



OPACITY

Why Criminals Love Canadian Real Estate
(And How to Fix It)

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Transparency International Canada (TI Canada) is the Canadian chapter of Transparency International. Since its foundation in 1996, TI Canada has been at the forefront of the national anti-corruption agenda. In addition to advocating legal and policy reform on issues such as whistleblower protection, public procurement and corporate disclosure, we design practical tools for Canadian businesses and institutions looking to manage corruption risks, and serve as an anti-corruption resource for organizations across Canada.

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Canadians for Tax Fairness is a non profit organization whose aim is to raise public awareness of crucial issues of tax justice and to change the way Canadians talk about tax. We advocate for fair and progressive government policies aimed at building a strong and sustainable economy, reducing inequalities and funding quality public services. Canadians for Tax Fairness believes in the development and implementation of a tax system, based on ability to pay, to fund the comprehensive, high-quality network of public services, and programs required to meet our social, economic and environmental needs in the 21st century.

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Publish What You Pay Canada is part of the global Publish What You Pay movement of civil society organisations working to make oil, gas and mineral governance open, accountable, sustainable, equitable and responsive to all people. As a movement, we envision a world where all people benefit from their natural resources, today and tomorrow. Launched in 2008, PWYP-Canada today numbers 15 members and realises its work through advocacy, research and public outreach to promote and achieve enhanced disclosure of information about extractive industry operations, with an emphasis on revenues and contracts.

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Foreword

In 2016, Transparency International Canada revealed in its report *'No Reason to Hide: Unmasking the anonymous owners of Canadian companies and trusts'* that no one really knew who owned almost half of Vancouver's most valuable properties, as the true owners were hiding behind shell companies, trusts and nominee owners. That report helped ignite public and political awareness about money laundering in Vancouver real estate, with subsequent investigative reports exposing how the 'Vancouver Model' of money laundering filters overseas and domestic criminal funds into the city's real estate. This flow of illicit funds has contributed to a variety of issues including escalation of property prices, housing affordability crisis, and facilitation of criminal activity in Vancouver and elsewhere in Canada. It has all been facilitated by very weak rules over corporate transparency and beneficial ownership of assets in Canada. Since the release of the report, the British Columbia government has been taking steps to address this challenge including proposing a registry of beneficial owners for property.

Vancouver is not the only Canadian target for criminals who want to hide dirty money in real estate. In this report, we turn our attention to Canada's largest property market, Toronto. Torontonians are facing similar pressures as Vancouverites with mounting property costs, a housing affordability crisis, and increasing homelessness, despite many properties remaining empty. While some of these vacant properties might sit as investments for legitimate money, as this report will show, a worrying amount slips past regulators who do not really know who owns what, nor how much is being used for money laundering and tax evasion.

Canada's lack of beneficial ownership transparency makes our entire country an attractive destination for money laundering or 'snow washing.' The Panama Papers showed that this term was used internationally to promote Canada as a place where dirty money could be cleaned like the pure white snow. Since 2016, Transparency International Canada, Canadians for Tax Fairness and Publish What You Pay Canada have partnered to investigate the country's opaque beneficial ownership problem further and to provide recommendations to solve it.

We hope this report will further discussion about the extent of money laundering in our real estate markets and the solutions that all levels of government can take to end snow washing in Canada.



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Executive Summary

Criminals need homes too. It might not come as a surprise to hear that local crooks buy their houses with the proceeds of crime. But property is also an appealing asset class for individuals looking to launder and invest large sums of dirty cash, and there are few countries quite as welcoming as Canada.

As an investment, real estate is relatively stable and offers significant returns – characteristics that are universally attractive. However, the Canadian real estate market has other conditions that particularly appeal to money launderers: weak regulation, lax enforcement, and the ability to hide in plain sight through anonymous ownership structures.

Opaque ownership has been cited as the most important single factor facilitating money laundering in real estate.¹ Canada's property registers allow beneficial owners to remain anonymous by using companies, trusts, or nominees (straw men) to hold title to property. Using one or more of those three structures, individuals can hide their ownership from law enforcement, tax authorities, and private sector entities with anti-money laundering (AML) obligations.²

Money launderers use that anonymity to take advantage of significant gaps in Canadian AML regulations in the real estate sector. Reporting entities such as real estate agents, brokers and developers are not required to conduct beneficial ownership or source-of-funds checks on buyers, and transactions can be structured through lawyers who are exempt from AML legislation. Where they do have obligations, real estate industry players have a dismal record of compliance – something Canada's regulatory agencies have done little to remedy.

To make matters worse, our enforcement record advertises that laundering dirty money is a low-risk endeavour in Canada. Money laundering cases rarely go to trial, and often collapse when they do. This appears to have contributed to a rise in professional money laundering operations across the country.

Domestic criminals have known for decades that Canada is 'la la land' for financial crime,³ but word has spread internationally too. As the case studies in this report show, Canadian real estate has attracted the attention and money of corrupt government officials and organized crime syndicates from across the globe.

Opaque Ownership in the Greater Toronto Area

To determine the prevalence of opaque ownership in Canada's largest housing market, we analyzed more than 1.4 million residential property transactions in the Greater Toronto Area (GTA) dating back to 2008. Because there is no data on nominee owners and trusts, our analysis focused on properties owned through corporate entities.

Since 2008, \$28.4 billion in GTA housing has been acquired through companies – the vast majority of which are private entities with owners who can remain anonymous. Those companies have made \$9.8 billion in cash purchases and taken out \$10.4 billion in mortgages from unregulated lenders. Companies are more than three times as likely as individuals to purchase real estate without a mortgage (this amounts to nearly 35% of corporate purchases) and when they do take out financing, most go to private lenders. In all, at least \$20 billion appears to have entered the GTA housing market in the past 10 years without oversight from FINTRAC and the financial institutions tasked with conducting AML due diligence on beneficial owners and source of funds.⁴ There is no way of knowing how much additional money, through trusts and nominees, has entered the market without undergoing AML due diligence or reporting.

Policy Solutions

The good news is that opaque ownership and the other conditions that make our real estate markets vulnerable to money laundering can be addressed with relatively straightforward policy reforms. For starters, Canada's federal, provincial and territorial governments should:

- Require beneficial owners of real estate to identify themselves to land title authorities, and make that information available to the public in an open data format. Disclosure of beneficial ownership should be a prerequisite for any property transfer.
- Require all companies and trusts registered or transacting in Canada to identify their beneficial owners, and publish that information in a central publicly available registry.
- Amend the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its regulations to include other real estate-related businesses such as unregulated mortgage lenders, mortgage brokers, land registries, title and mortgage insurers, 'for sale by owner' companies, promoters and redevelopers.
- Require all Designated Non-Financial Businesses and Professions (DNFBPs) to collect and verify beneficial owners, and conduct due diligence on Politically Exposed Persons (PEPs) and Heads of International Organizations (HIOs).
- Develop made-in-Canada versions of Geographic Targeting Orders and Unexplained Wealth Orders to provide authorities with new tools to gather intelligence and seize unlawfully acquired real estate.

A complete list of our recommendations is set out at the end of this report.

Terms and Abbreviations

AML: Anti-money laundering

AMLD4 / AMLD5: European Union's Fourth and Fifth Anti-Money Laundering Directives, respectively

Beneficial owner: The natural person who owns, controls, or exercises ultimate effective control over a legal entity, arrangement or property.

CRA: Canada Revenue Agency

DNFBP: Designated Non-Financial Businesses and Professions. DNFBPs are a category of reporting entities with obligations under the PCMLTFA and its regulations, which include real estate brokers and representatives, real estate developers, casinos, BC notaries, accountants, and dealers in precious metals and stones. Under the PCMLTFA and its regulations, DNFBPs are not required to identify and verify the accuracy of beneficial owners, politically exposed persons and heads of international organizations.

FATF: Financial Action Task Force

FINTRAC: Financial Transactions and Reports Analysis Centre of Canada

FSP: Financial service provider. FSPs include all non-DNFBP entities with obligations under the PCMLTFA, namely: financial institutions (including banks, credit unions, caisses populaires and trust and loan companies), life insurers, securities dealers and money services businesses.

G8: Group of eight leading advanced economies (now known as the G7)

G20: Group of 20 major economies

GTA: Greater Toronto Area

HIO: Head of International Organization. This term is used in the context of Canadian AML regulations to designate individuals who lead organizations such as the International Monetary Fund (IMF) or World Bank, which are established by governments through treaties.

Money laundering: The act of disguising the source of money or assets derived from criminal activity. The money laundering process involves three stages: placement – depositing the funds into the financial system; layering – separating the illicit money from its source through transactions intended to hide its origin; and integration – converting the illicit funds into a seemingly legitimate form.

Nominee: An individual appointed to control an asset, legal entity or arrangement on behalf of a beneficial owner. Nominees can be family members, friends or business associates (informal nominees), or professionals such as lawyers or corporate service providers (formal nominees).

PCMLTFA: Proceeds of Crime (Money Laundering) and Terrorist Financing Act. Enacted in 2001, the PCMLTFA and its regulations form the basis of Canada's AML regime.

PEP: Politically Exposed Person, defined in the context of Canadian AML regulations as 'an individual who is or has been entrusted with a prominent public function'.

RCMP: Royal Canadian Mounted Police

STR: Suspicious Transaction Report

TI Canada: Transparency International Canada

Trust: A legal arrangement whereby one party (a trustee) manages property placed in trust by another party (settlor) for the benefit of another (beneficiary). The same individual or entity can assume two or more of these roles, depending where the trust is formed.



