August 4th, 2023

Director General
Financial Crimes and Security Division
Financial Sector Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa ON K1A 0G5

Subject: Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime

On behalf of Publish What You Pay Canada, Transparency International Canada, and Canadians For Tax Fairness, we are pleased to submit feedback as part of Canada's consultations to Strengthen its Anti-Money Laundering and Anti-Terrorist Financing Regime.

Canada's reputation as a destination to launder illicit funds has been part of national conversations since 2016.[1] In response, Publish What You Pay Canada, Transparency International Canada, and Canadians for Tax Fairness formed a coalition (known as the 'End Snow-Washing Coalition') to advocate for the creation of a pan-Canadian, publicly accessible, beneficial ownership registry.[2]

Canada's Anti-Money Laundering and Anti-Financing Terrorism (AML/ATF) Regime can benefit from being more transparent, more comprehensive, and with broader information-sharing. Below is a list of our recommendations to improve Canada's regime:

Section 3.1 - Beneficial Ownership Transparency:

- The Federal Government reaches an agreement with Provinces/Territories to allow willing Provincial corporations to be treated as a prescribed class.
- Lowering of ISC threshold from 25% to 10% for CBCA Corporations.
- Coordinate with provinces/territories to require foreign companies operating in Canada to disclose ISCs.
- Coordinate with provinces/territories on the implementation of Beneficial Ownership Registries of Real Property.
- Coordinate with provinces/territories to require beneficiaries of relevant trust arrangements and partnerships as part of corporate transparency legislation.
- Check up on efforts with provinces/territories towards eliminating bearer certificates.

[1] See: https://www.thestar.com/opinion/contributors/2017/12/31/snow-washing-forgery-and-corruption-a-look-back-at-fraud-in-canada-in-2017.html
[2] See: www.endsnowwashing.ca

Section 3.2 - The Legal Profession

- The Federal Government examines how other G7 members and other countries have conjoined aspects of national AML/ATF regimes with the legal profession and that an independent expert assessment be conducted to determine where improvements can be made.
- Ensuring that Canada's pan-Canadian beneficial ownership registry will have verified and validated data to assist all sectors, including the legal profession.
- Assess how FINTRAC's guidance on PEPs and HIOs could be a reporting requirement by the legal profession using existing public databases.

Section 3.3 - Civil Asset Forfeiture

- Conduct privacy analysis and a feasibility study for unexplained wealth orders.

Section 4.1 - Third Party Money Laundering

- Ensure a low enough threshold for the nexus between the predicate offence and money laundering.

Section 4.2 - Offences for Other Economically Motivated Crime

- Ensure offences can be prosecuted and that they are general enough to capture money laundering-related activity.

Section 4.3 - Sentencing for Laundering of Proceeds of Crime

- The Government of Canada should develop and provide public guidance on sentencing.

Section 5.1 - The Mandate and Structure of the Canada Financial Crimes Agency

- Scope the mandate broad enough that the CFCA include predicate crimes such as corruption and securities fraud.
- The CFCA should be accompanied by effective and robust whistleblower protections.
- Ensure the CFCA enables specialised personnel to build a career within the agency.

Section 5.2 - Core Elements of Effective Financial Crime Enforcement

- The CFCA should also be a national coordination body for financial crime to increase effectiveness and eliminate redundancy.
- The CFCA should conduct public outreach initiatives to sensitise Canadians to the issues of financial crimes and be a thought leader in the area.

Section 6.2 - Public to Private Information Sharing

- The Government of Canada should study the feasibility of creating a centralized Politically Exposed Persons (PEPs) and Head of International Organizations (HIO) database to assist all reporting entities to carry out PEPs/HIO screening in a cost-effective manner.

- Canada's Federal Departments (including FINTRAC) should seek insight wherever possible with civil society on AML policy proposals.

Section 6.3 - Public to Public Information Sharing
- Publish a national performance report for Canada's AML/ATF regime.

Section 7.1 - Review of Existing Reporting Entities
- Include Non-certified Accountants in the PCMLTFA.

Section 7.2 - Expanding AML/ATF Coverage in the Real Estate Sector
- Include Building Supply and Renovation Companies.
- Include Title Insurers and Mortgage Insurers.
- Identity Verification for Unrepresented Parties in Real Estate Transactions.

Section 8.2 - False Information Offences
- Universal Registration for all Reporting Entities.
- Penalties for non-compliance should exceed the cost of doing business.

Section 8.3 - Additional Preventive and Risk Mitigation Measures
- Study the feasibility of introducing Geographic Targeting Orders
- Study the feasibility of disclosing the source of wealth and funds with a threshold of $100,000 or more.
- Work with provinces to ensure independent, appropriately resourced and active roles for corporate registrars.

Section 9.1 – Threats to the Security of Canada
- Ensure Canada's Beneficial Ownership Registries are the best among G7/G20 countries to protect national security and public safety.

We trust that our recommendations and commentary will prove helpful in the evolution of Canada's AML/ATF regime, and we thank you for your leadership in this vital policy area for our country.

Yours sincerely,

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P.S. Our comments are organized on the next page according to the chapter headings from the consultation document. Should you have any questions about the content in our discussion document, please contact Sasha Caldera: scaldera@pwyp.ca

Chapter 3 – Federal, Provincial, and Territorial Collaboration:

The Coalition has previously stated the need for a pan-Canadian approach to combating corruption and financial crime and has called for greater coordination and information sharing between the federal, provincial, and territorial authorities on several matters mentioned throughout this chapter.

