen Beneficial Ownership Transparency" (the "FPT Beneficial Ownership Agreement").<sup>186</sup> As part of the FPT Beneficial Ownership Agreement, the Ministers agreed to pursue legislative amendments to federal, provincial and territorial legislation to ensure corporations hold accurate and up-to-date information on beneficial owners that is available to law enforcement, and tax and other authorities. The Ministers further agreed to pursue legislative amendments to eliminate the use of bearer shares, warrants, or options and to replace existing bearer instruments with registered ones.<sup>187</sup>

74. Canada has introduced several legislative changes in accordance with the FPT Beneficial Ownership Agreement. While the CBCA has required shares to be in registered form since 1975, Canada proposed additional legislative changes to address the risks posed by bearer shares and other bearer instruments. Bill C-25, which received Royal Assent on May 1, 2018, amended the CBCA to prohibit the issuance of new bearer shares, warrants, options, or rights and required corporations presented with bearer instruments to convert them into registered form.<sup>188</sup>

75. Canada also implemented legislative amendments to expand the beneficial ownership information collected by federally incorporated corporations and to make that information more readily available to investigative authorities. Bill C-86, which received Royal Assent on December 14, 2018, amended the CBCA to require corporations to create

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<sup>185</sup> PCMLTF Regulations, s. 44.1 [s.138](#), as amended by *Regulations Amending the Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2019*, SOR/2020-112, [s. 5](#).

<sup>186</sup> Ex. 304: Finance Canada, Agreement to Strengthen Beneficial Ownership Transparency, July 11, 2019 (MOF2327) [["Agreement to Strengthen BOT"](#)].

<sup>187</sup> Ex. 304: Agreement to Strengthen BOT [at 1](#).

<sup>188</sup> Ex. 414: Government Response to the 24<sup>th</sup> Report of the House of Commons Standing Committee on Finance, tabled November 8, 2018 [["Government Response to the 24<sup>th</sup> Report"](#) [at 5](#)].



and maintain a register identifying individuals with significant control over the corporation (the “Significant Control Register”).<sup>189</sup>

76. Bill C-97, which received Royal Assent on June 21, 2019, requires a corporation to provide a copy of its Significant Control Register to investigative bodies where there are reasonable grounds to suspect certain offences have been committed by the corporation, individuals with significant control over the corporation, or related entities.<sup>190</sup> The relevant offences include those related to possessing and laundering POC,<sup>191</sup> and offences related to organized crime activities.<sup>192</sup>

77. In November 2018, the House of Commons Standing Committee on Finance (“FINA”) recommended that Canada work with the provinces and territories to create a pan-Canadian beneficial ownership registry for all legal persons and entities.<sup>193</sup> In June 2019, the federal, provincial, and territorial Ministers of finance committed to initiating and coordinating public consultations on the creation of public beneficial ownership registries.<sup>194</sup>

78. From February to May 2020, Canada conducted public consultations on the creation of one or more publicly accessible registries that identify the beneficial owners of Canadian corporations.<sup>195</sup> Over the course of those consultations, Canada received input from a broad spectrum of stakeholders, including law enforcement and tax agencies, industry associations, privacy commissioners, individual Canadians, and a coalition of civil society organizations.<sup>196</sup> Stakeholders from across the spectrum supported the creation of a central registry, or registries, containing beneficial ownership information.<sup>197</sup>

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<sup>189</sup> Ex. 414: Government Response to the 24<sup>th</sup> Report [at 2](#); [Budget Implementation Act, 2018, No. 2, S.C. 2018, c.27](#); CBCA, [s. 21.1](#).

<sup>190</sup> [Budget Implementation Act 2019, No. 1, S.C. 2019, c 29, s. 103](#); CBCA, [s. 21.31](#).

<sup>191</sup> CBCA, Schedule, [ss. 1\(z.052\) – 1\(z.054\)](#) and [1\(z.095\)](#).

<sup>192</sup> CBCA, Schedule, [ss. 1\(z.096\) – 1\(z.099\)](#).

<sup>193</sup> Ex. 436: Confronting Money Laundering and Terrorist Financing: Moving Canada Forward, Report of the Standing Committee on Finance, November 2018 [**“Confronting ML and Terrorist Financing”**] [at 1](#) and [28-29](#).

<sup>194</sup> Ex. 55: BC Consultation on a Public Beneficial Ownership Registry [at 2](#).

<sup>195</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 7 at 263](#).

<sup>196</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 7 at 267](#).

<sup>197</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 7 at 280](#).

79. Canada announced funding for the implementation of a registry in federal budget 2021-2022. Canada committed \$2.1 million over two years to ISED to support the implementation of a publicly accessible corporate beneficial ownership registry by 2025.<sup>198</sup>

### **E. Sector Specific Aspects of the Federal Regime**

80. This section of Canada’s closing submissions sets out the interaction of the Federal Regime with the specific sectors that the Commission is tasked with addressing, namely: gaming and horse racing; real estate; financial institutions and MSBs; luxury goods; and, professionals, including lawyers and accountants.

#### i.) Gaming and Horse Racing

81. In Canada, all forms of gambling are prohibited aside from those forms expressly permitted by the *Criminal Code*. Part VII of the *Criminal Code* describes gambling-related criminal offences, including keeping a gaming or betting house,<sup>199</sup> and betting, pool-selling and book-making.<sup>200</sup> Section 207 of the *Criminal Code* creates exemptions to those offences for lottery schemes<sup>201</sup> conducted and managed, or licensed, by the government of a province. Provincial governments are permitted to either conduct and manage lottery schemes directly,<sup>202</sup> or license others to conduct and manage lottery schemes in certain circumstances.<sup>203</sup>

82. Similarly, section 204 of the *Criminal Code* creates exemptions for certain forms of gambling associated with horse racing that would otherwise be prohibited. For example, money may be paid out to the winner of a lawful race, or to the owner of a horse engaged in a lawful race.<sup>204</sup> Bets related to horse racing are also permitted if they are made through

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<sup>198</sup> [Budget 2021, Chapter 10, Section 10.1 “A Tax System that Promotes Fairness”](#).

<sup>199</sup> *Criminal Code*, [s. 201](#).

<sup>200</sup> *Criminal Code*, [s. 202](#).

<sup>201</sup> As defined in [s. 207\(4\)](#) of the *Criminal Code*; [Bill C-218, An Act to amend the Criminal Code \(sports betting\)](#), 2<sup>nd</sup> Sess, 43<sup>rd</sup> Parl, 2021, passed on second reading in the Senate on May 25, 2021, would include single event sports betting within the scope of lottery schemes provinces may conduct and manage.

<sup>202</sup> *Criminal Code*, [s. 207\(1\)\(a\)](#).

<sup>203</sup> *Criminal Code*, [ss. 207\(1\)\(b\)-\(f\)](#).

<sup>204</sup> *Criminal Code*, [ss. 204\(1\)\(a\)\(i\) and \(ii\)](#).

the agency of a pari-mutuel betting system<sup>205</sup> that has been approved by and is operated under the supervision of an officer appointed by the Minister of Agriculture and Agri-Food.<sup>206</sup>

83. Canada has identified ML threats and vulnerabilities related to both legal and illegal gambling activities.<sup>207</sup> In the 2015 NIRA, legal brick and mortar casinos were assigned a "high vulnerability rating," which places casinos in the second highest tier of vulnerable sectors or products.<sup>208</sup> The volume and high value of casino-related transactions are important factors that affect the overall vulnerability of casinos.<sup>209</sup> Other factors contributing to the high vulnerability rating of casinos include: the potential that casino clients may be Politically Exposed Persons ("PEPs"), or other higher risk persons, all of whom are able to engage in gaming activity with relative anonymity; the primarily transactional business relationships casinos have with their clientele; and the fact that casinos are able to transfer funds electronically, including to high-risk jurisdictions.<sup>210</sup>

84. Another risk factor for casinos is the presence of loan sharks. The 2015 NIRA assessed loan sharks as posing a medium ML threat.<sup>211</sup> Loan sharking activity appears to be primarily undertaken by OCGs who are suspected to exhibit a relatively high level of sophistication and capability in terms of laundering proceeds from illicit loans.<sup>212</sup>

85. Illegal gambling activity, including private betting or gaming houses, unregulated video gaming and lottery machines, and unregulated online gambling, is also an important ML threat in Canada.<sup>213</sup> Illegal gambling opportunities in Canada are primarily provided by sophisticated OCGs, and illegal gaming is suspected to be highly profitable for those involved in it.<sup>214</sup>

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<sup>205</sup> Pari-mutuel betting is an exchange of monies between bettors, less a percentage of the total monies for the racetracks and the federal and provincial governments (Ex. 69: Overview Report - Regulation of Horse Racing in British Columbia [at 6](#)).

<sup>206</sup> *Criminal Code*, [ss. 204\(1\)\(c\)](#) and [204\(3\)](#).

<sup>207</sup> [Ex. 396: 2015 NIRA](#).

<sup>208</sup> [Ex. 396: 2015 NIRA at 32](#).

<sup>209</sup> [Ex. 396: 2015 NIRA at 39](#).

<sup>210</sup> [Ex. 396: 2015 NIRA at 39](#).

<sup>211</sup> [Ex. 396: 2015 NIRA at 26](#).

<sup>212</sup> [Ex. 396: 2015 NIRA at 26](#).

<sup>213</sup> [Ex. 396: 2015 NIRA at 19](#).

<sup>214</sup> [Ex. 396: 2015 NIRA at 24](#).

86. In an effort to mitigate and address the ML threats posed by legal gaming activities, Canada requires provincial and territorial governments, or government-licensed organizations that conduct and manage lottery schemes to report a variety of information to FINTRAC for analysis and possible disclosure to law enforcement.<sup>215</sup> In BC, the British Columbia Lottery Corporation (“BCLC”) is the reporting entity for the 30 casinos it oversees.<sup>216</sup>

87. Part 1 of the PCMLTFA requires casino reporting entities to complete and submit the following reports to FINTRAC when certain thresholds set out in the Regulations are met: suspicious transactions;<sup>217</sup> terrorist property<sup>218</sup>; large cash transactions;<sup>219</sup> electronic funds transfers;<sup>220</sup> casino disbursements;<sup>221</sup> and virtual currency transactions.<sup>222</sup>

88. Casino reporting entities are also obligated to ascertain the identity of any client who conducts a transaction that would be the subject of any of the reports described above.<sup>223</sup> In addition, casino reporting entities must ascertain the identity of any client who opens an account with a casino or is authorized to give instructions in respect of an account with the casino (and who does not already hold an account with the casino in question);<sup>224</sup> receives an extension of credit from a casino of \$3,000 or more;<sup>225</sup> conducts a transaction of \$3,000 or more;<sup>226</sup> or initiates or receives an electronic funds transfer of \$1,000 or more.<sup>227</sup>

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<sup>215</sup> PCMLTFA, [ss. 5\(k\)-\(k.3\)](#).

<sup>216</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 16](#).

<sup>217</sup> PCMLTFA, [s. 7](#); *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*, SOR/2001-317 [“PCMLTF STR Regulations”], [s. 9\(2\)](#).

<sup>218</sup> PCMLTFA, [s. 7.1](#); PCMLTF STR Regulations, [s. 10](#).

<sup>219</sup> PCMLTFA, [s. 9](#); PCMLTF Regulations, [s. 40\(1\)\(a\)](#); [s. 70\(1\)\(a\)](#).

<sup>220</sup> PCMLTFA, [s. 9](#); PCMLTF Regulations, [ss. 3, 5, and 40\(1\)\(b\) and \(c\)](#); [ss. 127, 128, 70\(1\)\(b\) and \(c\)](#).

<sup>221</sup> PCMLTFA, [s. 9](#); PCMLTF Regulations, [ss. 5\(2\), 42\(1\) and 42\(2\)](#); [ss. 71, 130, 132\(3\)](#).

<sup>222</sup> PCMLTF Regulations, [s. 70\(1\)\(d\)](#).

<sup>223</sup> PCMLTF Regulations, [ss. 40\(1\)\(b\), 40\(1\)\(c\), 42\(1\), 53, 53.1, 60\(b\)\(i\), ss. 84, 85, 103\(a\)\(ii\), \(vi\) and \(vii\), 70\(1\)\(d\), Schedules 1, 4, and 8](#); PCMLTF STR Regulations, [s. 10](#) and [Schedule 2](#).

<sup>224</sup> PCMLTF Regulations, [s. 60\(a\)](#); [ss. 103\(a\)\(i\) and \(ii\)](#).

<sup>225</sup> PCMLTF Regulations, [ss. 103\(a\)\(iv\) and 105\(7\)\(a\)](#).

<sup>226</sup> PCMLTF Regulations, [ss. 103\(a\)\(iv\) and 105\(7\)\(a\)](#).

<sup>227</sup> PCMLTF Regulations, [ss. 103\(a\)\(vi\), 105\(7\)\(a\), and 127](#).

89. As of June 1, 2021, casino reporting entities are also required to take additional steps when dealing with clients who may be PEPs or associated with PEPs. Those measures include establishing the source of any funds or virtual currency received from those clients, as well as the clients' source of wealth.<sup>228</sup>

90. Casino reporting entities must establish and implement a compliance program.<sup>229</sup> If a casino reporting entity fails to comply with its obligations under the PCMLTFA and associated regulations, FINTRAC may issue a notice of violation and impose an administrative monetary penalty.<sup>230</sup> Administrative monetary penalties range in value from \$1 to \$500,000 depending on the seriousness of the violation.<sup>231</sup>

91. As discussed in more detail in the "Overview of the Federal Government" section above, FINTRAC conducts compliance examinations to ensure reporting entities are meeting their obligations under the PCMLTFA and associated regulations. For the casino sector, there are 18 reporting entities throughout Canada.<sup>232</sup> FINTRAC follows a cycle-based examination strategy that ensures each of those reporting entities is examined every two to five years.<sup>233</sup> In fiscal year 2019-2020, FINTRAC completed five compliance examinations in the casino sector. These examinations included 59 casino locations, which is 45% of the total casino population in Canada.<sup>234</sup>

92. FINTRAC also engages with the casino sector to educate reporting entities and casino service providers about their PCMLTFA obligations. In June 2019, FINTRAC's Vancouver Office participated in a panel discussion at the Canadian Gaming Summit, which was attended by over 120 participants from the casino sector.<sup>235</sup> In December 2019, FINTRAC hosted its second Casino Forum, which was attended by reporting entities from both the casino and banking sectors. The Casino Forum provided an opportunity for

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<sup>228</sup> PCMLTF Regulations, [s. 121\(1\)](#).

<sup>229</sup> PCMLTFA, [s. 9.6](#).

<sup>230</sup> PCMLTFA, [s. 73.1](#).

<sup>231</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*, SOR/2007-292, [s. 5](#).

<sup>232</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 16](#).

<sup>233</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 16](#).

<sup>234</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 17](#).

<sup>235</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 8](#).

participants to discuss compliance and law enforcement approaches, as well as common challenges and upcoming legislative changes.<sup>236</sup> FINTRAC's Vancouver office also regularly meets with Gaming Policy and Enforcement Branch ("GPEB") and BCLC to discuss ongoing compliance observations, strategies, and sector trends.<sup>237</sup>

ii.) Real Estate

93. Issues of ML in the real estate sector are of concern to both national and provincial governments.<sup>238</sup> In general, the regulation of real estate is a matter of provincial jurisdiction falling within "property and civil rights in the province".<sup>239</sup> However, some actors in the real estate sector are subject to federal legislative requirements under the PCMLTFA (as described further below).<sup>240</sup>

94. It is widely accepted that the real estate sector is vulnerable to exploitation by criminals looking to launder illicit POC. A number of features make real estate a particularly attractive investment for illicit funds: it provides a location to live and conduct further criminal business; it is a secure high-value investment; and the sale of real estate appears as a legitimate source of funds.<sup>241</sup>

95. Recent studies demonstrate the extent of the vulnerability in Canada. In a 2014 report commissioned by FINTRAC, Grant Thornton LLP concluded that the real estate sector represents a comparatively high risk among PCMLTFA reporting entity sectors.<sup>242</sup> Similarly, Canada's 2015 NIRA rated the vulnerability of the domestic real estate sector to ML as "high"<sup>243</sup> and these concerns were reiterated in the FATF AML and Counter-Terrorist

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<sup>236</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 2, 7-8](#).

<sup>237</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 8](#).

<sup>238</sup> Transcript of Real Estate Working Group Panel, March 8, 2021 [**"REWG Panel Transcript"**] at [133:1-20](#).

<sup>239</sup> Ex. 603: Overview Report – Legislative & Regulatory Structure of Real Estate in BC [**"OR – Legislative/Regulatory Structure"**] [at para 3](#).

<sup>240</sup> Ex. 603: OR – Legislative/Regulatory Structure, [at para 3](#); REWG Panel Transcript at [134:13 to 136:9](#)

<sup>241</sup> Ex. 601: Overview Report - Literature on Money Laundering and Real Estate & Response from Real Estate Industry [**"OR – Literature on ML"**], [Appendix 2 at 44](#); Ex. 1017: OR – NCIE ML/Fraud, [Appendix A at 13](#); Ex. 601: OR – Literature on ML, [Appendix 1 at 27](#).

<sup>242</sup> Ex. 601: OR – Literature on ML, [Appendix 9 at 7, 23-25](#).

<sup>243</sup> Ex. 396: 2015 NIRA [at 53](#).

Financing Measures Canada, Mutual Evaluation Report dated September 2016 (“2016 FATF MER”).<sup>244</sup> The main typologies identified in Canada from a review of real estate-related STRs submitted to FINTRAC included the use of nominees by criminals, the structuring of cash deposits, and the use of sophisticated schemes involving loans, mortgages, and the use of a lawyer’s trust accounts.<sup>245</sup>

96. Designated reporting entities under the PCMLTFA and its associated regulations include real estate developers, brokers and sales representatives. Each of these persons or entities are defined in the PCMLTFA regulations. These designated reporting entities must comply with the obligations set out in Part 1 of the PCMLTFA, including establishing a compliance program, identifying clients, keeping records and reporting all suspicious transactions, terrorist property, large virtual currency transactions (as of June 1, 2021) and large cash transactions to FINTRAC.<sup>246</sup> Activities related to leasing, rentals or property management are not captured by the Act.<sup>247</sup>

97. BC notaries are also subject to Part 1 of the PCMLTFA when they engage in the receipt or payment of funds (other than professional fees), the purchasing or selling of securities, real estate or business assets or the transfer of funds or securities, on behalf of any person or entity, including the giving of instructions in respect of those activities.<sup>248</sup> Mortgage Brokers are not designated reporting entities under PCMLTFA.<sup>249</sup>

98. FINTRAC provides a number of financial intelligence products for the real estate sector on its website, gives presentations and training to real estate boards and associations, and conducts individual compliance examinations.<sup>250</sup> In 2016, FINTRAC published its *Operational Brief: Indicators of money laundering in financial transactions*

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<sup>244</sup> Ex. 601: OR – Literature on ML, [Appendix 5](#).

<sup>245</sup> Ex. 601: OR – Literature on ML, [Appendix 5 at 79](#).

