



## Impeding the Ability of Transnational Organized Crime Groups to Launder Funds

Major Natalie Wispinski

### JCSP 49

#### Exercise Solo Flight

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### PCEMI n° 49

#### Exercice Solo Flight

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Exercise Solo Flight – Exercice Solo Flight

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## TARGET THE MONEY: HOW CANADA CAN IMPROVE GLOBAL SECURITY BY IMPEDING THE ABILITY OF TRANSNATIONAL ORGANIZED CRIME GROUPS TO LAUNDER FUNDS

In 2022, Canada scored twelfth in the world on the Rule of Law Index by the World Justice Project,<sup>1</sup> which measures how the rule of law is perceived and experienced in countries around the world.<sup>2</sup> Although, in general, Canada has a reputation for having robust rule of law, there is an aspect in particular in which Canada is seen to be deficient: money laundering. In their annual *International Narcotics Control Strategy Report*, the United States Department of State consistently identifies Canada as being a major money laundering jurisdiction.<sup>3</sup> Jeffrey R. Simser, former Legal Director in the Ministry of the Attorney General of Ontario, contends that “Canada is an inviting environment. We have stable financial institutions, ready access to international markets and under-resourced law enforcement.”<sup>4</sup> This is of concern because the threats associated with money laundering are not solely financial in nature. According to a money laundering risk assessment published by Canada’s Department of Finance in 2023, “transnational [organized crime groups] with a presence or ties to Canada are generally the most threatening both in terms of generating the most proceeds of crime and in the intensity of efforts to launder the proceeds.”<sup>5</sup> Many of the profit-oriented criminal activities conducted by transnational organized crime groups threaten both Canadian and global security. Examples of such activities that are strongly linked to money laundering include corruption, bribery, illicit drug trafficking, human smuggling and human trafficking.<sup>6</sup>

According to the United Nations Office on Drugs and Crime, “since criminals are motivated by profit, the key is to go after their money.”<sup>7</sup> Unfortunately, based on an evaluation conducted by the Financial Action Task Force (FATF), in Canada the “law enforcement results are not commensurate with the [money laundering] risk.”<sup>8</sup> Of the 35 money laundering charges that were federally prosecuted in 2019-2020, only four

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<sup>1</sup> “WJP Rule of Law Index,” World Justice Project, accessed April 29, 2023, <https://worldjusticeproject.org/rule-of-law-index/global>.

<sup>2</sup> “Our Approach,” World Justice Project, accessed April 29, 2023, <https://worldjusticeproject.org/about-us/overview/our-approach>.

<sup>3</sup> United States, Department of State, *International Narcotics Control Strategy Report: Volume II Money Laundering*, March 2022, 11, <https://www.state.gov/wp-content/uploads/2022/03/22-00768-INCSR-2022-Vol-2.pdf>; “International Narcotics Control Strategy Reports,” United States, Department of State, accessed April 29, 2023, <https://www.state.gov/international-narcotics-control-strategy-reports>.

<sup>4</sup> Jeffrey R. Simser, “Canada’s Financial Intelligence Unit: FINTRAC,” *Journal of Money Laundering Control* 23, no. 2 (2020): 297–298.

<sup>5</sup> Canada, Department of Finance, *Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, March 2023, 16, <https://www.canada.ca/content/dam/fin/programmes-programmes/fsp-psf/nira-neri/NIRA%20Report%20Final-%20EN.pdf>.

<sup>6</sup> Canada, Department of Finance, *Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, 18.

<sup>7</sup> United Nations, Office on Drugs and Crime, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, 2010, iii, [https://www.unodc.org/documents/data-and-analysis/tocta/TOCTA\\_Report\\_2010\\_low\\_res.pdf](https://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf).

<sup>8</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures - Canada: Mutual Evaluation Report*, September 2016, 3, <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-Canada-2016.pdf.coredownload.pdf>.

resulted in a conviction.<sup>9</sup> Therefore, this begs the question: What measures would increase the successful prosecution and detection of money laundering in Canada? By amending legislation to enable the prosecution of professional money launderers (PMLs) and improving the collection, sharing and analysis of information pertaining to trade-based money laundering (TBML), Canada can improve Canadian and global security by impeding the ability of transnational organized crime groups to launder funds. Following an overview of pertinent background information, this paper will first examine how the current structure of the *Criminal Code of Canada* makes it challenging to prosecute PMLs employed by transnational organized crime groups and propose potential solutions to strengthen the legislation. Secondly, this paper will explore TBML, one of the most significant money laundering methodologies used by transnational organized crime groups,<sup>10</sup> and how, through legislative and technological solutions, improved collection, sharing and analysis of information can aid in the detection of TBML and money laundering in general.

## BACKGROUND

The *United Nations Convention against Transnational Organized Crime* defines an *organized criminal group* as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences ... in order to obtain, directly or indirectly, a financial or other material benefit.”<sup>11</sup> An offence is considered transnational if it involves more than one state.<sup>12</sup> In 2020, there were over two thousand organized crime groups believed to be conducting operations in Canada.<sup>13</sup> Of those organized crime groups that have been specifically assessed by the Criminal Intelligence Service Canada (CISC), nearly a third are international in scope,<sup>14</sup> with connections to seventy-seven other countries.<sup>15</sup>

The threat to national and global security posed by transnational organized crime groups can be significant enough to trigger the intervention of national armed forces and military alliances, as the military is at times called upon to respond to situations in which

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<sup>9</sup> Canada, Department of Finance, *Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime: Report on Performance Measurement Framework*, March 2023, 34, <https://www.canada.ca/content/dam/fin/programs-programmes/fsp-psf/pmf-cmr/PMF-Report-eng.pdf>.

<sup>10</sup> Todd Hataley, "Trade-based money laundering: organized crime, learning and international trade," *Journal of Money Laundering Control* 23, no. 3 (2020): 653.

<sup>11</sup> United Nations, Office on Drugs and Crime, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, 2004, 5, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

<sup>12</sup> United Nations, Office on Drugs and Crime, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, 6.