Section 3.1 - Beneficial Ownership Transparency

Recommendation: Federal Government reaches an agreement with Provinces/Territories to allow willing Provincial corporations to be treated as a prescribed class

We recommend that the Government of Canada reach an agreement with willing provinces to treat provincial corporations as a prescribed class, (e.g., a "reporting corporation"). This approach would allow smaller provinces to permit provincial corporations to send beneficial ownership information to the federal government without having to create their own provincial registry system. By doing so, it creates efficiencies by making it easier for provinces to use Canada's federal registry to disclose beneficial ownership information while saving resources. Provinces would need to agree and subsequently pass legislation to render this treatment effective. The reference language for such an agreement could be as follows:

> ***Intergovernmental Coordination***
>
> *The Minister, may on behalf of the Government of Canada agree with the government of a province to treat some or all provincial corporations, or specified provincial entities as reporting corporations solely for the purposes of collecting information on individuals of significant control."*

Recommendation: Lowering of ISC threshold from 25% to 10% for CBCA Corporations

We recommend lowering the Individuals with Significant Control (ISC) threshold from 25% to 10% for corporations governed under the *Canada Business Corporations Act* (CBCA).

While 25% is a common starting point for Canada, we expect this threshold will be lower in subsequent years as the European Union is considering legislation to lower the threshold to 15%.[3] Canada may be able to provide global leadership by moving this threshold down to 10%. We recommend that the federal government examine trends from international partners and lower this threshold as a progressive signal to provinces.

Recommendation: Coordinate with provinces/territories to require foreign companies operating in Canada to disclose ISCs

Currently, the CBCA does not require foreign corporations operating in Canada to disclose ISCs. Foreign corporations not disclosing ISCs may make it difficult for Corporations Canada

[3] See: https://www.europarl.europa.eu/news/en/press-room/20230327IPR78511/new-eu-measures-against-money-laundering-and-terrorist-financing

and other competent authorities such as the Canada Revenue Agency to gain insight as to whether those ISCs are engaging in financial crime or predicate offences such as corruption and who might be knowingly avoiding detection.

Beneficial ownership transparency requirements have been increasing globally and as of August 2023, 110 countries have committed to publicly accessible beneficial ownership registries. Yet, when examining selected countries on Canada's Sanctions List, most do not have national beneficial ownership registries. Only the Russian Federation and China have registries, both of which are private[4].

Below is a list of countries currently on Canada's Sanctions List and their status (in brackets) of national beneficial ownership registries[5]:

- Belarus (none)
- Central African Republic (none)
- China (private)
- Iran (none)
- Libya (none)
- Nicaragua (none)
- Russian Federation (private)
- South Sudan (none)
- Venezuela (none)
- Yemen (none)

Taking stock of the lack of beneficial ownership registries in these countries, Canada is facing the risk of foreign interference and influence. Sanctioned individuals may be carrying on business as a foreign ISC for a company registered in a non-sanctioned country to avoid detection. It is worth noting that the *U.S. Corporate Transparency Act* requires all foreign companies to disclose beneficial owners.[6]

We recommend that Canada's federal government work with provinces and territories and require disclosure for ISCs of foreign companies operating in Canada as part of extra-jurisdictional business registrations.

Recommendation: Coordinate with provinces/territories on the implementation of Beneficial Ownership Registries of Real Property

The federal government should recommend for provinces to implement beneficial ownership registries for real property. These registries should be freely open to the public and searchable without a paywall. In cases where a property is held through a nominee, this relationship should be explicitly stated, and the identity of the nominee and ultimate beneficiary should be disclosed. In 2021, British Columbia launched the Land Ownership Transparency Registry, the

[4] See: https://www.openownership.org/en/map/
[5] See: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/current-actuelles.aspx?lang=eng
[6] See: https://www.taftlaw.com/news-events/law-bulletins/new-federal-rule-requires-many-domestic-and-foreign-companies-to-report-beneficial-ownership-information-to-fincen

first publicly accessible and searchable beneficial ownership registry of real property which includes relevant trusts, partnerships, and nominee disclosure.[7]

We recommend that the federal government recommend provinces emulate the approach in British Columbia.

Recommendation: Coordinate with provinces/territories to require beneficiaries of relevant trust arrangements and partnerships as part of corporate transparency legislation

We recommend that the federal government work with provinces and territories to include beneficiaries of trusts and partnerships as part of corporate transparency legislation. As partnerships and some trust arrangements fall under provincial jurisdiction, we recommend that language be included in legislation to cover trusts and partnerships. These measures will make beneficial ownership disclosure laws strong and comprehensive. The federal government can suggest that provinces emulate language in the CBCA[8] which covers joint control and applies to trusts, or from the *British Columbia Business Corporation Act* (BCBCA).[9] All beneficial ownership information should be publicly accessible, searchable, and free of cost after appropriate measures are taken to protect privacy.

Recommendation: Check up on efforts with provinces/territories towards eliminating bearer certificates

The Government of Canada has taken concrete steps to eliminate the issuance of new bearer certificates with amendments to the CBCA and is coordinating with provinces to require registration of any existing bearer shares.[10] As many provinces have eliminated the issuance of bearer certificates, the Coalition recommends a check-up on progress with provinces.