Background

On the surface, Canada seems an unlikely haven for money laundering and organized crime. Our streets are safe, our economy is stable and our public officials are (mostly) honest. Yet our laws and regulations are full of cracks that can be exploited by criminals, and they appear to be doing so in growing numbers.⁵

Canadian companies have been favoured for international tax evasion schemes,⁶ and foreign intelligence agencies now refer to the 'Vancouver Model' of using underground banking networks to launder drug money and facilitate capital flight from China.⁷ Thanks to a handful of investigative reporters and the brazen use of the courts by some alleged criminals to recover debts, rays of light have been cast on some of the various 'Made-in-Canada' money laundering methods – or 'snow-washing' – that have infiltrated our financial and real estate markets.⁸

The money laundering schemes identified in those reports have some innovative variations, but they share common attributes. A near ubiquitous characteristic is the use of companies, trusts and nominees (straw men) to conceal the involvement of the schemes' beneficiaries.⁹ Another common thread is real estate – a sector of the economy that has been identified by government and law enforcement as 'highly vulnerable' to money laundering.¹⁰ While the proceeds of crime can be laundered through any strand of the economy, there are several characteristics of the real estate sector that make it particularly attractive for money laundering. The Financial Action Task Force (FATF) estimates that real estate accounts for nearly a third of criminal assets confiscated worldwide, reflecting its appeal for money laundering.¹¹

A lack of data and the illicit nature of money laundering make it impossible to quantify the extent to which dirty money has infiltrated the Canadian housing market or artificially inflated prices.¹² Nevertheless, it is clear that real estate is attractive to criminals with money to launder, and basic economics suggests that prices increase in response to added demand. Money launderers also have perverse incentives to overpay or overstate the value of property in some cases, artificially inflating



benchmark prices.¹³ By allowing criminals to invest in Canadian real estate, we are exacerbating crises in cities where housing is unaffordable and in short supply.

In 2016, TI Canada published a report that examined the degree of beneficial ownership transparency in Canada. That report, *No Reason to Hide: Uncovering the Anonymous Owners of Canadian Companies and Trusts*, revealed that Canadian companies and trusts are exceptionally vulnerable to misuse for criminal ends. The report included a cursory study of opaque ownership in Canada's real estate market, and the risks of that opacity. The study found that nearly half of Vancouver's most valuable homes were held through companies, trusts or nominees, obscuring their true owners.

Drawing on that 2016 study, we now examine how Canadian real estate is vulnerable to money laundering and underlying crimes such as tax evasion and fraud. We review what is currently being done to prevent dirty money from infiltrating our housing market, and consider why those measures are failing. We conclude by recommending how lawmakers can more effectively deter criminals from using Canadian real estate to launder and enjoy the proceeds of crime.

The central case study in this report focuses on residential property in the Greater Toronto Area (GTA). Using land registry data, we analyzed a decade of transactions – including 1.4 million sales and 1.3 million mortgages – to determine the extent of opaque ownership and financing in the city's housing market. That analysis identified billions of dollars in property acquired by anonymous owners with money of unknown origin.

It is important to note that opacity is a risk factor and does not equate to evidence of money laundering. Rather, it provides an opportunity for dirty money to enter the legitimate economy undetected. Unfortunately, the ease with which one can set up opaque structures to hold assets and access financing in Canada attracts individuals with much to hide.

The Shell Company Next Door: Anonymous Ownership of GTA Housing

Toronto consistently ranks among the world's most livable cities, yet paradoxically it is also one of the least affordable.¹⁴ As of 2018, Toronto was the 10th most unaffordable housing market and had the third worst housing 'bubble risk' globally.¹⁵ The impacts are felt far and wide: many investment properties sit vacant, eroding neighbourhoods¹⁶ and contributing to a shortage of rental housing¹⁷; rising prices push workers out of the city and exacerbate crowded commutes¹⁸; and leveraged purchases by resident homebuyers have driven household debt to record levels.¹⁹

Faced with a crisis situation, the provincial and federal governments have begun to intervene with measures such as the 2017 non-resident speculation tax²⁰ and audits of known real estate speculators in the GTA.²¹ Yet without accurate and available data on the true owners of property, those efforts will fall short.²² Finance Minister Bill Morneau has said himself that "good policy is impossible without good data," and we could not agree more.²³ As this report shows, a good AML regime is also impossible without good data.

With that in mind, we set out to shed some light on the extent of opaque ownership and financing in Canada's largest housing market. The data shows that billions of dollars in GTA housing has been acquired by anonymous owners using funds of unknown origin. Hiding behind companies, these owners make cash purchases or borrow from unregulated private lenders, avoiding scrutiny from financial institutions with AML controls and reporting obligations.

“The data shows that billions of dollars in GTA housing has been acquired by anonymous owners using funds of unknown origin.”

Methodology and Limitations

We analyzed more than 1.4 million residential property transactions in the GTA dating back to 2008. Comparing purchases by corporate entities to purchases by individuals, we looked for trends over time, across municipalities and by purchase price. We also analyzed nearly 1.3 million mortgages over the same 10-year period to determine how much lending activity is unregulated, and how many purchases were made without external financing.

Since no data exists that can identify nominee owners or trusts that hold property in Ontario, this study focuses on only one of three opaque forms of ownership: the use of companies to hold title. As the case studies in this report and previous research by TI Canada suggest, nominees and trusts are widely used to hide beneficial ownership in Canada. Opaque ownership in the GTA is therefore likely much higher than we can demonstrate.

The data for this study was provided by Teranet, which holds an exclusive licence to administer Ontario land title records. While we would like to share the aggregate data so that it can be analyzed further and our methodology can be tested, we are unable to do so under the terms of our agreement with Teranet. Those terms also prevent us from publishing information on specific properties, despite the underlying data being publicly available.

Key Findings

- **Corporate entities have acquired \$28.4 billion in GTA housing since 2008.** The vast majority of those companies are privately owned, with no information on their beneficial owners.
- **\$9.8 billion in GTA housing was acquired by companies through cash purchases during that period**, much of it bypassing statutory AML checks on source of funds and beneficial owners.²⁴
- **From 2008 to 2018 more than \$25 billion in residential mortgages²⁵ in the GTA were provided by unregulated lenders²⁶ with no AML reporting obligations.** Nearly 50% of those unregulated mortgages were issued to corporate buyers, despite corporate purchases accounting for less than 4% of total transactions.



Cash Purchases

For the purposes of this report, 'cash purchases' refer to real estate transactions that do not involve external financing. Cash purchases can be made with banknotes, electronic fund transfers, bank drafts and cheques, among other forms of payment.

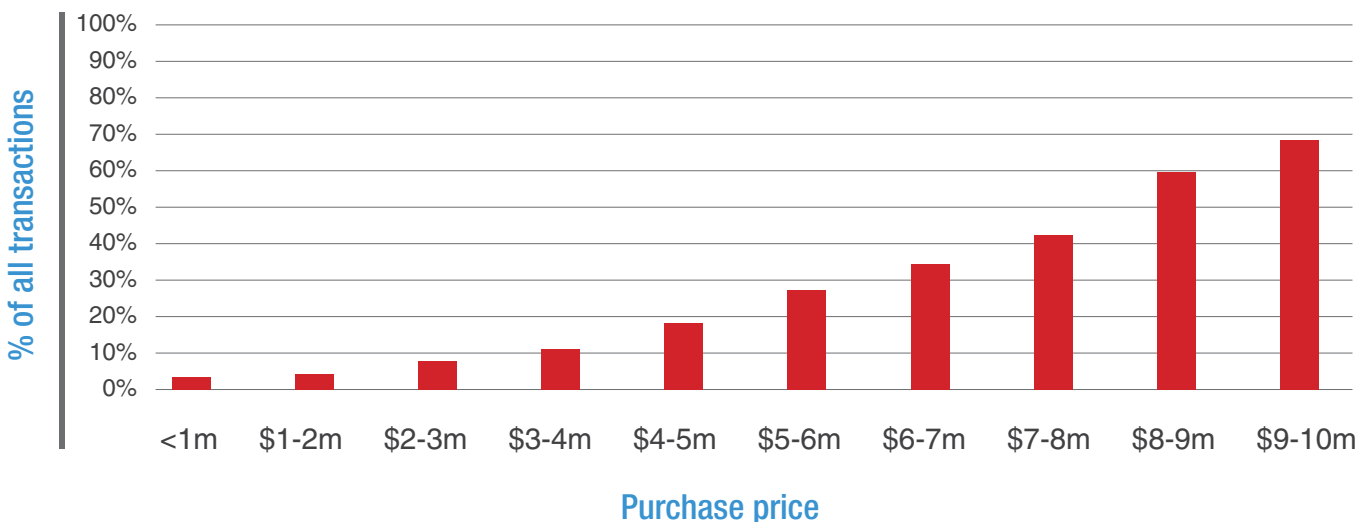
For individuals looking to buy real estate undetected, corporations are extremely effective camouflage. Companies can register title to property in Ontario without disclosing any information about their directors, owners or even their country of registration. All that needs to be disclosed is the company's name and an address – a post office box or a lawyer's address will suffice. In cases where the company cannot be located, it is practically impossible for the police or tax authorities to investigate suspicious activity.

Between 2008 and 2018, \$28.4 billion in residential property across the GTA was acquired through companies. Approximately 22,920²⁷ entities bought 51,498 properties, accounting for nearly 4% of total residential transactions during that period. The vast majority of those companies are privately owned entities with no available information on their beneficial owners.²⁸

