



TRANSPARENCY
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CANADA

Establishing a Canadian Financial Crime Agency

White Paper

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Summary

Over the last two decades Canada has been criticized at home and internationally for its weak enforcement record in response to money laundering, foreign bribery, sanctions enforcement, and other criminal offences that could fall under the broad category of ‘financial crime’.

Because of national and international attention on ‘financial crimes’, since 2021, through mandate letters and budgets, the Government of Canada has stated its intention to establish a Canadian Financial Crimes Agency (CFCA). Though the original scope of the CFCA was unclear, the government has since indicated that the CFCA should focus on investigations, enforcement, convictions, and asset seizures. In the 2023 budget, the government narrowed the scope of ‘financial crime’ to money laundering.

In this white paper, Transparency International Canada (TI Canada) considers how the proposed CFCA could contribute to Canada’s anti-corruption efforts. While TI Canada is supportive of the creation of greater institutional capacity to respond to financial crime, it proposes a broader scope for a CFCA than what the government appears to be moving towards.

First, TI Canada recommends the government consider extending the scope of ‘financial crime’ within the enforcement mandate of the CFCA to include the predicate crimes which create the impetus for money laundering. Expanding the scope of 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..

Second, TI Canada recommends that the CFCA be both an enforcement body as well as a coordination body. On enforcement, TI Canada suggests that the CFCA take action on as broad a mandate as possible on “financial crime” with an initial operational focus on anti-money laundering. A coordination function for the CFCA should also start broad, taking the expansive scope of what could be considered ‘financial crime’.

In examining how a coordination body could work in Canada, this white paper examines the examples of the Australian Criminal Intelligence Commission and the UK National Crime Agency, and then draws on both to develop recommendations for the CFCA’s coordination functions based on good practice. Finally, this white paper provides a non-comprehensive list of the agencies responsible for enforcing the legislation targeting the offenses noted in the United Nations Convention on Anti-Corruption.

This white paper is not intended to be a conclusive argument, but rather to contribute to the ongoing conversation and analysis that Government of Canada and anti-corruption experts are having about how to improve Canada’s ability to fight corruption.

Introduction

In Budget 2022, the Government of Canada announced its intention to establish a national “Canada Financial Crimes Agency” (CFCA). The government proposed providing \$2 million to Public Safety Canada throughout 2022 and 2023 for the purposes of developing and designing the agency stating:

“To bolster Canada’s ability to quickly respond to complex and fast-moving cases of financial crime, Budget 2022 announces the government’s intent to establish a new Canada Financial Crimes Agency, which will become Canada’s lead enforcement agency in this area.”ⁱ

The Budget 2022 announcement followed directions in Public Safety Minister Mendicino’s mandate letter from the Prime Minister, stating:

“Accelerate work to establish a dedicated unit to investigate all forms of major financial crime and consider options to strengthen laws and investigative powers relating to financial crimes. Concurrently, you will work to bring forward a proposal for the establishment of the Canada Financial Crimes Agency, whose sole purpose will be to investigate these highly complex crimes.”ⁱⁱ

In the 2023 budget, the government is more direct with what it intends of the CFCA, stating:

The CFCA will become Canada’s lead enforcement agency against financial crime. It will bring together expertise necessary to increase money laundering charges, prosecutions and convictions, and asset forfeiture results in Canada. These actions will address the key operational challenges identified in both domestic and international reviews of Canada’s AML/ATF Regime.ⁱⁱⁱ

While the government’s statements provide a rationale for a CFCA and a desire for it to establish focused and timely action to address ‘financial crime’, Public Safety Canada can still work with a broad canvas to conceptualize and develop the agency. The CFCA’s scope is to lead enforcement, investigate, and prosecute financial crime – or as Budget 2023 more specifically points towards, money laundering - in Canada. At this early stage, several critical questions remain unanswered:

- What does ‘financial crime’ mean?
- What are the jurisdictional limitations of such an agency operating in the Canadian federation to either lead enforcement of, or investigate financial crime, or to do both?
- What is the rationale for a new agency as opposed to bolstering the resources or mandate of an existing agency?

To create an effective agency, well integrated into Canada's political structure, the government needs to answer these questions. This white paper does not attempt to answer these questions in-depth, nor to stay in the confines of the goals set out in Budget 2023. Rather, the paper endeavors to unpack these questions in an expanded perspective of 'financial crime' and to provide guided analysis of the underlying issues posed by these questions.

The structure of the paper is as follows:

- **Section One** reflects on why the government is calling for a new agency to lead enforcement in the area of financial crime.
- **Section Two** examines the term 'financial crime', and how the government can think about setting parameters, even outside a focus directly on money laundering.
- **Section Three** reviews what the jurisdictional issues may be for establishing a new agency at the federal level and in federal-provincial-territorial dynamics that has a role to investigate financial crime.
- **Section Four** reviews the possibilities and limits of a new national enforcement body for 'financial crime'.
- **Section Five** reviews other international examples of national 'financial crime' agencies.
- **Section Six** explores the possibility of the government establishing a coordination agency of financial crime instead of an enforcement agency, and provides good practice on doing so.