Section 3.2 - The Legal Profession

Recommendation: The Federal Government examines how other G7 members and other countries have conjoined aspects of national AML/ATF regimes with the legal profession and that an independent expert assessment be conducted to determine where improvements can be made.

Recognizing the importance of the principle of solicitor-client privilege and the previous rulings by the Supreme Court of Canada, we believe that Canada must still find a way to ensure the legal profession is not a weak leak in Canada's AML regime. We encourage Canada's federal

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[7] See: https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/land-owner-transparency-registry/interpretation#beneficial-ownership-partnerships

[8] See: https://laws-lois.justice.gc.ca/eng/acts/C-44/page-2.html#docCont refer to 2.1(1)

[9] See: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02057_055 refer to 119.11(1)

[10] See: https://www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/bearer-share-certificate-elimination#:~:text=Effective%20May%2016%2C%202019%2C%20all,dividend%2C%20share%20equity%2C%20etc.

government to study how other countries have approached regulating legal professionals with legal scholars, ethicists, the FATF, and law societies. For instance, in the UK, The Solicitors Regulation Authority (SRA) which regulates solicitors in England and Wales is an independent body formed in January 2007 by the Legal Services Act, 2007 to regulate solicitors.[11] While formally an arm of the Law Society of England and Wales, the SRA is a statutory creation and operationally independent of the Law Society.

The UK approach was taken in recognition of the fact that legal professionals are inherently highly vulnerable to money laundering. The B.C. Cullen Commission identified regulation concerning lawyers' trust accounts as an approach to mitigate risk. More specifically, establishing a threshold for high-risk transactions.[12] Transactions exceeding a certain threshold (e.g., $100,000) via trust accounts should be declared as high-risk.

To minimise the compliance burden on reporting entities and legal professionals, legal professionals should consider requiring their clients to provide beneficial ownership information obtained through affidavits, or an unsworn Declaration Under Penalty of Perjury, when transactions exceed a certain threshold (e.g., $100,000) with financial institutions (trust accounts). The burden should be on the legal professionals' clients to complete and submit a Declaration of Beneficial Ownership (DBO) to their legal professional, who in turn would provide that DBO to the reporting entity, upon request, to assist the reporting entity in assessing the risk of abuse of the trust account for ML/TF purposes. Guidance should be provided by FINTRAC to reporting entities on suspicious indicators and how to monitor the misuse of trust accounts. This would include indicators such as multiple transactions for the same client that collectively exceed the threshold within a short period (structuring the transactions). Suspicious transactions should be reported to FINTRAC.

The FATF evaluations of Canada have also highlighted the gap created by the absence of lawyers from the AML/ATF regime and the lack of scope in the self-regulatory regimes of the law societies. Without an independent expert assessment, the Government of Canada, provinces, territories and all Canadians have little information to be assured that the legal profession's rules and practices meet the current Canadian standards set by the Act (and associated regulations), or even the FATF standards in protecting against money laundering and terrorist financing. Without independent public accountability of the effectiveness of the implementation of law societies' rules, and remedial action by law societies, Canada remains highly vulnerable to this sector's weaknesses for ML/TF.

The Government of Canada may also wish to look at how legal professionals can be accountable for providing accurate beneficial ownership information when they act as company formation agents for their clients. For example, Slovakia requires an "authorised person" (a lawyer, notary or other) to be responsible for the registration of the information in the beneficial

[11] See: https://www.sra.org.uk/

[12] See: https://cullencommission.ca/files/reports/CullenCommission-FinalReport-Full.pdf See page 24 for recommendations about the legal profession

ownership registry and they are required to update the information. Authorised persons (i.e., lawyers) can be fined up to €100,000 for providing false information.[13]

Many other countries, and close allies, are taking measures about scoping lawyers into their AML regimes. Not all examples will work within our constitutional confines, but it is not enough for Canada to cite solicitor-client privilege and do nothing to address a high-risk area that has been identified as a major gap in our approach to AML.

Recommendation: Ensuring that Canada's pan-Canadian beneficial ownership registry will have verified and validated data to assist all sectors, including legal professionals with due-diligence

Canada's federal beneficial ownership registry should have data verification and validation measures to ensure that the information submitted by corporations is accurate. This feature will assist Canada's legal professionals conduct due-diligence checks and remain compliant with 2023 Federation of Law Society standards on client identification and verification.[14]

Access to verified data would assist private companies to understand who they are doing business with and help them conduct due diligence on their potential partners. It would also be useful for other sectors such as real estate professionals to conduct know-your-client checks on their customers.

Recommendation: Assess how FINTRAC's guidance on PEPs and HIOs could be a reporting requirement by the legal profession using existing public databases

In 2018, The House of Commons Standing Committee on Finance heard from witnesses that the legal profession does not require sanctions list screening of clientele.[15] FINTRAC has since provided new guidance for PEPs/HIO screening and disclosure requirements for all reporting entities which came into effect on June 1st 2021.[16] Law Societies and the Government of Canada should assess how to incorporate this type of screening for legal professionals.