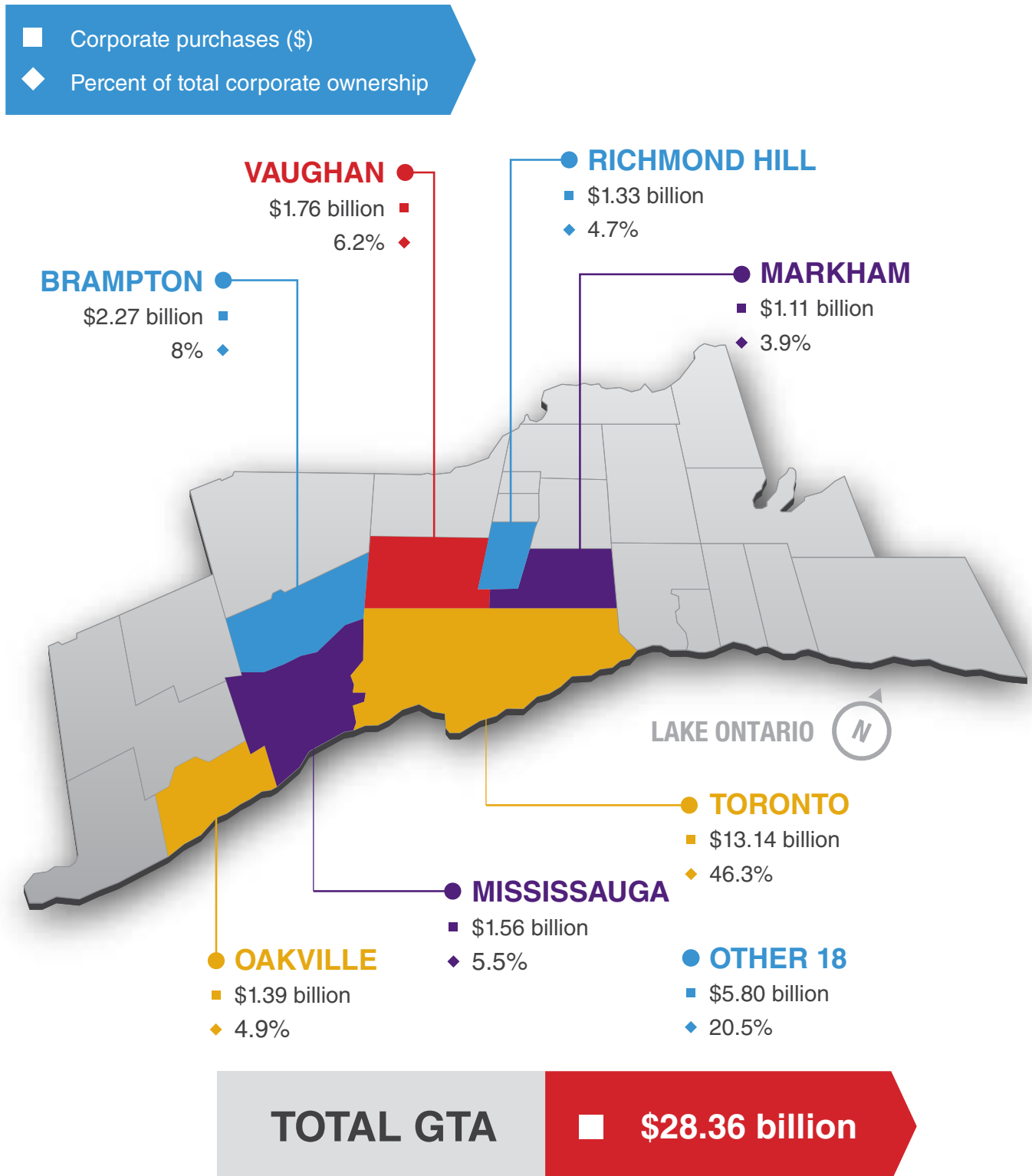
Corporate ownership becomes much more common with high-value real estate. In this respect, buyers of luxury real estate in the GTA behave much like their counterparts in other cities like London, New York and Vancouver. As **Figure 1** shows, the more expensive a property, the more likely it is owned through a company.²⁹ Only 3.5% of residential properties bought for under \$1 million have corporate owners. Yet if a home was purchased for \$7-10 million, there is a 54% chance it is owned through a company.

“The more expensive a property, the more likely it is owned through a company.”

Figure 1: Corporate Ownership by Property Value



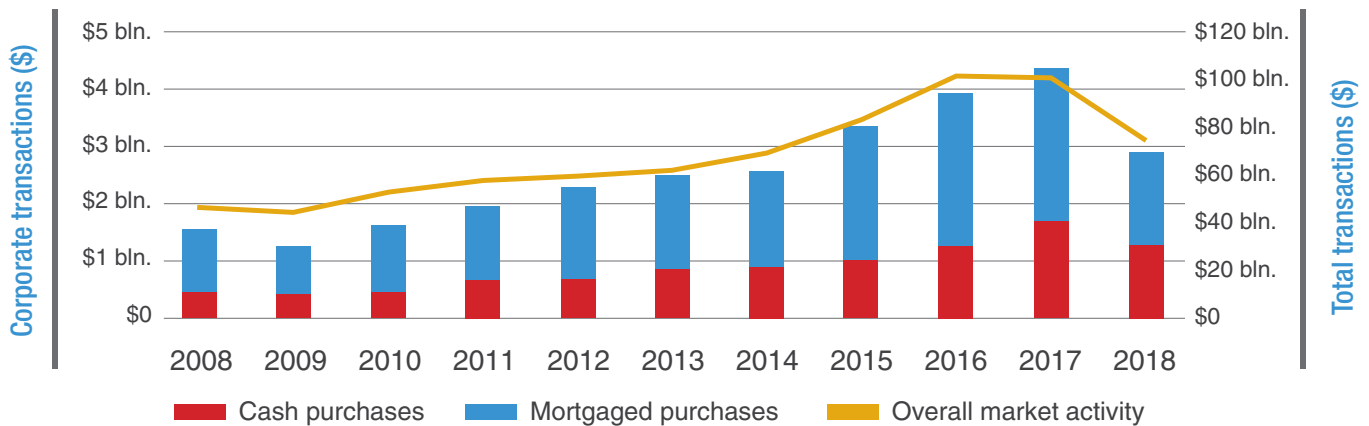
We analyzed the data across each of the GTA's 25 municipalities³⁰ and found no statistically significant differences in opaque ownership between them. Around 80% of corporate purchases in the past decade occurred in the following municipalities, which aligns with overall market activity during that period.



Cash Purchases

The data shows that companies are far less likely than individuals to take out mortgages. Of the 51,498 properties acquired through corporate entities between 2008 and 2018, 35% percent were cash purchases (i.e. had no mortgages). That compares to 11% of properties bought by individuals. Cash purchases by companies have been rising steadily over the past decade and accounted for nearly half of corporate purchases in 2018 (see **Figure 2**).

Figure 2: Corporate Purchases: Cash v Mortgaged



Buying property without a mortgage enables a buyer to avoid the scrutiny of financial institutions with statutory AML obligations. Funds may transit through one or more regulated entities, but they are unlikely to identify suspicious activity from such limited information.

This is precisely the type of activity that the US Treasury Department recently tried to curb through Geographic Targeting Orders (GTO, see page 46), which require the beneficial owners of companies paying cash for residential property in some US cities to identify themselves to the government. That information is not shared with the public, and GTOs did not impact the limited liability or legal tax advantages of holding property through a company. Nevertheless, within months of the regulation taking effect in 2016, cash purchases by companies dropped by 70-95%.³¹ The dramatic impact of GTOs suggests that many buyers who make cash purchases through companies do so in order to conceal their identities from law enforcement and tax authorities.

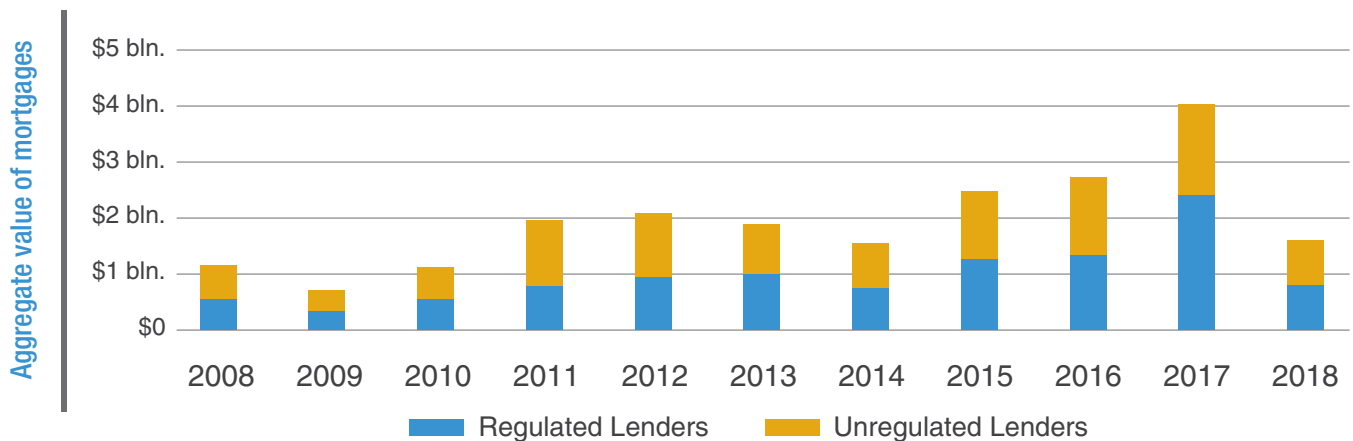
“Cash purchases by companies have been rising steadily over the past decade and accounted for nearly half of corporate purchases in 2018.”

Unregulated Lending

When corporate entities do take out mortgages, they often borrow from unregulated private lenders. Unregulated lending accounts for 49% of all mortgages taken out by companies across the GTA in the last 10 years, compared to 3% of borrowing by individual buying a home. As a reminder, private lenders are not covered under Canada’s AML regime and do not need to conduct beneficial ownership or source-of-funds checks on customers.

Corporate buyers have taken out \$10.4 billion in mortgages from unregulated lenders since 2008. Those lenders have provided a further \$14.7 billion in mortgages to individuals purchasing homes in the GTA. In all, \$25 billion in lending has bypassed the AML controls (and mortgage stress tests) of regulated financial institutions.

Figure 3: Borrowing by Corporate Buyers



Corporate buyers that take out mortgages tend to be much more leveraged than their individual counterparts. The average loan-to-value (LTV) ratio for individuals has remained around 75% over the past 10 years. Meanwhile, the average mortgage taken out by a corporate buyer has ranged from 90% to 150% of purchase price. These high LTV ratios could reflect readvanceable mortgages³² used to finance development projects - which can appear on title in full as being much larger than the purchase price – but could also include borrowing with the intention of washing dirty money through repayment.³³

“Unregulated lending accounts for 49% of all mortgages taken out by companies across the GTA in the last 10 years, compared to 3% of borrowing by individual buyers.”

A Handful of Shells

The use of corporate structures to facilitate money laundering in real estate is not just theoretical. The companies below were used to acquire residential property in the GTA while concealing their owners' identities. In all but one case, the properties were acquired with the proceeds of crime or were otherwise involved in money laundering.