<sup>246</sup> PCMLTFA, [Part 1](#); PCMLTF Regulations, ~~ss. 37 and 39.5~~ [ss. 2, 53-64, 101 and 102](#); PCMLTF STR Regulations, [ss. 7 and 7.1](#); Regulations Amending Certain Regulations Made Under the PCMLTFA, 2019: SOR/2019-240 [ss. 3 and 12](#).

<sup>247</sup> Ex. 620: FINTRAC presentation to RECBC [at 5](#); Ex. 628: FINTRAC Memorandum on ML [at 38](#).

<sup>248</sup> PCMLTF Regulations, ~~at s. 33~~ [at s. 38](#); PCMLTF STR Regulations, ~~at s. 4~~.

<sup>249</sup> Ex. 603: OR – Legislative/Regulatory Structure, ~~at 63~~ [at para 63](#).

<sup>250</sup> FINTRAC Real Estate Panel Transcript, testimony of A. Ryan [**“A. Ryan”**] [at 33:19 to 34:6](#); testimony of D. Achimov [**“D. Achimov”**] [at 34:8-19, 35:2-9](#).

*related to real estate* (“2016 Operational Brief”). The 2016 Operational Brief presents 32 indicators tied to 12 risk factors that real estate reporting entities should consider in determining whether to report a suspicious transaction.<sup>251</sup> Also in 2016, FINTRAC published a *Risk-Based Approach Workbook: Real Estate Sector*, which provides reporting entities with examples of how to assess and control risks, and offers a step-by-step guide to developing a risk-based approach.<sup>252</sup>

99. In 2019, FINTRAC published new guidance for all sectors.<sup>253</sup> With respect to the real estate sector, FINTRAC’s updated guidance provides 38 indicators organized into 10 topic areas, including specific indicators for transactions involving non-Canadian jurisdictions and indicators related to transactions involving the use of third parties.<sup>254</sup> Between April 2017 to October 2020, FINTRAC issued 85 policy interpretations to the Canadian Real Estate Association (“CREA”) and real estate industry reporting entities, to further clarify guidance in relation to that sector.<sup>255</sup> FINTRAC’s public-facing intelligence products for the real estate sector are derived from a variety of sources, including internal analyses of STR trends and transactions in the FINTRAC database.<sup>256</sup> FINTRAC is currently working on more risk-based products that will be more informative for local real estate sectors or markets.<sup>257</sup>

100. FINTRAC also directly engages with the real estate industry, their associations and provincial regulators. At the national level, FINTRAC has worked with CREA to, among other things, assist CREA with its Risk Assessment Form, provide feedback on CREA’s AML manual, review CREA’s online training, provide briefings on the sector’s examination results and expected areas of improvement, and seek CREA’s feedback on FINTRAC’s

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<sup>251</sup> Ex. 601: OR – Literature on ML, [Appendix 6 at 4-6](#); Ex. 738: FINTRAC RE Presentation at [21-23](#); FINTRAC Real Estate Panel Transcript, A. Ryan at [8:8 to 12:5](#); D. Achimov at [12:14 to 13:4](#).

<sup>252</sup> Ex. 601: OR – Literature on ML, [Appendix 7](#); Ex. 626: Presentation - FINTRAC AML/TF Real Estate Sector, September 19, 2018 (CAN-001330), [slide 30](#).

<sup>253</sup> Ex. 629: FINTRAC Report to the Minister of Finance on Compliance and Related Activities, September 2019 (CAN-001708) [“2019 FINTRAC Compliance Report”] at [9](#).

<sup>254</sup> Ex. 601: OR – Literature on ML, [Appendix 8](#); FINTRAC Real Estate Panel Transcript, A. Ryan at [116:11-24](#); D. Achimov at [53:21 to 54:13](#).

<sup>255</sup> Ex. 736: FINTRAC’s Engagement and Compliance at [2](#); FINTRAC Real Estate Panel Testimony, D. Achimov at [117:22 to 119:8](#).

<sup>256</sup> FINTRAC Real Estate Panel Transcript, A. Ryan and B. Mackillop at [42:15 to 47:24](#).

<sup>257</sup> FINTRAC Real Estate Panel Transcript, A. Ryan at [37:19 to 38:2](#), [51:21 to 52:12](#).



revised guidelines.<sup>258</sup> Between April 1, 2017 and December 4, 2020, FINTRAC participated in nearly 80 activities across Canada with the real estate sector.<sup>259</sup>

101. In federal Budget 2019, FINTRAC received targeted funding to increase the number of outreach activities and of compliance examinations in the real estate and casino sectors, with the initial focus on BC.<sup>260</sup> In March 2019, FINTRAC implemented a new MOU with Real Estate Council of British Columbia (“RECBC”), which establishes a framework to allow the two agencies to exchange compliance-related information and coordinate risk-informed examinations in the BC real estate sector.<sup>261</sup>

102. In the fall of 2020, the FINTRAC Vancouver Regional officer sent Welcoming Letters to 172 newly licensed real estate brokerages in BC to inform them of AML obligations.<sup>262</sup> FINTRAC is also currently developing new online education tools that will provide an overview of PCMLTFA obligations, with emphasis on areas that the sector struggles with, such as conduct of risk assessment and reporting of suspicious transactions.<sup>263</sup>

103. Over the past two fiscal years (2018-19 and 2019-20), FINTRAC conducted 336 real estate compliance examinations nationwide, 38% of which took place in BC.<sup>264</sup> In 2019-2020, the areas where FINTRAC identified the highest level of non-compliance in the real estate sector included the implementation of adequate risk assessments, policies and procedures (which were incomplete or too generic), as well as gaps in client information

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<sup>258</sup> [Ex. 627: FINTRAC’s presentation to representatives of the CREA, June 5, 2018 \(CAN-001331\)](#); Ex. 629: 2019 FINTRAC Compliance Report [at 12](#); Ex. 736: FINTRAC’s Engagement and Compliance [at 1](#); [Ex. 737: FINTRAC’s meeting with the representatives of the CREA](#); Ex. 1021: OR – Miscellaneous Documents, Appendix 15 [at 9](#); FINTRAC Real Estate Panel Transcript, D. Achimov [at 57:12 to 58:12](#).

<sup>259</sup> Ex. 736: FINTRAC’s Engagement and Compliance [at 2](#); FINTRAC Real Estate Panel Transcript, D. Achimov [at 58:19 to 59:10](#).

<sup>260</sup> Ex. 736: FINTRAC’s Engagement and Compliance [at 2](#).

<sup>261</sup> Ex. 629: 2019 FINTRAC Compliance Report [at 4](#), 11; Ex. 736: FINTRAC’s Engagement and Compliance [at 2-3](#); Ex. 733: FINTRAC Annual Report, November 17, 2020 [at 19](#).

<sup>262</sup> Ex. 736: FINTRAC’s Engagement and Compliance [at 3](#); [Ex. 739: FINTRAC’s Compliance Sector BC Real Estate Brokerages Welcome Letter Template Redacted \(CAN-001315\)](#); FINTRAC Real Estate Panel Transcript, D. Achimov [at 19:12 to 20:3](#), [66:7 to 67:25](#).

<sup>263</sup> Ex. 736: FINTRAC’s Engagement and Compliance [at 3](#); FINTRAC Real Estate Panel Transcript, D. Achimov [at 81:16 to 83:4](#).

<sup>264</sup> Ex. 736: FINTRAC’s Engagement and Compliance [at 4](#).

records and receipt of funds records.<sup>265</sup> There were also 10 examinations of BC Notaries in 2019-2020.<sup>266</sup>

104. In 2020-2021, FINTRAC planned 177 real estate compliance examinations, more than 40% percent of the entire examination plan. However, it is expected that COVID-19 will have an impact on these targets.<sup>267</sup> Per FINTRAC's risk-based approach, examinations in the real estate sector continue to focus on large brokerages in Vancouver and the Lower Mainland, as well as the Greater Toronto Area and Montreal.<sup>268</sup>

105. Suspicious transaction reporting among real estate reporting entities is steadily improving.<sup>269</sup> In 2019-2020, FINTRAC received 138 STRs from real estate reporting entities throughout the country, representing a 38% increase from 2018-2019.<sup>270</sup> Of these, 37 were from reporting entities in BC.<sup>271</sup> Overall, 111 STRs have been filed by BC reporting entities since April 2015.<sup>272</sup> FINTRAC also receives STRs in respect of real estate transactions from major financial institutions.<sup>273</sup>

106. In terms of other recent activities to address ML in the real estate sector, Canada has been working collaboratively with the province of BC through the Canada-BC working group on real estate that was convened in 2018.<sup>274</sup> The working group, co-chaired by the BC Ministry of Finance and the federal Department of Finance, brought together nine provincial agencies and seven federal bodies with expertise in either AML or the real estate

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<sup>265</sup> Ex. 1021: OR – Miscellaneous Documents, Appendix 15 [at 23](#).

<sup>266</sup> Ex. 1021: OR – Miscellaneous Documents, Appendix 15 [at 16](#).

<sup>267</sup> Ex. 736: FINTRAC's Engagement and Compliance [at 4](#); FINTRAC Real Estate Panel Transcript, D. Achimov [at 107:14 to 108:15](#).

<sup>268</sup> Ex. 1021: OR – Miscellaneous Documents, Appendix 15 [at 24](#).

<sup>269</sup> Ex. 1021: OR – Miscellaneous Documents, Appendix 15 [at 23](#); Ex. 630: FINTRAC Report to the Minister of Finance on Compliance and Related Activities, September 30, 2017 (CAN-001168) [**FINTRAC Report on Compliance**] [at 8-9](#); FINTRAC Real Estate Panel Transcript, D. Achimov [at 20:14 to 21:24](#); testimony of B. Mackillop [**B. Mackillop**] [at 22:2-22](#).

<sup>270</sup> Ex. 1021: OR – Miscellaneous Documents, Appendix 15 [at 22](#).

<sup>271</sup> Ex. 743: Excel Spreadsheet re BCREA Request for Information [[STR sheet](#)]; FINTRAC Real Estate Panel Transcript, D. Achimov [at 93:23 to 94:16](#).

<sup>272</sup> [Ex. 743: STR sheet](#).

<sup>273</sup> FINTRAC Real Estate Panel Transcript, D. Achimov [at 95:17-23](#); B. Mackillop [at 96:2-14](#).

<sup>274</sup> Ex. 700: Letter from Minister Carole James to Minister Bill Morneau, February 1, 2018 (CAN-001130) [at 1](#); Ex. 701: Letter from Minister Bill Morneau to Minister Carole James, August 3, 2018 (CAN-001129) [**Morneau Letter**] [at 1](#); REWG Panel Transcript [at 85:7 to 87:1](#).

sector. On the federal side, in addition to the Department of Finance, this included the RCMP, FINTRAC, Statistics Canada, CRA, CMHC and the Bank of Canada.<sup>275</sup> The mandate of the working group, as set out in the TOR, was “to enhance communication, information sharing and alignment amongst relevant operational and policy partners to explore and better address issues and risks related to fraud, money laundering and tax evasion through real estate in B.C.”<sup>276</sup>

107. To fulfill its mandate, the working group established three thematic workstreams, each with its own federal and provincial co-lead: (1) Data Collection and Sharing (2) Regulatory Gaps, Compliance, Standards and Education and (3) Improving Enforcement and Prosecution.<sup>277</sup>

108. Workstream 1, co-led by Statistics Canada and the BC Ministry of Finance, undertook a feasibility study to investigate how a conceptual data framework data could be developed and applied to the real estate sector in BC in furtherance of AML efforts (the “Feasibility Study”).<sup>278</sup> In Budget 2019, the federal government had allocated one million dollars over two years to Statistics Canada to investigate data needs in the BC real estate sector related to ML. The Feasibility Study, led by STC analysts, responded not only to the mandate of the real estate working group, but also to the authority provided by Budget 2019.<sup>279</sup>

109. Workstream 1 identified 8 known schemes and 23 sub-schemes for ML in the real estate sector, which were further broken down into 160 individual data points required for

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<sup>275</sup> Ex. 702: ~~Morneau Letter~~ at 2-6 Terms of Reference on Real Estate Working Group Redacted (CAN-001131) [“REWG TOR”] at 3-6; REWG Panel Transcript at 93:5 to 95:8, 96:21-25, 104:12-19.

<sup>276</sup> Ex. 702: ~~Morneau Letter~~ REWG TOR at 1; REWG Panel Transcript at 90:6 to 91:14.

<sup>277</sup> REWG Panel Transcript at 95:12 to 96:14; Ex. 706: Final Report to Finance Ministers, January 2021 (CAN-001768) [“**Report to Finance Ministers**”] at 1.

<sup>278</sup> REWG Panel Transcript at 99:23 to 100:9, 101:8-15, 132:15-25; STC Panel Transcript at 94:9 to 95:5.

<sup>279</sup> REWG Panel Transcript at 99:23 to 100:9, 101:8-15, 132:15-25; STC Panel Transcript at 94:9-18, 106:6-12. See also Ex. 703: Work Stream 1 – Feasibility Study, December 9, 2020 (CAN-001758) [“**WS1 Feasibility Study**”] at 6. For a full description of the methodology, see STC Panel Transcript at 110:24 to 127:25.

their detection.<sup>280</sup> In consultation with BC officials, the STC analysts assessed the feasibility of operationalizing this conceptual AML model with existing data sets in the public sector.<sup>281</sup> This exercise allowed for the identification of key data gaps or deficiencies in current public sector holdings.<sup>282</sup> Finally, the workstream identified various operational models that could be used to implement, manage and run the AML data framework.<sup>283</sup> In December 2020, workstream 1 produced a 160-page final report that offered seven recommendations for further consideration by federal and BC policy makers.<sup>284</sup> Legal aspects such as changes to agency mandates, in-depth privacy and *Charter* implications, or resource requirements associated with data and data framework implementation were not explored.<sup>285</sup>

110. Workstream 2, co-led by the Department of Finance Canada and the BC Ministry of Finance, focused on how financial intermediaries and government organizations could improve the detection and deterrence of ML. They analyzed existing frameworks and practices to identify key regulatory and compliance gaps.<sup>286</sup> Workstream 2 also assisted on a number of initiatives, including: AML training for real estate licensees; enhanced referral procedures to the CRA's Criminal Investigations Division; the roll-out of new PCMLTFA requirements in respect of beneficial ownership and PEPs, and the implementation of a licensing regime for MSBs (including White Label Automated Teller Machines ("WLATMs") in BC.<sup>287</sup>

111. Workstream 3, co-led by the RCMP and BC Ministry of Public Safety and Solicitor General ("PSSG"), discussed how to improve law enforcement actions and the prosecution of financial crimes. They focused on issues such as: ongoing federal and provincial initiatives to translate intelligence into evidence and investigations into prosecutions;

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<sup>280</sup> Ex. 725: WS1 Executive Summary [at 5](#); STC Panel Transcript [at 142:11 to 144:11](#).

<sup>281</sup> STC Panel Transcript [at 117:7 to 118:1](#), [121:7 to 123:6](#), [148:6 to 149:23](#).

<sup>282</sup> STC Panel Transcript [at 147:5 to 149:6](#).

<sup>283</sup> STC Panel Transcript [at 127:18 to 128:25](#), [152:1 to 153:15](#), [190:6-20](#).

<sup>284</sup> Ex. 725: WS1 Executive Summary [at 12-14](#); STC Panel Transcript [at 154:3-25](#), [161:24 to 162:21](#).

<sup>285</sup> Ex. 703: WS1 Feasibility Study [at 6](#), [13-14](#); Ex. 725: WS1 Executive Summary [at 3](#); STC Panel Transcript [at 155:1 to 158:19](#), [159:17 to 160:12](#).

<sup>286</sup> Ex. 704: Work Stream 2 – Regulatory Gaps, Compliance, Standards and Education (CAN-001763) [**"WS2 Regulatory Report"**] [at 1-9](#); Ex. 706: Report to Finance Ministers [at 1](#).

<sup>287</sup> Ex. 704: WS2 Regulatory Report [at 10-12](#).

bringing together experts from intelligence and law enforcement agencies; and, dedicating, developing, and retaining resources for AML/ATF priorities. Workstream 3 recommended continued collaboration and support for initiatives such as Counter Illicit Finance Alliance BC (“CIFA-BC”), Anti-Money Laundering Action, Coordination and Enforcement (“ACE”)/Financial Crime Coordination Centre (“FC3”) and Integrated Money Laundering Investigative Team (“IMLIT”).<sup>288</sup>

112. The activities and findings of the three workstreams are summarized in the final report of the real estate working group that was submitted to the respective federal and provincial ministers in January of 2021.<sup>289</sup> Canada and BC have committed to continue to work together to build on the insights of the working group.<sup>290</sup>

iii.) Financial Institutions and MSBs

*Financial Institutions*

113. The following financial entities are subject to reporting, compliance and record-keeping requirements under the PCMLTFA and its regulations:

- Canadian banks, foreign banks in Canada, and full service and lending foreign bank branches in Canada to which Canada’s *Bank Act* applies;
- cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act, credit unions central, financial services cooperatives, and associations regulated by the *Cooperative Credit Associations Act*;
- trust companies and loan companies regulated under the federal *Trust and Loan Companies Act* or an equivalent provincial Act; and
- departments, agents and mandataries of the Crown that accept deposit liabilities when providing financial services to the public.<sup>291</sup>

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<sup>288</sup> Ex. 705: Work Stream 3 – Improving Enforcement and Prosecution, December 18, 2020 (CAN-001764) [at 3-9](#); Ex. 706: Report to Finance Ministers [at 1](#); REWG Panel Transcript [at 123:12-124:10](#).

<sup>289</sup> [Ex. 706: Report to Finance Ministers](#); REWG Panel Transcript [at 139:13-23](#).

<sup>290</sup> REWG Panel Transcript [at 140:21-142:3](#).

<sup>291</sup> PCMLTFA, [s. 5\(a\)-\(b\),\(d\)-\(f\),\(l\)](#); PCMLTF Regulations, [s. 1\(2\)](#) “financial entity”, [s. 11.2](#); PCMLTF STR Regulations, [ss. 1\(1\)](#) “financial entity”, [s. 8](#); *Proceeds of Crime (Money Laundering) and*

114. For the 2019-2020 fiscal year, five Canadian banks were responsible for over 90% of all reports received by FINTRAC.<sup>292</sup>

115. Domestic banks are considered most vulnerable primarily due to the size of the six domestic banks that dominate Canada's financial sector.<sup>293</sup> These banks offer a large number of vulnerable products and services to a very large client base that includes high-risk clients and businesses.<sup>294</sup>

116. Over the past two fiscal years (2018-19 and 2019-20), FINTRAC conducted 92 compliance examinations of financial entities nationwide.<sup>295</sup> In FINTRAC's view, key compliance challenges the banking sector faces include dealing with large volumes of clients and transactions and ensuring that all internal units are working together to monitor clients, transactions and STR indicators.<sup>296</sup> FINTRAC examinations often identified a lack of awareness or consistent application of AML policies, procedures and training.<sup>297</sup> The examinations also found that financial entities are investing significant resources into their AML/ATF compliance programs.<sup>298</sup>

117. Pursuant to an MOU, FINTRAC and the BC Financial Services Authority ("BCFSA") share compliance information in respect of the credit unions, trust companies and life insurance companies that BCFSA regulates in BC.<sup>299</sup>

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*Terrorist Financing Registration Regulations*, SOR/2007-121, [s. 1\(1\)](#) "financial entity"; [Bank Act, S.C. 1991, c. 46](#); [Cooperative Credit Associations Act, S.C. 1991, c. 48](#); [Trust and Loan Companies Act, S.C. 1991, c. 45](#).