<sup>13</sup> Canada, Criminal Intelligence Service Canada, *Public Report on Organized Crime in Canada: 2020*, February 18, 2021, 4, [https://publications.gc.ca/collections/collection\\_2021/scrc-cisc/PS61-39-2020-eng.pdf](https://publications.gc.ca/collections/collection_2021/scrc-cisc/PS61-39-2020-eng.pdf).

<sup>14</sup> Canada, Criminal Intelligence Service Canada, *Public Report on Organized Crime in Canada: 2020*, 2.

<sup>15</sup> Canada, Criminal Intelligence Service Canada, *Public Report on Organized Crime in Canada: 2020*, 5.

other strategies have failed or no other options are available to governments.<sup>16</sup> For example, since 2006 the Canadian Armed Forces has actively participated in Operation *Caribbe* in support of the United States' efforts to suppress drug trafficking in the Caribbean Sea and the eastern Pacific Ocean.<sup>17</sup> On a larger scale, in 2008 the European Union Naval Force, the Standing Naval Group of the North Atlantic Treaty Organization and Combined Task Force 151, in conjunction with other individual nations, deployed to counter pirate attacks in the Gulf of Aden,<sup>18</sup> which are deemed by the United Nations to be a form of transnational organized crime.<sup>19</sup> More concerning, is the impact that transnational organized crime groups can have on the integrity of states themselves. According to the World Bank, "[the] unprecedented progression of organized crime could spell the collapse of many weak states as their institutions fall prey to the associated violence."<sup>20</sup> A paper published by the United Nations University Centre for Policy Research further highlights that "[organised] crime has emerged as a major stress factor that exacerbates state fragility, undermines state legitimacy, and often lowers the incentives of armed groups to enter political settlements."<sup>21</sup> This contributes to protracted intra-state conflicts that often require a military response, such as occurred in Mali, where transnational organized crime is prevalent.<sup>22</sup>

According to Dr. Peter German, former Royal Canadian Mounted Police (RCMP) deputy commissioner, "[virtually] all organized crime is profit driven and therefore gives rise to money, generally cash, which must then be returned to the legitimate financial system in order to be used to buy additional product or taken as profit."<sup>23</sup> Money laundering is defined by the Canadian Department of Finance as "the process used by criminals to conceal or disguise the origin of criminal proceeds to make them appear as if

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<sup>16</sup> Mark Shaw, "Soldiers in a Storm: Why and How Do Responses to Illicit Economies Get Militarised?" in *Militarised Responses to Transnational Organised Crime*, eds. Tuesday Reitano, Lucia Bird Ruiz-Benitez de Lugo and Sasha Jespersen (Switzerland: Springer International Publishing AG, 2018), 12-13.

<sup>17</sup> "Operation CARIBBE," Canada, Department of National Defence, accessed April 29, 2023, <https://www.canada.ca/en/department-national-defence/services/operations/military-operations/current-operations/operation-caribbe.html>.

<sup>18</sup> Glen Forbes, "Replicating Success? A Military Response to Maritime Piracy, the Somalia Experience," in *Militarised Responses to Transnational Organised Crime*, eds. Tuesday Reitano, Lucia Bird Ruiz-Benitez de Lugo and Sasha Jespersen (Switzerland: Springer International Publishing AG, 2018), 112.

<sup>19</sup> "Awash with money - organized crime and its financial links to Somali piracy," United Nations, Office on Drugs and Crime, accessed April 29, 2023, <https://www.unodc.org/unodc/en/frontpage/2011/May/awash-with-money---organized-crime-and-its-financial-links-to-somali-piracy.html>.

<sup>20</sup> International Bank for Reconstruction and Development / The World Bank, *World Development Report 2011 Overview: Conflict, Security and Development*, 2011, 10, <https://documents1.worldbank.org/curated/en/806531468161369474/pdf/622550PUB0WDR0000public00BOX361476B.pdf>.

<sup>21</sup> Sebastian von Eisiendel et al., "Civil War Trends and the Changing Nature of Armed Conflict," United Nations University Centre for Policy Research, Occasional Paper 10, March 2017, 2, [https://collections.unu.edu/eserv/UNU:6156/Civil\\_war\\_trends\\_UPDATED.pdf](https://collections.unu.edu/eserv/UNU:6156/Civil_war_trends_UPDATED.pdf).

<sup>22</sup> United Nations Security Council, Resolution 2480, The Situation in Mali, S/RES/2480, June 28, 2019, 4-8, <http://unscr.com/en/resolutions/doc/2480>; von Eisiendel et al., "Civil War Trends and the Changing Nature of Armed Conflict," 4.

<sup>23</sup> German, Peter M, *Dirty Money - Part 2: Turning the Tide - An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019, 27-28, [https://cullencommission.ca/files/Dirty\\_Money\\_Report\\_Part\\_2.pdf](https://cullencommission.ca/files/Dirty_Money_Report_Part_2.pdf).

they originated from legitimate sources.”<sup>24</sup> Although the scale of money laundering activity is difficult to precisely quantify, the United Nations Office on Drugs and Crime estimates that between \$800 billion and \$2 trillion USD is laundered worldwide each year, which equates to between two and five percent of global gross domestic product.<sup>25</sup> As of 2020, CISC estimates that between \$45 billion and \$113 billion CAD is being laundered in Canada annually.<sup>26</sup>

In an effort to address money laundering at the international level, the FATF was created in 1989 by the G7<sup>27</sup> as an intergovernmental body, of which Canada is a member, responsible for setting international standards to prevent global money laundering.<sup>28</sup> The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) is key Canadian legislation in place to combat money laundering<sup>29</sup> and is supported by the *Criminal Code of Canada*, which establishes money laundering as an offence.<sup>30</sup> In addition to mandating reporting requirements for suspicious financial transactions, the PCMLTFA also establishes the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).<sup>31</sup> FINTRAC, which is responsible to the Department of Finance,<sup>32</sup> is Canada’s financial intelligence unit.<sup>33</sup> It collects and analyses information received and, if warranted, discloses that information to designated agencies in order to assist with the investigation or prosecution of money laundering offences.<sup>34</sup>

The primary client of FINTRAC is the RCMP,<sup>35</sup> which is Canada’s national police force. The RCMP is the organization mainly responsible for investigating money laundering offences.<sup>36</sup> Another important recipient of intelligence generated by FINTRAC is the Canada Border Services Agency (CBSA).<sup>37</sup> As CBSA is responsible for

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<sup>24</sup> Canada, Department of Finance, *Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, 7.