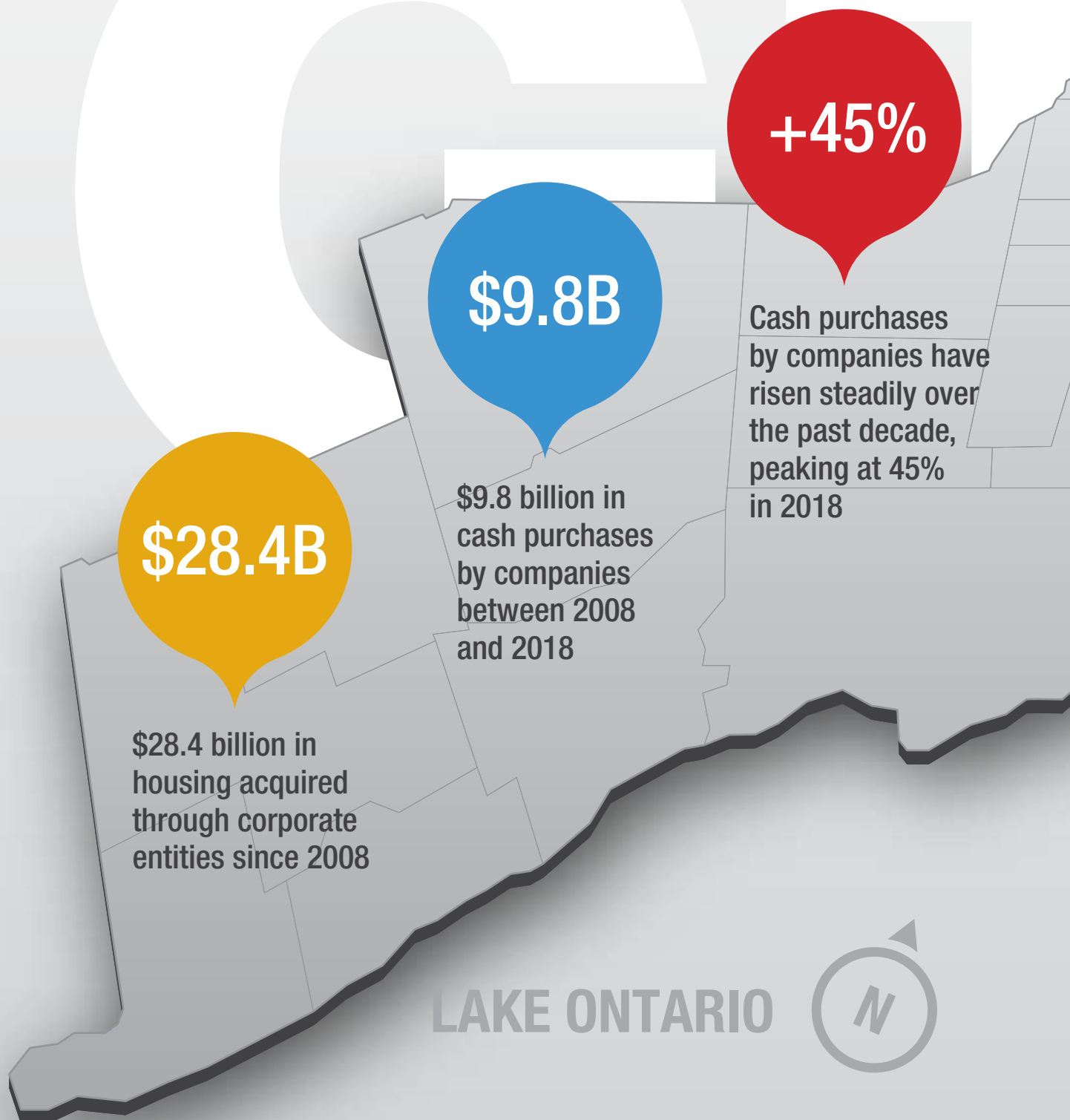
- **CLJ Everest Ltd** is an Ontario company that was used to acquire a sprawling rural estate in Burlington. According to court documents, CLJ Everest was controlled by disgraced fund manager and alleged fraudster Clayton Smith, who used it to misappropriate at least \$5 million in investor funds for personal use.³⁴ Land title records show that Smith used CLJ Everest to acquire the estate for \$2.7 million in January 2015. The property was sold by court-appointed receivers in April 2018 for \$2.1 million.
- **Mashinchi Investments Ltd** is a BC-registered company controlled by convicted criminal and former realtor Omid Mashinchi, who is currently serving a two-year sentence in the US for laundering drug money through the company's accounts.³⁵ Mashinchi used the company to acquire residential properties in Vancouver and Toronto, some of which were then leased to criminal associates.³⁶ No further information on the company's Toronto property holdings could be identified, as the land title office only permits searches by current owner name.
- **953667 Ontario Ltd** owned a home in Etobicoke that served as the Toronto clubhouse of the Outlaws motorcycle gang. Court documents show that the gang held several residential properties through numbered Ontario companies, which it used to further its criminal operations.³⁷ The Etobicoke property was forfeited to the government in 2009 and was subsequently demolished.
- **6747841 Canada Inc** is a defunct federally incorporated company that was used to purchase a mixed-use property along Eglinton Avenue West. Court documents show that the company and the Eglinton property were used in a complex loan fraud orchestrated by its owner, Marshall Kazman.³⁸ Between 2007 and 2010 Kazman and his accomplices used a network of shell companies to fraudulently obtain several million dollars in small business loans. They then diverted the money before defaulting on the debts, which were insured by the federal government. In 2018 Kazman was sentenced to seven years imprisonment for fraud and money laundering.
- **Pramor Global Financial Corp**, according to a November 2018 Toronto Star report, is one of 51 companies used to acquire units in the Four Seasons Private Residences in Yorkville, a luxury condo development built in 2013.³⁹ Some of the companies are domiciled in offshore jurisdictions but most are simply registered in Canadian provinces where no ownership information is disclosed. According to the Toronto Star, this particular entity is a British Virgin Islands-registered company whose anonymous owners paid more than \$4 million for a unit in the Four Seasons without a mortgage. There is no evidence of criminal activity in this case study. We highlighted it due to the complete lack of information on its owners and directors.

Follow the Leaders

This study confirms that companies have provided camouflage for nearly \$30 billion in residential property transactions in the GTA alone during the past decade. Most of those transactions have all but avoided regulated financial institutions and have not been subject to beneficial ownership and source-of-funds checks. This amounts to a massive multi-billion dollar blind spot in Canada's AML regime, where funds of unknown origin can be used to acquire property while their true owners remain invisible.

Responding to the growing problem of opaque ownership in London and Vancouver, the British and British Columbian governments have drafted legislation to end anonymous ownership of real estate through companies within their jurisdictions (see page 44). The US has also moved to regulate cash purchases by corporate entities through its GTO program (see page 46). As other governments make ownership of real estate more transparent, one can only expect that more dirty money will pour into markets like Toronto where opacity reigns.

Investigation of Anonymous Real Estate Across the Greater Toronto Area



\$25B

At least \$25 billion in residential mortgages provided by unregulated lenders with no statutory AML reporting obligations

37%

Companies own 37% of homes valued at more than \$5 million, and more than half of homes over \$7 million

49%

Unregulated lending accounts for nearly half of mortgages taken out by companies, compared to 3% for individuals

Why Money Launderers Love Real Estate

The same factors that make real estate attractive to legitimate investors – its relative stability and potential to appreciate in value – also appeal to money launderers. Yet real estate has several other characteristics that uniquely appeal to criminals: its high value, the potential to manipulate prices, a lack of regulatory oversight and enforcement, and the ability to remain anonymous.⁴⁰

- **High value:** A single property is often valued in the hundreds of thousands or millions of dollars, so a criminal investing in real estate can launder substantial sums in a single transaction. This makes luxury homes particularly attractive to money launderers.⁴¹ After the initial transaction, there are further opportunities to launder dirty money through construction and renovations, as well as refinancing by using the property as collateral.
- **Manipulability:** It can be difficult to accurately assess the value of a particular property, which is why professional appraisers must be trained and licensed. Money launderers exploit that imperfect information by either overstating or understating the value of a property. Doing so typically requires the complicity of service providers such as appraisers, real estate agents, lawyers and notaries.⁴² The Canada Revenue Agency (CRA) has identified the manipulation of property values as a major vulnerability to tax evasion and fraud.⁴³

Over-valuations are a common element of mortgage fraud, whereby an owner overstates the value of a property to secure larger loans that he has no intention of repaying.⁴⁴ Criminals can also access financing by taking out loans on overvalued properties, which they can then repay with criminal proceeds.

Undervaluing a property also provides an opening to inject dirty money into a transaction. By declaring a lower transaction price than the actual value, a buyer and seller can both criminally benefit – the buyer can pay the seller the difference with illicit funds, and the seller can evade taxes associated with the property transfer, especially if it is a property subject to capital gains tax. On a subsequent sale, the buyer benefits from the appearance of legitimate capital gains, completing the integration of dirty money into the economy.⁴⁵

- **Weak regulation and enforcement:** By investing in real estate, criminals can circumvent the most robust elements of Canada's AML regime. Purchases made without external financing or with mortgages from private lenders avoid the more stringent AML compliance processes of regulated financial institutions, such as beneficial ownership checks on corporate clients and comprehensive vetting of borrowers. Other businesses and professions involved in real estate transactions have fewer AML obligations than financial institutions or are excluded from Canada's AML regime altogether. Real estate agents, brokers and developers are required to do some AML due diligence on their customers, but FINTRAC statistics show that they rarely report suspicious activity.⁴⁶ Mortgage brokers and private lenders have no statutory AML obligations, while lawyers are exempt from the PCMLTFA and offer a shield in the form of attorney-client privilege.⁴⁷

Though the illicit nature of money laundering makes it impossible to obtain accurate statistics, law enforcement agencies estimate rates of detection at less than 1%.⁴⁸ If criminals do get caught laundering dirty money, they are extremely unlikely to be held to account. In the decade from 2006 to 2016, only 11% of money laundering charges in Canada led to a conviction.⁴⁹

➤ **Anonymity:** The ease with which criminals can remain anonymous when acquiring and holding property has been identified by AML experts as “the most important single factor facilitating money laundering in real estate.”⁵⁰ No land title office or government authority in Canada requires the beneficial owner of a property to be identified. By hiding behind companies, trusts or straw men, criminals can enjoy the spoils of their crimes in plain sight while making it exceptionally difficult for law enforcement agencies to detect, investigate and prove their ultimate ownership.