<sup>292</sup> These five banks are the Royal Bank of Canada, the Bank of Montreal, Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, and TD Canada Trust; Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 10](#).

<sup>293</sup> Ex. 396: 2015 NIRA [at 32](#), [37-38](#).

<sup>294</sup> Ex. 396: 2015 NIRA [at 37](#).

<sup>295</sup> Ex. 1021: OR – Miscellaneous Documents [at Appendix 15](#); Ex. 629: 2019 FINTRAC Compliance Report [at 17](#).

<sup>296</sup> Ex. 1021: OR – Miscellaneous Documents [at Appendix 15](#); Ex. 629: 2019 FINTRAC Compliance Report [at 18](#).

<sup>297</sup> Ex. 1021: OR – Miscellaneous Documents [at Appendix 15](#); Ex. 629: 2019 FINTRAC Compliance Report [at 18](#).

<sup>298</sup> Ex. 1021: OR – Miscellaneous Documents [at 18-19](#).

<sup>299</sup> [Ex. 419: Memorandum of Understanding, January 9, 2005 \(FSA0012\)](#).

## *Money Service Businesses*

118. MSBs are non-banking persons and entities that have a place of business in Canada and engage in the business of foreign exchange dealing, remitting or transmitting funds, issuing or redeeming money orders or similar negotiable instruments, or deal in virtual currencies.<sup>300</sup> Foreign MSBs (“FMSBs”) do not have a place of business in Canada, but they are engaged in the business of providing at least one of these services that is directed at persons or entities in Canada and they provide those services to clients in Canada.<sup>301</sup>

119. It is widely accepted that the MSB sector is vulnerable to exploitation by criminals looking to launder illicit POC; however, the degree of vulnerability varies among MSBs.<sup>302</sup> National, full-service MSBs conducting large volumes of transactions and small, predominantly family-owned MSBs providing wire transfer services largely through informal networks are deemed most vulnerable.<sup>303</sup> Unregistered MSBs also present risks.<sup>304</sup>

120. The Commission heard from Megan Nettleton, the Acting Supervisor of the RCMP Financial Crime Analysis Unit at RCMP NHQ, who described multiple risks associated with MSBs, particularly respecting a typology involving professional money launderers and the intelligence challenges this typology presents.<sup>305</sup>

121. MSBs are responsible for registering with FINTRAC, for providing FINTRAC with certain transaction reports, for implementing a compliance program and verifying client identities as required and for keeping prescribed records.<sup>306</sup> As of June 1, 2020, FMSBs must also register with FINTRAC and meet obligations under the PCMLTFA.<sup>307</sup>

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<sup>300</sup> PCMLTFA, [s. 5\(h\)](#).

<sup>301</sup> PCMLTFA, [s. 5\(h.1\)](#).

<sup>302</sup> Ex. 396: 2015 NIRA [at 5-6](#), Ex. 601: OR – Literature on ML, [Appendix 5](#).

<sup>303</sup> Ex. 396: 2015 NIRA [at 5-6](#).

<sup>304</sup> MSB FINTRAC Panel Transcript [at 122:12-22](#).

<sup>305</sup> Transcript of M. Nettleton, January 18, 2021 [**“Nettleton Transcript”**] [at 14:10 to 17:17](#), [33:8-11](#).

<sup>306</sup> PCMLTFA, [Part 1](#); PCMLTF Regulations, [ss. 2-11.1, 27-32](#), [ss. 30-37](#); PCMLTF STR Regulations, [ss. 12.1-12.3](#), [s. 13](#).

<sup>307</sup> PCMLTFA, [s. 5\(h.1\)](#).

122. FINTRAC provides educational materials on its website to assist MSBs to understand their reporting obligations<sup>308</sup> and regularly engages with MSB industry stakeholders.<sup>309</sup> In 2010, FINTRAC published a report on ML/TF typologies and trends for MSB sector.<sup>310</sup> In 2019, FINTRAC published new guidance for all sectors, including ML/TF indicators specific to MSBs.<sup>311</sup>

123. In the 2019-20 fiscal year, MSBs made up 29% of FINTRAC’s national examination plan.<sup>312</sup> FINTRAC conducted examinations of registered MSBs in BC as follows.<sup>313</sup>

| <b>Fiscal Year</b> | <b>MSBs w/ Main Location in BC</b> | <b># of Onsite Exams</b> | <b># of Desk Exams</b> |
|--------------------|------------------------------------|--------------------------|------------------------|
| 2015-16            | 164                                | 33                       | 14                     |
| 2016-17            | 155                                | 24                       | 6                      |
| 2017-18            | 190                                | 13                       | 1                      |
| 2018-19            | 222                                | 24                       | 0                      |
| 2019-20            | 317                                | 13                       | 3                      |
| <b>Total</b>       |                                    | <b>107</b>               | <b>24</b>              |

124. Nationally, out of 114 examinations in the MSB sector in 2019-20, 2 were recommended for enforcement actions (2%) and 39 for a follow up activity (34%).<sup>314</sup> Due to the short lifespan and transient nature of some MSBs, FINTRAC encounters challenges identifying MSBs and conducting compliance examinations before they cease to operate.<sup>315</sup> To mitigate this, FINTRAC conducts annual MSB validations to identify those that may be operating with expired or inactive registrations or are no longer operating.<sup>316</sup>

<sup>308</sup> MSB FINTRAC Transcript, [at 66:10-15, 176:17-21, 187:13-19](#).

<sup>309</sup> Ex. 449: Compliance List [at 1-2, 4-5, 7-9, 11, 13-14, 17, 20, 22](#); Ex. 1021: OR – Miscellaneous Documents [at 10](#).

<sup>310</sup> [Ex. 441: Money Laundering and Terrorist Financing \(ML-TF\) Typologies and Trends for Canadian Money Services Businesses \(MSBs\) FINTRAC Typologies and Trends Reports, July 2010 \(CAN-001243\)](#).

<sup>311</sup> Ex. 629: 2019 FINTRAC Compliance Report [at 9](#).

<sup>312</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 20](#).

<sup>313</sup> Ex. 446: FINTRAC Statistics Letter, January 15, 2021, [at 1-2](#).

<sup>314</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 20](#).

<sup>315</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 21](#).

<sup>316</sup> Ex. 1021: OR – Miscellaneous Documents, [Appendix 15 at 21-22](#).



## *White Label ATMs*

125. WLATMs are automated teller machines run by independent operators rather than major financial institutions and are not reporting entities under the PCMLTFA.<sup>317</sup> The WLATM sector is complex due to the multitude of actors involved (e.g., network connectors, automatic teller machine (“ATM”) sellers, and owners) and its integration with other sectors, such as financial institutions and payment network providers.<sup>318</sup>

126. A 2008 RCMP report identified money-laundering risks associated with the WLATM industry and the use of WLATMs by organized crime.<sup>319</sup> The 2016 FATF MER listed WLATMs among the high-risk areas that are not covered by the Federal Regime.<sup>320</sup> The 2018 Statutory Review of the PCMLTFA by the FINA also recommended that the WLATM sector be subject to the AML regime.<sup>321</sup> In her testimony, Melanie Paddon identified various risks associated with WLATMs, including the opportunities WLATMs provide for criminal actors to place money in the system with an element of anonymity,<sup>322</sup> to intermingle POC with legitimate funds,<sup>323</sup> and to falsify source of funds declarations when loading a WLATM with cash.<sup>324</sup>

### iv.) Luxury Goods

127. Although luxury goods are largely regulated by provincial legislation, current federal legislation and regulations place certain controls on luxury goods transactions, including fine art and precious metals and stones. All luxury goods sectors are subject to section 462.31 of the *Criminal Code*,<sup>325</sup> which establishes ML as a criminal offence. All luxury goods

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<sup>317</sup> Ex. 601: OR – Literature on ML, [Appendix 5 at 23](#).

<sup>318</sup> Ex. 430: WLTM Brief – Department of Finance, March 5, 2020 (CAN-001128) [at 1](#).

<sup>319</sup> [Ex. 429: RCMP Criminal Intelligence – Project Scot, November 10, 2008 \(CAN-000173\)](#); Transcript of White Label ATM Panel, January 15, 2021 [[“WLATM Panel Transcript”](#)] [at 122:3-7](#).

<sup>320</sup> Ex. 601: OR – Literature on ML, [Appendix 5 at 16](#), [31](#).

<sup>321</sup> Ex. 436: Confronting ML and Terrorist Financing [at 3](#).

<sup>322</sup> WLATM Panel Transcript [at 141:6-8](#), [141:12-18](#).

<sup>323</sup> WLATM Panel Transcript [at 141:8-12](#), [142:2-6](#).

<sup>324</sup> WLATM Panel Transcript [at 142:2-6](#).

<sup>325</sup> [Criminal Code](#).

sectors, who import or export their goods, are also subject to section 153 of the *Customs Act*,<sup>326</sup> which sets out general anti-fraud provisions for the import/export sector.

128. The *Cultural Property Export and Import Act*<sup>327</sup> and its Regulations are designed to protect Canada's national heritage through the establishment of export and import controls for objects of applied and decorative art, and objects of fine art, depending on age and dollar value limits. These controls do not apply to objects that are less than 50 years old or objects made by a person still living.

129. The PCMLTFA applies to dealers in the precious metals and stones sector.<sup>328</sup> There is specific FINTRAC guidance for dealers in precious metals and stones, including ML indicators unique for dealers of precious metals and stones as well as additional ML indicators for wholesalers and suppliers.<sup>329</sup> The suspicious transaction reporting requirement under the PCMLTFA and its Regulations does not apply if dealers in precious metals and stones engage in a purchase or sale carried out for, in connection with, or for the purpose of manufacturing jewellery, extracting precious metals or precious stones from a mine or cutting or polishing precious stones. Dealers whose purchases and sales are 90% related to manufacturing activities are similarly not subject to the PCMLTFA reporting regime.<sup>330</sup>

130. Dealers of precious metals and stones are also subject to the restrictions set out in the *Export and Import of Rough Diamonds Act*<sup>331</sup> and the *Precious Metals Marking Act*.<sup>332</sup> The *Export and Import of Rough Diamonds Act* places import and export controls over rough

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<sup>326</sup> [Customs Act, R.S.C., 1985, c. 1 \(2<sup>nd</sup> Supp.\)](#).

<sup>327</sup> [Cultural Property Export and Import Act, R.S.C., 1985, c. C-51](#).

<sup>328</sup> See PCMLTF STR Regulations, s 5 [Regulations Amending Certain Regulations Made Under the Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act, 2019, SOR/2019-240, s. 22\(3\)](#).

<sup>329</sup> See "Money Laundering and Terrorist Financing Indicators - Dealers in Precious Metals and Stones" (Updated 08 June 2020), online: <[www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/dpms\\_mltf-eng](http://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/dpms_mltf-eng)>.

<sup>330</sup> See "Dealers in Precious Metals and Stones" (Updated 04 May 2021), online: <[www.fintrac-canafe.gc.ca/re-ed/dpms-eng](http://www.fintrac-canafe.gc.ca/re-ed/dpms-eng)>.

<sup>331</sup> *Export and Import of Rough Diamonds Act*, S.C., 2002, c 25 [["Rough Diamonds Act"](#)].

<sup>332</sup> *Precious Metals Marking Act*, R.S.C., 1985, c P-19 [["Precious Metals Marking Act"](#)].

diamonds through enforcement by the CBSA and RCMP.<sup>333</sup> The *Precious Metals Marking Act* prohibits the making of false or misleading representations related to precious metal articles.<sup>334</sup>

131. Vehicle dealers as well as dealers in luxury clothing and personal items are not currently reporting entities under the PCMLTFA and FINTRAC regime, nor are they regulated by other sector-specific federal legislation.

v.) Professionals

132. The following section addresses the Federal Regime with respect to two professional categories: legal professionals and accountants.

*Legal Professionals*

133. Legal counsel and law firms are not currently subject to reporting, record keeping and other requirements under the PCMLTFA.<sup>335</sup> Canada continues to work with law societies and the Federation of Law Societies of Canada (“FLSC”) to strengthen the legal profession’s self-regulation as it relates to ML and TF in order to align with Canada’s Federal Regime and international standards.<sup>336</sup>

134. In June 2019, Canada and the FLSC established a joint working group on ML and TF (the “FLSC Working Group”).<sup>337</sup> The working group is co-chaired by Department of Finance Canada and the FLSC, and the DOJ is a standing member.<sup>338</sup> Other federal entities

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<sup>333</sup> See Rough Diamonds Act, [ss. 8, 14, 41](#). See also Canada Border Services Agency, Memorandum D19-6-4, “Kimberley Process – Export and Import of Rough Diamonds” (19 August 2020), online: <[www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-6-4-eng.pdf](http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-6-4-eng.pdf)>.

<sup>334</sup> See Precious Metals Marking Act, [ss. 3, 4, 10](#).

<sup>335</sup> [Canada \(Attorney General\) v. Federation of Law Societies of Canada, 2015 SCC 7](#).

<sup>336</sup> Ex.198: Overview of the FLSC and the Government of Canada Working Group on Money Laundering and Terrorist Financing presented by Department of Finance Canada presentation, October 2020 (CAN-001254) [**“FLSC Overview”**] [at 3](#); Transcript of Finance/FINTRAC Panel, November 16, 2020 [**“Finance/FINTRAC Panel Transcript”**], [at 30:18 to 31:15, 34:1-23, 98:20, 100:1](#).

<sup>337</sup> Finance/FINTRAC Panel Transcript [at 17:15-16](#); Ex. 198: FLSC Overview [at 3](#).

<sup>338</sup> Ex. 195: Terms of Reference FLSC and the Government of Canada Working Group on Money Laundering and Terrorist Financing (draft for policy discussion) (CAN-001122) [**“Draft FLSC/GOC TOR”**] [at 1](#); Finance/FINTRAC Panel Transcript at [16:19-20](#).

(e.g., FINTRAC, the RCMP and CRA) and representatives from provincial law societies are invited to participate on an *ad hoc* basis.<sup>339</sup>

135. The mandate of the FLSC Working Group is to explore issues related to ML and TF in the legal profession and to strengthen information sharing between law societies and the federal government.<sup>340</sup> The FLSC Working Group's objectives include: improving education, awareness and due diligence in the legal profession; assisting the FLSC in enhancing its AML/ATF guidance; and, discussing best practices, compliance, and enforcement issues.<sup>341</sup>

136. In their first phase of work, the FLSC Working Group focused on sharing information on vulnerabilities and areas of risk observed in the legal sector and improving understanding of law societies' audit powers, investigative processes and best practices.<sup>342</sup> A second phase of work will concentrate on potential changes to strengthen the FLSC *Model Rules to Fight Money Laundering and Terrorist Financing*.<sup>343</sup> Gabriel Ngo testified that Canada provided recommendations to the FLSC Working Group for the purposes of aligning the FLSC model rules with federal requirements and international standards.<sup>344</sup> The FLSC Working Group continues to meet and advance work in accordance with its mandate and objectives.<sup>345</sup>

### *Accounting Professionals*

137. Accountants and accounting firms have obligations under the PCMLTFA and its Regulations when they engage in prescribed specified activities.<sup>346</sup> These "Triggering

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<sup>339</sup> Finance/FINTRAC Panel Transcript [at 16:19 to 17:10](#); Ex. 198: FLSC Overview [at 7](#).

<sup>340</sup> Finance/FINTRAC Panel Transcript [at 15:12-18](#); Ex. 198: FLSC Overview [at 5](#); [Ex. 195: Draft FLSC/GOC TOR](#).

<sup>341</sup> Ex. 198: FLSC Overview [at 6](#).

<sup>342</sup> Ex. 198: FLSC Overview [at 9](#); Finance/FINTRAC Panel Transcript [at 18:10 to 19:5](#).

<sup>343</sup> Ex. 191: Overview Report - Anti Money Laundering Initiatives of the LSBC and FLSC, [paras 10-12, 17, 19](#); Ex. 198: FLSC Overview [at 10](#); Finance/FINTRAC Panel Transcript [at 99:21 to 100:1, 101:10-14, 102:1-8](#).

<sup>344</sup> Finance/FINTRAC Panel Transcript [at 22:21-25, 24:14-21, 102:9-20](#); Ex. 196: Recent amendments to Canada's AML-ATF Regulations, June 25, 2020 (CAN-001124) [at 12-14](#).

<sup>345</sup> Ex. 198: FLSC Overview [at 12](#).

<sup>346</sup> PCMLTF Regulations, [s. 1\(2\)](#) "accountant", "accounting firm". Accountants are defined in the PCMLTFA as chartered accountants, certified general accountants and certified management

Activities” include receiving or paying funds or virtual currency; transferring funds, virtual currency or securities by any means or purchasing or selling securities, real property, immovable or business assets, all on behalf of any person or entity or giving instructions on behalf of any person or entity in respect of these activities.<sup>347</sup>

138. Accountants and accounting firms captured under the PCMLTFA<sup>348</sup> are required to implement a compliance program;<sup>349</sup> verify client identity; report certain transactions to FINTRAC; and, for specified activities and transactions, make third party determinations and keep prescribed records.<sup>350</sup> Where, as a result of their ongoing monitoring of a business relationship, an accountant or accounting firm considers there to be a high risk of ML, they shall treat activities in respect of that client as high risk and take prescribed special measures.<sup>351</sup>

139. Accountants and accounting firms must also file STRs with FINTRAC in respect of financial transactions that occur or are attempted in the course of Triggering Activities.<sup>352</sup> Accountants and accounting firms are similarly subject to reporting, record keeping and client verification requirements with respect to large cash and large virtual currency transactions.<sup>353</sup>

140. The 2016 FATF MER found that accountants’ level of awareness of AML/ATF obligations was quite low and that in the absence of guidance and outreach efforts, accountants are often unclear as to when they are subject to the AML/ATF regime.<sup>354</sup>

141. FINTRAC conducted a three-year examination review of the accounting sector from April 2012 to February 2015 that involved 44 examinations across Canada. The results of

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accountants; however, the unified new professional designation Chartered Professional Accountant (“CPA”), replaces these three designations.

<sup>347</sup> PCMLTF Regulations, ~~s. 34(1)~~ [s. 47\(1\)](#).

<sup>348</sup> PCMLTF Regulations, ~~s. 34~~ [s. 47](#).

<sup>349</sup> PCMLTFA, [s. 9.6](#); PCMLTF Regulations, ~~s. 71(1)~~ [s. 156\(1\)](#).

<sup>350</sup> PCMLTF Regulations, ~~ss. 8(1), 36(1)–1(a), 36(2), 53, 59.1(a)–(c), 69,~~ [48-52, 100, 120.1](#); Ex. 391: OR – Accounting [at 27, fn 108](#).

<sup>351</sup> PCMLTF Regulations, ~~s. 1(2) “business relationship”, s. 59.11(a)–(b), 59.12~~ [s. 123.1](#).

<sup>352</sup> PCMLTFA, [s. 7](#); PCMLTF Regulations, ~~s. 53.1(1), 69~~.