Section 3.3 - Civil Asset Forfeiture

Recommendation: Conduct a privacy analysis and feasibility study for unexplained wealth orders

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[13] See: https://www.openownership.org/en/publications/early-impacts-of-public-beneficial-ownership-registers-slovakia/
[14] See: https://flsc.ca/wp-content/uploads/2023/05/Model-CIV-Rule-amended-March-12-2023.pdf
[15] See: https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf refer to page 23.
[16] See: https://fintrac-canafe.canada.ca/guidance-directives/client-clientele/pep/pep-non-acct-eng

The federal government should carry out consultations and study the feasibility of unexplained wealth orders (UWOs). This study should include recognizing risks to privacy rights and civil liberties in Canada.

UWOs extend the existing civil recovery schemes with no need for criminal proceedings to be initiated. If a Court issues a UWO, the respondent must provide a satisfactory response explaining how the property (or funds) was lawfully obtained. Failure to comply may subject the property to a seize and dispose order.[17]

Concerning jurisdictions which have implemented UWO schemes, The UK unexplained wealth orders regime was introduced under the *Criminal Finances Act 2017*.[18] This investigative power enables law enforcement and competent authorities to seize and dispose of any property suspected to be obtained using illicit wealth. It is also worth noting that B.C. successfully passed legislative amendments for UWOs in May 2023.[19]

Chapter 4 – Criminal Justice Measures to Combat Money Laundering and Terrorist Financing

Chapter 4 seeks views on reforms to the *Criminal Code, Canada Evidence Act* and related measures. While the coalition does not wish to put forth specific legislative amendments, we do consider policy elements that the government should consider before making legislative amendments.

Section 4.1 - Third Party Money Laundering

Recommendation: Ensure a low enough threshold for the nexus between the predicate offence and money laundering

Transparency International Canada (TI Canada) made submissions in 2018 calling upon the federal government to consider recklessness or gross negligence as the standard of proof to reduce the level of complexity for law enforcement agencies to link the predicate offence to money laundering. Acknowledging the amendments made to the *Criminal Code* in 2019, the Coalition continues to support efforts to alter the nexus required between the predicate offence and money laundering activity to increase the likelihood of successful prosecutions. This may require further changing the standard of proof to a lower threshold. This is especially important regarding third parties, where they are further removed from the laundering offence. In addition, including clear definitions of the standard to better capture the activities of facilitators or enablers of money laundering would be beneficial.

[17] See: https://www.pwc.com/m1/en/services/tax/private-business/unexplained-wealth-orders.html
[18] See: https://www.legislation.gov.uk/ukpga/2017/22/part/1/chapter/1/crossheading/unexplained-wealth-orders-england-and-wales-and-northern-ireland/enacted
[19] See: https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/progress-of-bills

Section 4.2 - Offences for Other Economically Motivated Crime

Recommendation: Ensure offences can be prosecuted and that they are general enough to capture money laundering-related activity

TI-Canada is more concerned with the implementation and enforcement of the existing money laundering offences, including the required thresholds to prosecute than with creating new offences. The risk in creating new offences is that it may be perceived as the solution to a perceived threat, however, the existence of an offence in law is only the first step. We have previously called for increased resourcing of law enforcement authorities, both financially and in terms of specialised expertise, to be able to enforce the current suite of offences. Adding new offences creates another need for additional resourcing, something which is already lacking.

The caveat to the above is that there may be a requirement to create a new offence where the activity is not already captured, or where it is easier to create a new offence rather than amend the wording of an existing offence that is causing problems for prosecution purposes.

In addition, particularised offences may not always be the best solution. General offences interpreted flexibility may provide law enforcement with greater ability to pursue offenders for money laundering activity. Unless a new offence expands the ambit of liability to a new form of conduct, or where the interpretation of an existing offence has become unworkable and operationally challenging, we believe the focus should be placed on enforcement and coordination of authorities.

Section 4.3 - Sentencing for Laundering of Proceeds of Crime

Recommendation: The Government of Canada should develop and provide public guidance on sentencing

Publicly accessible sentencing guidelines that provide transparency on how sentences are arrived at are essential. Transparency provides fair notice to potential offenders where the reference figures are known in advance when calculating sentences. In addition, it is recommended that the government provide mechanisms for calculating the illegal gains obtained through criminal activity as well as the harm caused.

Data that might assist in developing guidelines include requiring federal, provincial and territorial prosecution services to create a database that is publicly accessible on the number of ML/TF cases referred to them; the charges laid; the number of prosecutions; the rationale for proceeding or not with prosecutions; and outcomes of ML/TF cases brought before the courts. This will assist the public in understanding the underlying numbers of prosecutions of ML/TF and will also help prosecutors in developing sentencing guidelines.

Chapter 5 – Canada Financial Crimes Agency

In May 2023, TI Canada released a white paper with recommendations for creating a Canadian Financial Crimes Agency (CFCA). We recommend that the CFCA be both an enforcement and coordination body whose mandate includes the enforcement of predicate offences and functions as a true national entity. The mandate and structure we propose would help to ensure the CFCA attracts the required expertise to combat financial crime and that collaboration with other authorities would lead to better detection and enforcement of financial crime in Canada.

Section 5.1 - The Mandate and Structure of the Canada Financial Crimes Agency

Mandate

Recommendation: Scope the mandate broad enough that the CFCA include predicate crimes such as corruption and securities fraud

TI Canada recommends that the mandate of the CFCA include the predicate crimes which create the impetus for money laundering. Scoping the mandate of the CFCA to include predicate crimes such as corruption and securities fraud would better support the goal of building the institutional capacity to increase Canada's ability to fight money laundering.