While the real estate market has other attributes that make it attractive for money laundering – such as the potential to disguise criminal proceeds as rental income, or to launder funds by entering the private lending business – this report focuses on the problems of opaque ownership and weak regulation and enforcement because they are the key facilitators of money laundering in real estate and are most easily addressed by policy reforms.

➤ Money Laundering in Commercial Real Estate

Commercial real estate is by no means immune to dirty money, and has been referred to as ‘deep cover’ for those looking to launder large sums.⁵¹ There is considerable overlap between the residential and commercial sectors with respect to regulation and money laundering risk, but commercial property has a number of unique characteristics that require separate analysis and policy solutions. For instance, it is common to hold commercial property through special purpose vehicles – corporate entities set up to hold a particular asset or complete a specific project – whereas that is comparatively unusual in the residential sector. Large projects are also often backed by multiple limited partners who can remain behind the scenes and avoid scrutiny. These aspects make it much more difficult for outsiders to identify suspicious activity in commercial real estate. We would welcome additional research into money laundering risks and potential solutions targeting that segment of Canada’s real estate market.

Case Study: Real Estate and the ‘Vancouver Model’

“The alleged scheme is a win-win-win for the gangsters and the Chinese gamblers. The gamblers could evade China’s tight currency export controls, get their wealth offshore and invest in Canadian real estate, using B.C. casinos as the conduit to obscure drug cash paper trails. And the transnational gangsters could wash drug sales in B.C. and transfer funds back to gang bank accounts in China to produce and export more fentanyl precursors.”

– Global News, citing RCMP files⁵²

In December 2017, BC’s newly appointed Attorney General, David Eby, launched an independent review of what appeared to be widespread money laundering in Greater Vancouver casinos. The findings of that review were published in a June 2018 report, *Dirty Money*, which confirmed a total “system failure” of AML controls in the gaming sector, with “Lower Mainland casinos unwittingly serv[ing] as laundromats for the proceeds of organized crime.”⁵³ The main scheme used to launder money through those casinos had been so successful in the years leading up to the review that foreign organized crime experts already had a term for it: The Vancouver Model.⁵⁴

The Vancouver Model works like this: Money launderers take dirty cash from local organized crime groups and transfer it to Chinese nationals with a need for Canadian currency. The recipients are often ‘high roller’ gamblers on junkets to Vancouver casinos, who have trouble getting Canadian dollars due to Chinese currency controls and a lack of local credit. The recipients deposit Renminbi into accounts in China controlled by the launderers, who transfer the Chinese funds to settle accounts with their organized crime clients. The organized crime groups then use their Renminbi to buy fentanyl and precursor chemicals, or put the seemingly legitimate money to another use. The recipients of the dirty dollars leave the casino with clean \$100 bills or cheques that they can spend locally without suspicion, while the launderers make commissions on both sides.

Though the first iteration of the Vancouver Model used casinos to launder dirty money, the model is transferable to other sectors. As Peter German, the author of *Dirty Money* notes, “The only criteria is that the new landing spot be lucrative, because organized crime is entrepreneurial by nature. It will not go away. As a result, the Vancouver Model is a snapshot in time for the casino industry, but it may replicate in other sectors of the economy.”⁵⁵

One firm allegedly employing the Vancouver Model was an unregistered Richmond-based money services business called Silver International Investment Ltd (Silver), which in 2015 became the focus of the RCMP's largest-ever money laundering investigation. Silver allegedly laundered between \$220 million and \$1 billion annually for dozens of organized crime syndicates before the RCMP raided its office in October 2015.⁵⁶

Among the alleged organized crime clients of Silver were a number of loan sharks who secured loans to 'high roller' gamblers against their Vancouver area properties. An investigative report published by *The Globe and Mail* in February 2018 identified 17 such lenders that had placed builders liens⁵⁷ on homes owned by their debtors, as security against some \$47 million in loans. If borrowers failed to repay their debts – some of which had annualized interest rates of up to 130% – the loan sharks were paid out with interest when the properties were sold, which washed their money and earned them a substantial profit.⁵⁸ When it suited them, the loan sharks used BC's courts to enforce their claims against non-resident owners, sometimes forcing the sale of their homes. The \$47 million in loans identified by *The Globe and Mail* only accounts for defaults that wound up in court, suggesting that it accounts for only a fraction of criminal proceeds loaned against Vancouver real estate.

It remains unclear to what extent cash allegedly laundered by Silver and others using the Vancouver Model has infiltrated the Vancouver real estate market. In November 2018 *Global News* reported that more than \$1 billion in real estate transactions in 2016 alone had been identified with links to "Chinese organized crime," citing an unpublished police intelligence report.⁵⁹ In an effort to gain a more detailed understanding of the problem, the BC Attorney General has commissioned a follow-up review to *Dirty Money*, which is scheduled to report in Spring 2019. The provincial government has also moved to create a beneficial ownership registry for property and amend the *Builders Lien Act*, among other legislative reforms.



Case Study:

Suspect West African Funds in Montreal Real Estate

A June 2017 investigative report by the *Journal de Montréal, Le Monde Afrique and African Arguments* revealed nearly \$30 million in property bought in the Montreal area as bought by government officials and politically exposed persons from several West African countries with endemic corruption.⁶⁰ Some of those individuals are under investigation or have been indicted by French authorities for corruption and money laundering. With the legal dragnet tightening in France, these individuals appear to have sought out Quebec as a friendly and stable jurisdiction where few questions are asked about the source of their wealth.⁶¹

According to the investigative report, the buyers include Wilfrid Nguesso, a nephew of Congolese president Denis Sassou Nguesso who has been barred from entering Canada on the grounds that he belongs to a 'criminal organization' that has looted Congo-Brazzaville's public coffers to the tune of hundreds of millions of dollars.⁶² As head of a joint venture shipping company with the Congolese state, Wilfrid Nguesso collects an annual salary of several million dollars and enjoys free housing, private school education for his seven children, and a fleet of luxury vehicles. He has allegedly used some of that largesse to buy a home in Montreal's affluent Côte-des-Neiges neighbourhood. In order to conceal his ultimate ownership, he acquired the property through a Luxembourg holding company, which in turn is owned by two entities registered in the Seychelles.⁶³

The *Journal de Montréal* investigation also identifies several relatives of Chadian dictator Idriss Déby who spent some \$8.6 million on Montreal real estate between 2012 and 2016. One of them, Déby's 29-year-old brother-in-law, Ibrahim Hissein Bourma, bought 10 apartments in a downtown Montreal building in a single day in June 2016 for \$3.2 million in cash. When the newspaper called him for an interview, he explained that he was attracted to the stability of Montreal real estate and was considering immigrating through Quebec's investor visa program. He failed to mention that he had previously applied for US status through a similar program, but was denied by the Department of Homeland Security due to suspicions about the sources of his income. Bourma had been a director of Chad's state-owned oil company for several years, and in 2013 had been caught smuggling funds out of the country in a false-bottomed suitcase.⁶⁴

The other dozen suspect property owners identified in the *Journal de Montréal* investigation include politically exposed persons and government officials from Algeria, Burkina Faso, the Democratic Republic of Congo, Gabon and Senegal. Some own their properties through shell companies, though most simply hold title in their own names, seeing no reason to insulate their Canadian assets from local authorities with little interest in investigating corruption in distant places.

An aerial photograph of a city skyline, likely Montreal, featuring a prominent skyscraper with a distinctive pointed top. The city is densely packed with buildings, and a body of water is visible in the background. A large red banner is overlaid on the right side of the image, containing a quote.

“ Nearly \$30 million in property in the Montreal area was bought by government officials and politically exposed persons from several West African countries with endemic corruption.”

Anonymous Ownership: How It Works

There are three main structures through which people can conceal their ownership of real estate: legal entities (companies and partnerships), legal arrangements (trusts), and nominees (straw men).⁶⁵

The opaque ownership structure of choice varies across markets. In New York City and Miami, the preferred structure has been US Limited Liability Companies (LLCs),⁶⁶ while those purchasing in London and São Paulo favour offshore companies.⁶⁷ In Vancouver, many property owners wishing to obscure their identities prefer to use individual nominees,⁶⁸ though the use of Canadian companies and trusts remains a popular way to conceal ownership and stymie investigators.⁶⁹

Each of the three structures achieves the same ultimate goal: shielding the beneficial owner from view. They are often used in combination – for instance, a shell company with a nominee director and a shareholder governed by a trust – and can stretch across multiple jurisdictions to make it even more difficult to expose the ultimate owner and pursue legal claims. In the words of one AML expert, these opaque structures are the ‘secret sauce’ in the recipe for money laundering.⁷⁰

Companies

“Corporate vehicles... have often been found to be misused in order to hide the ownership, purpose, activities and financing related to criminal activity. Indeed that practice is so common that it almost appears to be ubiquitous in money laundering cases.”