Given the direction that the federal government is moving in, in modifying the scope of the CFCA, Transparency International Canada, using an expansive understanding of financial crime, recommends the government create a broad national *coordinating* body with an investigative component focused on anti-money laundering.

Canada has had mixed success in certain areas of financial crime enforcement, for example anti-corruption,^{iv} sanctions,^v and anti-money laundering.^{vi} In each of these examples, there is a limited enforcement record and a lack of transparency of enforcement mechanisms and, until recently, results^{vii}. In our view, 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. 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 are involved in 'financial crime' enforcement. A starting point would be examining the effectiveness of the many departments and agencies that work as civil/administrative regulators in ensuring compliance and combating

'financial crime'.^{viii} For many, their compliance efforts are stymied due to lack of further criminal investigation and prosecution. This defeats the purpose of specific and general deterrence of financial crime. See example in Figure 1 below with only a few federal agencies selected.

Figure 1

Federal Department or Agency	Regulator or supervisor of civil or administrative law – provides assistance and awareness of requirements, examines or audits, can issue penalties and generally ensures compliance	These departments or agencies may refer cases of serious cases of non-compliance to:	Specialist prosecution unit from the Public Prosecution Service of Canada (PPSC) ^{ix}
Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)	Yes. Information is published on violations. ^x	FINTRAC has no internal criminal investigative unit. Cases are referred to the police. Until recently, little if any publicly available outcomes on cases referred to police.	No
Canada Revenue Agency (CRA)	Yes. Information on the number of audits conducted, penalties assessed and other results of civil non-compliance are not published in the CRA's Annual Report. ^{xi}	Cases are referred to an internal criminal investigations division. Information is available publicly on cases prosecuted. ^{xii}	Yes
Canada Border Services Agency (CBSA)	Yes. No published list of administrative penalties issued	Cases are referred to an internal Criminal Investigations Division. Some results are publicly available on cases. ^{xiii}	With few exceptions, the CBSA does not have access to a dedicated PPSC subject-matter expert prosecutor assigned to the prosecution of criminal cases referred by the CBSA.
Employment and Social Development Canada (ESDC)	Yes	Cases are referred to an internal criminal investigative unit. Cases are referred to the police.	No

No anti-corruption agency or regulator of compliance for the Corruption of Foreign Public Officials Act (CFPOA)	None at present	No regulator in place. Royal Canadian Mounted Police (RCMP) exclusively investigates.	No
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A national coordinating body with a mandate to develop a national ‘financial crime’ strategy, priorities and action plan with defined measurable outputs, results and outcomes that is mandatorily comprehensive in bringing together as broad as possible a coalition of stakeholders and agencies across all levels of government in a whole-of-governments (federal/provincial/territorial/municipal) approach to combating ‘financial crime’; and with a mandate specific to inter-agency information sharing, training, statutory disclosure obligations that encourage transparency, an investigative support function, and a crime-specific escalation requirement, will increase the flow of information regarding investigative priorities, techniques, and provide oversight and focus over the investigation and enforcement of some of Canada’s most complex crimes. The recommendation for a national coordinating body are further detailed in Section 5.

Section 1: Why Did the Government Call for the CFCA?

Situating the government's call for a financial crime enforcement agency is achieved by firstly reviewing the various stakeholders associated with what could be considered 'financial crime' enforcement, and secondly, examining internationally recognized examples of Canada's vulnerability to money-laundering and two of its predicate offences (collectively, the "vulnerability examples"):

1. Securities fraud; and
2. Corruption.

Stakeholders

The CFCA must provide a collaborative framework for stakeholders to continue to play a role in combating financial crime. A myopic viewpoint, focusing on police efforts alone, will discount the role of Canada's various stakeholders in preventing financial crime and/or escalating potential civil/administrative violations to investigative agencies and prosecutors.

There are eight broad categories of stakeholders:

1. Elected officials in municipal, territorial, provincial, and federal governments;
2. Administrative bodies/regulators established by municipal, territorial, provincial, and federal governments (e.g., regulators and supervisors of civil/administrative statutes);
3. Internal criminal investigative units of government departments and agencies (e.g., CRA, CBSA);
4. Major municipal, provincial police and the Royal Canadian Mounted Police;
5. Provincial, territorial and federal prosecutors;
6. Civil forfeiture authorities at the provincial and territorial level (where they exist)
7. Private sector actors (e.g. reporting entities under the PCMLTFA such as Canadian financial institutions); and
8. Civil Society (e.g. non-governmental organizations, academia, and journalists).

In considering the stakeholders that are tasked with enforcing civil legislation aimed at rooting out for example money laundering and securities fraud, there are examples of administrative bodies enforcing laws to mitigate risks of non-compliance. Each stakeholder has a means to determine non-compliance and corresponding liabilities.

For example, as illustrated in Figure 1:

- FINTRAC has a supervisory unit for ensuring reporting entity compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the PCMLTFA).

FINTRAC has the power to assess administrative monetary penalties. However, FINTRAC does not have a dedicated internal criminal investigative unit or specialist prosecutors to which it may refer serious cases of non-compliance with the PCMLTFA. Rather, these cases are referred to police, who may or may not pursue an investigation, much less have a subject matter specialist as a prosecutor to lay charges and prosecute the case.