<sup>25</sup> “Money Laundering,” United Nations, Office on Drugs and Crime, accessed April 29, 2023, <https://www.unodc.org/unodc/en/money-laundering/overview.html>.

<sup>26</sup> Canada, Criminal Intelligence Service Canada, *Public Report on Organized Crime in Canada: 2020*, 7.

<sup>27</sup> Simser, “Canada’s Financial Intelligence Unit: FINTRAC,” 298.

<sup>28</sup> “Who we are,” Financial Action Task Force, accessed April 29, 2023, <https://www.fatf-gafi.org/en/the-fatf/who-we-are.html>.

<sup>29</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17. <https://laws-lois.justice.gc.ca/eng/acts/P-24.501/index.html>.

<sup>30</sup> *Criminal Code*, R.S.C. 1985, c. C-46, s 462.31(1), <https://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>.

<sup>31</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, s 41(1).

<sup>32</sup> Canada, Department of Finance, *Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime*, February 7, 2018, 9, <https://www.canada.ca/content/dam/fin/migration/activty/consult/amlatfr-rpcf-a-eng.pdf>.

<sup>33</sup> Simser, “Canada’s Financial Intelligence Unit: FINTRAC,” 297.

<sup>34</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, s 55(3).

<sup>35</sup> Canada, Department of Finance, *Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime: Report on Performance Measurement Framework*, 20.

<sup>36</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, June 2022, 1464, <https://cullencommission.ca/files/reports/CullenCommission-FinalReport-Full.pdf>.

<sup>37</sup> Canada, Department of Finance, *Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime: Report on Performance Measurement Framework*, 20.

facilitating the flow of goods and people across Canada's border,<sup>38</sup> it is mandated to investigate commercial trade fraud<sup>39</sup> and has a role in the investigation of money laundering offences that are trade-based.<sup>40</sup>

## PROSECUTION

Although laundering proceeds of crime is an offence under section 462.31 of the *Criminal Code*, the structure of the offence requires that the proceeds be linked with the commission of a designated offence.<sup>41</sup> The designated offence, commonly referred to as the predicate offence,<sup>42</sup> is defined by Emma Goulden, a Juris Doctor candidate at the Schulich School of Law, as the "act that makes the money dirty."<sup>43</sup> According to Goulden "one of the biggest challenges in [money laundering] investigations is collecting evidence proving the laundered money is proceeds of crime, especially when required to be proven beyond a reasonable doubt."<sup>44</sup> This is supported by the Honourable Austin F. Cullen, Commissioner of the Commission of Inquiry into Money Laundering in British Columbia, who stated in the inquiry's final report that "[over] the course of the evidentiary hearings, I repeatedly heard evidence that proving the predicate offence ... is a significant hurdle for investigators in many cases."<sup>45</sup> The difficulty in linking illicit proceeds with the predicate offence in order to satisfy the *Criminal Code* requirements for money laundering has made it particularly challenging to prosecute PMLs in Canada.<sup>46</sup>

PMLs provide a crucial service to criminals and organized crime groups who have an ongoing need to launder the proceeds of their illicit activities.<sup>47</sup> According to the FATF, the role of PMLs is to "provide expertise to disguise the nature, source, location, ownership, control, origin and/or destination of funds to avoid detection."<sup>48</sup> In turn, they receive a commission or fee for the provision of their services.<sup>49</sup> The same PMLs can

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<sup>38</sup> "Canada Border Services Agency mandate," Canada, Canada Border Services Agency, accessed April 29, 2023, <https://www.cbsa-asfc.gc.ca/agency-agence/menu-eng.html>.

<sup>39</sup> Canada, Department of Finance, *Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime Strategy: 2023-2026*, 2023, 23, <https://www.canada.ca/content/dam/fin/programs-programmes/fsp-psf/rs-sr/Regime%20Strategy-final-eng.pdf>.

<sup>40</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1462.

<sup>41</sup> *Criminal Code*, R.S.C. 1985, c. C-46, s 462.31(1).

<sup>42</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1539.

<sup>43</sup> Emma Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," *Canadian Criminal Law Review* 25, no. 2 (2020): 123.

<sup>44</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 148.

<sup>45</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1539.

<sup>46</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 123.

<sup>47</sup> Financial Action Task Force, *Professional Money Laundering*, July 2018, 6, <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/MethodsandTrends/Professional-money-laundering.html>.

<sup>48</sup> Financial Action Task Force, *Professional Money Laundering*, 6.

<sup>49</sup> Financial Action Task Force, *Professional Money Laundering*, 10.

provide their services to multiple organized crime groups.<sup>50</sup> The Department of Finance highlights in their 2023 money laundering risk assessment that “[PMLs] are of principal concern since they are often the masterminds behind large-scale money laundering schemes and are frequently used by the most powerful transnational [organized crime groups] in Canada.”<sup>51</sup> Based on testimony provided by the RCMP to the House of Commons Standing Committee on Finance, PMLs deliberately structure their operations such that they are disassociated from the predicate offence, thereby minimizing the risk of being convicted for money laundering.<sup>52</sup> According to the Department of Finance, “[large-scale], sophisticated money laundering operations rarely take place in Canada without the employ of [PMLs]. The nexus between transnational [organized crime groups] and [PMLs] is a key money laundering threat in Canada.”<sup>53</sup>

Given the critical role that PMLs play in the laundering of illicit funds in Canada, which empowers the continued operation of organized crime groups,<sup>54</sup> it is necessary that steps be taken to address the significant difficulty that currently exists in convicting PMLs for money laundering. In 2019, the Government of Canada attempted to do so by passing legislation to amend the *Criminal Code* to add an alternative requirement of recklessness to the offence of laundering proceeds of crime.<sup>55</sup> Previously, it was necessary to prove that an individual had knowledge or believed that the funds were derived from the commission of a designated offence in order to be successfully prosecuted for money laundering.<sup>56</sup> As documented in the final report for the Commission of Inquiry into Money Laundering in British Columbia, Cullen posits that the amendment will assist in bringing criminal proceedings against PMLs<sup>57</sup> and will reduce the burden for law enforcement “in circumstances where the evidence is insufficient to prove knowledge but the accused was aware of the *risk* that the property was obtained or derived from the commission of a designated offence.”<sup>58</sup>

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<sup>50</sup> Financial Action Task Force, *Professional Money Laundering*, 13.