– Financial Action Task Force, 2016⁷¹

Shell companies are often associated with sleepy tropical locales such as the British Virgin Islands and the Seychelles. Though not as infamous, Canada is at least as opaque as these offshore jurisdictions. There are few places on earth where it is easier to set up an untraceable company.⁷²

Canada has no standards for company data collection and disclosure across provinces and territories, and none of the 14 Canadian jurisdictions collects information about beneficial owners. Our corporate registries act as passive receptacles for basic corporate information. They do not independently verify the data they receive from Canada's approximately 3.2 million companies,⁷⁴ and no Canadian company has ever been criminally sanctioned for filing inaccurate information or failing to keep proper records.⁷⁵ This makes it easy to intentionally submit false information without fear of being caught or disciplined, though there are perfectly legal ways of concealing one's involvement through the use of nominee directors, nominee shareholders and bearer shares, which are still permitted in most provinces and territories.⁷⁶

Together, these conditions make Canadian corporate structures extremely vulnerable to abuse by money launderers, tax evaders, fraudsters and other criminals. The anonymity facilitated by Canadian entities routinely hinders law enforcement investigations into money laundering and tax evasion,⁷⁷ and has raised Canada's international profile as a jurisdiction of convenience for anyone looking to conceal financial misdeeds.⁷⁸

The use of Canadian entities in international money laundering schemes may be a relatively recent effect of globalization, but local criminals have taken advantage of them for decades.⁷⁹ According to a risk assessment published by the federal government in 2015, more than 70% of Canadian money laundering cases involve the use of corporate structures.⁸⁰

Real estate is no exception when it comes to the use of companies to launder money and evade taxes, though there is a lack of data on the Canadian property market specifically. A 2004 study of Canadian money laundering cases found that nearly 10% of properties bought with proceeds of crime were acquired through corporate entities.⁸¹ If a comparable study were conducted today, that figure would likely be much higher due to the globalization of money laundering. Data from other international markets suggest that is the case. In the UK, more than 75% of properties investigated by the Metropolitan Police Proceeds of Corruption Unit since 2004 have been held through offshore companies.⁸² A July 2018 FATF report found that one third of 106 cases of money laundering from member countries involved the use of corporate entities to invest proceeds of crime in real estate, most often in other jurisdictions.⁸³

“Companies in Canada are effectively given more privacy rights than individuals.”⁷³

► From the Courts: Wang v Kesarwani

This civil dispute between husband-and-wife real estate investors and their former lawyer and real estate agent exposed questionable dealings in a series of GTA property deals, including the use of a company to commit mortgage fraud.⁸⁴

The plaintiff, Rongjuan ‘Judy’ Wang and her husband, Peter Zhang, came to Canada in 2010 through the federal government’s immigrant investor program. They used \$6 million to acquire a portfolio of GTA homes through a federally incorporated company, Yi Hao Investments Inc. Though the government presumably conducted some due diligence on the couple when they applied to immigrate, their former business associates claimed under oath that Zhang “was a criminal who managed to get his wealth out of China to become a money launderer in Canada.”⁸⁵

Between 2011 and 2012, Wang and Zhang used \$3.2 million of that cash of unknown origin to buy three GTA homes, two of which were purchased through Yi Hao Investments. In order to finance a spiralling gambling habit, Zhang used Yi Hao Investments to secure mortgages against his investment properties. This involved transferring his shares in the company to a business associate – a real estate agent named Yan Ling Ding – to conceal his beneficial ownership when applying for loans.

Through Ding as his nominee, Zhang obtained a \$900,000 mortgage from a major bank. Subsequent attempts were less successful, and he resorted to high-interest mortgages from private lenders, including his real estate lawyer Rahul Kesarwani. Public court documents do not reveal whether the real estate agent and lawyer made any effort to enquire about the source of funds for their clients’ purchases, submitted suspicious transaction reports or otherwise complied with their AML obligations. If the origin of Zhang’s wealth was indeed criminal, as the defendants’ testimonies suggest, then they may have been complicit in money laundering. Neither Ding nor Kesarwani appears to have been disciplined by their industry regulators in relation to the case.



Case Study: The Russian Oligarch with 111 Toronto Properties

Russian oligarch and former senator Vitaly Malkin has had his sights on Canada since making his fortune in the Wild West years after the breakup of the USSR.⁸⁶ Having made billions from the chaotic privatization of Russian state assets, the banking magnate appears to have sought Canadian citizenship as an insurance policy. In an apparent effort to prove to immigration authorities that he planned to establish business interests here, Malkin acquired 111 rental properties in a North York mixed-use complex through an Ontario-registered shell company.⁸⁷ Malkin's beneficial ownership of the properties was disclosed in documents submitted to an immigration tribunal, which became public when he took the Ministry of Citizenship and Immigration to court for refusing his repeated applications.⁸⁸

Malkin first applied for Canadian permanent residency in 1994 but was rejected due to alleged links to Russian organized crime – a claim he denies.⁸⁹ Undeterred, Malkin applied on multiple occasions for residency and travel visas over the next two decades. The Canadian government remained unconvinced, citing among other things Malkin's "extended association with persons suspected to be involved in organized crime and money laundering."⁹⁰ Malkin's lawyers claim he has been unfairly targeted due to geopolitical considerations and have pointed out that he has never been charged with a crime.⁹¹ Nevertheless, with each visa application new concerns emerged regarding Malkin's business activities and connections.

Among those concerns were that he profited from a corrupt deal to restructure sovereign debt to Russia that Angola had incurred during its civil war.⁹² Malkin was a late entrant to the scheme – he helped refinance the \$1.5 billion deal in 1999, three years after its inception – but nevertheless made nearly \$50 million in profits at the expense of the Russian and Angolan people. A 2013 investigation into the deal found that a company Malkin co-owned channeled tens of millions of dollars in kickbacks to the Angolan president and members of his cabinet.⁹³

Court documents also relay concerns by Canadian immigration officials that Malkin "had used profits from organized crime to subvert the democratic process in Russia" during Boris Yeltsin's 1996 re-election campaign. After Malkin became a senator in 2004, additional concerns were raised about his political exposure, including his efforts to lobby against the Magnitsky Act, a human rights law enacted in the US in 2012 that targeted certain Russian officials with sanctions.⁹⁴ (Canada enacted its own Magnitsky Act, the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, in 2018.)

Malkin resigned from his government post in 2013 when Aleksei Navalny, a Russian anti-corruption campaigner, revealed that he had omitted his Canadian properties and an Israeli passport from his disclosures to the Federation Council, Russia's senate.⁹⁵ Searches of Ontario property records show that Malkin still owns a condo in Toronto's Summerhill neighbourhood. It is unclear if he is still the owner of the 111 properties in North York, or if he has more undisclosed real estate in Canada.

Trusts

Trusts are a useful money laundering tool due to their private nature and ability to conduct financial transactions. In Canada, trusts are private legal arrangements, and there is no requirement to register them or disclose their existence to the government. While there are believed to be millions of trusts under Canadian law, only a small fraction disclose their existence to the government.^{96,97}

Trusts can bind their parties with non-disclosure agreements and are often drafted and overseen by lawyers, thereby adding other layers of secrecy through attorney-client privilege and the fiduciary duty of trustees to maintain confidentiality. Like nominees, trustees can conduct business on behalf of a trust without disclosing their status, posing a challenge for financial institutions and others with know-your-customer AML obligations.⁹⁸

In some provinces, such as BC, if a property title is held by an express trust, the trust agreement (including the trust's beneficiaries) must be disclosed to the land title office.⁹⁹ More often, however, trusts serve as undisclosed contracts governing the relationship between nominee titleholders and the beneficial owners of real estate.

➤ From the Courts: Ontario (Attorney General) v 626 Strand Avenue

In June 2011 Ontario police made a series of arrests following an investigation into a drug trafficking syndicate in Thunder Bay. The syndicate's kingpin, John Tsekouras, was subsequently convicted and sentenced to more than 15 years in prison.¹⁰⁰

Civil forfeiture proceedings following his arrest reveal that Tsekouras laundered drug money through at least eight Thunder Bay properties held in the names of his wife and sister, as well as through a numbered company under their control.¹⁰¹ By using his family members as nominees, Tsekouras was able to obtain financing and pay deposits for the homes while concealing his involvement.

Nominees

Nominees, or straw men, are a common feature in real estate money laundering in Canada. They are used to hold title, obtain mortgages and transact with banks and other service providers. A 2004 study of successful proceeds of crime cases in Canada found that nominee owners were used in more than 61% of real estate purchases made with laundered funds.¹⁰² Criminals most often registered property titles in the names of relatives, though others used business associates or lawyers as nominees. The author of that study referred to the use of nominees as "the most prevalent technique to facilitate the laundering process in the real estate market."¹⁰³

Nominees are difficult to identify. There is no field in property title documents for nominees to identify themselves as such, and the government does not ask for that information. Nominees can conduct

business with financial institutions, real estate agents, lawyers and other service providers in the real estate sector without disclosing that they are acting on someone else's behalf.

At least two studies have sought to examine the prevalence of nominee ownership of real estate using occupational information disclosed on property titles. Both focused on the Vancouver market, and used students and homemakers as proxies for nominees due to their apparent lack of independent income.

The first study, conducted by urban planner Andy Yan, looked at a sample of 172 homes purchased on Vancouver's west side in 2014-2015 and found that 35% of them were owned by homemakers or students.¹⁰⁴ The properties ostensibly acquired by homemakers were mortgaged 94% of the time, suggesting that banks were satisfied that either the homemaker had sufficient wealth, or the spouse had sufficient wealth or income, to make the necessary payments.

The second study, conducted by TI Canada in 2016, examined the ownership of Vancouver's 100 most valuable homes and found that 11 of them were owned by students or homemakers.¹⁰⁵ TI Canada's research suggests that the use of nominee owners is on the rise: 26% of the high-end properties acquired between 2011 and 2016 are owned on paper by homemakers or students, compared to 2% of the homes bought before 2011.

Due to a lack of data it is impossible to know how widespread the use of nominees in Canadian real estate markets really is. Nominees do not disclose that they act on anyone else's behalf, and in the rare cases where indicators such as occupational information are available, they are crude proxies and are likely to substantially underestimate the number of nominee owners. Indeed, nominees are the main blind spot of our case study on the GTA housing market (pages 10-19), as there is no information that can be used to identify individuals who might hold property on another's behalf.

» From the Courts: Homelife Romano Realty Ltd v Castelluzzo

Peter and Stella Castelluzzo were real estate agents who worked for Toronto-based brokerage Homelife Romano Realty Ltd until a falling out with the firm's owner, Donato Romano. When the brokerage filed a lawsuit against the couple to recover debts owed, an egregious case of conflict of interest and fraud involving the former business partners came to light.¹⁰⁶

According to court documents, the Castelluzzos and their former employer used a numbered Ontario company with a nominee shareholder, as well as other trust arrangements, to anonymously acquire properties from the brokerage's clients. In doing so they could buy undervalued properties and sell them again at a profit, while earning agency fees. The Castelluzzos and Donato evenly split the commissions for each deal, keeping their clients in the dark on who the buyers were.

Homelife Romano Realty's case against the Castelluzzos fell apart upon discovery of the fraudulent scheme, and criminal cases were opened. The Castelluzzos ultimately lost their real estate licences over their conduct, which the Real Estate Council of Ontario said "involved clear conflicts of interest and obvious breaches of undeniable fiduciary obligations."¹⁰⁷

Real Estate and Canada's AML Regime

Real estate is perhaps the weakest part of Canada's AML regime.¹⁰⁸ The sector is riddled with vulnerabilities including the use of opaque ownership structures, the use of trust accounts to move large sums of money, and capital with unknown foreign origins. While Canada's AML law, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), applies to real estate brokers, agents and developers, many others involved in real estate transactions are not covered. Among those that are, compliance is spotty at best.¹⁰⁹ The authorities have an exceptionally poor track record of prosecuting money laundering and enforcing AML regulations. Together these conditions have turned Canada into a money launderer's playground.