- In the case of securities violations and fraud, the Ontario Securities Commission (OSC) has both an administrative unit to assess compliance and a criminal investigative unit that also may jointly work with an Integrated Market Enforcement Team (IMET) (detailed further).
- There is an evident governance gap with respect to the vulnerability example related to corruption. No administrative body at any level of government is charged with ensuring compliance and enforcing existing legislation or investigating violations of anti-corruption legislation. In Canada, rooting out corruption falls solely within the authority of the police. The lack of an administrative body to act as a first line of defence, may be the underlying cause for Canada's poor anti-corruption enforcement record to date.

The interplay between the administrative bodies and criminal investigative bodies whose purpose “is the determination of penal liability”^{xiv} has largely been ignored by the ‘financial crime’ enforcement community. Each of these administrative bodies play a fundamental role in rooting out non-compliance. They serve as the first line of defense. They are key players in preventing and deterring financial crime, and for referring suspected violations to internal investigative units or to police for further assessment.

Examples of Canada's vulnerability to financial crime

Money Laundering

Canada’s anti-money laundering and terrorist financing regime has been under scrutiny from international and domestic observers for the past decades. In 2016, Canada received generally poor grades from the Financial Action Task Force (FATF)^{xv}, the international standard setting body for anti-money laundering and anti-terrorist financing. In 2016, with the release of the *Panama Papers*, the term ‘snow washing’ was coined to describe Canada’s money-laundering problems. The term is premised on international intermediaries selling Canada to their clients as a good destination for funds due to easy corporate secrecy, low oversight, and the fact that no one generally thinks of Canada as a secrecy jurisdiction^{xvi}. As a Toronto lawyer explained ‘bring your dirty money to Canada and it will be cleaned like the pure white snow’^{xvii}. In 2019, Prime Minister Trudeau acknowledged that money-laundering is a national problem^{xviii}. Money laundering was put into focus in British Columbia following revelations about the ‘Vancouver Model’ of money laundering, particularly connected to B.C. casinos and real estate. The B.C. government eventually called for the Commission of Inquiry into Money Laundering in British Columbia led by former B.C. Supreme Court justice, Austin Cullen (‘The Cullen Commission’).

While Commissioner Cullen’s mandate focused on B.C., his final report released in 2022 provided plenty of scathing critiques of the federal government’s handling of money laundering^{xix}.

Securities Fraud

Securities regulation is also a challenge for Canada. There is no national securities regulator in Canada. Rather, each province and territory has their own regulator. While there is general harmonization of securities laws across the jurisdictions, provincial securities regulators use a mix of enforcement tools, including administrative, regulatory (quasi-criminal), and criminal proceedings with varying levels of effectiveness.

This capital markets vulnerability has been largely addressed through the creation of IMETs, which are led by the RCMP to investigate criminals using capital markets to harm Canadians. The IMET Initiative is a partnership with the Public Prosecution Service of Canada, provincial and municipal forces and securities commissions and market regulators.

Corruption

Money laundering is not the only crime on which Canada has faced national and international critiques and challenges. Canada’s commitment to the OECD Convention on Combating Bribery of Foreign Public Officials, the CFPOA, could be seen to address financial crime. Just like critiques of low anti-money laundering enforcement, Transparency International has given Canada a “limited enforcement” score of the CFPOA in Exporting Corruption reports^{xx}.

In the 2011 OECD Phase 3 Review Report of Canada, the reviewers highlighted the Working Group on Bribery’s observations on the “unique challenges to the effective coordination of CFPOA investigations and prosecutions due to the shared role of the federal government and the provinces in the enforcement and prosecution of criminal law”.^{xxi} The Working Group assessed that increased coordination between provincial and federal levels of enforcement and suggested that Canada “consider establishing a coordinating role for one of the principal agencies responsible for CFPOA enforcement”.^{xxii} This gap in coordination could be picked up by the new CFCA.

Under Canadian law, anti-corruption enforcement remains orphaned in the sense that there is no dedicated agency whose mandate is to ensure compliance and enforce the CFPOA as a regulator, although the RCMP has exclusive jurisdiction for criminal investigation. It appears to us that this is a significant gap structurally in a compliance continuum where businesses and other organizations need assistance, awareness and regulatory obligations on how to prevent corruption in the first place.

Cross-Agency Collaboration

Cross-agency collaboration is a necessary part of Canada's governance framework. Multiple agencies fulfill different roles within one administrative process. For example, imports and exports of goods into and from Canada are governed by the CBSA, Global Affairs Canada (GAC), and various other government departments (e.g. Health Canada, the Canadian Nuclear Safety Commission, the Canadian Food Inspection Agency). Enforcing compliance of these processes requires further collaboration, for example export control violations may be investigated by GAC, the CBSA, and the RCMP.