<sup>353</sup> PCMLTFA, [ss. 6, 6.1](#); PCMLTF Regulations, ~~ss. 5(2), 8(1), 36(2), 53, 69~~ [48-52, 100](#).

<sup>354</sup> Ex. 4: OR – FATF, [Appendix N, at para 214](#).

this review were presented to Chartered Professional Accountant (“CPA”) Canada on March 4, 2015.<sup>355</sup> Between 2016 and 2020, FINTRAC conducted seven examinations of accountants.<sup>356</sup>

142. FINTRAC has held consultations with CPA Canada and publishes guidance materials for the accounting profession on its website, including: ML and TF indicators specific to accountants; a risk-based approach workbook for accountants; guidance for accountants regarding record keeping requirements; and, an advice document on when to identify individuals and confirm the existence of entities.<sup>357</sup>

## **F. Federal Anti-Money Laundering Law Enforcement in British Columbia: RCMP and PPSC**

### **i.) RCMP**

143. Set out below is a strictly factual explanation of various significant historical and current RCMP AML enforcement initiatives. Canada has not provided submissions on the efficacy of the RCMP’s AML enforcement regime or whether this regime should be modified because, as set out in Annex “A”, these are matters that are beyond the constitutional jurisdiction of the Commission.

#### *a) Role of the RCMP in British Columbia Generally*

144. Policing in Canada is a shared responsibility between federal, provincial/territorial, and municipal governments. In BC, policing is provided mainly by the RCMP, municipal police departments, and one First Nations self-administered Police Service.<sup>358</sup> The

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<sup>355</sup> Ex. 408: FINTRAC Presentation – Anti-Money Laundering and Anti-Terrorist Financing in Canada (CPA Canada), March 4, 2015, [at 14](#); Ex. 395: Email from Marial Stirling, re Materials for AMLATF Committees concerned call, July 13, 2015 (CPAC65) [at 2-3](#).

<sup>356</sup> Ex. 630: FINTRAC Report on Compliance [at 21](#); Ex. 448: FINTRAC’s Report to the Minister of Finance on Compliance and Related Activities, September 2018 (CAN-001169) [at 6](#); Ex. 629: 2019 FINTRAC Compliance Report [at 17](#); Ex. 1021: OR – Miscellaneous Documents, Appendix 15 [at 16](#).

<sup>357</sup> Ex. 391: OR – Accounting [at 23, fn 83](#), and [27, fn 108](#); Ex. 449: Compliance List [at 7-8](#).

<sup>358</sup> Ex. 789: Police Resources in BC, 2019 [“**Police Resources**”] [at 2](#).

Commanding Officer of the BC RCMP reports to both RCMP NHQ and the BC Government Police Services Board.<sup>359</sup>

145. The RCMP provides three levels of service in BC: federal, provincial and municipal.<sup>360</sup> On the federal side, the Officer in Charge of the BC FSOC unit reports to both RCMP NHQ and to the BC HQ.<sup>361</sup> As the federal police service in the province, the RCMP enforces federal statutes and is responsible for border integrity, national security, drugs and organized crime, financial crime and international policing.<sup>362</sup> The RCMP allocates approximately \$100 million to federal policing in BC.<sup>363</sup>

146. On the provincial side, the BC *Police Act* requires the provincial government to provide policing and law enforcement to rural/unincorporated areas and municipalities under 5,000 population. Effective April 1, 2012, the Province signed a new 20-year Provincial Police Services Agreement with the Government of Canada to contract the RCMP as BC's Provincial Police Service.<sup>364</sup>

147. The RCMP Provincial Service can be broken into two main categories: detachment policing and provincial police services. Detachment policing provides local police services to municipalities under 5,000 in population and unincorporated areas throughout the province by means of uniformed patrols, response-to-call duties, investigative services, community-based policing, traffic enforcement, and administrative support to provincial detachments.<sup>365</sup> The Provincial Service maintains the capacity and expertise to deal with the highest risk incidents; target organized crime, gang and gun violence, and serial crimes; and respond to large scale, provincial emergencies and events.<sup>366</sup>

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<sup>359</sup> Ex. 863: Presentation – Briefing for the Cullen Inquiry, Supt. B. Taylor [**"Taylor Presentation"**] [at 2](#).

<sup>360</sup> Transcript of Supt. B. Taylor, April 16, 2021 [**"Taylor Transcript"**], [at 7:8-13](#).

<sup>361</sup> Ex. 863: Taylor Presentation [at 2](#).

<sup>362</sup> Ex. 789: Police Resources [at 2](#).

<sup>363</sup> Taylor Transcript [at 30:10-12](#).

<sup>364</sup> Ex. 789: Police Resources [at 2](#); [Ex. 788: Provincial Police Service Agreement](#).

<sup>365</sup> Ex. 789: Police Resources [at 2](#).

<sup>366</sup> Ex. 789: Police Resources [at 3](#).

148. On the municipal side, the *Police Act* requires municipalities to provide police services when its population exceeds 5,000 persons. Municipalities may choose to form their own municipal police department, contract with an existing municipal police department, or contract with the provincial government for RCMP municipal police services.<sup>367</sup> In 2019, there were 77 municipalities in BC responsible for providing police services within their municipal boundaries. 12 municipalities were policed by municipal police departments and 65 were policed by the RCMP.<sup>368</sup>

149. There are a number of integrated policing teams in BC. These teams may be integrated in one or more ways: they may be comprised of police officers from more than one police agency or members from at least two levels of policing (ie. federal, provincial, municipal) and/or they may be funded by multiple governments (federal, provincial, municipal).<sup>369</sup>

150. In BC, there are three broad categories of integrated teams: federal, provincial, and regional/municipal. Federal integrated teams include members from municipal, provincial, and other federal agencies (Canadian and US) and are funded primarily by the federal government and managed under Federal Policing. Such multi-disciplined groups deal with national security, transnational organized crime (“TNOC”), ML, integrated market enforcement and border integrity.<sup>370</sup> Federal integrated teams include the Integrated Market Enforcement Team (“IMET”).

151. Provincial integrated teams may include members from municipal, provincial, and/or federal agencies but are funded primarily by the provincial government. Provincial integrated teams include Combined Forces Special Enforcement Unit (“CFSEU”).

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<sup>367</sup> Ex. 789: Police Resources [at 3](#).

<sup>368</sup> Ex. 789: Police Resources [at 3](#).

<sup>369</sup> Ex. 789: Police Resources [at 5](#).

<sup>370</sup> Ex. 789: Police Resources [at 5](#).



b) *Historical RCMP Anti-Money Laundering Enforcement in British Columbia:  
IPOC and IIGET*

152. During the Commission’s hearings, and particularly during the “Gaming” portion of the hearings, the Commissioner heard from dozens of witnesses on the historical approach to ML in BC by GPEB, BCLC and the RCMP. This section of Canada’s closing submissions sets out a factual explanation of the two primary RCMP units that have been the subject of much of this historical testimony: the Integrated Proceeds of Crime (“IPOC”) unit and the Integrated Illegal Gaming Enforcement Team (“IIGET”).

*IPOC*

153. In terms of Federal Policing and AML enforcement in BC, prior to federal re-engineering in 2012, the IPOC unit was mandated to disrupt and dismantle OCGs through the seizure of criminal assets.<sup>371</sup> IPOC was an integrated unit whose partner agencies included Forensic Accounting Management Group (“FAMG”), CRA, CBSA, and PPSC.<sup>372</sup>

154. IPOC was a national program with a mandate to focus on:

- proactively disrupting and dismantling OCGs through the seizure, restraint and forfeiture of their assets accumulated through their criminal activities;
- investigating national and divisional tactical priorities with an emphasis on proceeds of crime and money laundering;
- working with international and national partners to reach a common goal;
- developing and sharing financial intelligence through collection and dissemination; and
- delivering education through prevention and awareness initiatives to the community.<sup>373</sup>

155. Generally, IPOC in BC was comprised of 55 people (45 regular members, three civilian members, and seven public service employees) divided into long-term project teams, ML teams, an expert witness program, and an asset forfeiture unit.<sup>374</sup> The mandate

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<sup>371</sup> Ex. 864: Assessment of Proceeds of Crime Responsibilities within FSOC, July 29, 2015 (CAN-001222) [**“FSOC Assessment”**] [at 2](#).

<sup>372</sup> Ex. 864: FSOC Assessment [at 4](#).

<sup>373</sup> Ex. 864: FSOC Assessment [at 6](#).

<sup>374</sup> Ex. 864: FSOC Assessment [at 4](#).

of the ML teams included the review and assessment of the viability of investigations resulting from FINTRAC disclosures, casino reporting, financial institutions and MSBs, and CBSA seizures of what was believed to be POC.<sup>375</sup>

156. The Commission heard testimony about the AML activities of IPOC from various witnesses, including retired RCMP members, Barry Baxter and Melanie Paddon. Mr. Baxter became the Officer in Charge of IPOC in 2010 and he testified that at that time, “IPOC was the primary unit for the investigation of money laundering for the RCMP in Canada.”<sup>376</sup> He noted that IPOC was a frequent recipient of FINTRAC disclosures<sup>377</sup> and that IPOC worked closely with the CBSA and US partners on AML investigations.<sup>378</sup>

157. Mr. Baxter and Ms. Paddon also testified that in the latter half of 2010, IPOC became concerned about potential ML in BC casinos and began an investigation.<sup>379</sup> Mr. Baxter testified that FINTRAC and GPEB information revealed that large amounts of suspicious cash was flowing through BC casinos.<sup>380</sup> The consensus among members of IPOC and senior E Division RCMP officers was that this was “dirty money”.<sup>381</sup> The ML team (named “C22”) “developed an action plan which began with surveillance” in the hopes that the surveillance would provide necessary evidence to conduct a criminal investigation.<sup>382</sup> In 2011, C22 put together an operational plan, which is the first step in requesting funding to work a project.<sup>383</sup> Ultimately, the operational plan was not approved by senior RCMP management as the federal re-engineering process had begun and other priorities and projects that were already ongoing took precedence.<sup>384</sup>

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<sup>375</sup> Ex. 864: FSOC Assessment [at 7](#).

<sup>376</sup> Transcript of B. Baxter, April 8, 2021 [**“Baxter Transcript”**] [at 11:25 to 12:2](#).

<sup>377</sup> Baxter Transcript [at 12:3-17](#).

<sup>378</sup> Baxter Transcript [at 14:12 to 15:10](#).

<sup>379</sup> Ex. 759: Casino Summary & Proposal – IPOC, December 2011 (CAN-001275) [**“Casino Summary & Proposal”**]; Baxter Transcript [at 21:1 to 22:15](#); Transcript of CIFA-BC Panel, April 14, 2021 [**“CIFA-BC Panel Transcript”**], testimony of M. Paddon [**“M. Paddon”**] [at 11:9-21](#).

<sup>380</sup> Baxter Transcript [at 42:7-20](#).

<sup>381</sup> [Ex. 823: Media Excerpts: Money Laundering in Casinos – various, 2011 \(BCLC0015750\)](#); Baxter Transcript [at 51:20 to 52:2](#).

<sup>382</sup> Baxter Transcript [at 27:25 to 28:8](#).

<sup>383</sup> [Ex. 759: Casino Summary & Proposal](#); CIFA-BC Panel Transcript, M. Paddon [at 11:22 to 12:2](#).

<sup>384</sup> CIFA-BC Panel Transcript, M. Paddon [at 13:3-13](#).

158. In 2012, the federal government instituted the Deficit Reduction Action Plan (“DRAP”).<sup>385</sup> DRAP created a reduction in funding to the RCMP and resulted in the re-engineering of Federal Policing.<sup>386</sup> Federal sections, including IPOC, were restructured. The intent of the re-engineering was to bring areas of expertise into each project and resulted in generalist, rather than specialist, teams. Ideally, each serious organized crime investigation would include a member who had expertise in the POC.<sup>387</sup> The new focus of Federal Policing, and in particular FSOC, was to be on national tactical enforcement priorities and on investigations that tiered at the highest level.<sup>388</sup> FSOC is described in more detail below.

### *IIGET*

159. Created in 2003, IIGET was an integrated specialized police unit dedicated to the investigation of illegal gaming.<sup>389</sup> IIGET was created through an MOU signed between the provincial Police Services Division, GPEB, the RCMP and the BCLC.<sup>390</sup> The MOU required the RCMP to provide a maximum of six members and one support staff to form IIGET in the first year. Beginning in 2004, this commitment increased to a maximum of 12 members and one support staff.<sup>391</sup>

160. The MOU required the Police Services Division to provide financial support for IIGET, while GPEB provided office space and administrative support at no cost to the RCMP. IIGET was to be co-located with GPEB throughout BC.<sup>392</sup> The Government of BC and the BCLC entered into a sponsoring agreement to ensure funding for IIGET.<sup>393</sup>

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<sup>385</sup> Ex. 863: Taylor Presentation [at 6](#).

<sup>386</sup> Ex. 864: FSOC Assessment [at 12](#); Taylor Transcript [at 18:16-24](#).

<sup>387</sup> Ex. 864: FSOC Assessment [at 12](#).

<sup>388</sup> Ex. 864: FSOC Assessment [at 12](#).

<sup>389</sup> Ex. 162: Overview of the Report on the Integrated Illegal Gaming Enforcement Team (IIGET) Effectiveness Review by Catherine Tait, March 31, 2009 (GPEB0549) [“**IIGET Review**”] [at 1](#); Ex. 77: Overview Report – Integrated Illegal Gaming Enforcement Team [“**OR – IIGET**”] [at 1](#).

<sup>390</sup> Ex. 162: IIGET Review [at 1](#).

<sup>391</sup> Ex. 77: OR – IIGET [at 1](#).

<sup>392</sup> Ex. 77: OR – IIGET [at 1](#).

<sup>393</sup> Ex. 77: OR – IIGET [at 2](#).

161. The MOU created a consultative board whose role, among others, was to determine the objectives, priorities and goals for IIGET.<sup>394</sup> The consultative board was chaired by the Director of the Police Services Division and membership also included the General Manager of GPEB, the Commanding Officer of RCMP “E” Division, the Executive of the British Columbia Association of Chiefs of Police, and the President and CEO of BCLC.<sup>395</sup>

162. The mandate of IIGET was “to ensure the integrity of public legalized gaming in British Columbia through an integrated approach that includes the RCMP, and the Provincial Gaming Policy and Enforcement Branch”.<sup>396</sup> The RCMP was to “enforce Criminal Code; investigate unlawful activities in legal venues; investigate illegal gambling; collect and produce intelligence; recommend charges to Crown Counsel; produce ‘Report to Crown Counsel’; participate in prosecutions.”<sup>397</sup>

163. Planned activities for IIGET for the first 18 months included a focus on mid-level targets: possession and distribution of illegal slot machines and common gaming houses.<sup>398</sup> The objective was to gain more experience and develop skills before pursuing higher-level crimes.<sup>399</sup> The division of responsibilities directed the GPEB investigators to enforce minor illegal gaming offences and support the RCMP who were to lead more complex investigations.<sup>400</sup> The IIGET Consultative Board directed IIGET to re-focus on mid-level investigations in 2007.<sup>401</sup>

164. Between January 2004 and June 2007, nearly 1,200 investigation files were opened by IIGET.<sup>402</sup> Of those, 975 low-risk investigations (such as lottery investigations) were opened by GPEB and 184 illegal gaming investigations were opened by the RCMP

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<sup>394</sup> Ex. 77: OR – IIGET [at 2](#); Transcript of W. Holland, December 2, 2020 [**“Holland Transcript”**] [at 102:14-18](#).

<sup>395</sup> Ex. 77: OR – IIGET [at 2](#).

<sup>396</sup> Ex. 77: OR – IIGET [at 4](#) & [Appendix I](#).

<sup>397</sup> Ex. 77: OR – IIGET [at 4](#) & [Appendix I](#).

<sup>398</sup> Ex. 162: IIGET Review [at 3](#).

<sup>399</sup> Ex. 162: IIGET Review [at 3](#).

<sup>400</sup> Ex. 162: IIGET Review [at 3](#).

<sup>401</sup> Ex. 162: IIGET Review [at 3](#).

<sup>402</sup> Ex. 162: IIGET Review [at 3](#).

investigators.<sup>403</sup> Common gaming houses accounted for 51% of the investigations, with video gaming machines accounting for another 24%.<sup>404</sup> Between January 2005 – June 2007, IIGET executed 16 take downs of illegal gaming operations.<sup>405</sup> These take downs were led by the RCMP staff and GPEB provided assistance.<sup>406</sup>

165. The MOU required the Consultative Board to arrange for an effectiveness review of IIGET two years after it commenced operations.<sup>407</sup> The Police Services Division contracted with Catherine Tait to conduct this review and she submitted her report on November 16, 2007.<sup>408</sup> The report advised against disbanding IIGET and recommended the MOU be extended one more year to allow the Consultative Board to gather the information it required to determine if IIGET should be expanded or continued in its present form.<sup>409</sup> The MOU was renewed for one year.<sup>410</sup>

166. In 2009, IIGET produced a Threat Assessment that discussed the types of illegal gaming in BC, other types of gaming-related offences, illegal gaming operators, and the cost to society.<sup>411</sup> The Threat Assessment was based on data collected from RCMP and municipal police agencies for the period of 2005-2008.<sup>412</sup> The Threat Assessment also addressed the risk of ML in legal casinos and confirmed IIGET's suspicions with respect to the prevalence of loan-sharking and ML in legal casinos.<sup>413</sup> The Threat Assessment also referred to a 2008 National RCMP report titled "Project Streak – Money Laundering in Casinos: A Canadian Perspective" that noted "Canadian casinos are extremely vulnerable to money laundering because they deal in cash and handle tens of millions of dollars every day."<sup>414</sup>

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<sup>403</sup> Ex. 162: IIGET Review [at 3-4](#).

<sup>404</sup> Ex. 77: OR – IIGET, [Appendix C at 23](#).

<sup>405</sup> Ex. 162: IIGET Review [at 4](#); Ex. 77: OR – IIGET, [Appendix C at 23](#).

<sup>406</sup> Ex. 77: OR – IIGET, [Appendix C at 8](#).

<sup>407</sup> Ex. 77: OR – IIGET [at 13](#).

<sup>408</sup> Ex. 77: OR – IIGET [at 13](#).

<sup>409</sup> Ex. 77: OR – IIGET [at 13-14](#) & [Appendix C](#).

<sup>410</sup> Ex. 77: OR – IIGET [at 16](#).

<sup>411</sup> Ex. 77: OR – IIGET [at 17](#).

<sup>412</sup> Holland Transcript [at 134:5 to 135:8](#).

<sup>413</sup> Holland Transcript [at 136:13 to 137:13](#).

<sup>414</sup> Ex. 77: OR – IIGET, [Appendix Y at 32](#) & [Appendix X](#).