Because section 462.31 of the Criminal Code requires that prosecutors establish a predicate offence for money laundering, expanding the enforcement mandate to include predicate offences will enhance the effectiveness of CFCA to address not just money laundering, but other financial crimes. As an example, if there is evidence that indicates that bribes have been paid to a foreign public official to obtain or retain an advantage in the course of business, it makes sense for law enforcement to investigate this primary offence (bribery/corruption) and not just whether the proceeds received from the commission of the primary crime have been laundered. This effectiveness will be further bolstered with the requisite prevention awareness and investigative training.

Whistleblowers

Recommendation: The CFCA should be accompanied by effective and robust whistleblower protections

Whistleblowers can provide invaluable information for detecting and prosecuting financial crimes. Therefore, an effective whistleblower program should be in place, including protections against retaliation, mechanisms for anonymous reporting, and financial rewards for information leading to successful enforcement action.

Career Trajectory

Recommendation: Ensure the CFCA enables specialised personnel to build a career within the agency

The ability to attract, develop, and retain the necessary expertise for conducting financial crime investigations, enabling prosecutions, and enhancing criminal forfeiture is crucial for the efficacy of the Canadian Financial Crimes Agency (CFCA). To ensure the top talent is targeted and retained, the CFCA should ensure there is enough room for growth within its ranks. By focusing on attracting, developing, and retaining talent, the CFCA can build a team with the skills and dedication necessary to conduct its mission.

Section 5.2 - Core Elements of Effective Financial Crime Enforcement

The lack of effective enforcement has plagued Canada's ability to go after financial crimes. The CFCA can provide a solution if it is given the power of being an enforcement and coordination body for financial crimes.

Coordination Body

Recommendation: The CFCA should also be a national coordination body for financial crime to increase effectiveness and eliminate redundancy

The CFCA's mandate should include acting as a national coordinating body for financial crime. A national coordinating body should be tasked with identifying the current and emerging gaps in the financial crime enforcement landscape and making recommendations on how to strengthen the compliance continuum where deficiencies exist, starting at the federal level with all departments and agencies that could be targeted for, or participate in financial crime enforcement. A starting point would be examining the effectiveness of departments and agencies that work as civil/administrative regulators in ensuring compliance and combating financial crime. For these stakeholders, their compliance efforts are stymied due to a lack of further criminal investigation and prosecution. This defeats the purpose of specific and general deterrence of financial crime.

Canada has had mixed success in certain areas of financial crime enforcement, for example, anti-corruption, sanctions, and anti-money laundering. In each of these examples, there is a limited enforcement record, a lack of transparency of enforcement mechanisms, and limited results. The government should be creating compliance regulators, dedicated criminal investigative units, and specialist prosecutors for specific crimes where there are gaps today and be providing increased resources to the existing agencies mandated with enforcing and prosecuting economic crimes (e.g. increasing budgets and staffing, providing enhanced training, and future-proofing agency success by succession planning), while addressing statutory limitations that have become apparent when prosecuting economic crimes.

Canada could improve its enforcement of and monitoring of financial crimes by way of a federal statutory independent body that cooperates with provincial, territorial, and municipal counterparts and among federal agencies. The body's mandate and constraints on its jurisdiction would be achieved through a memorandum of understanding, or a framework agreement, with each province and territory. At its most basic level, the body's mandate would be to maximise collaboration between regulators as well as ensure existing financial crime agencies and prosecutorial bodies work together efficiently and collaboratively with all stakeholders.

Considering the UK and Australian examples, and Canada's unique federal challenges, good practice for a CFCA that focuses on coordination should include the following:

1. Enhancement of communication channels between existing agencies and their counterparts.
    a. Requiring representatives from relevant agencies to attend annual meetings.
    b. Requiring representatives from relevant agencies to attend semi-annual subcommittee meetings where enforcement activities overlap between agencies.
2. Establishment of a reporting mechanism for investigations into 'financial crimes' that could involve multiple agencies or where there could be jurisdictional overlap.
3. In the case of overlap in municipal, provincial, territorial, and federal jurisdictions, the coordinating body would liaise with federal, provincial, territorial, and municipal governments.
4. Provide a communication channel with key stakeholders focused on policy implementation, whereby pain points can be identified efficiently and remediated.
5. Provide a channel through which criminal and/or non-criminal referrals could be made to other enforcement or regulatory bodies, like the approach in the UK and Australia.
6. Liaise with stakeholders in civil society and the private sector that work in 'financial crime', to collect feedback on the CFCA's work and policy development.
7. Provide investigation support, including the use of innovative technology.
8. Provide policy support and suggest improvements to current agencies' activities to make reporting to the coordinating body easier or more relevant (e.g., oversight of a standardised reporting framework which is easier to benchmark)
9. Provide regular updates to Parliament, and the general public, regarding targeted financial crimes and governance.
10. Prepare an annual report that brings together the regular updates and provides an overview of the state of enforcement activities across agencies and a summary of policy initiatives undertaken in the areas related to the body's mandate.
11. Imbue operational mechanisms with transparency including:
    a. Make a framework agreement or MOU establishing the CFCA should be publicly available.
    b. Make an up-to-date organisational chart for the CFCA publicly available.
    c. Maintain a document database, which includes all public reports and all public

documents relating to proceedings where the CFCA has publicly assisted in an investigation (i.e., court orders and reasons, public versions of remediation agreements or other non-trial settlement documents).

d. Provide access to provincial representatives to populate information on the CFCA website, including enforcement statistics for certain offences, organisational charts, and enforcement focus.
e. Research financial crime and coordinate with other relevant research: National inherent risk assessment of ML/TF, Tax Gap; CISC reports, etc., and publish annual enforcement priorities.
f. Publish policies regarding how the CFCA coordinates with external enforcement agencies and the applicable chain of command.