While current agencies tasked with addressing 'financial crime' are discussed below, Canada has had bodies focused on financial crime enforcement, and there is a current agency with a coordination mandate, the Financial Crime Coordination Centre (FC3). The FC3 is a five-year pilot project that the government dedicated \$24 million to establishing in 2019. Its aim is to strengthen inter-agency collaboration and capacity building, specifically on money laundering. It delivers its work through:

- training and expertise development;
- analysis of emerging money laundering threats and responses;
- legislative and policy initiatives;
- knowledge sharing on enforcement tools and resources; and
- providing partner support and best-practice resources.^{xxiii}

In Canada, criminal enforcement task forces, such as the Integrated Proceeds of Crime Units (that no longer exist) and the Combined Forces Special Enforcement Units, between police and other stakeholders, have improved enforcement and illustrated the importance of broad collaboration among agencies. The IMET, discussed below, has also had success in facilitating collaboration between the RCMP and provincial securities regulators.

Section 2: What Is ‘Financial Crime’?

Until Budget 2023 the fundamental unknown element of the CFCA is the scope of its jurisdiction: what is ‘financial crime’? In Budget 2023, the government replaced financial crime with money laundering. In taking this narrow approach, the government may not be adequately capturing the vulnerabilities of predicate offences such as securities fraud and corruption. Here, we explore the possibilities of an expanded perspective on financial crime.

The RCMP generally defines ‘financial crime’ to include “proceeds of crime”, “money laundering”, “serious fraud”^{xxiv}, and “capital market fraud”.^{xxv} Although not explicitly defined as ‘financial crime’, the RCMP lists the International Anti-Corruption Coordination Centre and the International Foreign Bribery Taskforce in its partnerships for combating financial crime. The RCMP’s limited definition illustrates the confusion associated with the scope of ‘financial crime’. For example, bribery does not always involve a direct financial element. It may involve undue influence. However, the business advantages obtained by bribery achieve a direct, or indirect, financial result.^{xxvi}

In thinking through a broad perspective, the government has options to help refine the scope of financial crime, for example, publishing a list of enumerated offences (criminal and regulatory), similar to Public Services and Procurement Canada’s *Ineligibility and Suspension Policy*.^{xxvii} The difficulty with a circumscribed approach, is that certain agencies, where enhanced collaboration and communication would serve the public interest, are excluded from this model. The best example being securities regulatory agencies, which may choose to exercise their jurisdiction to investigate bribery offences as misrepresentations in the financial documents filed by reporting issuers.^{xxviii} Specific collaboration between securities enforcement agencies and the RCMP on CFPOA offences would serve the public interest, considering that the RCMP has the exclusive authority to issue charges under the CFPOA.^{xxix}

Another example of an opportunity for increasing specific and general deterrence in combating financial crime would be to ensure more serious cases of tax law violation (e.g., cases of gross negligence penalties) are referred to the CRA’s Criminal Investigations Directorate.

Another option for the government to consider may be to provide the CFCA with a broad mandate to investigate crimes that result in certain outcomes, such as destabilizing Canada’s or international global economies, threatening the integrity of government institutions, and or destabilizing democracy. The downside to failing to clarify the jurisdiction of the CFCA is risking transparency in its operational mandate, for example, failing to delineate which organizations are required to coordinate with the agency. Additionally, at a practical level, the conferral of a broad outcomes-based mandate on the CFCA might require the creation of additional offences to support its enforcement efforts.

Section 3: Jurisdiction

As a federal state, enforcement of what could be considered ‘financial crimes’ in Canada is shared among the federal, provincial, territorial and municipal governments. Enforcement is also shared between administrative bodies that are creatures of statute and law enforcement. A ‘financial crime’ violation may result in a non-criminal administrative monetary penalty under one regime and incarceration (for individuals) or criminal fines under another. Cross-jurisdictional crimes are often enforced in parallel, and in other circumstances a specific jurisdiction has been carved out either under the law or by policy.

For example, FINTRAC has authority over specific reporting entities,^{xxx} which may be subject to administrative monetary penalties or, following a referral to police for investigation of serious non-compliance, they may be subject to prosecution and incarceration should they violate offences listed in the PCMLTFA.^{xxxi} While not a case of overlapping jurisdiction, the arrangements that are made (e.g. Memoranda of Understanding), and/or the expectations of regulators for the pursuit of criminal investigation by police of serious non-compliance in their areas of competence need to be reviewed (at least at the federal level) to ensure some degree of standardization and effective enforcement at the earliest stages of criminal non-compliance.

A jurisdictional overlap was highlighted by the OECD when it recommended that the government take measures to encourage all provincial securities commissions to sanction books and records and other securities violations associated with CFPOA misconduct, and to share this information with the RCMP and other relevant investigative authorities.^{xxxii}

This issue of overlapping jurisdictions, and lack of follow-through on cases referred for criminal investigation by regulators, and the potential scope as to what constitutes a ‘financial crime’ creates an opportunity for the proposed CFCA to review and recommend strengthening the current roles, processes and landscape of agencies to better enforce financial crime. For example, the proposed CFCA could review the government-established agencies that are responsible for enforcing Canada’s legislation aimed at crimes listed in the United Nations Convention Against Corruption (UNCAC) and determine that these departments and agencies have a role to play in combating financial crime. Appendix A provides a non-comprehensive list of those agencies.