<sup>51</sup> Canada, Department of Finance, *Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, 21.

<sup>52</sup> Canada, House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward; Report of the Standing Committee on Finance /Honourable Wayne Easter, Chair*, November 2018, 46, <https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf>.

<sup>53</sup> Canada, Department of Finance, *Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, 17.

<sup>54</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 129.

<sup>55</sup> Canada, Department of Finance, *Investing in the Middle Class: Budget 2019*, March 19, 2019, 199, <https://www.budget.canada.ca/2019/docs/plan/budget-2019-en.pdf>; Canada, Parliament of Canada, Bill C-97, *An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures*, 1st sess., 42nd Parliament, SC 2019, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-97/royal-assent>.

<sup>56</sup> Canada, Department of Finance, *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*, 35.

<sup>57</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1540.

<sup>58</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1540.



However, Goulden contends that the inclusion of recklessness in the *Criminal Code* may not have the desired effect<sup>59</sup> and that “it will take more than amending the *Criminal Code* [money laundering] provision through the addition of recklessness to effectively address PMLs.”<sup>60</sup> One of the issues identified by Goulden is that in order for a prosecutor to prove that an individual knew, believed or was reckless to the possibility that the funds they handled were derived from crime, “the prosecutor first must prove the funds [were] proceeds of crime.”<sup>61</sup> Another problem highlighted by Goulden is that the *Criminal Code* specifically makes reference to the commission of a designated offence. As a result, it may not be sufficient to prove that the funds being handled were the proceeds of any crime, but rather it would need to be proved that the crime from which the funds were derived was one of the designated offences listed in the *Criminal Code*.<sup>62</sup>

Instead of requiring proof of a designated offence to prosecute money laundering,<sup>63</sup> the Netherlands utilizes what is known as the *all-crimes approach*.<sup>64</sup> With this approach, any crime can serve as the predicate offence<sup>65</sup> and it is not necessary to prove the predicate offence.<sup>66</sup> The method, according to the Fiscal Information and Investigation Service of the Netherlands, “is about excluding a legal source of origin and reaching the conclusion and the conviction that ‘it cannot be otherwise than that the object originates from any crime’.”<sup>67</sup> In other words, “if an object is not from a legal source it has to be from an illegal source.”<sup>68</sup> In 2022, the FATF assessed the Netherlands as having “a good conviction rate of [money laundering] cases.”<sup>69</sup> Between 2016 and 2021, the Netherlands initiated over 17,000 money laundering investigations.<sup>70</sup> Of those,

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<sup>59</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 131.

<sup>60</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 133.

<sup>61</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 131.

<sup>62</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 132.

<sup>63</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures – The Netherlands: Mutual Evaluation Report*, August 2022, 61, <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-Netherlands-2022.pdf.coredownload.pdf>.

<sup>64</sup> Netherlands, Fiscal Information and Investigation Service of the Netherlands, *Indirect Method of Proof: Providing Evidence in stand-alone money laundering investigations*, April 15, 2019, 3, <https://www.amlc.eu/wp-content/uploads/2019/04/Money-Laundering-the-Indirect-Method-of-Proof-2019.pdf>.

<sup>65</sup> Netherlands, Fiscal Information and Investigation Service of the Netherlands, *Indirect Method of Proof: Providing Evidence in stand-alone money laundering investigations*, 7.

<sup>66</sup> Netherlands, Fiscal Information and Investigation Service of the Netherlands, *Indirect Method of Proof: Providing Evidence in stand-alone money laundering investigations*, 9.

<sup>67</sup> Netherlands, Fiscal Information and Investigation Service of the Netherlands, *Indirect Method of Proof: Providing Evidence in stand-alone money laundering investigations*, 9.

<sup>68</sup> Netherlands, Fiscal Information and Investigation Service of the Netherlands, *Indirect Method of Proof: Providing Evidence in stand-alone money laundering investigations*, 9.

<sup>69</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures – The Netherlands: Mutual Evaluation Report*, 46.

<sup>70</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures – The Netherlands: Mutual Evaluation Report*, 66.

approximately 53 percent resulted in money laundering charges brought to the courts.<sup>71</sup> Of the cases presented to the courts, 62 percent resulted in conviction and for which no appeal was submitted.<sup>72</sup> However, implementation of the all-crimes approach could potentially be problematic in Canada, as section 11(d) of the *Canadian Charter of Rights and Freedoms* establishes the right of an individual to be presumed innocent until proven guilty.<sup>73</sup>

Another alternative approach to effectively address the prosecution of PMLs could be that employed by the United States. In the United States, it is a criminal offence under *31 United States Code § 5324* to structure transactions to evade the reporting requirements of domestic financial institutions, nonfinancial trades or businesses, or those required for international monetary instrument transactions.<sup>74</sup> A similar offence could be considered in Canada with regards to the reporting requirements that are already in place under the PCMLTFA. The benefit of this approach is that it entirely avoids the issue of needing to prove that the funds were derived from the commission of a predicate offence.<sup>75</sup> Structuring transactions with the intent to avoid triggering reporting requirements in and of itself is the offence.<sup>76</sup> This approach was recommended for implementation by the Government of Canada by the House of Commons Standing Committee on Finance in 2018.<sup>77</sup>

In the 2023 federal budget, the Government of Canada stated that it intended on introducing amendments to the *Criminal Code* and the PCMLTFA, which will include establishing “a new offence for structuring financial transactions to avoid FINTRAC reporting.”<sup>78</sup> The government also announced that a parliamentary review of the PCMLTFA will be initiated in 2023.<sup>79</sup> This would be an excellent opportunity for the government to strengthen Canada’s anti-money laundering regime. Ensuring that Canada has the necessary legislation in place to effectively prosecute PMLs, who play a vital role in the conduct of large-scale money laundering operations used to sustain organized crime groups, is essential to preserve both Canadian and global security.