167. IIGET was disbanded in 2009.<sup>415</sup> The decision to dissolve IIGET was not made by the RCMP.<sup>416</sup> Rather, the RCMP supported a business case proposal that would have increased the size of IIGET in order to provide the capacity to target higher level targets.<sup>417</sup> The RCMP were first made aware of the possibility of dissolution at a Consultative Board meeting in 2008 and were advised that the decision was made by the Ministry of Housing and Social Development, who was responsible for gaming enforcement.<sup>418</sup>

c) *Current Anti-Money Laundering Enforcement in British Columbia*

168. The following section provides a general factual overview of the RCMP’s current AML enforcement units and their activities. Between 2015-2020, there were at least 375 ML and 11,804 POC investigations initiated by E Division.<sup>419</sup> The chart below sets out the numbers of these investigations by year and type.<sup>420</sup>

Table 1: ML and POC Investigations, by Classification and Calendar Year

|       | ML Investigations |           |       | POC Investigations |           |        |
|-------|-------------------|-----------|-------|--------------------|-----------|--------|
|       | Major             | Non-Major | Total | Major              | Non-Major | Total  |
| 2015  | 1                 | 46        | 47    | 11                 | 1,813     | 1,824  |
| 2016  | 5                 | 49        | 54    | 7                  | 2,024     | 2,031  |
| 2017  | 2                 | 68        | 70    | 13                 | 2,118     | 2,131  |
| 2018  | 20                | 81        | 101   | 7                  | 2,104     | 2,111  |
| 2019  | 12                | 59        | 71    | 13                 | 2,408     | 2,421  |
| 2020  | 0                 | 32        | 32    | 2                  | 1,284     | 1,286  |
| Total | 40                | 335       | 375   | 53                 | 11,751    | 11,804 |

*Note.* ML = Money Laundering. POC = Proceeds of Crime. Data for calendar year 2020 runs from January 1, 2020 to September 2, 2020.

*FSOC*

169. FSOC is the Federal Serious Organised Crime group within the RCMP’s Federal Policing service. FSOC is tasked with enforcing federal laws, including those related to financial crime, counterfeiting, drug trafficking, cyber-crime, transnational and serious

<sup>415</sup> Ex. 77: OR – IIGET [at 18](#).

<sup>416</sup> Ex. 77: OR – IIGET [at 18](#) & [Appendix AA](#).

<sup>417</sup> Ex. 77: OR – IIGET, [Appendix S](#); Holland Transcript [at 142:14 to 143:13](#).

<sup>418</sup> Ex. 77: OR – IIGET [at 18](#) & [Appendix AA](#).

<sup>419</sup> Ex. 794: Appendix B – Response to Request 11 of Cullen Commission’s May 4, 2020 Request [**“E-Division ML/POC Stats”**] [at 10](#).

<sup>420</sup> Ex. 794: E-Division ML/POC Stats [at 10](#).

organized crime, border integrity, and other related matters.<sup>421</sup> FSOC also provides counterterrorism and domestic security services and participates in various international policing efforts.

170. FSOC plays an advisory function for smaller provincial or municipal detachments and agencies when those units encounter a complex investigation by providing knowledge, information, and contacts.<sup>422</sup> Additionally, as Supt. Taylor testified, up to 10% of FSOC's resources can be deployed to assist in provincial emergencies and up to 100% of FSOC's resources can be deployed to respond to federal government initiatives and emergencies.<sup>423</sup>

171. FSOC is a large and diverse group of investigators comprised of RCMP officers and support staff, as well as involvement from partner and stakeholder agencies.<sup>424</sup> FSOC is home to the RCMP's Financial Integrity Program, which is made up of a number of distinct operational groups and includes specialized market enforcement, sensitive investigations, ML, and intelligence units.<sup>425</sup> FSOC's broad Federal Policing mandate currently focuses on three strategic priorities: transnational and serious organized crime; cyber security, and; national security. In accordance with the 2020 Directive, FSOC investigates ML and POC offences.<sup>426</sup>

172. Since 2008, federal Criminal Operations Officers and the Deputy Commissioner of Federal Policing have identified that ML and POC components should be a part of all federal

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<sup>421</sup> Ex. 863: Taylor Presentation [at 4](#).

<sup>422</sup> Ex. 793: RCMP, Financial Crime Resources in "E" Division, August 31, 2020 (CAN-001293) [**RCMP Financial Crime Resources**] [at 3](#); Transcript of FSOC ML/IMET Panel, April 15, 2021 [**FSOC ML/IMET Panel Transcript**], testimony of T. Farahbakhchian ["T. Farahbakhchian"] [at 121:9-16](#).

<sup>423</sup> Ex. 863: Taylor Presentation [at 9](#); Taylor Transcript [at 13:13 to 18:5](#).

<sup>424</sup> See e.g. Ex. 859: "E" Division Criminal Operations Chart, March 15, 2021 (CAN-001796) [**E-Division Chart**"].

<sup>425</sup> [Ex. 859: E-Division Chart](#).

<sup>426</sup> Ex. 868: Presentation – Money Laundering/Proceeds of Crime – RCMP Federal Policing Perspective, April 2021 [**ML/POC Presentation**] [at 2](#).

policing investigations.<sup>427</sup> As discussed in more detail below, this position was set out in a formal directive in February, 2020.<sup>428</sup>

173. FSOC teams have a presence in each of the RCMP's Divisions across Canada. E Division FSOC is comprised of seven distinct operational groups, with Groups 1 and 2 making up FSOC Financial Integrity.<sup>429</sup> The RCMP allocates approximately \$6 million to FSOC Financial Integrity in BC.<sup>430</sup> Within FSOC Financial Integrity, a dedicated intelligence unit supports blended and integrated teams within Groups 1 and 2 that contain RCMP officers and staff, seconded Vancouver Police Department ("VPD") officers, embedded Special Legal Advisors, participating CRA investigators, Office of the Superintendent of Bankruptcy investigators,<sup>431</sup> as well as co-located members from the BC Securities Commission ("BCSC") and the FAMG.<sup>432</sup>

174. FSOC's Financial Integrity Intelligence Unit (FI Intel) reviews strategic intelligence, open source information, and information available to law enforcement to ascertain TNOC involvement in financial crimes. The FI Intel unit has eleven positions, an intelligence analyst supervisor oversees seven intelligence analyst positions and three open source analyst positions.<sup>433</sup>

175. The unit assesses known TNOC networks to determine if they should be disrupted and aims to identify new TNOC networks.<sup>434</sup> FI Intel also provides tactical and analytical support to ongoing investigations. FSOC officers rely on the unit's analysts to determine which suspects ought to be targeted.<sup>435</sup>

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<sup>427</sup> Taylor Transcript [at 45:21 to 46:9](#).

<sup>428</sup> Ex. 861: Letter from Michael Duheme to CROPS Officers – All Divisions re Directive on Proceeds of Crime and Money Laundering in All Future Federal Policing Serious and Organized Crime Investigations, February 4, 2020 (CAN-001278) [["Duheme Letter"](#)].

<sup>429</sup> Ex. 795: RCMP Narrative Document - Business Cases and Proposals for Provincially Funded ML Unit [at 1](#).

<sup>430</sup> Taylor Transcript [at 31:13-19](#).

<sup>431</sup> Ex. 863: Taylor Presentation [at 8](#).

<sup>432</sup> Ex. 863: Taylor Presentation [at 10](#).

<sup>433</sup> [Ex. 859: E-Division Chart](#).

<sup>434</sup> FSOC ML/IMET Panel Transcript, T. Farahbakhchian [at 71:19-24](#).

<sup>435</sup> FSOC ML/IMET Panel Transcript, T. Farahbakhchian [at 64:24 to 65:11](#).



176. Within FSOC Group 1, the IMET has a mandate to detect, deter, and investigate *Criminal Code* capital market fraud offences that are of regional or national significance that pose a threat to investor confidence, economic stability in Canada, and the integrity of Canada's capital markets. In pursuit of these objectives, IMET partners with key stakeholders.<sup>436</sup> Since 2017, the specific inclusion of a regional focus within the IMET mandate has allowed the unit to address offences of regional significance, including those that impact British Columbians.<sup>437</sup>

177. IMET consists of 27 positions, its current strength is 15 RCMP officers, four VPD officers seconded to the unit, and one civilian intelligence analyst.<sup>438</sup> Additionally, IMET has one chartered accountant embedded within the unit<sup>439</sup> and is able to draw upon the resources of the larger Financial Integrity group for intelligence, data analysis and legal support with its investigations.<sup>440</sup> Since 2020, each of IMET's investigations has examined at the outset whether there exists a viable ML / POC investigative avenue.<sup>441</sup>

178. The funding for IMET's positions and operations is fenced. Within the RCMP, fenced funding means that money is strictly allocated to a specific unit and cannot be used for any other purpose or re-allocated to account for shifting priorities.<sup>442</sup> IMET's files are prioritized within E Division and are not federally tiered.<sup>443</sup> As of March 15, 2021, IMET has 14 active investigations, many of which have come from referrals from the BC Civil Forfeiture Office ("CFO"), the BCSC, the BC Financial Services Authority, RECBC, the Law Society of BC, and the CRA.<sup>444</sup>

179. Within FSOC Group 1, the Sensitive Investigations Unit ("SIU") has a mandate to investigate sensitive files including breach of trust, corruption, fraud and other offences

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<sup>436</sup> Ex. 856: Presentation – FSOC Financial Integrity Program Group 1, March 2021 (CAN-001801) [**FSOC Presentation**] [at 5](#).

<sup>437</sup> FSOC ML/IMET Panel Transcript, testimony of K. Bedford [**K. Bedford**] [at 12:19 to 13:21](#).

<sup>438</sup> Ex. 863: Taylor Presentation [at 7](#).

<sup>439</sup> FSOC ML/IMET Panel Transcript, K. Bedford [at 19:15-16](#).

<sup>440</sup> FSOC ML/IMET Panel Transcript, K. Bedford [at 19:15-24](#), [25:2-5](#).

<sup>441</sup> FSOC ML/IMET Panel Transcript, K. Bedford [at 77:14-20](#).

<sup>442</sup> FSOC ML/IMET Panel Transcript, K. Bedford [at 14:1 to 15:10](#), [87:17 to 88:4](#).

<sup>443</sup> Ex. 856: FSOC Presentation [at 6](#).

<sup>444</sup> Ex. 856: FSOC Presentation [at 6](#).

involving government employees and officials in BC. It also investigates threats directed towards government institutions that imperil political, economic or social integrity.<sup>445</sup> Additionally, when other police forces in the province do not have the necessary expertise for a particular sensitive file, the SIU will assist or conduct that investigation on their behalf, in support of the provincial policing contract.<sup>446</sup> The SIU consists of 28 positions, its current strength is 19 RCMP officers and one civilian intelligence analyst.<sup>447</sup> As of March 15, 2021, the SIU has 11 active investigations.<sup>448</sup>

180. Within FSOC Group 2, two Money Laundering Teams investigate and combat ML and other threats to Canada's economy. Their mandate is to detect, enforce and disrupt OCGs involved in ML operating in BC, nationally and internationally, using intelligence-lead and collaborative policing.<sup>449</sup> Additionally, the work done by Money Laundering Team 1 has a cyber-crime component, as it tracks and undertakes cryptocurrency and cyber-related financial transaction investigations.<sup>450</sup>

181. Together, these two teams consist of 52 positions, their current strength is 38 RCMP officers, four civilian intelligence analysts, and four seconded VPD officers.<sup>451</sup> One team focuses on regional cases and works with partner agencies within Canada while the other team targets individuals tied to transnational criminal networks, and liaises with international partner agencies.<sup>452</sup> On an as needed basis, the two teams combine resources to handle complicated tasks on larger investigations, including takedown days,<sup>453</sup> production orders and surveillance.<sup>454</sup>

182. The FSOC Money Laundering Teams conduct major federal investigations and, as such, their files are reviewed by the RCMP national headquarters prioritization committee

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<sup>445</sup> Ex. 793: RCMP Financial Crime Resources [at 2](#).

<sup>446</sup> Taylor Transcript [at 85:19 to 86:14](#).

<sup>447</sup> Ex. 856: FSOC Presentation [at 3](#), [6](#).

<sup>448</sup> Ex. 856: FSOC Presentation [at 6](#).

<sup>449</sup> Ex. 856: FSOC Presentation [at 10](#).

<sup>450</sup> Ex. 793: RCMP Financial Crime Resources [at 1-2](#).

<sup>451</sup> Ex. 863: Taylor Presentation [at 7](#).

<sup>452</sup> FSOC ML/IMET Panel Transcript, T. Farahbakhchian [at 43:5-21](#).

<sup>453</sup> Ex. 821: Resourcing Overview of Major ML Investigations in BC [at 6](#) [at 5](#).

<sup>454</sup> FSOC ML/IMET Panel Transcript, T. Farahbakhchian [at 42:22 to 43:1](#).

to decide on the file's level of seriousness and corresponding access to resources.<sup>455</sup> This tiering process assists Federal Policing in allocating its investigative resources on major projects against the most important priorities, criminal threats and activities.<sup>456</sup> Federal investigations are assigned at Tier 1, Tier 2, Tier 3, or do not get tiered.<sup>457</sup> A Tier 1 file is deemed a top priority, requires the most resources, and receives significant oversight, direction and support from NHQ.<sup>458</sup>

183. As of March 15, 2021, the FSOC Money Laundering Teams have a combined 18 active investigations. Internationally they are involved in three international ML files with ties to Europe and the Middle East, one file involving money involving laundering and drug offences pertaining to Asian Organized Crime, and five files assisting American partners, including Homeland Security, US Postal Service, Drug Enforcement Administration, Federal Bureau of Investigation ("FBI"). Domestically, they are involved in four files assisting domestic partners, including other RCMP divisions, one file stemming from a BCSC referral, two files assisting local E Division RCMP units, and two files involving civil proceedings.<sup>459</sup>

184. Within FSOC Group 2, three RCMP officers work in the Asset Forfeiture Unit<sup>460</sup> to assess RCMP files that cannot proceed criminally for referral to the CFO.<sup>461</sup> The Commissioner heard testimony that civil forfeiture is the RCMP's tool of last resort.<sup>462</sup> If a file meets the criteria of being a successful civil forfeiture on a balance of probabilities, the file is referred to the CFO.<sup>463</sup> After referring a file, members of the Unit continue to work with the CFO and take part in the civil litigation process to achieve forfeiture of assets seized, or

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<sup>455</sup> Ex. 868: ML/POC Presentation [at 4](#).

<sup>456</sup> Ex. 869: RCMP Major Projects Prioritization Matrix, January 1, 2020 (CAN-000215) [**"RCMP Major Projects"**] [at 5-6](#).

<sup>457</sup> Ex. 868: ML/POC Presentation [at 4](#).

<sup>458</sup> Ex. 868: ML/POC Presentation [at 4](#); Ex. 869: RCMP Major Projects [at 6](#).

<sup>459</sup> Ex. 856: FSOC Presentation [at 16-17](#).

<sup>460</sup> [Ex. 859: E-Division Chart](#); Ex. 864: FSOC Assessment [at 10](#).

<sup>461</sup> Ex. 864: FSOC Assessment [at 7-8](#).

<sup>462</sup> Transcript of M. Chizawsky, March 1, 2021 [**"Chizawsky Transcript"**] [at 143:13-19](#).

<sup>463</sup> Ex. 864: FSOC Assessment [at 7-8](#).

to restrain assets as either offence-related property or POC.<sup>464</sup> In 2018, the RCMP throughout BC referred 861 files to the CFO.<sup>465</sup>

### *IMLIT*

185. Budget 2019 provided \$68.9 million to the RCMP over five years and \$20 million per year for enhanced federal policing capacity, including to fight ML.<sup>466</sup> One of the RCMP initiatives that arose out of Budget 2019 is the development of IMLITs in Quebec, Ontario, Alberta and BC.<sup>467</sup>

186. The IMLITs are investigative teams dedicated to the investigation of POC and ML.<sup>468</sup> The IMLITs will build integrated partnerships with RCMP municipal and provincial policing partners and other federal agencies, such as the CRA, CBSA, FAMG and SPMD.<sup>469</sup> The objectives of the IMLITs will be to reduce the capacity of and increase enforcement actions against targeted OCGs through the removal of their assets, as well as increasing knowledge and understanding of ML and POC.<sup>470</sup>

187. Federal policing has created five new investigative positions in each of the C, O, K and E divisions and one analyst position at NHQ to tackle ML and POC.<sup>471</sup> The funding for the IMLITs is fenced funding and accountability on resources and outcomes will likely take place through semi-annual assessments and reviews.<sup>472</sup> All four divisions have begun their staffing processes.<sup>473</sup>

188. The E Division IMLIT will be situated in FSOC, Financial Integrity Group 2 and the members of IMLIT will work in collaboration with the existing Money Laundering team and

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<sup>464</sup> Chizawsky Transcript [at 145:1-10](#).

<sup>465</sup> Ex. 803: JIGIT Review [at 42](#).

<sup>466</sup> Ex. 868: ML/POC Presentation [at 8](#).

<sup>467</sup> Transcript of P. Payne, April 16, 2021 [**“Payne Transcript”**] [at 111:22 to 112:1](#).

<sup>468</sup> Ex. 872: 2021 IMLIT Way Forward – IMLIT (CAN-001785) [**“2021 IMLIT Way Forward”**] [at 1](#).

<sup>469</sup> Ex. 872: 2021 IMLIT Way Forward [at 2-3](#).

<sup>470</sup> Ex. 872: 2021 IMLIT Way Forward [at 1](#).

<sup>471</sup> Ex. 872: 2021 IMLIT Way Forward [at 2](#).

<sup>472</sup> Ex. 872: 2021 IMLIT Way Forward [at 3](#); Taylor Transcript [at 30:22 to 31:3](#).

<sup>473</sup> Payne Transcript [at 114:4-5](#).

Project Development Team. The IMLIT in BC will consist of one Sergeant, two Corporals, and two Constables.<sup>474</sup>

### *2020 Anti-Money Laundering Directive*

189. As noted above, one of the priorities of RCMP Federal Policing is to address TNOC in Canada.<sup>475</sup> One of the strategies for doing so is to follow the money on serious and organized crime investigations.<sup>476</sup> Supt. Peter Payne, Director of Financial Crime at RCMP NHQ,<sup>477</sup> testified that it is a priority for Federal Policing to follow the money on all tiered federal policing investigations to identify, seize, and forfeit the major assets and criminal profits of TNOC groups.<sup>478</sup>

190. Supt. Payne also testified that his unit conducted several reviews over the years on a number of tiered files to examine the POC and ML investigations that accompanied these serious and organized crime investigations.<sup>479</sup> These reviews revealed that a “follow the money” approach was not a focus in most Tier 1 and Tier 2 Federal Policing investigations.<sup>480</sup> The Federal Policing Projects Review found that even though ML was a federal priority, out of 127 Federal Policing files tiered between January 1, 2017 – December 31, 2018, only 30 of these investigations pursued a ML component.<sup>481</sup>

191. Supt. Payne’s unit brought these results to the attention of the Deputy Commissioner of Federal Policing, Michael Duheme.<sup>482</sup> On February 4, 2020, Deputy Commissioner Duheme sent a memo to all Divisional Criminal Operations (“CROPS”) Officers directing

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<sup>474</sup> [Ex. 859: E-Division Chart](#).

<sup>475</sup> Payne Transcript [at 133:2-10](#).

<sup>476</sup> Ex. 872: 2021 IMLIT Way Forward [at 2](#).

<sup>477</sup> Ex. 867: Curriculum Vitae of Peter Payne [at 1](#); Payne Transcript [at 91:23 to 92:11](#).

<sup>478</sup> Ex. 868: ML/POC Presentation [at 3](#).