Section 4: The Importance of a National Enforcement Body

Should the government choose to legislate on an enforcement function for the CFCA, it must carefully circumscribe the role of the agency to avoid redundancy between existing enforcement agencies who investigate and levy charges for offences that may fall under the CFCA's mandate. Despite TI Canada's recommendation that the government take a broad perspective on what constitutes 'financial crime', we agree with the commitments in Budget 2023 that, from an enforcement perspective, it makes sense for the CFCA to focus initially, for operational purposes, on anti-money laundering enforcement. However, TI Canada encourages the government to ensure the CFCA's enforcement mandate is as broad as possible for the investigation of 'financial crime'.

As noted above, compliance with anti-money laundering legislation and regulations is enforced through an administrative regulatory regime under the purview of FINTRAC. What appears to have been missing in the past is a systematic approach for investigation and prosecution of offences under the PCMLTFA by police who have received non-compliance disclosures from FINTRAC compliance officers. From 2005 to 2021-22^{xxxiii}, approximately 85 cases of non-compliance with the PCMLTFA (when it is extensive or if there is little expectation of immediate or future compliance^{xxxiv}) have been forwarded to police. While the number of charges laid since 2014-15 is increasing^{xxxv}, the number of convictions remains extremely low. Between 2014 and 2020 only one federal conviction or guilty plea has occurred for a PCMLTFA offence.^{xxxvi}

The CFCA could play a role in investigating and bringing these serious and extensive non-compliance cases to prosecution as well as addressing complex money laundering cases. Given that criminal enforcement of money laundering is undertaken by provincial and municipal police and the RCMP, who enforce section 462.31 of the *Criminal Code* provision - laundering proceeds of crime – an initial focus on these two aspects of financial crime will allow the CFCA to develop its internal processes to perfect its enforcement and coordinating role.

However, section 462.31 of the *Criminal Code* does require that prosecutors establish a predicate offence for money laundering. Accordingly, expanding the enforcement mandate to include predicate offences will likely 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.

In conjunction with the CFCA taking on an enforcement role, the government will need to build up the capacity of the PPSC to successfully prosecute offences listed in the PCMLTFA and the money laundering offences in the *Criminal Code*. This means hiring more federal prosecutors, ensuring they understand the PCMLTFA and its regulations as well as the provisions of the

Criminal Code related to money laundering, they obtain the correct forensic and financial training, ensuring they have third party expertise at their disposal to prepare for prosecutions, and ensuring that individual success is not measured by the breadth of a prosecutor's subject matters. The latter will encourage prosecutors to develop expertise in prosecuting specific offences with the hope that this experience compounded over time will result in a well-developed prosecutorial skill set for complex financial crimes.

Section 5: The Importance of a National Coordinating Body

A primary aim of a national coordinating body is to identify and assess the problem of ‘financial crime’ and recommend an action plan to mitigate the problem. It can do this by:

- working with a broad array of stakeholders (see Section 1);
- developing a national strategic plan with priorities that have expected accountabilities, results, outcomes and performance measures;
- fostering cooperation and collaboration;
- building training capacity and expertise;
- participating in senior government meetings and where appropriate,
- eliminating redundancy between enforcement agencies with overlapping jurisdictions.

From an operational perspective, a mandatory membership, mandatory information sharing (subject to the consideration of highly sensitive investigations), and an escalation mechanism for the investigation of specific crimes will allow the multiple agencies that cover financial crimes to share investigation progress, investigative techniques, allow the proper resources to be deployed to support enforcement, and maintain specialized knowledge.

A coordinating body would increase collaboration by facilitating information between agencies in different levels of government, and it could provide a unified voice to governments to identify pain points within the financial crime landscape. For example, in the United States, the Financial Crimes Enforcement Network (FINCEN) was created to support federal, state, local, and international law enforcement by analyzing reporting required under the *Bank Secrecy Act*.^{xxxvii} This type of analysis may reduce redundancy by streamlining observations about similar issues appearing under a reporting mechanism.

National criminal enforcement bodies in parliamentary democracies can serve as valuable reference points for Canada, such as the United Kingdom’s National Crime Agency (NCA) and the Australian Criminal Intelligence Commission (ACIC). Both financial crime regulators provide for cross-jurisdictional collaboration, are national in scope, and have transparent organizational structures. Each of these regulators have similar legislative authority, but differ in their legal construction and enforcement responsibilities.

ACIC (Australian Criminal Intelligence Commission)

In 2016, an amalgamation of the Australian Crime Commission and CrimTrac, a former agency with the Attorney General’s department which aimed to facilitate the integration of national policing information, established the ACIC to house Australia’s national criminal intelligence and information capabilities into one agency, which now has offices in every Australian state and territory.^{xxxviii}

The ACIC established a number of multi-agency task forces, which are led by relevant government and law enforcement agencies.^{xxxix} For example, the Criminal Assets Confiscation Taskforce is led by the Australian Federal Police and liaises with the Australian Taxation Office, Australian Transaction Reports and Analysis Centre and the Australian Border Force.^{xl} Executive oversight of the ACIC is performed by the Attorney-General, the Commission for Law Enforcement Integrity, and the Australian National Audit Office, amongst others.