Below, we summarize Canada's AML framework, examine its implementation and assess its enforcement as it relates to real estate.

The Legal Framework

Canada's AML regime leans heavily on financial services providers (FSPs) and other reporting entities (designated non-financial businesses and professions, or DNFBPs) to identify suspicious activity, including in real estate transactions. This mirrors the regulatory frameworks in other countries, and is based on the logic that the nature of their activities puts them directly in the path between illicit money and the legitimate economy, and they are therefore an appropriate first line of defence against money laundering.

Real estate transactions typically involve a number of parties with AML obligations. Real estate brokers and agents, developers, lawyers, notaries, accountants, life insurers and financial entities (e.g. banks) all have specific responsibilities to prevent money laundering under the PCMLTF regulations or their professional codes of conduct. However, under the PCMLTFA and its regulations there are certain responsibilities that only apply to FSPs, and there are important players in the real estate industry who are not covered by the Act, including lawyers, unregulated mortgage lenders, 'for sale by owner' companies, appraisers and redevelopers.

All reporting entities have obligations under the PCMLTFA and its regulations, including: submitting reports for suspicious transactions (STRs), large cash transactions and international electronic funds transfers; know-your-client (KYC) checks; and maintaining AML compliance programs that include training for their staff and periodic risk assessments.¹¹⁰ However, like other DNFBPs, real estate businesses and professionals do not need to identify and verify the accuracy of beneficial ownership information, conduct checks on politically exposed persons and heads of international organizations, or inquire about the source of funds used for a transaction. This is a significant gap in Canada's AML regime that enables dirty money to enter our real estate markets.

FSPs, though required to conduct beneficial ownership due diligence, are ill equipped to do so in the absence of any available data on the owners of companies and trusts. As one senior industry executive explained in a 2018 House of Commons hearing on the PCMLTFA, “a rule that cannot be complied with is neither a reasonable nor effective rule.”¹¹¹

There is much that the government could do to better equip the private sector to meet their AML obligations, including legislating the collection and disclosure of beneficial ownership information. There is a growing consensus within the private sector in Canada that effectively complying with the government’s AML regulations is practically impossible in the absence of that data.¹¹²

“In not obligating DNFBPs to enquire into beneficial ownership, the federal and provincial governments have placed the greatest part of the burden of the detection of money-laundering and terrorist-financing on the financial services industry alone. At the same time, the governments have not provided the sector with the tools or legislative framework to aid them.”

– Mora Johnson, author of *Secret Entities: A legal analysis of the transparency of beneficial ownership in Canada*¹¹³

Compliance

“Low compliance diminishes FINTRAC’s ability to pursue cases of potential money laundering, and may signal that Canada’s real estate sector is a low-risk vehicle for money laundering operations.”

– February 2018 law enforcement briefing to BC government, obtained through Freedom of Information request

Though real estate DNFBPs are spared from the most stringent AML obligations – such as source-of-funds checks and identifying/verifying beneficial owners of companies and trusts – statistics show that they nevertheless have a dismal record of complying with their existing AML responsibilities. In a five-year period from 2013 to 2017, there were more than 2.5 million real estate transactions in Canada but fewer than 200 suspicious transaction reports filed by real estate businesses.¹¹⁴ That marked an improvement on the previous decade, during which only 127 STRs were filed by reporting entities in the real estate sector.¹¹⁵

In response to this problem of underreporting, FINTRAC has targeted real estate businesses for ‘compliance examinations’ – essentially audits for AML compliance – completing several hundred such reviews across Canada. A 2016-2017 FINTRAC report obtained through an Access to Information request shows that FINTRAC completed 152 examinations of real estate entities that year and found that “the overall level of non-compliance continues to be significant.”¹¹⁶

The low reporting and compliance rates among real estate professionals suggests that there is a serious lack of will or awareness regarding their potential to guard against money laundering. Studies in the UK and Canada suggest that there is a common misunderstanding among real estate professionals that financial institutions are better placed to identify suspicious activity due to their involvement in financing and the resources at their disposal.¹¹⁷ While financial institutions do have an important role to play in preventing money laundering, it is not a substitute for the participation of real estate agents and developers in AML efforts. Brokers and agents are directly involved in the vast majority of real estate transactions and often have detailed knowledge of their clients, putting them in a unique position to identify suspicious activity.

➤ The Lawyer Challenge

Since March 2015, Canadian lawyers and notaries in Quebec have been exempt from the PCMLTFA. Concluding a legal challenge brought by the Federation of Law Societies of Canada (FLSC) after the PCMLTFA was enacted in 2000, the Supreme Court of Canada ruled that reporting obligations placed on lawyers and Quebec notaries (who are also represented by the FLSC) violated their constitutional protection against unreasonable search and seizure as well as the rights of Canadians to privileged legal counsel.

The FATF considers the omission of lawyers and Quebec notaries from the PCMLTFA to be “a serious impediment to Canada’s efforts to fight ML [money laundering],”¹¹⁸ and the Department of Finance has referred to it as “a major deficiency that negatively affects Canada’s global reputation.”¹¹⁹ The exemption of lawyers from Canada’s AML regime is problematic because they have unique knowledge of companies, trusts and financial transactions linked to their clients. Lawyers set up and administer the vast majority of legal entities and arrangements in Canada, and use their trust accounts for large transactions such as real estate conveyances.

The FLSC does have some AML measures in place, though they fall short of PCMLTFA standards. The FLSC’s model rules of professional conduct prohibit lawyers from accepting more than \$7,500 in cash from clients and require them to inquire about the source of funds used for a transaction. An update to the rules in October 2018 requires lawyers to take ‘reasonable measures’ to identify and verify the beneficial owners of clients that are legal entities or arrangements.¹²⁰ The model rules also include certain provisions governing the use of lawyers’ trust accounts.¹²¹

Trust accounts are a common conduit for funds used in real estate purchases. They pool funds held for clients, which are intended for transactions that involve the services of the lawyer or law firm that owns the account. While lawyers have a professional duty to maintain records of trust account inflows and outflows, until recently they did not have to identify the beneficial owners behind those transfers. Moreover, prior to October 2018, trust accounts could be used as conduits or repositories for client funds that were unrelated to a particular legal service. The FLSC has amended its Model Trust Accounting Rule to discourage that practice following cases where lawyers were caught using their trust accounts for suspicious transactions without inquiring about the circumstances or providing other legal services.¹²²

Most lawyers and notaries are scrupulous professionals who would not knowingly participate in criminal activity. However, as the Panama and Paradise Papers exposés highlighted, there are bad actors in any profession, and when those bad actors are lawyers they can do significant harm. An undercover investigation by anti-corruption NGO Global Witness offers a window into the ease with which a criminal can find willing legal counsel to invest dirty money. Of 13 New York City law firms visited by an investigator posing as an adviser to an African government minister, all but one provided advice on how the minister could get his money into the US without detection.¹²³

With respect to money laundering, TI Canada continues to urge the FLSC and the government to come to a constitutionally compliant solution to ensure lawyers and Quebec notaries meet the standards set by the PCMLTFA and its regulations. We are encouraged to see that the FLSC has become a vocal advocate for a public registry of beneficial owners and is urging the government “to move forward promptly with legislative initiatives” to make Canada’s companies and trusts more transparent.¹²⁴

Enforcement

Enforcement of AML regulations in the Canadian real estate sector is lackluster, and criminal sanctions for money laundering offences is disappointingly rare. Dramatic improvements in Canada's enforcement of money laundering laws are needed if we are to deter criminal activity and demonstrate that bad behavior in the real estate sector will not be tolerated.

FINTRAC has the statutory authority to sanction entities that fail to report suspicious transactions or meet their other AML obligations, and can in theory seek criminal fines of up to \$2 million and imprisonment up to five years. In 2008, FINTRAC was also given authority to issue administrative monetary penalties (AMPs) to non-compliant entities. However, following a court challenge in 2016 over AMPs issued by the agency, FINTRAC has not issued any penalties.¹²⁵

In the five years prior to the legal challenge, FINTRAC penalized seven real estate agencies, fining them a total of \$197,310.¹²⁶ There are no reports of any referrals for criminal sanctions against real estate DNFBPs. The AMPs issued to real estate agencies have mostly been in the thousands of dollars, which is lower than a commission on a typical sale. In its 2016 evaluation of Canada, the FATF identified inadequate enforcement as a major area of concern, noting that breaches of the PCMLTFA had not been punished in a proportionate or dissuasive manner.¹²⁷

The problems associated with law enforcement and prosecutorial failures are documented in TI Canada's 2016 report, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*. They include under-resourced law enforcement and a shortage of specialist financial crime investigators, as well as difficulties proving beneficial ownership and linking money laundering to a specific predicate crime.

A greater strategic emphasis needs to be placed on recovering the proceeds of crime. Civil forfeiture tools are available to law enforcement agencies across Canada but they are underutilized when it comes to real estate. Real estate seizures by federal authorities steadily declined from a peak of \$54 million in 2010 to less than \$17 million in 2015, despite the total number of money-laundering cases remaining consistent.¹²⁸ A review of civil forfeiture cases filed in BC in 2017 provides a snapshot of the limited activity at the provincial level; real estate appears to have been seized in fewer than 25 of approximately 1,000 cases that year.¹²⁹

Commitments and Recent Developments

Canada is a founding member of the FATF and is evaluated against the standards set by the global organization through its 40 Recommendations.¹³⁰ We have also committed to the G20 High-Level Principles on Beneficial Ownership Transparency, which mirror several of the key FATF recommendations.¹³¹ By participating in those forums, the Government of Canada has committed to implementing the necessary legislative changes to make the ownership of companies and trusts more transparent. The government has so far failed to live up to those commitments.¹³²

In December 2017, Canada's finance ministers agreed to require companies to collect information on their beneficial owners by mid-2019.¹³³ That has been framed as a first step toward more transparent beneficial ownership, though it falls far short of emerging global standards and Canada's commitments on the international stage.¹³⁴ The finance ministers have established a working group to discuss other

potential beneficial ownership reforms, but the creation of a registry remains an open question.