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<sup>71</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures – The Netherlands: Mutual Evaluation Report*, 66.

<sup>72</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures – The Netherlands: Mutual Evaluation Report*, 66-67.

<sup>73</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 145.

<sup>74</sup> United States, *Structuring transactions to evade reporting requirement prohibited*. 31 U.S.C. § 5324 (2021), <https://www.govinfo.gov/content/pkg/USCODE-2021-title31/pdf/USCODE-2021-title31.pdf>.

<sup>75</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 144.

<sup>76</sup> Goulden, "Professional Money Launderers in Canada: Restructuring the Criminal Code Offence to Remove Legal Obstacles to Prosecution," 142.

<sup>77</sup> Canada, House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward; Report of the Standing Committee on Finance /Honourable Wayne Easter, Chair*, 31.

<sup>78</sup> Canada, Department of Finance, *Budget 2023: A Made-in-Canada Plan*, 2023, 172, <https://www.budget.canada.ca/2023/pdf/budget-2023-en.pdf>.

<sup>79</sup> Canada, Department of Finance, *Budget 2023: A Made-in-Canada Plan*, 173.

## DETECTION

In order to effectively address deficiencies in Canada's anti-money laundering regime, it is not sufficient to only increase the percentage of successful prosecutions. Canada must also improve its ability to detect money laundering activities, in particular those of PMLs who are key actors in money laundering operations in Canada.<sup>80</sup> According to the FATF, "[effective] dismantling of PMLs requires focused intelligence collection and investigation of the laundering activities, rather than the associated predicate offences of the groups using the services of the PMLs."<sup>81</sup> FINTRAC contends that "[while] [PMLs] may be accountants, bankers or lawyers, current financial intelligence suggests that they often are owners of, or associated with, trading companies or money-services businesses."<sup>82</sup> Dr. Todd Hataley, a professor at Sir Sandford Fleming College who has researched TBML, asserts that "TBML is rapidly becoming the methodology of choice for transnational organized crime groups, and as a result the incidents of, and groups incorporating TBML, will increase in the future."<sup>83</sup> The FATF has identified three main methods of laundering money: through the financial system, physically moving funds and through the trade system.<sup>84</sup> Because of relatively successful regulation and enforcement by the international community to deter the laundering of illicit funds through the use of financial institutions and the smuggling of large volumes of cash, TBML is left as the next best option to transfer value and re-introduce illicit funds into the legitimate economy.<sup>85</sup>

The FATF defines TBML "as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origin."<sup>86</sup> Two main types of TBML schemes have been observed by FINTRAC. The first involves "falsified customs, shipping and trade finance documents."<sup>87</sup> Mechanisms which fall under this type include: "[transferring] funds to buy goods that are never shipped";<sup>88</sup> "[misrepresenting] the quality, quantity, or type of goods or services traded";<sup>89</sup> "[issuing] a single invoice but receiving multiple payments";<sup>90</sup> and "[invoicing] goods or services at

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<sup>80</sup> Canada, Department of Finance, *Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, 5.

<sup>81</sup> Financial Action Task Force, *Professional Money Laundering*, 7.

<sup>82</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, July 18, 2018, 1, <https://fintrac-canafe.canada.ca/intel/operation/oai-ml-eng.pdf>.

<sup>83</sup> Hataley, "Trade-based money laundering: organized crime, learning and international trade," 653.

<sup>84</sup> Financial Action Task Force, *Trade Based Money Laundering*, June 23, 2006, Executive Summary, <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Trade%20Based%20Money%20Laundering.pdf>. coredownload.pdf.

<sup>85</sup> Hataley, "Trade-based money laundering: organized crime, learning and international trade," 655.

<sup>86</sup> Financial Action Task Force, *Trade Based Money Laundering*, 3.

<sup>87</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, 1.

<sup>88</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, 1.

<sup>89</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, 1.

<sup>90</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, 1.

a price above or below market value.”<sup>91</sup> For example, a foreign drug cartel could sell narcotics to an organized crime group in Canada and smuggle the drugs into the country via their standard channels. In order to receive payment for the drugs, the cartel could also ship the Canadian organized crime group a commodity, which could be anything such as bananas, through legitimate means. The real value of the shipment could only be a thousand dollars; however, it would be declared as having a value of a million dollars. Once the bananas are received by the Canadian organized crime group, the million dollars is paid to the foreign drug cartel, thereby covering the cost of the bananas and the narcotics, while simultaneously laundering the funds.<sup>92</sup>

The second main type of TBML scheme observed by FINTRAC is what is often referred to as a *Black Market Peso Exchange*.<sup>93</sup> To illustrate how this type of scheme can function, the countries of Mexico and the United States are used; however, similar schemes, which also vary in complexity,<sup>94</sup> take place in other countries and currencies as well.<sup>95</sup> To begin, narcotics are smuggled by a Mexican drug cartel into the United States and sold for US dollars. Those US dollars, which remain in the United States, are then sold at a discount to a Mexican currency broker who pays the Mexican drug cartel in pesos that reside in Mexico. The currency broker then deposits the US dollars into American financial institutions, using techniques to avoid detection, such as structuring. The currency broker next transacts with a potentially legitimate Mexican importer and uses the laundered US dollars to pay for goods to be shipped from the United States to Mexico. Those goods are then sold in Mexico for pesos, and the currency broker is repaid in pesos, completing the cycle.<sup>96</sup> According to FINTRAC, one of the most common Canadian elements of Black Market Peso Exchanges occurs when currency brokers send illicit funds to Canadian entities, such as trading companies and wholesalers, who then forward the funds to other jurisdictions to pay for goods.<sup>97</sup> Currency brokers also utilize Canadian financial institutions to transfer funds between entities in different jurisdictions.<sup>98</sup>

Bryanna Gateley, an intelligence analyst supervisor for the RCMP Federal Serious and Organized Crime Border Integrity Unit in British Columbia, testified during the Commission of Inquiry into Money Laundering in British Columbia that TBML harms

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<sup>91</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, 1.