The ACIC is required to report on its performance under the *Public Governance, Performance and Accountability Act 2013*. The FY 2022 report highlights a number of analytical and tactical intelligence products produced by the ACIC, and the effect of that intelligence (i.e. disruptions of criminal entities).^{xli} Notably, the ACIC has set "performance criteria" and is required to assess whether it has met that criteria and to comment on its results. In 2022, it met 9 of 14 criteria and partially met 4 of 14 criteria. A separate report by the Chair of the ACIC Board is required under the *Australian Crime Commission Act 2002*. ACIC, its website includes an organizational chart, priority crime themes, task forces, and information regarding government reporting requirements under other statutory regimes.

NCA (National Crime Agency)

In May 2013, the United Kingdom established the NCA, which is an independent non-ministerial government department that is accountable to the Home Secretary, and through the Home Secretary, to Parliament.^{xlii} Generally, the NCA provides expertise to law enforcement, provides investigation support, and intelligence, and works to tackle illicit finances (fraud, money laundering and bribery, corruption, and further financial and non-financial crimes).^{xliii}

The NCA is a creature of statute^{xliv} and a framework document provides the roles and responsibilities of the NCA, the Home Secretary, and other government departments.^{xlv} The Home Secretary determines strategic priorities for the NCA, and among other responsibilities, appoints the Director General of the NCA. The Director General may enter into Memoranda of Understanding or partnership agreements with other government departments or UK police forces.^{xlvi}

The NCA has a duty to be open, transparent and accountable^{xlvii} and it is required, by law, to publish information on its functions, threats from serious and organized crime, general information about the NCA, priorities and performance, NCA spending, and summary records of NCA Board meetings.^{xlviii} The NCA is also subject to external and independent scrutiny, and scrutiny by Parliament.

An example of the level of transparency into the functioning of the NCA is illustrated by its public reporting. Each year, the NCA is required to publish an Annual Plan^{xlix} and an Annual Report^l. The Annual Plan sets out priorities for the year and provides operational commitments on how those priorities will be delivered. The NCA is guided by an "outcomes based" framework, which ensures that it is measuring its impact rather than recording its activities. The Annual Report

includes the NCA's governance framework, including its sub-committee memberships and provides an analysis of the NCA's overarching performance.

Section 6: The Proposed National Coordinating Body

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 maximize collaboration between regulators as well as ensure existing financial crime agencies and prosecutorial bodies work together efficiently and collaboratively with all stakeholders. The definition of ‘financial crime’ will dictate what agencies and stakeholders would be required to liaise with the future body.

Considering the UK and Australian examples, and Canada’s unique federal challenges, good practice for a CFCA that focuses on coordination could be the following:

1. Enhancement of communication channels between existing agencies and their counterparts.
 - a. Requiring representatives from relevant agencies attend annual meetings.
 - b. Requiring representatives from relevant agencies attend semi-annual sub-committee 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. 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.
6. Provide investigations support, including use of cutting-edge technology.
7. 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 standardized reporting framework which is easier to benchmark).

8. Provide regular updates to Parliament, and the general public, regarding targeted financial crimes and governance.
9. 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' mandate.
10. 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 organizational 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, organizational 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.

APPENDIX “A”

Canadian Enforcement Agencies

The following is a non-comprehensive list of the agencies responsible for enforcing the legislation targeting the offenses noted in the United Nations Convention on Anti-Corruption:

- **CRIME / ENFORCEMENT**
 - Royal Canadian Mounted Police
 - Anti-Money Laundering Unit
 - Sanctions Unit
 - *Corruption of Foreign Public Officials Act* Enforcement Unit
 - Unité permanente anticorruption
 - Provincial and municipal police forces responsible for enforcing the following sections of the *Criminal Code*:
 - 119 – Bribery of Judicial Officers
 - 120 – Bribery of Officers
 - 121 – Frauds on the Government
 - 122 – Breach of Trust by Public Officers
 - 123 – Municipal Corruption
 - 124 – Selling or Purchasing Office
 - 125 – Influencing or negotiating appointments or dealing in offices
 - 462.31 – Laundering proceeds of crime
 - Public Prosecution Service of Canada / Department of Justice Canada
 - Deputy Attorney General of Canada
 - Provincial Attorney Generals
 - Crown Prosecutors
- **PROCUREMENT**
 - Public Services and Procurement Canada
- **FINANCE**
 - Office of Superintendent of Financial Institutions
 - Provincial financial services regulatory authorities
 - Financial Transactions and Reports Analysis Centre of Canada
 - Provincial Securities Commissions
 - Canadian Securities Administrators
 - New Self-Regulatory Organization of Canada
 - Canadian Commercial Corporation

- **TAXATION**
 - Canada Revenue Agency

- **SANCTIONS AND EXPORT CONTROLS**
 - Royal Canadian Mounted Police
 - Canada Border Services Agency
 - Global Affairs Canada
 - Sanctions Policy and Operations Coordination Division
 - Trade Controls Bureau
 - Export Development Canada

- **ETHICS AND TRADING IN INFLUENCE**
 - Office of the Commissioner of Lobbying of Canada
 - Conflicts of Interest and Ethics Commissioner of Canada
 - Municipal and provincial lobbying, integrity and ethics commissions
 - Treasury Board Secretariat

Endnotes

ⁱ Department of Finance Canada, Budget 2022: A Plan to Grow Our Economy and Make Life More Affordable, at 140-41. Available online : <<https://www.budget.canada.ca/2022/report-rapport/chap5-en.html#2022-3>> , at 140-141.