<sup>479</sup> Payne Transcript [at 103:19 to 104:12](#).

<sup>480</sup> Ex. 866: RCMP Federal Policing Projects Review, January 2017 to December 2018 – NHQ (CAN-001225) [[“RCMP Federal Policing Projects Review”](#)]; Ex. 872: 2021 IMLIT Way Forward [at 2](#); Payne Transcript [at 103:12-18](#).

<sup>481</sup> Ex. 866: RCMP Federal Policing Projects Review [at 1](#).

<sup>482</sup> Payne Transcript [at 103:19-24](#).

that POC and ML be examined at the outset of every Federal Policing serious and organized crime investigation (the “2020 Directive”).<sup>483</sup>

192. The 2020 Directive requires all future Federal Policing serious and organized crime investigations across the country that are submitted to RCMP NHQ for criminal operations approvals and tiering to clearly denote all dimensions being considered, examined and investigated in relation to the accumulation of illicit funds and wealth, including the laundering of money derived from criminal activity.<sup>484</sup>

### *CFSEU/JIGIT*

193. JIGIT is the Joint Illegal Gaming Investigation Team, an integrated team of GPEB and RCMP investigators and staff. JIGIT’s mandate is to provide a dedicated, coordinated, multijurisdictional investigative and enforcement response to unlawful activities within BC gaming facilities with an emphasis on AML strategies, illegal gambling in BC and provide a targeted focus on organized crime.<sup>485</sup> JIGIT’s primary strategic objectives are to target and disrupt top-tier organized crime and gang involvement in illegal gaming, and the prevention of criminal attempts to legalize the POC through gaming facilities. JIGIT’s secondary strategic objective is to have a clear public education function with respect to the identification and reporting of illegal gambling in BC with consideration of its provincial partners.<sup>486</sup>

194. JIGIT was established in April 2016.<sup>487</sup> The BC Government had expressed an interest to the RCMP in establishing a coordinated federal and provincial approach to illegal gaming in the Province. In response to this interest, Chief Superintendent Kevin Hackett, Chief Officer, CFSEU-BC prepared a memo and business case for Assistant Deputy

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<sup>483</sup> [Ex. 861: Duheme Letter](#).

<sup>484</sup> [Ex. 861: Duheme Letter](#); Ex. 872: 2021 IMLIT Way Forward [at 2](#).

<sup>485</sup> Ex. 902: Letter from Mike Morris re JIGIT, Mar 10, 2016 (GPEB858) [**“JIGIT Establishment Letter”**] [at 1](#); Ex. 818: JIGIT ML Enforcement Presentation [at 2](#).

<sup>486</sup> Ex. 818: JIGIT ML Enforcement Presentation [at 1](#); Ex. 809: Slide deck - The Combined Forces Special Enforcement Unit BC JIGIT - April 7, 2021 (CAN-001803) [**“CFSEU-JIGIT Presentation”**] [at 7](#).

<sup>487</sup> Ex. 803: JIGIT Review [at 45](#).

Minister and Director of Police Services, Clayton Pecknold.<sup>488</sup> The business case proposal was approved, and Minister Mike Morris, Minister of PSSG formally convened JIGIT pursuant to the *Provincial Police Service Agreement*<sup>489</sup> in March of 2016.<sup>490</sup>

195. JIGIT was created with a five-year mandate, and required a review in 2019 to determine whether it should continue beyond its five-year mandate.<sup>491</sup> Doug LePard and Catherine Tait were commissioned to conduct a review of JIGIT, assessing JIGIT's effectiveness between 2016-2019.<sup>492</sup> LePard and Tait's review resulted in the JIGIT Review. The JIGIT Review concluded that from 2016 to 2019, JIGIT had substantially achieved its key objectives. LePard and Tait recommended JIGIT be funded for a further five-year period.

196. JIGIT is housed within CFSEU-BC.<sup>493</sup> The CFSEU-BC/Organized Crime Agency of British Columbia Designated Board of Governance, which includes the Commanding Officer, "E" Division RCMP and the Director of Police Services, oversee JIGIT.<sup>494</sup> JIGIT consists of 22 law enforcement personnel (one Staff Sergeant, two sergeants, three corporals, ten constables, two criminal analysts, two data support, and two administrative support) and four GPEB investigators.<sup>495</sup>

197. At any given time since its formation, JIGIT has carried an average of three to five vacancies per year.<sup>496</sup> This is an average vacancy and turnover rate for a law enforcement unit and attrition is a normal issue for police units.<sup>497</sup> These vacancies were filled on average

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<sup>488</sup> Ex. 803: JIGIT Review [at 45](#).

<sup>489</sup> Ex. 902: JIGIT Establishment Letter [at 1](#).

<sup>490</sup> Ex. 803: JIGIT Review [at 45](#).

<sup>491</sup> Ex. 902: JIGIT Establishment Letter [at 2](#).

<sup>492</sup> Ex. 803: JIGIT Review [at 32](#).

<sup>493</sup> Ex. 902: JIGIT Establishment Letter [at 1](#).

<sup>494</sup> Ex. 902: JIGIT Establishment Letter [at 1](#).

<sup>495</sup> Ex. 902: JIGIT Establishment Letter [at 1](#); Ex. 809: CFSEU-JIGIT Presentation [at 8](#).

<sup>496</sup> Ex. 803: JIGIT Review [at 59](#); However, see also Ex. 819: Responses from CFSEU for Cullen Commission Requests 4(2)(A), (B), and (C) (CAN-000919) [**"JIGIT Staffing Metrics"**] [at 1-2](#): Sub-bullet b(i) sets out in detail the actual vacancy rates between 2015-2020. According to these numbers, at no point were 5 positions vacant for an entire year.

<sup>497</sup> JIGIT Transcript, J. Hussey [at 90:17 to 91:11](#); Transcript of D. LePard, April 7, 2021 [**"LePard Transcript"**] [at 19:25 to 20:3](#); Ex. 803: JIGIT Review [at 61](#).

within two to three months.<sup>498</sup> The average retention rate for officers within JIGIT is three years, which is considered normal, if not long, in law enforcement.<sup>499</sup>

198. JIGIT's original structure consisted of two investigative teams: one for longer-term investigations and one for "quick hit" type investigations.<sup>500</sup> In 2019-2020, JIGIT restructured, separating into one investigative team and one intelligence team.<sup>501</sup> The investigative branch of JIGIT now conducts all investigations, including short and long-term investigations. As described in the testimony of RCMP Staff Sgt. Joel Hussey, Team Commander for JIGIT, the intelligence branch of JIGIT, called the Gaming Intelligence and Investigation Unit (or "GIU", sometimes labelled "GIU") is "an intelligence hub that's effective in guiding law enforcement and GPEB in their regulatory and criminal investigations....[The GIU] is a centralized hub for gaming intelligence".<sup>502</sup> All GPEB members are currently housed under the GIU branch of JIGIT.<sup>503</sup> The GIU provides intelligence support to the investigations branch of JIGIT.

199. Since its formation and staffing in 2016, JIGIT has conducted numerous investigations.<sup>504</sup> JIGIT has determined that the main typology surrounding ML issues at BC casinos is the criminal abuse of the underground banking system or Informal Value Transfer System. JIGIT's ML and loan sharking investigations focus on top tier organized criminals' exploitation of casinos and banks, and JIGIT prioritizes high level gaming houses over low level gaming houses.<sup>505</sup> JIGIT has conducted investigations into individuals operating MSBs who were in non-compliance with PCMLTFA requirements, and has investigated the exploitation of WLATMs supplied to BC casinos.<sup>506</sup>

200. According to the review conducted by Doug LePard and Catherine Tait, between April 2016 and the end of 2019 (three years), JIGIT has had the following operational results:

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<sup>498</sup> JIGIT Transcript, J. Hussey [at 90:17-19](#); Ex. 819: JIGIT Staffing Metrics [at 2](#).

<sup>499</sup> JIGIT Transcript, J. Hussey [at 87:24 to 88:21](#).

<sup>500</sup> Ex. 803: JIGIT Review [at 64](#).

<sup>501</sup> Ex. 803: JIGIT Review [at 65-66](#); JIGIT Transcript, J. Hussey [at 25:4-11](#).

<sup>502</sup> JIGIT Transcript, J. Hussey [at 15:3-23](#).

<sup>503</sup> JIGIT Transcript, J. Hussey [at 23:8-20](#).

<sup>504</sup> LePard Transcript [at 13:20-23](#).

<sup>505</sup> Ex. 809: CFSEU-JIGIT Presentation [at 10](#); LePard Transcript [at 76:10-17](#).

<sup>506</sup> Ex. 809: CFSEU-JIGIT Presentation [at 10](#).



- 27 investigations/files;
- 34 arrests;
- 23 cash seizures totalling over \$1million;
- 10 vehicles seized;
- Closed four illegal gaming operations;
- Seized \$319,000 in casino chips;
- Made CFO referrals valuing \$619,933 CAD and \$20, 879 USD;
- Seized 121 electronic devices;
- Obtained and/or executed 160 search warrants; and
- Conducted 575 surveillance shifts.<sup>507</sup>

201. JIGIT's search warrants for illegal gaming houses throughout the lower mainland in BC have resulted in charges, convictions and disruption of criminal enterprises. They have also led to a number of seizures including seizures of various drugs and cash.<sup>508</sup> Additionally, JIGIT's enforcement work has led to the banning or restriction of 38 registered gaming workers' licences, the deportation of three individuals, and JIGIT has made over 35 referrals to other police and partner agencies.<sup>509</sup>

202. Along with operational impacts and outputs, Tait and LePard found that JIGIT had an impact on "non-operational impacts on issues pertaining to money laundering, illegal gaming and the legal gaming industry."<sup>510</sup> These impacts include the following:

- Influencing government policy (regarding suspicious transactions and source of funds reporting);
- Advocating for changes to legislation;
- Engaging in innovative investigative strategies;
- Developing new police training;
- Creating highly productive partnerships outside of policing;
- Using technology in developing intelligence; and
- Sharing subject matter expertise widely.<sup>511</sup>

203. The JIGIT Review conducted a social return on investment ("SROI") analysis for JIGIT. They found a negative return on investment, in that it costs \$4.19 for every \$1 of

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<sup>507</sup> Ex. 803: JIGIT Review [at 96-97.](#)

<sup>508</sup> Ex. 809: CFSEU-JIGIT Presentation [at 11.](#)

<sup>509</sup> Ex. 809: CFSEU-JIGIT Presentation [at 31.](#)

<sup>510</sup> Ex. 803: JIGIT Review [at 14.](#)

<sup>511</sup> Ex. 803: JIGIT Review [at 14.](#)

potential criminal activity disrupted.<sup>512</sup> LePard and Tait also note that not all potential cost savings and benefits of JIGIT are captured in the SROI analysis. They found that other benefits and costs savings resulting from JIGIT include:

- Increased capacity and support for police of jurisdiction
- Increase response to public concerns regarding criminal activity in communities;
- Better engagement and collaboration among stakeholders;
- Better intelligence on illegal gaming;
- The deterrent impact [of police attention and investigations on potential or planned illegal activities];
- Fewer issued related to ML in casinos; and
- Increased disruption of other ML activity through systems such as ATMs and the banking industry.<sup>513</sup>

204. With particular reference to illegal gaming housing, LePard and Tait noted that that the downstream revenue from criminal activities that is disrupted as the result of closing down a single low-level gaming facility is as much as \$140,000 per year, with larger scale illegal gaming houses drawing in revenue of approximately \$32 million in four months.<sup>514</sup> In testimony, Mr. LePard noted that arrests and charges are not necessarily the most efficient way to address a problem, such as ML.<sup>515</sup> Mr. LePard testified, “JIGIT recognized that from early on” and “engaged in all ... aspects in terms of prevention and education and suppression, disruption and also criminal charges.”<sup>516</sup>

205. In accordance with its mandate, JIGIT has been involved in a number of initiatives. JIGIT started the Gaming Integrity Group (“GIG”), which brings together members of JIGIT, BCLC and GPEB in monthly meetings and weekly calls to discuss various evidence based ML trends, typologies, and other suspicious illegal gaming activity in BC casinos. This provides GPEB and BCLC with a direct line to law enforcement for the timely discussion and exchange of information regarding the detection and analysis of suspicious transactions within casinos.<sup>517</sup> JIGIT developed Project Athena in 2018, which is discussed in further

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<sup>512</sup> Ex. 803: JIGIT Review [at 16.](#)

<sup>513</sup> Ex. 803: JIGIT Review [at 16.](#)

<sup>514</sup> Ex. 803: JIGIT Review [at 16.](#)

<sup>515</sup> LePard Transcript [at 14:10-14.](#)

<sup>516</sup> LePard Transcript [at 14:14 to 15:3.](#)

<sup>517</sup> Ex. 809: CFSEU-JIGIT Presentation [at 13.](#)

detail at paragraphs 228-230. JIGIT convened the British Columbia Money Laundering Working Group, which engages municipal, provincial, and federal law enforcement resources in BC to share information about ML trends, intelligence, and investigations.<sup>518</sup> JIGIT coordinates the Money Service Business Working Group in BC, which includes representatives from CFSEU-BC, the BC Ministry of Finance, the BC Attorney General's Office, BC Police Services, Richmond City Counsel and the Autorité de Marchés Financiers in Quebec to develop provincial regulatory oversight of MSBs in BC.<sup>519</sup>

206. BCLC and JIGIT share information pursuant to an established information sharing agreement (initially entered into in 2014, and subsequently revised in 2020).<sup>520</sup> RCMP Staff Sgt. Hussey, testified, “[JIGIT has] a good working relationship with BCLC and always look to share information where we can especially when it comes to public safety.”<sup>521</sup> Out of necessity, information sharing agreements with law enforcement are intended to work one way.<sup>522</sup> As such, due to the need to balance public safety concerns and to protect the integrity and success of investigations, not all information in JIGIT's possession is shared with BCLC. At times, where information is requested by BCLC, JIGIT will make a determination, balancing a number of factors including public safety and the integrity and success of any ongoing investigations, whether it is able to share that information with BCLC.<sup>523</sup>

207. JIGIT Media announcements are governed by the “Media Protocol for Joint Illegal Gaming Investigation Team (JIGIT)” subsequent to Section 8, of the Operation and Funding Agreement Between the Minister of PSSG and the Ministry of Finance dated, February 7<sup>th</sup>, 2017”.<sup>524</sup> JIGIT has the discretion to provide an early heads-up draft of a media release to

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<sup>518</sup> Ex. 809: CFSEU-JIGIT Presentation [at 15](#).

<sup>519</sup> Ex. 809: CFSEU-JIGIT Presentation [at 16](#).

<sup>520</sup> Ex. 490, Affidavit #1 of Robert Kroeker, sworn on January 15, 2021, [at Ex. 41](#).

<sup>521</sup> JIGIT Transcript, J. Hussey [at 45:2-6](#).

<sup>522</sup> JIGIT Transcript, J. Hussey [at 28:24 to 29:2](#); Transcript of B. Desmarais, February 1, 2021 at [93:21 to 94:2](#); Transcript of D. Tottenham, November 5, 2020 [at 32:4 to 33:5](#).

<sup>523</sup> JIGIT Transcript, J. Hussey [at 45:6-25](#).

<sup>524</sup> Ex. 820: Media Protocol for JIGIT subsequent to Section 8, of the Operation and Funding Agreement between the Minister of PSSG and MOF, February 7, 2017 (GPEB1002) [[“JIGIT Media Protocol”](#)].

the Policing and Security Branch (“PSB”).<sup>525</sup> PSB provides a copy of the embargoed copy of any such press release to the Executive Director of Compliance Division, GPEB.<sup>526</sup> GPEB through GCPE will determine what media information needs to be shared with BCLC.<sup>527</sup> JIGIT is not responsible for providing BCLC with information regarding upcoming media or press releases.

d) *Some Complexities of Money Laundering Investigations*

208. The Commission has heard from several witnesses that ML and financial crime investigations are complicated, project-based and multi-phased.<sup>528</sup> The following section provides a general overview of the RCMP’s approach to ML investigations and highlights some of the complexities inherent in these types of investigations.

209. The RCMP is an evidence-based and intelligence-led police service.<sup>529</sup> The RCMP receives information from a wide variety of sources and its enforcement response to potential ML begins with an intelligence assessment, an examination of capacity, and a triaging of files.<sup>530</sup> When the RCMP launches a ML investigation, it often works with partners, including the PPSC, FINTRAC, CRA, CBSA, police of jurisdiction, or international law enforcement agencies. At the conclusion of an investigation, the RCMP may refer cases to the Crown for prosecution, to the CRA for the purpose of investigating tax fraud, or to civil forfeiture offices to seize and forfeit assets under their own authorities.