<sup>92</sup> Hataley, "Trade-based money laundering: organized crime, learning and international trade," 654-655.

<sup>93</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, 1.

<sup>94</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1452-1453.

<sup>95</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, 2.

<sup>96</sup> Hataley, "Trade-based money laundering: organized crime, learning and international trade," 656-657.

<sup>97</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, 2.

<sup>98</sup> Canada, Financial Transactions and Reports Analysis Centre of Canada, *Operational Alert: Professional money laundering through trade and money services businesses*, 2.

Canada's national security because "it can provide criminals, including terrorists or extremists, with a relatively risk-free mechanism to repatriate their proceeds of crime."<sup>99</sup> However, according to the final report of the Commission of Inquiry, it is likely that a large portion of TBML in Canada is not detected by FINTRAC and that new methods are required to identify and detect TBML.<sup>100</sup>

TBML is so challenging to detect and investigate because the various pieces of information necessary to build a case are held by a large number of different entities, both government and private, such as FINTRAC, CBSA, customs brokers, freight forwarders, transport companies and financial institutions.<sup>101</sup> Therefore, one of the necessary steps in optimizing Canada's ability to detect money laundering activities, TBML in particular, is to improve the collection, sharing and analysis of data and intelligence. In order to ensure that the various pieces of the puzzle can be brought together, such that instances of TBML can be effectively detected, both legislative and technological solutions are required.

### Legislative Solutions

The first aspect to consider is how to optimize the collection and sharing of intelligence between stakeholders. As highlighted by German, "[any] opportunity to broaden the use of the intelligence housed within [FINTRAC] would be a benefit. Unless that intelligence is used by law enforcement and other agencies, [FINTRAC] is simply a collector of information."<sup>102</sup> This is supported by the Commission of Inquiry into Money Laundering in British Columbia, which stated in its final report that "[a] repeated theme in the evidence on [TBML] was the need for better information sharing among relevant stakeholders."<sup>103</sup> In many other countries, the financial intelligence unit is integrated with the government's enforcement branch;<sup>104</sup> however, to ensure that privacy rights are protected, FINTRAC is designed to operate at arm's length from law enforcement and other designated agencies to which it can disclose information.<sup>105</sup> FINTRAC collects financial intelligence, but cannot carry out follow-on investigations based on the information received.<sup>106</sup> FINTRAC proactively discloses information to law enforcement and other designated agencies if certain thresholds are met following their analysis of information received. Alternatively, enforcement agencies can also submit a voluntary

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<sup>99</sup> Canada, British Columbia, "Proceeds at Hearing of December 10, 2020: Commissioner Austin F. Cullen," December 10, 2020, 42, <https://cullencommission.ca/data/transcripts/Transcript%20December%2010,%202020.pdf>.

<sup>100</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1462.

<sup>101</sup> Hataley, "Trade-based money laundering: organized crime, learning and international trade," 659.

<sup>102</sup> Canada, British Columbia, *An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia*, 5, <https://www.ourcommons.ca/Content/Committee/421/FINA/Brief/BR9761047/br-external/GovtOfBritishColumbia-Gaming-IR2-e.pdf#page=5>.

<sup>103</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1470.

<sup>104</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 193.

<sup>105</sup> Simser, "Canada's financial intelligence unit: FINTRAC," 301.

<sup>106</sup> Canada, House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward; Report of the Standing Committee on Finance /Honourable Wayne Easter, Chair*, 33.

information report to request information on a particular target of an investigation.<sup>107</sup> However, FINTRAC has been criticized for its ineffectiveness in generating actionable intelligence in a timely manner.<sup>108</sup> In the year spanning 2019-2020, FINTRAC received over 31 million reports, but only 2,057 disclosures were made to law enforcement agencies.<sup>109</sup>

A further challenge is that FINTRAC is currently unable to request additional information from reporting entities, such as financial institutions who flag suspicious transactions.<sup>110</sup> Simser points out that “[anyone] who has worked on a financial crime case knows that each level of disclosure broadens possibilities: is this actor connected? Is this account relevant to the scheme?”<sup>111</sup> In its 2016 evaluation of Canada’s anti-money laundering regime, the FATF stated that “[enabling] FINTRAC to request additional information from [reporting entities] would considerably facilitate and strengthen the analysis and development of financial intelligence.”<sup>112</sup> In a similar vein, the House of Commons Standing Committee on Finance heard testimony from multiple witnesses who felt that FINTRAC’s lack of direction to reporting entities regarding the type of information that is most useful to the agency is hampering the effectiveness of Canada’s anti-money laundering regime.<sup>113</sup> The House of Commons Standing Committee on Finance recommended in their 2018 report that FINTRAC’s mandate be amended to allow for the two way flow of information and that it be enabled to request follow-on information from reporting entities.<sup>114</sup>

Professors Christian Leuprecht, Arthur Cockfield and David B. Skillicorn recommend going one step further and, based on best practices of the Australian Transaction Reports and Analysis Centre, allowing financial institutions to embed members of their financial crime teams within FINTRAC to facilitate the sharing of financial intelligence. Conversely, FINTRAC could also embed their members within the banks’ financial crime teams.<sup>115</sup> A similar concept could be applied between FINTRAC and other key stakeholders, such as the RCMP and CBSA,<sup>116</sup> specifically CBSA’s Trade Fraud and Trade-Based Money Laundering Centre of Expertise, to optimize the flow of

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<sup>107</sup> Simser, "Canada’s Financial Intelligence Unit: FINTRAC," 300.

<sup>108</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 3.

<sup>109</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 3.

<sup>110</sup> Simser, "Canada’s financial intelligence unit: FINTRAC," 303.

<sup>111</sup> Simser, "Canada’s financial intelligence unit: FINTRAC," 303.

<sup>112</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures - Canada: Mutual Evaluation Report*, 42.

<sup>113</sup> Canada, House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward; Report of the Standing Committee on Finance /Honourable Wayne Easter, Chair*, 39.

<sup>114</sup> Canada, House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward; Report of the Standing Committee on Finance /Honourable Wayne Easter, Chair*, 43.