ⁱⁱ Office of the Prime Minister, Minister of Public Safety Mandate Letter, 16 December 2021. Available online: <<https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-public-safety-mandate-letter>>

ⁱⁱⁱ Department of Finance Canada Budget 2023: A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future, at 175. Available online : <<https://www.budget.canada.ca/2023/report-rapport/chap5-en.html#a7>>, at 175.

^{iv} OECD, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Canada (March 2011), p. 59. Available Online: < <https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Canadaphase3reportEN.pdf>>. See also: Global Affairs Canada, Canada's Fight against Foreign Bribery, Twenty-third Annual Report to Parliament Implementation of the Organisation for Economic Co-operation and Development (OECD) *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the Enforcement of the *Corruption of Foreign Public Officials Act*, (September 2021 – August 2022). Available online: <<https://www.international.gc.ca/transparency-transparence/bribery-corruption/2021-2022.aspx?lang=eng>>. See also: Dell, Gillian & Andrew McDermitt, Exporting Corruption 2022: Assessing enforcement of the OECD Anti-Bribery Convention, (Transparency International) pp. 36-38. Available Online: <https://images.transparencycdn.org/images/2022_Report-Full_Exporting-Corruption_EN.pdf>.

^v There have only been two prosecutions with respect to sanctions violations (one of which was acquitted due to lack of evidence), and one publicly reported guilty plea. See *R. v. Yadegari*, 2011 ONCA 287, *R. v. Kalai*, 2020 NSSC 351, CTV, Company charged for shipping goods to Iran (April 14, 2024). Available Online: <<https://calgary.ctvnews.ca/company-charged-for-shipping-goods-to-iran-1.1774953>>.

^{vi} Cullen Commission Final Report, *Executive Summary*, at p. 3. Available Online: <<https://cullencommission.ca/com-rep/>>.

^{vii} The Government of Canada published a comprehensive status of its performance in the area of anti-money laundering and anti-terrorist financing for the first time in March 2023. Department of Finance. Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime Performance Measurement Framework. (2023). Available online: <<https://www.canada.ca/en/department-finance/programs/financial-sector-policy/canadas-anti-money-laundering-and-anti-terrorist-financing-regime-report-performance-measurement-framework-released-march-2023.html>>

^{viii} A starting point could be the identification of agencies and departments within the Community of Federal regulators that are either targets for financial crime or who actively are engaged in combating financial crime. <<https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/community-federal-regulators.html>>

^{ix} To the best of the knowledge of the authors

^x <<https://fintrac-canafe.canada.ca/pen/4-eng>>

^{xi} Based on the 2021-2022 Departmental Results Report <<https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/departmental-performance-reports/2021-22-departmental-results-report.html>>

^{xii} <<https://www.canada.ca/en/revenue-agency/news/newsroom/criminal-investigations-actions-charges-convictions.html>>

^{xiii} Based on Canada Border Services Agency 2021–22 Departmental Results Report. Page 27. <<https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/dpr-rmr/2021-2022/report-rapport-eng.pdf>>

^{xiv} Warren James Jarvis v. Her Majesty The Queen <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2015/index.do>>

^{xv} FATF, Anti-money laundering and counter-terrorist financing measure: Canada Mutual Evaluation Report (September 2016). Available Online: < <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-canada-2016.html>>