210. In its financial crimes investigations, the RCMP’s main objectives are twofold. First, to follow the money and identify crime groups behind the flow of funds while identifying, seizing, and seeking to forfeit the assets and criminal profits of these groups.<sup>531</sup> Second,

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<sup>525</sup> Ex. 820: JIGIT Media Protocol [at s. 1.](#)

<sup>526</sup> Ex. 820: JIGIT Media Protocol [at s. 2.](#)

<sup>527</sup> Ex. 820: JIGIT Media Protocol [at s. 6.](#)

<sup>528</sup> Ex. 863: Taylor Presentation [at 13](#); FSO ML/IMET Panel Transcript, T. Farahbakhchian [at 63:13-20](#); JIGIT Transcript, J. Hussey [at 96:20 to 98:11.](#)

<sup>529</sup> FSO ML/IMET Panel Transcript, T. Farahbakhchian [at 158:1-4.](#)

<sup>530</sup> Ex. 832: German Report Part 1 [at 216.](#)

<sup>531</sup> Ex. 868: ML/POC Presentation [at 3](#); Payne Transcript [at 97:2-14.](#)

to uncover the financial facilitators and criminalized professionals who enable these crime groups to operate effectively.<sup>532</sup>

211. In order to begin an investigation, law enforcement must have knowledge of a possible criminal act. This information may come from many different sources such as an anonymous tip or walk-in from the public, information from a partner agency or a confidential informant, or intelligence learned from a law enforcement probe or operation.<sup>533</sup>

212. Supt. Taylor testified that law enforcement must analyse and operationalise the information it receives in order to obtain useful intelligence.<sup>534</sup> For example, in relation to ML in casinos, Staff Sgt. Hussey explained that information provided by BCLC and GPEB provided an initial indicator of possible illegal activity in the casinos.<sup>535</sup> The intelligence about ML networks and typologies within casinos, however, was obtained primarily through JIGIT's own ML investigations or through covert assets.<sup>536</sup> Staff Sgt. Hussey further explained that subsequent steps in the investigative process, those designed to establish the elements of the offence, occur primarily outside the casino environment.<sup>537</sup>

213. FINTRAC is also a key partner when it comes to providing intelligence related to ML investigations. The RCMP and its financial crime units are major recipients of ML intelligence disclosures.<sup>538</sup> Additionally, RCMP financial crime units request and receive information from FINTRAC via the VIR process.<sup>539</sup>

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<sup>532</sup> Ex. 868: ML/POC Presentation at 3; Payne Transcript [at 96:1-9.](#)

<sup>533</sup> Ex. 863: Taylor Presentation [at 14.](#)

<sup>534</sup> Taylor Transcript [at 66:11-14.](#)

<sup>535</sup> JIGIT Transcript, J. Hussey [at 19:5-8.](#)

<sup>536</sup> JIGIT Transcript, J. Hussey [at 18:22-23, 19:1-5.](#)

<sup>537</sup> JIGIT Transcript, J. Hussey [at 19:9-20.](#)

<sup>538</sup> Ex. 828: Collaborative Report, Detect, Disrupt and Deter Domestic and Global Financial Crime – A Roadmap for British Columbia – March 2021 [**“Collaborative Report – A Roadmap”**] [at 48, Table 6;](#) Payne Transcript [at 148:14 to 149:16.](#)

<sup>539</sup> Ex. 828: Collaborative Report – A Roadmap [at 49, Table 8.](#)

214. RCMP intelligence analysts assist in transforming information into actionable intelligence by assessing the information, prioritizing possible investigations and gauging the viability of particular targets.<sup>540</sup> The RCMP generally relies on three types of intelligence:

- strategic intelligence identifies future areas of concern, new ML techniques on the horizon and long-term trends that need attention;
- operational intelligence analyzes law enforcement holdings to identify possible targets of investigation, and provide them to investigators; and
- tactical intelligence assists investigative efforts by guiding investigations to known, substantiated targets and providing better situational awareness for investigators.<sup>541</sup>

215. Since 2015, the RCMP has improved its strategic and tactical intelligence collection efforts to address existing criminal intelligence and information gaps on ML offenders and techniques.<sup>542</sup> Supt. Payne testified that the RCMP has begun to leverage machine learning and big data to streamline target selection.<sup>543</sup>

216. Once analysis and target selection is complete, a ML investigation must be prioritized, either nationally or locally. The Commission heard evidence that ML investigations are time and resource-intensive, even if the ML method itself is simple.<sup>544</sup> As a result, many ML investigations require a “major project” designation and all major projects investigated by a federal policing unit are tiered by NHQ.<sup>545</sup> The tiering process requires officers to establish a business case and assess the file in keeping with the criteria for a federally tiered investigation.<sup>546</sup> These criteria are designed to gauge the overall profile of the project, its targets, the expected impact against those targets, as well as the expected

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<sup>540</sup> FSOC ML/IMET Panel Transcript, T. Farahbakhchian [at 71:19 to 72:7.](#)

<sup>541</sup> Ex. 871: RCMP AML Strategy, November 10, 2015 (CAN-000209) [**“RCMP AML Strategy”**] [at 15-16.](#)

<sup>542</sup> Ex. 871: RCMP AML Strategy [at 17;](#) Ex. 856: FSOC Presentation [at 14.](#)

<sup>543</sup> Payne Transcript [at 151:1-5.](#)

<sup>544</sup> ~~Ex. 803: JIGIT Review at 1~~ [Ex. 821: Resourcing Overview of Major ML Investigations in BC at 1-2.](#)

<sup>545</sup> Payne Transcript [at 129:12-15.](#)

<sup>546</sup> FSOC ML/IMET Panel Transcript, T. Farahbakhchian [at 78:15-20.](#)

costs in terms of investigative resources and the length of time they will be dedicated to the project.<sup>547</sup>

217. If a particular piece of information is insufficient to ground an investigation, or if an investigation does not meet regional or national prioritization thresholds to become a “project”, or if there are insufficient investigative resources, RCMP analysts ensure the information is entered into databases for potential future use.<sup>548</sup> If appropriate, the RCMP may share this information with police of local jurisdiction for potential further investigation.<sup>549</sup>

218. If a ML investigation is commenced, the complexity of these types of investigations means that they typically require significantly more resources than other types of investigations. In order to illustrate this point, Canada provided the Commission with “A Resourcing Overview of Major Money Laundering Investigations in British Columbia” (“ML Resourcing Overview”).<sup>550</sup> The ML Resourcing Overview provides data with respect to the various types of resources and specialized tools or techniques required for a ML investigation. This data is derived from CFSEU and the RCMP’s Federal Policing investigators.

219. In terms of ML file total hours, the average number of hours for a ML investigation, including the hours of the investigative team and all support units, is 111,870, whereas, the total number hours for a drug investigation is 11,000.<sup>551</sup> Similarly, the total hours cost for a ML investigation averages \$5.2 million, while the total hours cost for a drug investigation averages \$1.3 million.<sup>552</sup> ML files also average significantly more Judicial Authorizations than drug files and the total page volume for these Authorizations is significantly greater.<sup>553</sup>

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<sup>547</sup> Ex. 869: RCMP Major Projects [at 5](#).

<sup>548</sup> FSOC ML/IMET Panel Transcript, T. Farahbakhchian [at 133:1-16](#).

<sup>549</sup> Ex. 871: RCMP AML Strategy [at 19](#).

<sup>550</sup> ~~Ex. 803: JIGIT Review~~ [Ex. 821: Resourcing Overview of Major ML Investigations in BC](#).

<sup>551</sup> ~~Ex. 803: JIGIT Review at 4, Table 1~~ [Ex. 821: Resourcing Overview of Major ML Investigations in BC at 4, Table 1](#).

<sup>552</sup> ~~Ex. 803: JIGIT Review at 4, Table 2~~ [Ex. 821: Resourcing Overview of Major ML Investigations in BC at 4, Table 2](#).

<sup>553</sup> ~~Ex. 803: JIGIT Review at 5, Table 3~~ [Ex. 821: Resourcing Overview of Major ML Investigations in BC at 5, Table 3](#).

These figures are illustrative of the amount of resources that ML investigations typically require.

220. The Commission has heard that the RCMP, along with its partners, faces capacity and staffing issues.<sup>554</sup> One way in which these issues are being addressed is through increased collaboration. For example, the FSOC Money Laundering Teams have established or re-established regional/provincial/national stakeholder working groups and have increased the number of joint investigations.<sup>555</sup> The RCMP also collaborates with the TBML centre of expertise, FC3, and CIFA-BC. Currently, E Division has integrated resources within its investigative teams from CRA, VPD, FAMG, BCSC,<sup>556</sup> OSB, Special Advisors,<sup>557</sup> and GPEB.<sup>558</sup>

221. The final phases of a ML investigation involve document disclosure and a trial. The Commission heard testimony about the complexities of these aspects of a ML investigation.<sup>559</sup> For example, because ML investigations typically generate a significant volume of evidence, the disclosure process may be a large and time-consuming task. Supt. Payne testified that financial crime investigations often result in terabytes of data<sup>560</sup> and the RCMP is currently exploring data processing solutions that may drastically reduce the time spent preparing pre-trial disclosure.<sup>561</sup>

222. Supt. Taylor testified that the right to a trial within a reasonable time under section 11(b) of the *Charter*, particularly following *R. v. Jordan*, has also meant that on ML files where the underlying offence causes particular public safety concerns, law enforcement

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<sup>554</sup> Taylor Transcript [at 79:11-19](#); JIGIT Transcript, J. Hussey [at 90:17 to 91:11](#); LePard Transcript [at 19:25 to 20:3](#); Ex. 803: JIGIT Review [at 61](#).

<sup>555</sup> Ex. 856: FSOC Presentation [at 13](#).

<sup>556</sup> Ex. 856: FSOC Presentation [at 24](#).

<sup>557</sup> Ex. 863: Taylor Presentation [at 8](#).

<sup>558</sup> Ex. 803: JIGIT Review [at 71](#).

<sup>559</sup> Taylor Transcript at [58:17 to 59:3](#), [61:7 to 63:9](#), [106:9 to 108:8](#); FSOC ML/IMET Panel Transcript, T. Farahbakhchian [at 21:6 to 23:7](#), [74:16 to 75:7](#), [127:3-13](#).

<sup>560</sup> Payne Transcript [at 150:18-22](#).

<sup>561</sup> Payne Transcript [at 151:5-25](#).



cannot wait for the ML investigation to be complete and must, instead, seek charge approval as soon as possible:

[In] instances where we're dealing with a fentanyl trafficker and we're concerned that if the charges aren't laid . . . there's going to be an issue with public safety, so the fentanyl charges get laid. But to look at the money laundering and the proceeds, we'd end up having problems with trying to get into that and continue [within the *Jordan* timelines].<sup>562</sup>

223. While the complexities described above create certain challenges for law enforcement in investigating the offence of ML, the RCMP recognizes the harmful and adverse effects of ML on the economy, government, and social well-being of communities, and works with its partner agencies to investigate and recommend money-laundering charges whenever appropriate.<sup>563</sup>

e) *Recent Anti-Money Laundering Initiatives*

*CIFA-BC*

224. CIFA-BC is a financial information sharing partnership (“FISP”) (a type of public-private partnership (“PPP”)), which brings together a wide range of public and private stakeholders across sectors and jurisdictions.<sup>564</sup> The role of FISP models in addressing financial crime, and specifically ML is globally recognized and documented.<sup>565</sup> CIFA-BC’s mission is to collaborate with public and private industry to lawfully share information in the interest of protecting the economic integrity of BC through prevention, detection, and disruption of illicit financial activity.<sup>566</sup>

225. To support this mission, CIFA-BC’s planned activities include assessing, analyzing, generating and responding to intelligence (including co-developing typologies, case studies, and other intelligence products); promoting innovation; and advancing policy, regulatory and

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<sup>562</sup> Taylor Transcript [at 64:11-18](#).

<sup>563</sup> Ex. 821: Resourcing Overview of Major ML Investigations in BC [at 7](#) [at 6](#).

<sup>564</sup> Ex. 847: CIFA-BC Framework revised April 9, 2021 (CAN-001806) [**“CIFA-BC Framework”**] [at 3, 17-18](#) [at 2, 16-17](#).

<sup>565</sup> Ex. 847: CIFA-BC Framework [at 4](#) [at 3](#).

<sup>566</sup> Ex. 847: CIFA-BC Framework [at 3, 8-9, 19](#).

legislative reform.<sup>567</sup> The CIFA-BC partnership model empowers its partners to collectively and collaboratively take on this work, and draws upon partners' knowledge and subject matter expertise to develop and deliver intelligence products.<sup>568</sup> Sgt. Ben Robinson testified that this work breaks down siloed approaches to AML in order to enhance awareness and understanding among CIFA-BC partners and other stakeholders.<sup>569</sup>

226. CIFA-BC's organizational structure is as follows:

- a seven-member Strategic Advisory Board oversees CIFA-BC by providing strategic direction and guidance and by reporting on the progress of CIFA-BC operations;<sup>570</sup>
- the CIFA-BC Coordination Office, staffed by the RCMP, serves as the administrative secretariat, with responsibility for day-to-day administration and communications;<sup>571</sup>
- the Principal Working Group forms the core operations of CIFA-BC and meets on a monthly basis to share strategic information and respond to identified ML risks and threats;<sup>572</sup> and
- CIFA-BC's Associate Partners (organizations whose expertise and mandate broaden the depth and breadth of the Alliance) meet as required.<sup>573</sup>

227. CIFA-BC is part of a "hub and spoke" model that aims to be responsive to regional threats and conditions while retaining connectivity with national goals and priorities.<sup>574</sup> As a pilot project, CIFA-BC is the first regional "spoke" and was developed to allow for future replication and scaling across other regions.<sup>575</sup> The "hub" is the Counter Illicit Finance Initiative ("CIF") national secretariat, coordinated by Federal Policing Criminal Operations at RCMP NHQ.<sup>576</sup> CIF holds responsibility for working with the Federal Regime partners,

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<sup>567</sup> Ex. 847: CIFA-BC Framework at 14, 20 [at 13, 19.](#)

<sup>568</sup> Ex. 839: Presentation - Project Athena and CIFA-BC, April 2021 [**"PA/CIFA-BC Presentation"**] [at 35.](#)

<sup>569</sup> Ex. 847: CIFA-BC Framework at 9, 12 [at 8, 11](#); CIFA-BC Panel Transcript, testimony of B. Robinson [**"B. Robinson"**] [at 76:16-21, 109:23 to 110:4, 118:25 to 119:3](#)

<sup>570</sup> Ex. 847: CIFA-BC Framework at 12 [at 11](#); CIFA-BC Panel Transcript, B. Robinson [at 109:9-12.](#)

<sup>571</sup> Ex. 847: CIFA-BC Framework [at 11.](#)

<sup>572</sup> Ex. 847: CIFA-BC Framework [at 10-11.](#)

<sup>573</sup> Ex. 847: CIFA-BC Framework [at 11](#); Ex. 839: PA/CIFA-BC Presentation [at 32.](#)

<sup>574</sup> Ex. 847: CIFA-BC Framework [at 3.](#)

<sup>575</sup> Ex. 847: CIFA-BC Framework [at 3-4](#); Ex. 839: PA/CIFA-BC Presentation [at 27.](#)

<sup>576</sup> Ex. 847: CIFA-BC Framework [at 3, 6.](#)

stewarding national PPP issues that arise in regional CIFA bodies, and advancing public-private policy, legislative, and regulatory issues that are national in scope.<sup>577</sup>

228. CIFA-BC evolved out of two previous RCMP initiatives: Project Athena and the Bank Draft Intelligence Probe.<sup>578</sup> In February 2018, CFSEU-BC sought and analyzed information from BCLC related to cash and bank drafts to assess the effectiveness of source of funds declarations and to garner understanding of the use of bank drafts.<sup>579</sup> Subsequent meetings with stakeholders resulted in information sharing and discussion.<sup>580</sup>

229. The Bank Draft Intelligence Probe evolved into Project Athena, which held its inaugural meeting in October 2018. Project Athena was a voluntary collaboration between private sector, law enforcement, government, and regulatory bodies to share information to combat ML and other criminal activity.<sup>581</sup> Project Athena led to the publication of FINTRAC's December 2019 Operational Alert, increased threat awareness and changes to the design of Canadian bank drafts to reduce anonymity.<sup>582</sup> In her testimony, Melanie Paddon confirmed that the intelligence generated through Project Athena's operations was operationally valuable.<sup>583</sup> Sgt. Robinson testified that a benefit of Project Athena is an environment of shared understanding and collaboration among Project Athena's stakeholders.<sup>584</sup>

230. In January 2020, the RCMP and CFSEU-BC began to transition Project Athena into a permanent, expanded national FISP.<sup>585</sup> Following a year of research, stakeholder engagement, model development and implementation, the outcome of this transition is

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<sup>577</sup> Ex. 847: CIFA-BC Framework [at 6](#).

<sup>578</sup> [Ex. 839: PA/CIFA-BC Presentation](#).

<sup>579</sup> Ex. 839: PA/CIFA-BC Presentation [at 9-10](#).

<sup>580</sup> Ex. 839: PA/CIFA-BC Presentation [at 11-12](#); Ex. 847: CIFA-BC Framework ~~at 6~~ [at 8](#).

<sup>581</sup> Ex. 847: CIFA-BC Framework ~~at 6~~ [at 5](#); Ex. 839: PA/CIFA-BC Presentation [at 13](#).

<sup>582</sup> Ex. 839: PA/CIFA-BC Presentation [at 16](#).

<sup>583</sup> CIFA-BC Panel Transcript, M. Paddon [at 82:9-18](#).

<sup>584</sup> CIFA-BC Panel Transcript, B. Robinson [at 76:9-21](#).

<sup>585</sup> Ex. 839: PA/CIFA-BC Presentation [at 18](#); Ex. 847: CIFA-BC Framework [at 5](#).

CIFA-BC.<sup>586</sup> To date, CIFA-BC has over thirty-five Principal and Associate partners, a Partner Protocol, a Strategic Plan, and a Strategic Advisory Board.<sup>587</sup>

### *ACE/FC3*

231. In the federal budget for fiscal year 2019-2020, Canada announced the creation of the ACE Team. \$24 million over five years was committed to launch and implement a pilot project of this team.<sup>588</sup>

232. The purpose of the ACE Team is to bring together experts from intelligence and law enforcement agencies to identify significant ML and financial crime threats and to strengthen inter-agency coordination and cooperation.<sup>589</sup>

233. The ACE Team pilot project has proceeded in two phases.<sup>590</sup> The first phase was a design phase that took place in fiscal years 2019-2020 to 2020-2021 and included consultations with Canadian AML operational partners at all levels of government, as well as international partners.<sup>591</sup> The ACE Team used the information collected through this research to develop a framework to guide the ACE Team during the second, operational phase of the pilot project.<sup>592</sup>

234. For the operational phase of the pilot project, the ACE Team was renamed the Financial Crime Coordination Centre (“FC3”) to better reflect its role. FC3’s role will be to coordinate support to AML operational partners, including law enforcement and public agencies across all levels of government.<sup>593</sup> This support will be provided in three primary areas: policy, training, and operations.<sup>594</sup>

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<sup>586</sup> Ex. 839: PA/CIFA-BC Presentation [at 21](#), Ex. 847: CIFA-BC Framework [at 7](#) [at 6](#).

<sup>587</sup> CIFA-BC Panel Transcript, B. Robinson [at 109:7-12](#), [126:10-13](#), [123:22-25](#), Ex. 847: CIFA-BC Framework [at 17-18](#).

<sup>588</sup> Ex.1019: Soper Affidavit [at para 4](#).

<sup>589</sup> Ex.1019: Soper Affidavit [at para 5](#).

<sup>590</sup> Ex.1019: Soper Affidavit [at para 6](#).

<sup>591</sup> Ex.1019: Soper Affidavit [at paras 9-11](#).

<sup>592</sup> Ex.1019: Soper Affidavit [at para 12](#).

<sup>593</sup> Ex.1019: Soper Affidavit [at para 13](#).

<sup>594</sup> Ex.1019: Soper Affidavit [at para 16](#).

235. FC3's policy support role will be focused on working with operational AML partners to modify and develop AML strategies, legislation and policies.<sup>595</sup> FC3 will consult and coordinate with partners to ensure that federal policies and initiatives respond to the operational needs of enforcement partners at all levels of government.<sup>596</sup>

236. As part of its training support role, FC3 intends to provide partners with greater access to existing training, and to consult with partners to identify gaps in knowledge and skills that can be addressed through the development of additional training.<sup>597</sup> FC3 also intends to host a national-level AML conference that will be open to all AML or financial crime operational personnel from enforcement or prosecution services across Canada. This conference is expected to take place from November 25 to December 3, 2021.<sup>598</sup>

237. FC3's operational support role will be focused on ensuring AML and financial crime initiatives and partners across Canada have additional support to effectively undertake operations.<sup>599</sup> Some of the activities FC3 may undertake as part of its operational support role include providing guidance to partners on federal information sharing mechanisms, assisting domestic partners in accessing federal support services (e.g., forensic accounting services), and developing FC3 subject matter experts who can assist and provide guidance to partners on specific issues.<sup>600</sup>

238. Canada has approved the FC3 operational mandate and responsibilities, which will continue for the remainder of the five-year pilot, from fiscal year 2021-2022 to 2023-2024. Based on the results of the pilot project, PS may seek additional funding for the post-2024 period in order to continue with or adapt the FC3 operational model.<sup>601</sup>

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<sup>595</sup> Ex.1019: Soper Affidavit [at para 17.](#)

<sup>596</sup> Ex.1019: Soper Affidavit [at para 18.](#)

<sup>597</sup> Ex.1019: Soper Affidavit [at para 20.](#)

<sup>598</sup> Ex.1019: Soper Affidavit [at para 22.](#)

<sup>599</sup> Ex.1019: Soper Affidavit [at para 23.](#)

<sup>600</sup> Ex.1019: Soper Affidavit [at para 24.](#)

<sup>601</sup> Ex.1019: Soper Affidavit [at para 15.](#)

ii.) PPSC

239. Set out below is a factual explanation of the role of the PPSC in federal prosecutions of ML offences generally and in BC specifically.