<sup>115</sup> Leuprecht, Christian, Arthur Cockfield and David B. Skillicorn, “Submission to the House of Commons Standing Committee on Finance to give consideration to the statutory review of the Proceeds of Crime and Terrorism Financing Act,” April 18, 2018, 8, <https://www.ourcommons.ca/Content/Committee/421/FINA/Brief/BR9772527/br-external/LeuprechtChristian-2018-04-18-Final-e.pdf>.

<sup>116</sup> Canada, House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward; Report of the Standing Committee on Finance /Honourable Wayne Easter, Chair*, 35.

intelligence necessary to progress investigations into money laundering and especially TBML.

Another aspect that merits consideration is the current gap that exists in the PCMLTFA which limits the collection of intelligence regarding TBML. Although freight forwarders, customs brokers and other entities that play key roles in trade transactions are well placed to detect TBML, they are not required to report suspicious transactions to FINTRAC.<sup>117</sup> Including these types of businesses as reporting entities under the PCMLTFA would provide further sources of TBML intelligence for FINTRAC and additional pieces of the puzzle to better enable the agency to identify instances of TBML.

Amending FINTRAC's mandate to allow for enhanced communication and sharing of intelligence with other stakeholders, as well as increasing the scope of entities required to report suspicious transactions to FINTRAC, would require legislative amendments to the PCMLTFA and potentially other acts. As the Privacy Commissioner of Canada highlighted to the House of Commons Standing Committee on Finance, there is a "need for rigorous legal standards around the collection and sharing of personal information, effective oversight, and minimization of risks to the privacy of law-abiding Canadians."<sup>118</sup> The challenge will be for the Government of Canada to strike a balance between respecting the rights of Canadians and ensuring that Canada's anti-money laundering regime is effective in addressing a notable threat to Canadian and global security.

In the 2023 federal budget, the Government of Canada confirmed that it intends on introducing amendments to the PCMLTFA and the *Criminal Code* to strengthen investigation, enforcement and information sharing to combat money laundering, which includes improving the sharing of financial intelligence between FINTRAC and law enforcement agencies.<sup>119</sup> While this is a positive step, further changes are required if Canada is to have a nimble financial intelligence unit that can deliver timely and actionable intelligence to law enforcement agencies.

The Government of Canada announced in the 2022 federal budget its intent to establish the Canada Financial Crimes Agency (CFCA), which would become the lead enforcement agency in the domain of financial crime.<sup>120</sup> According to the Department of Finance, CFCA "will bolster Canada's ability to quickly respond to complex and fast-moving cases of financial crime."<sup>121</sup> Currently, \$2 million CAD is allocated for the

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<sup>117</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1462.

<sup>118</sup> "FINA Committee Meeting: February 28, 2018; Evidence," Canada, Parliament of Canada, accessed May 3, 2023, <https://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/meeting-135/evidence#Int-9992953>.

<sup>119</sup> Canada, Department of Finance, *Budget 2023: A Made-in-Canada Plan*, 172.

<sup>120</sup> Canada, Department of Finance, *Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime Strategy: 2023-2026*, 14.

<sup>121</sup> Canada, Department of Finance, *Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime Strategy: 2023-2026*, 14.

development and design of the new agency.<sup>122</sup> Canada has thirteen different departments and agencies at the federal level that have a primary role in Canada's regime to combat money laundering.<sup>123</sup> Although the exact mandate and authorities of the new agency have yet to be established, it has potential to improve the sharing of intelligence if it can effectively bring together key stakeholders from across government. This is key for the high level of information sharing necessary to detect TBML.

### Technological Solutions

Assuming that the necessary legislation is in place to optimize the use of intelligence gathered by FINTRAC, an additional hurdle that must be overcome is that of technology. The trade system is still often paper based and includes a multitude of documents, such as manifests, bills of lading and invoices. The pertinent data may be contained in separate databases in formats that are not conducive to analysis. As well, the software employed by various agencies is not necessarily compatible. All of these elements make it very challenging to put together the pieces necessary to detect and investigate TBML.<sup>124</sup> According to Gateley, "information sharing at the domestic and international level is typically very ad hoc, case by case based, very target specific and very manual."<sup>125</sup> While the cost and effort could potentially be significant, as stated by Cullen in the final report for the Commission of Inquiry into Money Laundering in British Columbia, "[all] efforts should be made to ensure that government systems are at least capable of sharing relevant information when legally permissible."<sup>126</sup>

Ensuring that the software and databases of stakeholder agencies are compatible to enable the sharing of data is the first step. However, technology, to assist in the domain of data analysis, offers tremendous potential to optimize the detection of trade anomalies.<sup>127</sup> According to Dr. John Zdanowicz, Professor Emeritus of Finance at Florida International University, "the statistical analysis of information and statistical profiling is crucial in the fight against money laundering and the financing of terrorist activities."<sup>128</sup> In his paper titled "Trade-Based Money Laundering and Terrorist Financing," Zdanowicz details how analysis of a country's trade databases using statistical profiling methodologies that focus on the risk profiles of countries, customs districts, products and

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<sup>122</sup> Canada, Department of Finance, *Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime Strategy: 2023-2026*, 14.

<sup>123</sup> "Parliamentary Committee Notes: Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) Mandate," Canada, Public Safety Canada, accessed April 29, 2023, <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20221013/28-en.aspx>.

<sup>124</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1460.

<sup>125</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1461.

<sup>126</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1471.

<sup>127</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1467.