Beyond national coordination, legal collaboration with international law enforcement agencies and regulatory bodies is also vital for cross-border investigations.

Public Outreach

Recommendation: The CFCA should conduct public outreach initiatives to sensitise Canadians to the issues of financial crimes and be a thought leader in the area

Public outreach is a crucial aspect of the Canadian Financial Crime Agency's (CFCA) work to keep Canadians safe from financial crime threats. It not only builds public trust and understanding of the agency's role but also empowers individuals and organizations to protect themselves.

The CFCA should regularly conduct campaigns to educate the public about the nature of financial crimes, how to recognize potential threats, and the steps they can take to protect themselves. This could involve providing training programs and releasing research reports, and private-sector partnerships to educate people about financial crime.

Establishing a reporting mechanism that would enable Canadians to report potential financial crimes and seek assistance if they believe they have been victimised would also help to build trust and knowledge of the CFCA and financial crime.

Chapter 6 – Information Sharing

Information sharing, both among public authorities and between government departments and the public, is important in thwarting financial crime. In addition, a centralized PEPs/HIO database and coordination with Canada’s NGO sector would significantly enhance the effectiveness of Canada’s AML efforts.

Section 6.2 - Public to Private Information Sharing

Recommendation: The Government of Canada should study the feasibility of creating a centralized Politically Exposed Persons (PEPs) and Head of International Organizations (HIO) database to assist all reporting entities to carry out PEPs/HIO screening in a cost-effective manner

Given the higher AML risks posed by PEPs and HIOs, the 2022 Cullen Commission final report recommends that the federal government evaluate the feasibility of creating a PEPs/HIO database.[20] In light of inconsistent methods to designate a PEP or an HIO, a PEPs/HIO database can standardize and greatly improve PEP screening compliance particularly amongst small to mid-sized reporting entities, including smaller law firms. Should this registry be free-of-cost, compliance can be conducted with maximum effectiveness as it's recognized that private PEPs/HIO providers are cost-prohibitive for accountants, realtors, and the legal profession.

Recommendation: Canada's Federal Departments (including FINTRAC) should seek insight wherever possible with civil society on AML policy proposals

We recommend for the Department of Finance, Canada Revenue Agency, Global Affairs Canada, and Innovation Science and Economic Development Canada invite civil society organizations to engage in dialogue to gain insights on a variety of policy issues related to AML. Canadian civil society has regularly provided insights to parliamentary committees and published research about a cross-section of public policy topics such as corporate transparency, real estate-based money laundering, anti-tax evasion policies, and trade-based money laundering. Civil society can share research and novel insights and regular meetings can help civil society appreciate departmental plans and priorities relating to AML.

Section 6.3 - Public to Public Information Sharing

Recommendation: Publish a national performance report for Canada's AML/ATF regime

Currently, there is no annual comprehensive public account of Canada's AML/ATF regime's collective outputs, outcomes, and results from the regime's partners. While there is a departmental performance measurement framework, none of the outputs are publicly available.[21] As part of Canada's 2018 Parliamentary Review of the PCMLTFA, experts, industry associations, and provincial governments have found difficulties in locating information about the number of money laundering investigations, referrals to provincial and federal prosecutors, and the number of convictions, forfeitures and sentences in Canada.[22]

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[20] See: https://cullencommission.ca/files/reports/CullenCommission-FinalReport-Full.pdf pg.107

[21] See: https://www.canada.ca/en/department-finance/programs/financial-sector-policy/canadas-anti-money-laundering-and-anti-terrorist-financing-regime-strategy-2023-2026.html#_Toc87276445 refer to Figure 3.

[22] See: https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf page 44.

A national AML/ATF performance report should be published annually with consideration for confidentiality of operations and relevant privacy legislation. Parliamentarians, reporting entities, civil society, and the public should have access to information such as the following:

- To what extent investigations or other enforcement actions have benefited from intelligence disclosed by FINTRAC;
- The number of ML/TF investigations conducted;
- The number of ML/TF investigations that have been abandoned and why;
- The proportion of ML/TF investigations vs predicate crime investigations;
- The number of ML/TF investigations that have been referred to federal and provincial prosecutors;
- The number of ML investigations that have been thwarted because of a lack of investigative resources or legal hurdles such as lack of beneficial ownership transparency;
- The number of referrals of ML/TF cases to prosecutors that have been declined by the prosecution services and why;
- The number of convictions for ML/TF;
- The sentences and court fines for ML/TF convictions;
- The number and value of court fines collected compared to the court judgement;
- The number of assets seized and forfeited as a result of an ML conviction;
- The effectiveness of civil forfeiture procedures compared to convictions and forfeitures under the Criminal Code; and,
- Other benefits to the regime.

Chapter 7 – Scope and Obligations of AML/ATF Framework

The Coalition recommends expanding coverage for Canada's accounting and real estate sectors while adding additional sectors based on the 2023 Risk Assessment from Canada's Department of Finance.