- ^{xvi} Transparency International Canada, Snow-Washing, Inc.: How Canada is marketed abroad as a secrecy jurisdiction (2022). Available Online: < <https://static1.squarespace.com/static/5df7c3de2e4d3d3fce16c185/t/6231830a2f62a849a5da0eb4/1647411983132/TIC-Report-Snow-Washing-Inc-2MB.pdf>>
- ^{xvii} Toronto Star, Snow Washing: Canada is the world's newest tax haven (January 25, 2017). Available Online < https://projects.thestar.com/panama-papers/canada-is-the-worlds-newest-tax-haven/?_gl=1*76vspi*_ga*NzAwNTgyNjUuMTY3NTcwOTAxNQ..*_ga_6FZFMVVVWN*MTY3NzY5Nzg1NC43LjEuMTY3NzY5Nzk3OC42MC4wLjA.>
- ^{xviii} Global News, Justin Trudeau says B.C. money laundering report is 'extremely alarming' (May 10, 2019). Available Online < <https://globalnews.ca/news/5264258/trudeau-bc-money-laundering-comments/>>
- ^{xix} Commission of Inquiry into Money Laundering in British Columbia: Final Report (June 2022). Available Online: < <https://cullencommission.ca/files/reports/CullenCommission-FinalReport-Full.pdf>>
- ^{xx} Exporting Corruption 2022: Assessing enforcement of the OECD Anti-Bribery Convention (October 2022). Online Transparency International): <https://images.transparencycdn.org/images/2022_Report-Full_Exporting-Corruption_EN.pdf>
- ^{xxi} OECD, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Canada (March 2011), at 29. Available Online : < <https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Canadaphase3reportEN.pdf>>.
- ^{xxii} OECD, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Canada (March 2011), at 26. Available Online : < <https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Canadaphase3reportEN.pdf>>.
- ^{xxiii} Public Safety Canada, Anti-Money Laundering. Available online: < <https://www.publicsafety.gc.ca/cnt/cntrng-crm/nt-mny-lndrng/index-en.aspx>>
- ^{xxiv} Royal Canadian Mounted Police, "Types of Financial Crime". Available Online: < <https://www.rcmp-grc.gc.ca/en/economic-financial-crime/types-financial-crime>>. Serious fraud is defined to include fraud cases of "provincial, national or international significance" which include elements of: Substantial value and/or financial losses; Substantial impact on victims; High degree of criminal sophistication; Requirement for special investigative expertise; Municipal, provincial, or federal government are victims; and It is in the public or national interest to pursue an investigation. The RCMP provides examples of serious fraud as corporate fraud, investment fraud, securities fraud, mass marketing fraud, and credit fraud.
- ^{xxv} Capital Market Fraud is defined to include, insider trading, market manipulation, pump and dumps, illegal distribution, false prospectus.
- ^{xxvi} CFPOA, s. 4.
- ^{xxvii} Public Services and Procurement Canada, *Ineligibility and Suspension Policy*. Available Online: <<https://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>>.
- ^{xxviii} See e.g. In the Matter of Katanga Mining Limited et al, Available Online: <https://www.osc.ca/sites/default/files/pdfs/proceedings/set_20181214_katanga-mining.pdf>.
- ^{xxix} S.C. 1998, c. 34. We note that a number of security regulatory agencies across Canada have the RCMP embedded within their enforcement units (referred to as Joint Security Offences Teams), wherein the RCMP and regulatory enforcement teams work together and collaborate.
- ^{xxx} FINTRAC, "Who Must Report". Available Online: <<https://www.fintrac-canafe.gc.ca/reporting-declaration/info/re-ed-eng>>.
- ^{xxxi} S.C. 2000, c. 17, Part 5.
- ^{xxxii} OECD, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Canada (March 2011) at p. 60. Available Online: <<https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Canadaphase3reportEN.pdf>>.
- ^{xxxiii} Estimate based on FINTRAC Annual Reports from 2005 to 2021-22
- ^{xxxiv} FINTRAC Annual Report 2021-22. Page 30. <<https://fintrac-canafe.canada.ca/publications/ar/2022/ar2022-eng.pdf>>
- ^{xxxv} Department of Finance Canada. March 2023. Page 17. Canada's Anti-Money Laundering and Terrorist Financing Regime: Report on Performance measurement Framework. <<https://www.canada.ca/en/department-finance/programs/financial-sector-policy/canadas-anti-money-laundering-and-anti-terrorist-financing-regime-report-performance-measurement-framework-released-march-2023.html>>

^{xxxvi} *Idem*. Page 10.

^{xxxvii} Financial Crimes Enforcement Network., «Law Enforcement Overview». Available Online: <<https://www.fincen.gov/index.php/resources/law-enforcement-overview>> .

^{xxxviii} *Australian Crime Commission Act 2002*.

^{xxxix} *ACIC, supra*, Task Forces.

^{xl} *ACIC, supra*, Criminal Assets Confiscation Taskforce.

^{xli} Australian Criminal Intelligence Commission, Annual Report (2021-2022). Available Online: <<https://www.acic.gov.au/publications/annual-reports/australian-criminal-intelligence-commission-annual-report-2021-22>>.

^{xlii} United Kingdom National Crime Agency, website, Available Online: <<https://www.nationalcrimeagency.gov.uk/>>. [“NCA”]

^{xliii} NCA, *supra*, “How we tackle illicit finances”

^{xliv} Revised Framework Document for the National Crime Agency (May 2015). Available Online: <<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/29-nca-framework-document/file>> at p. 3 [“*Framework Document*”]. See also the *Crime and Courts Act*.

^{xlv} *Framework Document, supra* at p. 4.

^{xlvi} *Framework Document, supra* at pp. 5 and 8.

^{xlvii} *Crime and Courts Act 2013*, c. 22 s. 6.

^{xlviii} There are certain exemptions for publishing information (discharge of the NCA’s functions, national security, health and safety of any person, commercial interests of the NCA or any person, jeopardizing the diplomatic/international relations with foreign governments, or if publishing the information is contrary to law). *Framework Document, supra* at p. 14.

^{xlix} National Crime Agency, Annual Plan 2022-2023. Available Online: <<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/594-nca-annual-plan-2022-23/file>>.

^l National Crime Agency, Annual Report (2021-2022). Available Online: <<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/606-national-crime-agency-annual-report-2021-2022/file>>.