<sup>128</sup> John S. Zdanowicz, "Trade-Based Money Laundering and Terrorist Financing," in *Transnational Financial Crime*, ed. Nikos Passas (London: Routledge, 2017), 23, <https://ag-pssg-sharedservices-ex.objectstore.gov.bc.ca/ag-pssg-cc-exh-prod-bkt-ex/361%20-%203%20Zdanowicz%20Article%20Trade%20Based%20Money%20Laundering.pdf>.



transaction prices can be used to better detect TBML.<sup>129</sup> For his study, Zdanowicz used the United States Merchandise Trade Data Base, which contains information from import and export documents that are required to be filed with United States Customs.<sup>130</sup> An example of the type of discrepancy detected in the study is safety pins imported from Canada with an individual unit price of \$29.65 USD, which is remarkably high for that product.<sup>131</sup> The abnormal trade transactions identified can then be flagged for follow-on investigation. Using the methodologies listed above, Zdanowicz conducted an analysis incorporating Canadian import and export data. He found that in 2019, \$90 billion was moved *out of* Canada through a combination of undervalued exports and overvalued imports. In the same year, \$124 billion was found to have moved *into* the country via overvalued exports and undervalued imports.<sup>132</sup>

It is therefore encouraging that CBSA is in the process of implementing the CBSA Assessment and Revenue Management (CARM) project. The CARM Client Portal was initially released in May 2021 and a second release is scheduled for October 2023.<sup>133</sup> CBSA highlights that the project is intended to “modernize and streamline the process of importing commercial goods”<sup>134</sup> into Canada. As the system conducts advanced analysis of import data, it has potential to assist in the detection of TBML, such as in cases where the declared value of an item is significantly higher or lower than the typical value of previous importations of the same item.<sup>135</sup> However, as the focus of the system is the collection of duties and taxes on goods being imported into the country,<sup>136</sup> the system has limitations with regards to its suitability to flag cases of potential TBML.<sup>137</sup> One of the main factors is that CARM does not analyse export data, which is collected in the Canadian Export Reporting System and is an entirely separate platform.<sup>138</sup> Additionally, CARM does not compare the price of goods in Canada with that in other countries.<sup>139</sup>

Given that only a small percentage of shipping containers entering Canada are physically inspected<sup>140</sup> and resources for follow-on investigation are limited, use of

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<sup>129</sup> Zdanowicz, “Trade-Based Money Laundering and Terrorist Financing,” 23.

<sup>130</sup> Zdanowicz, “Trade-Based Money Laundering and Terrorist Financing,” 5.

<sup>131</sup> Zdanowicz, “Trade-Based Money Laundering and Terrorist Financing,” 8.

<sup>132</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1468.

<sup>133</sup> “CARM: CBSA Assessment and Revenue Management project,” Canada, Canada Border Services Agency, accessed April 29, 2023, <https://www.cbsa-asfc.gc.ca/prog/carm-gcra/menu-eng.html>.

<sup>134</sup> Canada, Canada Border Services Agency, “CARM: CBSA Assessment and Revenue Management project.”

<sup>135</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1463.

<sup>136</sup> Canada, Canada Border Services Agency, “CARM: CBSA Assessment and Revenue Management project.”

<sup>137</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1463.

<sup>138</sup> Canada, British Columbia, “Proceeds at Hearing of December 10, 2020: Commissioner Austin F. Cullen,” 55-56.

<sup>139</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1463.

<sup>140</sup> “Marine Container Examination Process,” Canada, Canada Border Services Agency, accessed April 29, 2023, [https://www.cbsa-asfc.gc.ca/security-securite/mts\\_smc-eng.html](https://www.cbsa-asfc.gc.ca/security-securite/mts_smc-eng.html).

analysis software that incorporates methodologies such as those proposed by Zdanowicz can greatly assist in identifying suspicious international trade transactions and the associated actors.<sup>141</sup> Additionally, CBSA is not the only organization that can benefit from the use of analysis software. According to Leuprecht, Cockfield and Skillicorn, “[in] conjunction with its partners, FINTRAC should devote more resources to data analysis of the big data generated by cross-border financial transactions to identify relationships between facts that would otherwise be obscure.”<sup>142</sup> As FINTRAC receives millions of reports annually, there is a significant role for analysis software to augment the work being done by human analysts. However, to truly harness the potential of analysis software in identifying TBML, it is necessary to move away from stovepipes. Instead of having different agencies each employing software to analyse their own data, it is essential that data be shared between agencies for a combined analysis so that links, between financial transactions and trade data for example, can be established. Given the transnational nature of TBML, ideally data sharing would be maximized between countries as well, to enable an even more comprehensive analysis. The sharing of information and data is key in successfully identifying TBML, for which the various pieces of the puzzle are held by different stakeholders.

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<sup>141</sup> Canada, British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report / Austin F. Cullen, Commissioner*, 1469.

<sup>142</sup> Leuprecht, Cockfield and Skillicorn, “Submission to the House of Commons Standing Committee on Finance to give consideration to the statutory review of the Proceeds of Crime and Terrorism Financing Act,” 8.

## CONCLUSION

As highlighted by the Department of Finance, “[transnational] organized crime groups ... and [PMLs] are the key money laundering threat actors in the Canadian context.”<sup>143</sup> Because the activities of transnational organized crime groups are largely driven by profit, they have an on-going need to launder the proceeds of their illicit activities.<sup>144</sup> Therefore, amending legislation to facilitate the prosecution of PMLs for money laundering offences and improving the collection, sharing and analysis of information to better detect TBML, one of the most significant money laundering methodologies used by transnational organized crime groups,<sup>145</sup> will enable Canada to improve Canadian and global security by impeding the ability of transnational organized crime groups to launder the profits generated by their crimes. The Government of Canada has signalled its intent to take further steps to address the prevalence of money laundering in Canada, including introducing amendments to the *Criminal Code* and the PCMLTFA. However, more needs to be done, particularly in the domains of information sharing and data analysis. The upcoming parliamentary review of the PCMLTFA and establishment of the CFCA offer opportunities to further strengthen Canada’s anti-money laundering regime.

This paper has explored only several of the many aspects of money laundering in Canada. As criminals are constantly seeking innovative ways in which to launder the profits of their crimes, emerging domains such as Financial Technology (FinTech), in particular the use of virtual currencies, merit further examination. The anonymity and high level of transferability provided by virtual assets makes them attractive to criminals as they can be employed in multiple facets of the money laundering process to elude law enforcement.<sup>146</sup>

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<sup>143</sup> Canada, Department of Finance, *Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, 5.

<sup>144</sup> German, *Dirty Money - Part 2: Turning the Tide - An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, 27-28.

<sup>145</sup> Hataley, "Trade-based money laundering: organized crime, learning and international trade," 653.

<sup>146</sup> Canada, Department of Finance, *Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, 49, 67.

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