Section 7.1 - Review of Existing Reporting Entities

Recommendation: Include Non-certified Accountants

We recommend that non-certified accountants be included under the PCMLTFA and adhere to the same compliance regulations as CPAs under the Act. Accountants who are not CPAs offer diverse services for clients and are regularly used by organized crime groups and terrorist networks to launder money or avoid/evade tax.[23] Canada's 2023 Assessment of Inherent Money

[23] See: https://yorkspace.library.yorku.ca/server/api/core/bitstreams/a247a21f-e8aa-4c5b-bee1-6c55d8398363/content

Laundering Risks classifies the accounting profession as medium risk. The assessment also lists accountants as enablers of corruption, bribery, collusion, and tax evasion.[24]

Section 7.2 – Expanding AML/ATF Coverage in the Real Estate Sector

Recommendation: Include Building Supply and Renovation Companies

We recommend adding building supply and renovation companies to the PCMLTFA as there have been documented cases of money laundering and fraud by Canadian renovation companies.[25] Moreover, Public Safety Canada has issued an intelligence brief about how construction companies can be infiltrated by organized crime due to the cost of heavy equipment and the complexity of projects.[26] The B.C. Cullen Commission has noted the risk associated with building supply companies when they examined cash transactions received by these companies between 2015 to 2020.[27]

Recommendation: Include Title Insurers and Mortgage Insurers

We recommend for Title Insurers and Mortgage Insurers be covered under the PCMLTFA as both sectors gather and collect information on beneficial owners and can report to FINTRAC. Both sectors represent an additional line of defence in the instance that lenders accidentally or deliberately issue mortgages to suspicious clients.[28] Mortgage fraud and title fraud represent a very high threat rating for money laundering in Canada.[29]

Recommendation: Identity Verification for Unrepresented Parties in Real Estate Transactions

The Coalition recommends identity verification of unrepresented parties for all real estate transactions. Given Canada's national housing affordability crisis, we believe it's important for identity checks to be carried out by real estate professionals to mitigate fraud and other harms caused by money laundering.

While real estate professionals currently must take reasonable steps to determine ultimate beneficial owners to complete transactions, we recommend strengthening this measure by requiring all parties to sign a written attestation declaring whether they are representing a third

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[24] See: https://www.canada.ca/en/department-finance/programs/financial-sector-policy/updated-assessment-inherent-risks-money-laundering-terrorist-financing-canada.html
[25] See: https://globalnews.ca/news/2699858/2-charged-in-1-8m-toronto-renovation-company-money-laundering-scam-police/
[26] See: https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/rgnzd-crm-brf-27/index-en.aspx
[27] See: https://cullencommission.ca/files/reports/CullenCommission-FinalReport-Full.pdf pg. 789
[28] See: https://chicagotitle.ca/beware-condo-owner-impersonations-are-on-the-rise/
[29] See: https://www.canada.ca/en/department-finance/programs/financial-sector-policy/updated-assessment-inherent-risks-money-laundering-terrorist-financing-canada.html

party and to present valid, government-issued identity documents of the ultimate owner as a prerequisite to complete the transaction. Such a method could deter criminals with ties to organized crime, PEPs/HIOs, or terrorists from remaining anonymous during the transaction process.

While this measure represents enhanced due diligence, we believe it is warranted considering the extent of illicit funds artificially inflating the price of real estate in Canada.[30]

Section 7.3 – Expanding Regime Scope to Other New Sectors

Recommendation: Include Company Service Providers under the Act

Company service providers have been marketing shell company formation in Canada to international clients for years.[31] Expanding Canada's AML regime to include company service providers as a reporting entity will be a powerful method to root out bad actors who desire to set up shell companies for nefarious clients who desire to avoid taxes. Our own research profiles networks of international company service providers which market Canadian companies to avoid tax.[32]

Recommendation: Include High-Value Goods Dealers under the Act

We recommend High-Value Goods Dealers be included under the PCMLTFA due to the cash value of luxury goods such as planes, yachts, and supercars. The B.C. Cullen Commission has an extensive chapter which includes the background and proliferation of luxury goods in Europe, case studies, risk analysis, and a proposed model for addressing money laundering risks.[33] We believe the federal government can begin to roll in certain luxury goods dealers into the Act based on their retail and resale value.

Chapter 8 – Compliance Regulatory Framework

Our recommendations in this chapter focus on universal registration for reporting entities, penalties exceeding the cost of doing business, and commentary on additional risk-mitigation measures.

Section 8.2 – False Information Offences

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[30] See: https://ag-pssg-sharedservices-ex.objectstore.gov.bc.ca/ag-pssg-cc-exh-prod-bkt-ex/716%20-%20Money%20Laundering%20in%20the%20Canadian%20Real%20Estate%20Market%20Overview%20and%20key%20challenges%20for%20professionals%20and%20stakeholders%20-%20Bert%20Pereboom%20-%20Dec%202020_Redacted.pdf

[31] See: https://macleans.ca/news/canada/how-easy-is-it-to-buy-a-secret-shell-company-in-canada-very/

[32] See: https://static1.squarespace.com/static/5c8938b492441bf93fdbc536/t/6231f07b006c167227c965aa/1647439997583/TIC-Report-Snow-Washing-Inc-2MB.pdf

[33] https://cullencommission.ca/files/reports/CullenCommission-FinalReport-Full.pdf pg.1319

Recommendation: Universal Registration for all Reporting Entities

The Coalition recommends universal registrations for all reporting entities. Universal registration will help FINTRAC assess the number of reporting entities in Canada and how they change over time; moreover, it will improve FINTRAC's ability to provide detailed sector-specific information about compliance trends.