240. The PPSC is an independent organization, reporting to Parliament through the Attorney General of Canada.<sup>602</sup> The PPSC is responsible for initiating and conducting federal prosecutions, including for offences under the PCMLTFA.<sup>603</sup> The PPSC is a member of the Deputy Ministers' and Associate Deputy Ministers' Steering Committee for the Federal Regime.<sup>604</sup>

241. The Attorney General of Canada (as opposed to a provincial Attorney General) has authority to prosecute a ML offence only where the predicate offence is a contravention of an Act of Parliament other than the *Criminal Code*.<sup>605</sup> For example, the PPSC may prosecute ML when the predicate offence is a drug related offence under the *Controlled Drugs and Substances Act*.

242. The PPSC is a prosecution service and not an investigative agency. PPSC prosecutes charges of violating federal law following an investigation by a law enforcement agency. The independence of law enforcement agencies from the prosecution function is a well-established principle of the Canadian criminal justice system.<sup>606</sup>

243. The PPSC does, however, provide legal advice to law enforcement prior to them beginning an investigation and over the course of investigations. Prosecutors are also available for consultation with law enforcement as needed, including assisting in the preparation of the Crown brief.<sup>607</sup> While prosecutors and investigators are independent

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<sup>602</sup> *An Act respecting the office of the Director of Public Prosecutions*, S.C. 2006, c 9, s 121, [s 16\(1\)](#).

<sup>603</sup> Ex. 1015: Overview Report – Prosecution of Money Laundering and Proceeds of Crime Offences [“**OR – ML Prosecution**”], [Appendix C at 1](#).

<sup>604</sup> Ex. 1015: OR – ML Prosecution, [Appendix F at 7](#).

<sup>605</sup> Ex. 1019: Soper Affidavit, [Ex. B at 7](#).

<sup>606</sup> Ex. 1015: OR – ML Prosecution, [Appendix D at 2](#).

<sup>607</sup> Ex. 1015: OR – ML Prosecution, [Appendix F at 4](#).

when discharging their respective functions, the involvement of PPSC prosecutors in major cases is expected to be “early, continuous and close”.<sup>608</sup>

244. In BC, PPSC counsel are frequently involved in providing pre-charge advice to law enforcement in major cases.<sup>609</sup> PPSC is not currently physically co-located with an integrated unit as they were during the tenure of IPOC. However, the PPSC meets virtually with law enforcement to assist as needed.<sup>610</sup>

245. The PPSC in BC dedicates the resources necessary to the prosecution of ML files as the overall volume and particular cases require, including counsel, paralegal and support staff resources.<sup>611</sup> The extent of the resources necessarily changes with the volume of case enforcement referrals over a given time period and the resource demands of particular cases.<sup>612</sup> The PPSC does not maintain unused prosecutorial capacity in any area of its practice and resources are applied in real time where they are needed.<sup>613</sup>

246. In terms of training provided with respect to ML prosecutions, the PPSC’s School for Prosecutors provides general training on aspects of criminal law that a prosecutor may encounter in his or her practice.<sup>614</sup> The School’s annual course offerings include an Advanced Issues for Prosecutors Court that focuses on complex electronic evidence case management and topics such as complex wiretap issues, the prosecution of mega cases, criminal gangs, white collar crime, and terrorism offences.<sup>615</sup> Video conferences are offered on ML and POC issues, including training on virtual currency provided by FINTRAC.<sup>616</sup> PPSC also maintains an email distribution list on ML and POC. The list includes prosecutors

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<sup>608</sup> Ex. 1015: OR – ML Prosecution, [Appendix F at 5.](#)

<sup>609</sup> Ex. 1015: OR – ML Prosecution, [at 6.](#)

<sup>610</sup> Ex. 1015: OR – ML Prosecution, [at 6.](#)

<sup>611</sup> Ex. 1015: OR – ML Prosecution, [Appendix F at 1.](#)

<sup>612</sup> Ex. 1015: OR – ML Prosecution, [Appendix F, at 1.](#)

<sup>613</sup> Ex. 1015: OR – ML Prosecution, [Appendix F, at 1-2.](#)

<sup>614</sup> Ex. 1015: OR – ML Prosecution, [Appendix F, at 2.](#)

<sup>615</sup> Ex. 1015: OR – ML Prosecution, [Appendix F, at 2.](#)

<sup>616</sup> Ex. 1015: OR – ML Prosecution, [Appendix F, at 2.](#)

prosecuting ML and POC cases as well as prosecutors with an interest in this area of the law.<sup>617</sup>

247. The PPSC provided the Commission with statistical information regarding charges laid under section 462.31 (laundering the POC) of the *Criminal Code*.<sup>618</sup> These statistics are based on information extracted from the PPSC's internal database which is used for case management and timekeeping of operational files.<sup>619</sup> PPSC files were included in the statistical analysis if the file was opened between April 1, 2006 to March 31, 2020 and if the file contained at least one charge under section 462.31.<sup>620</sup> The statistical analysis shows 41 files in BC during that timeframe contain at least one charge under section 462.31 of the *Criminal Code*.<sup>621</sup> The statistical analysis also shows five convictions and six guilty pleas obtained on these files.<sup>622</sup>

248. When asked by Commission counsel what reasons may be contributing to the low number of convictions for ML in BC over the last 15 years, PPSC noted that focusing only on ML charges, rather than the entire case, does not necessarily fairly represent what is actually happening.<sup>623</sup> For example, in the case of a person accused of five offences, under an agreement with the Crown, the accused may plead guilty to the most serious offence and the other offences are withdrawn and his or her assets are forfeited. In other words, while a ML conviction may not have been obtained, the accused was still held accountable for the most serious offence and assets were forfeited.<sup>624</sup>

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<sup>617</sup> Ex. 1015: OR – ML Prosecution, [Appendix F, at 2.](#)

<sup>618</sup> Ex. 1015: OR – ML Prosecution, [Appendix E.](#)

<sup>619</sup> Ex. 1015: OR – ML Prosecution, [Appendix E, at 1.](#)

<sup>620</sup> Ex. 1015: OR – ML Prosecution, [Appendix E, at 1.](#)

<sup>621</sup> Ex. 1015: OR – ML Prosecution, [Appendix E, at 2.](#)

<sup>622</sup> Ex. 1015: OR – ML Prosecution, [Appendix F, at 2.](#)

<sup>623</sup> Ex. 1015: OR – ML Prosecution, [Appendix F, at 5.](#)

<sup>624</sup> Ex. 1015: OR – ML Prosecution, [Appendix F, at 5.](#)



## **PART IV – CONCLUSION**

249. Canada is highly appreciative of the work undertaken by the Commission and looks forward to receiving the Commissioner’s Final Report. Canada is grateful for having had the opportunity to participate in this important step in understanding and addressing ML in BC and across the country. Canada will continue to collaborate with provincial and private-sector entities, as well as international partners on various AML initiatives. Canada is committed to strengthening this country’s AML regime and fully supports the efforts of the Commission to better understand the complex issue of ML in the Province of BC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Vancouver, in the Province of British Columbia, this 9th day of July, 2021.



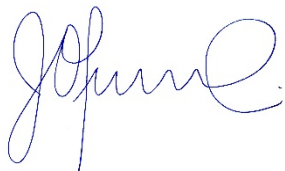
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BJ Wray



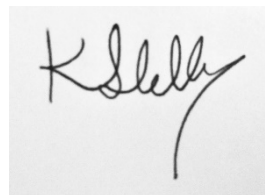
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## ANNEX “A” – CONSTITUTIONAL LIMITS

250. In his Interim Report, the Commissioner acknowledged that, “a provincial commission of inquiry cannot make findings or recommendations with respect to the administration and management of federal agencies”,<sup>625</sup> and he invited participants to provide submissions on “the precise scope of that principle as it relates to the work of the Commission.”<sup>626</sup> Canada’s response to the Commissioner’s invitation is set out below.

251. In brief, statements contained within the Commissioner’s report regarding the Federal Regime and the institutions responsible for administering it must be limited to objective findings of fact necessary to advise the provincial government regarding ML in BC. The report must not include subjective assessments of the Federal Regime or its institutions, either positive or negative. These limits flow from the doctrine of interjurisdictional immunity.

252. The leading authority on the doctrine of interjurisdictional immunity as it applies to commissions of inquiry remains *Quebec and Keable v. Canada* (“Keable”). In this case, the Supreme Court of Canada (“SCC”) considered the following constitutional question posed in relation to a commission of inquiry constituted by the province of Quebec:

If members of a federal institution, namely the Royal Canadian Mounted Police, be involved in allegedly criminal or reprehensible acts, does a commissioner appointed under provincial legislation for the purpose of inquiring into matters concerning the administration of justice in the Province have the right, while conducting an inquiry into the circumstances surrounding the commission [sic] of said acts, to inquire into:

- (a) the federal institution, namely, the Royal Canadian Mounted Police;
- (b) the rules, policies, and procedures governing the members of the institution who are involved;
- (c) the operations, policies and management of the institution;
- (d) the management, operations, policies and procedures of the security service of the Royal Canadian Mounted Police;

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<sup>625</sup> Interim Report [at 6-7](#).

<sup>626</sup> Interim Report [at 7](#).

and to make recommendations for the prevention of the commission of said acts in the future?<sup>627</sup>

253. The SCC answered the question in the negative. It noted that while the inquiry was constituted under a provincial statute, the RCMP is a federal institution operating under the authority of a federal statute. Consequently, as Pigeon J. explained: “Inasmuch as these are the regulations and practices of an agency of the federal government, it is clearly not within the proper scope of the authority of a provincial legislature to authorize such an intrusion by an agent of a provincial government”.<sup>628</sup> The SCC has reiterated the principles set out in *Keable* on multiple occasions and they have never been modified.<sup>629</sup>

254. In *Alberta v. Putnam*, the SCC addressed the question of whether the doctrine of interjurisdictional immunity applies when a provincial agency attempts to inquire into the conduct of the RCMP when it acts as a provincial or municipal police force pursuant to contract.<sup>630</sup> The SCC concluded that the doctrine of interjurisdictional immunity does apply and that, accordingly, the Alberta Law Enforcement Appeal Board could not inquire into the conduct of RCMP officers acting as provincial police.

255. Even in the case of *Canadian Western Bank v. Alberta*, where the SCC held that interjurisdictional immunity is a doctrine of “limited application” that “should in general be reserved for situations already covered by precedent”, the Court effectively noted that its precedents that forbid provincial bodies from inquiring into or overseeing federal institutions remain good law. This is because management of federal institutions is “an absolutely indispensable and necessary element of federal jurisdiction.”<sup>631</sup>

256. The Commission is mandated to inquire into and provide a report on ML in BC to the provincial government, as set out in its TOR. These TOR must be interpreted in accordance with the division of powers set out in the *Constitution Act, 1867*. Canada’s institutions play

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<sup>627</sup> *Quebec and Keable v. Canada*, [1979] 1 S.C.R. 218 [“*Keable*”] [at 238-239](#).

<sup>628</sup> *Keable* [at 243](#).

<sup>629</sup> *Alberta v. Putnam*, [1981] 2 S.C.R. 267 [“*Putnam*”]; *O’Hara v. British Columbia*, [1987] 2 S.C.R. 591; *Canadian National Railway v. Courtois*, [1988] 1 S.C.R. 868; *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796. See also: *Bentley v. Braidwood*, 2009 BCCA 604 and *Canada v. Saskatchewan*, 2006 SKQB 385.

<sup>630</sup> *Putnam*.

<sup>631</sup> *Canadian Western Bank v. Alberta*, 2007 SCC 22 [at para. 62](#).

an important role in combating ML in BC and the doctrine of interjurisdictional immunity does not preclude the Commissioner from making factual findings about these federal institutions and the Federal Regime under which they operate. Indeed, such findings will be necessary in order for the Commissioner to properly inform and advise the Government of BC in relation to how the provincial government can and should address ML issues within its sphere of legislative competence.

257. However, findings in relation to the Federal Regime and institutions must be expressed in a manner that is strictly factual and objective. Following from the SCC's jurisprudence, these findings ought not to include subjective assessments regarding the nature, efficacy or adequacy of Canada's efforts to combat ML. In accordance with the doctrine of interjurisdictional immunity, the Commissioner's report should not contain recommendations for legislative or policy changes that can only be effected by the federal government.<sup>632</sup> Rather, the Commission's recommendations must be limited to provincial regulators, institutions, and laws in respect of which the Government of BC has the authority to administer.

258. The jurisprudence on interjurisdictional immunity instructs that factual explanations by the Commissioner with respect to the nature of federal entities, including their composition, roles and AML activities in BC, are within the Commission's constitutional jurisdiction. On the other hand, subjective opinions with respect to the effectiveness of these entities, including the efficacy of their rules, policies, and procedures, are beyond the Commission's jurisdiction.

259. Finally, there remains the question of the extent to which Canada should advocate before the Commission that it direct particular recommendations to the Government of BC for changes to provincial institutions or laws. As Canada has been granted participant status

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<sup>632</sup> It would also be impermissible for the Commission to attempt to circumvent this principle by recommending to the Government of BC that it "recommend to its federal counterpart" changes to federal law and institutions (cf. Maloney, Somerville, and Unger's *Combating Money Laundering in BC Real Estate* at pp. 6-7). This would be tantamount to doing indirectly what cannot be done directly, and is contrary to the doctrine of interjurisdictional immunity (*Keable* at 242-243).

by the Commission, there is no apparent constitutional principle that would prohibit advocacy of this nature by Canada.

260. Nevertheless, as a matter of comity and respect for the Government of BC and its constitutional jurisdiction, Canada will not engage in such advocacy before the Commission. However, Canada's silence in this regard should not be interpreted as disinterest in the Commission's work or its recommendations. To the contrary, Canada is fully supportive of the Commission and expects that its report will be of great value to all governments within the federation as they work together in partnership to combat ML.

## LIST OF AUTHORITIES

| TAB                | JURISPRUDENCE  | PARA REFERENCE                          |
|--------------------|--|---|
| 1.                 | <a href="#"><i>Alberta v. Putnam</i>, [1981] 2 S.C.R. 267</a>  | 253, 254                                |
| 2.                 | <a href="#"><i>Bentley v. Braidwood</i>, 2009 BCCA 604</a>   | 253                                     |
| 3.                 | <a href="#"><i>Canada (Attorney General) v. Federation of Law Societies of Canada</i>, 2015 SCC 7</a>                    | 133                                     |
| 4.                 | <a href="#"><i>Canada v. Saskatchewan</i>, 2006 SKQB 385</a>   | 253                                     |
| 5.                 | <a href="#"><i>Canadian National Railway v. Courtois</i>, [1988] 1 S.C.R. 868</a>  | 253                                     |
| 6.                 | <a href="#"><i>Canadian Western Bank v. Alberta</i>, 2007 SCC 22</a>   | 255                                     |
| 7.                 | <a href="#"><i>MacKeigan v. Hickman</i>, [1989] 2 S.C.R. 796</a>   | 253                                     |
| 8.                 | <a href="#"><i>O'Hara v. British Columbia</i>, [1987] 2 S.C.R. 591</a>   | 253                                     |
| 9.                 | <a href="#"><i>Quebec and Keable v. Canada</i>, [1979] 1 S.C.R. 218</a>  | 252, 253, 257                           |
| <b>LEGISLATION</b> |  |   |
| <b>Statutes</b>    |  |   |
| 10.                | <a href="#"><i>An Act respecting the office of the Director of Public Prosecutions</i>, SC 2006, c 9, s 121, s 16(1)</a> | 240                                     |
| 11.                | <a href="#"><i>Budget Implementation Act, 2017, No 1</i>, S.C. 2017, c-20, s 441(1)</a>                                  | 56                                      |
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# Constitutional Law of Canada, 5th Edition

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# Constitutional Law of Canada

Fifth Edition Supplemented

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### Part I: Basic Concepts

#### 11 — Treaties

##### 11.2 — Power to make treaties

##### 11.2 — Power to make treaties

Because a treaty is an agreement which is binding in international law, a treaty can only be made by an entity having international legal personality. In 1867, the various colonies of the British Empire, although many of them (including those of British North America) were self-governing in domestic affairs, lacked the capacity to enter into treaties. The Empire spoke with one voice, and the voice was that of the imperial government in Great Britain. The common law accorded to the Crown (the executive branch of government in Great Britain) full power to conduct foreign affairs, including the making of treaties, for the entire Empire. In 1867, therefore, it was the British government which entered into treaties binding the Empire, or any part of the Empire. As the Empire became the Commonwealth, and as its members acquired international personality in their own right, the treaty-making powers of the British government were gradually distributed to the independent members of the Commonwealth.<sup>2</sup>

In Canada's case the formal grant of treaty-making power is not to be found in the Constitution Act, 1867 (which did not contemplate that Canada would become an independent nation), but in the instrument by which the King or Queen in Great Britain delegated the prerogative powers over foreign affairs to the Governor General of Canada, who would exercise the powers upon the advice of the Canadian government. The current instrument of delegation is a comprehensive document which was adopted in 1947 and which is entitled Letters Patent constituting the office of Governor General of Canada.<sup>3</sup> In this document, no prerogative power over Canada is withheld: by clause 2 the Governor General is authorized "to exercise all powers and authorities lawfully belonging to Us [the King] in respect of Canada". This language undoubtedly delegates to the federal government of Canada the power to enter into treaties binding Canada.

Even without an express delegation of treaty-making power, Canada's achievement of full independence would necessarily carry with it the power to enter into treaties, and in the absence of any contrary constitutional provision the power would be located with the executive branch of the government which represents the country as a whole, namely, the federal government.<sup>4</sup> From time to time, it has been claimed that the Canadian provinces possess treaty-making competence under the Constitution and in international law. This claim will be examined at the end of this chapter,<sup>5</sup> because it can be understood only in the light of the constitutional law respecting the implementation of treaties. For the moment, it suffices to say that the provincial claim has never been accepted by the federal government, and the federal government does in fact exercise exclusive treaty-making powers.

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## FOOTNOTES

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<sup>2</sup> See Kennedy, *The Constitution of Canada 1534-1937* (2nd ed., 1938), chs. 20, 25 and pp. 510-518; Hopkins, *Confederation at the Crossroads* (1968), ch. 11; Stanley, *A Short History of the Canadian Constitution* (1969),

ch. [7](#); Jacomy-Millette, *Treaty Law in Canada* (1975), Part I; Beaudoin, *Le Constitution du Canada* (3rd ed., 2004), ch. [17](#).

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[3](#) It is reproduced in R.S.C. 1985, Appendix II, No. 31.

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[4](#) For explanations of the source of federal treaty-making power, see Gotlieb, *Canadian Treaty-Making* (1968), 28-30; G.L. Morris, "The Treaty-Making Power" (1967) 45 Can. Bar Rev. 478, 482-484.

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[5](#) Section 11.3, "Provincial treaty-making", below.

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