Recommendation: Penalties for non-compliance should aim to exceed the cost of doing business

Administrative monetary penalties assessed for PCMLTFA (and associated regulations) violations are meant to encourage compliance. While that principle should be followed, the penalties assessed should always consider that for some entities, the risk of a penalty is calculated as a cost of doing business. Violations of the PCMLTFA and its associated regulations should be proportionate and sufficiently dissuasive to exceed the cost of risk-taking by non-compliers and serve as a deterrent to market competitors of the offending entity. Penalties must deter a catch-me-if-you-can behaviour by non-compliant reporting entities and indictable offences with exceptionally large fines and jail time for knowingly providing false information should be considered as part of penalty schemes.

***Section** 8.3 – Additional Preventive and Risk Mitigation Measures*

Recommendation: Study the feasibility of introducing geographic targeting orders

Geographic targeting orders (GTOs) may provide the flexibility for the federal government to target persons, or entities in a specific geographic location which has a high-risk or threat assessment. Geographic targeting orders are deployed by FINCEN in the United States across many high-risk jurisdictions.[34] Canada should study the feasibility of deploying such orders in specific regions of the country, perhaps targeting large metropolitan areas. It is worth noting that Canada's 2018 Parliamentary Review of the PCMLTFA recommended amending the Act to enable law enforcement agencies to utilize GTOs.[35]

Recommendation: Study the feasibility of disclosing the source of wealth and funds with a threshold of $100,000 or more

We recommend that the federal government study the feasibility of the source of wealth disclosures for transactions of $100,000 or more. Such a policy measure might be helpful to deter real estate-based money laundering in instances when buyers provide more than $100,000 up-front in cash. Source of wealth disclosures at these thresholds may also have

[34] See: https://www.fincen.gov/news/news-releases/fincen-renews-and-expands-real-estate-geographic-targeting-orders-0
[35] See: https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf page 54.

applications for luxury goods purchases such as supercars, planes, or boats. Canada's Department of Finance can refer to similar legal mechanisms in the *Income Tax Act* which specifies income verification for Canadian residents who own $100,000 in foreign property.[36]

Recommendation: Work with provinces to ensure appropriately resourced and active roles for provincial corporate registrars

The functions and powers of federal, provincial, and territorial corporate registrars should ensure that they can play an effective role in the AML/ATF regime. Provincial corporate registrars should have powers to independently compel and verify the information filed by legal entities, including the identities of directors and shareholders, inquire into the business, enter premises, and impose dissuasive penalties and other sanctions on non-compliant persons and entities. Registrars may also have a requirement to report suspicious activities to FINTRAC.

Chapter 9 – National Security and Sanctions

In this section, we provide general commentary about how beneficial ownership transparency advances national security, preserves the integrity of Canada's financial sector, and prevents the erosion of Canada's democratic institutions.

Section 9.1 – Threats to the Security of Canada

Ensure Canada's Beneficial Ownership Registries are the best among G7/G20 countries to protect national security and public safety

The U.S. Federal Bureau of Investigation (FBI), the U.S. Department of State,[37] and the Financial Action Task Force (FATF) have noted weaknesses in Canada's anti-money laundering (AML) regime, sanctions, and its prosecutorial regime.[38] After the Russian invasion of Ukraine, all G7 countries and Five Eyes members have broadened sanctions against authoritarian regimes and corrupt officials. Canada as a G7 country and Five Eyes member is recognizing that the threat of foreign election interference and foreign influence undermining major democracies requires immediate action.

Publicly accessible beneficial ownership registries play a vital role to prevent foreign agents from carrying out operations that undermine democracies and are part of the Five Eyes national strategies.[39] Publicly accessible beneficial ownership registries also help Canada and other countries administer sanctions against foreign officials. On this note, we believe Canada must ensure that its beneficial ownership registries are best-in-class amongst G7/G20 countries to

[36] See: https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/information-been-moved/foreign-reporting/foreign-income-verification-statement.html
[37] See: https://globalnews.ca/news/5102137/us-canada-major-money-laundering-country/
[38] See: https://www.cdhowe.org/sites/default/files/2021-12/Final%20for%20advance%20release%20Commentary_519_0.pdf
[39] See: https://www.dhs.gov/publication/communique

eliminate weaknesses in Canada's AML, sanctions, and prosecutorial regimes. To achieve this goal, Canada must deliver on the following:

- Striking an agreement for a harmonized beneficial ownership registry between provinces and territories.
- Ensuring beneficial ownership information has verification and validation mechanisms.
- Expanding beneficial ownership registries to include real property, foreign companies, trusts, and partnerships.
- Requiring beneficial ownership due diligence in federal procurement contracts and for relevant permits/licences.
- Ensuring Canada's federal beneficial ownership registry is well-resourced and implemented in a timely manner.
- Learning from international partners who are leaders in beneficial ownership disclosure and for Canada to share insights in international forums (e.g., IMF, World Bank, UNCAC, and Beneficial Ownership Leaders Network).

Conclusion:

Thank you for taking the time to review our recommendations and we welcome opportunities to share our insights in more detail as part of further stakeholder conversations. We would be pleased to answer any questions about this submission at any time.