Over the course of 2018, the government conducted a five-year review of the PCMLTFA. The Department of Finance published a discussion paper detailing potential amendments to the Act, which was followed by a public consultation and a review by the House Standing Committee on Finance.¹³⁵ In a report detailing its review, the committee urged the government to create “a pan-Canadian beneficial ownership registry for all legal persons and entities” with powers to verify information and issue sanctions for non-compliance. Unfortunately, the Committee failed to recognize the need for such a registry to be public and instead recommended a registry with restricted access, ignoring the recommendations of numerous expert witnesses.¹³⁶

Many of the committee’s other recommendations align with those made in this report. They include a recommendation that DNFBPs conduct beneficial ownership due diligence, which would bring Canada in step with FATF standards and the AML regimes in 15 of the G20 countries.¹³⁷ It remains to be seen which of the committee’s 32 recommendations the Government will act upon.

At the provincial level, after many years of allowing dirty money to spread through the Vancouver property market, BC has become a bright spot on an otherwise bleak national landscape for real estate AML policy. The BC government drafted the *Land Ownership Transparency Act* (LOTA) in June 2018, which intends to create a public beneficial ownership registry for real estate in the province. The registry will be the first of its kind in Canada, and one of two globally (see page 40). The government has also launched a non-public registry of pre-sale condos to track contract assignments in an effort to prevent tax evasion.¹³⁸ Those legislative reforms are in their infancy and, as with any regulation, the devil will be in the detail. However, they are promising measures that could safeguard BC real estate from further criminal misuse.

Though there have been some positive steps, Canadian law still offers a full menu of opaque ownership structures, which, coupled with weak regulation and a lackluster record of criminal law enforcement, renders Canada a top destination for dirty money. As other countries forge ahead to make widely misused legal structures more transparent, laggards like Canada have become increasingly vulnerable to infiltration by gangsters, corrupt officials and other criminals.

➤ Beneficial Ownership and Public Policy

Beneficial ownership data is not only vital to preventing financial crime, but also to drafting effective policy. Foreign ownership of real estate is one area where this has become apparent.

In 2017-2018 Statistics Canada (StatsCan) attempted to document foreign ownership of Toronto and Vancouver housing, but its analysis was hindered by the prevalence of nominee owners and domestic holding companies.¹³⁹ Of all residences, 6% in Vancouver and 4% in Toronto are held through Canadian corporate entities whose owners are unknown.¹⁴⁰ Quantifying the number of Canadian resident nominees is practically impossible, as the StatsCan researchers discovered. As the director of StatsCan’s housing program put it, we are only “seeing the tip of the iceberg right now.”¹⁴¹

The inability to see behind these opaque forms of ownership prevents our governments from understanding the scale of foreign ownership and making sensible policy decisions. Without more fulsome data, regulations such as the BC and Ontario governments’ foreign buyer taxes will remain easy to skirt around.

Policy Solutions

There are a number of policy solutions available to the federal, provincial and territorial governments that would dramatically curb money laundering and tax evasion in the real estate market and beyond. Our recommendations are set out below, followed by a more detailed discussion of three key policy tools.¹⁴²

Key Recommendation

Provincial and territorial governments should enact legislation to make the ownership of property transparent.

Beneficial owners of property should be identified with land title authorities, and that information should be made available to the public in an open data format. Legislation should encompass all property titles, whether they are held through legal entities, legal arrangements or real persons. Disclosure of beneficial ownership should be a prerequisite for any property transfer. Legislation should include criminal penalties for false declarations in addition to civil sanctions, and should be actively enforced to deter non-compliance.

Other Recommendations

Enhancing Canada's AML regime

- **Create a pan-Canadian registry of companies that includes beneficial ownership information and is available to the public in open data format.** The provincial, territorial and federal governments should augment their corporate registries to include beneficial ownership information, and make them searchable by both individual and company name. Those registries should feed into a central database maintained by the federal government. When registering a corporation, registrars should be required to verify the identity of the beneficial owner with government-approved identification and require a sworn statement or attestation of beneficial ownership, subject to sanction for false information. Regular randomized audits should be undertaken to ensure compliance.
- **Require all DNFBPs to collect and verify the beneficial owners** of legal entities and arrangements party to a financial transaction.

- **Block reporting entities (i.e., financial services providers and DNFBPs) from proceeding with a transaction if the beneficial owner of their customer cannot be identified.** This involves changing the ‘reasonable efforts’ standard of the PCMLTF regulations to an absolute requirement. In cases where reporting entities cannot identify a beneficial owner, they should file suspicious transaction reports with FINTRAC.
- **Require foreign companies doing business or transacting in Canada to disclose their beneficial owners** and meet the same transparency standards as their Canadian counterparts (once reforms are enacted).
- **Require nominees to disclose their status, their nominator and beneficial owner** when registering a corporation, acting as a nominee party to a trust, or conducting financial transactions with a reporting entity.
- **Amend the PCMLTFA to include other real estate-related businesses and professions,** including: mortgage insurers, land registries, title insurance companies, unregulated mortgage lenders, “for sale by owner” companies, promoters and redevelopers.
- **Classify foreign PEPs and HIOs as high-risk clients when purchasing real estate.** Reporting entities should conduct enhanced due diligence on PEP and HIO clients in real estate transactions.
- **Work to ensure that members of the legal profession (and Quebec notaries) are included in Canada’s AML regime** in a constitutionally compliant manner. Notwithstanding, law societies throughout Canada should move forward to revise their own rules of conduct as soon as possible to meet the standards set in the PCMLTFA and its regulations.

Other Real Estate-Specific Recommendations

- **Consider specialized legal tools such as Unexplained Wealth Orders and Geographic Targeting Orders.** (See pages 44-47 for further discussion.)
- **Regulate the ownership and transfer of pre-construction condominiums** so that the beneficial owners of so-called ‘assignments’ are disclosed to the government for tax purposes.
- **Establish better channels for information-sharing between government and the private sector.** This should include reciprocal sharing of AML intelligence on specific entities and transactions as well as emerging trends and typologies.
- **Conduct further research into money laundering in commercial and other non-residential segments of the real estate market,** as it is poorly understood and vulnerable to criminal activity.

Improving Enforcement

- **Provide more resources and support to law enforcement and prosecutors to pursue complex money laundering cases.**
- **Reassess the Criminal Code as it relates to money laundering**, which currently requires prosecutors to demonstrate that a defendant knowingly laundered proceeds of a specific predicate offence. Convictions are exceedingly rare due to the difficulties in proving that connection, particularly in the case of professional money launderers who distance themselves from the crimes of origin. A different standard of proof, such as that for gross negligence or recklessness, would reduce the number of abandoned prosecutions.
- **Actively enforce and sanction PCMLTFA violations by real estate professionals.** Efforts should be taken to ensure that real estate professionals prioritize their AML compliance obligations. Detailed data on enforcement activity should be published on an annual basis.
- **Expand the mandates and resources of corporate registries** so they can compel and verify company information, analyze data for unusual and suspicious activity, and apply dissuasive sanctions for non-compliance.
- **Use the *Justice for Victims of Foreign Corrupt Officials Act (the Sergei Magnitsky Law)*** to seize assets belonging to corrupt officials and those involved in human rights abuses.
- **Make use of civil forfeiture tools** to seize properties owned and used by known criminals.

Public Registries with Beneficial Ownership Data

Beneficial ownership transparency is the single most important tool for fighting money laundering and other financial crime in the real estate sector and beyond. As a group of prominent AML experts noted in a recent paper, “The lack of beneficial ownership transparency is the most important single factor facilitating MLRE [money laundering in real estate]... Providing a legislative basis for transparency is essential for all other AML reforms.”¹⁴³

The emerging standard for beneficial ownership transparency – and the most effective way to harness the power of that data – is through augmented corporate registries that make ownership data available to the public in open format.¹⁴⁴ Properly implemented, this type of registry can be a low-cost, high-impact way to prevent the misuse of legal structures. These registries are assets to law enforcement and tax authorities, and help the private sector comply with AML regulations and make better business decisions.¹⁴⁵

The international movement toward more corporate transparency is being led from Europe. The EU's fourth and fifth AML Directives (AMLD4 / AMLD5) have set new standards for beneficial ownership disclosure, meeting or surpassing several FATF recommendations. The passage of AMLD4 in June 2015 required all EU member states to create beneficial ownership registries, and in June 2018 AMLD5 mandated that those registries be made public by January 2020 and accessible via a centralized platform by 2021.¹⁴⁶

A total of 45 countries, including all EU members, have now implemented or are in the process of rolling out beneficial ownership registries, a majority of which are public.¹⁴⁷ They have the support of a growing coalition of stakeholders from law enforcement, industry and civil society, who are advocating for similar reforms in other jurisdictions.¹⁴⁸



“Beneficial ownership transparency is the single most important tool for fighting money laundering and other financial crime in the real estate sector and beyond.”

➤ Lessons from the UK PSC Register

“Are we in a position where, if you are a determined, effective criminal, we’ll make it impossible for you to run a company? No, we’re not. But we’ll make it harder, we’ll make it more awkward for you and to some extent, if that means that you don’t register your company in the U.K., don’t operate it in the U.K. and you go somewhere else, that is a success.”

– Donald Toon, UK’s economic crime director¹⁴⁹

The UK introduced the world’s first open registry of beneficial owners in 2016 – known as the Persons of Significant Control (PSC) register – and two years after its launch it presents a useful case study whereby we can assess its effectiveness and its shortcomings.

In July 2018, a team of data scientists partnered with Global Witness to analyze the data in the PSC register, looking for mistakes and suspicious signs, while comparing information in the register with other publicly available data sets. They identified thousands of companies that failed to comply with the law, and found numerous errors in the information submitted to the registrar. As a report on the data analysis notes, “loopholes in the rules and a lack of checks by Companies House [the registrar] on information submitted undermines the potential of the register to detect and deter crime.”¹⁵⁰

Though the lack of data verification is lamentable, by making the registry public the UK has at least given an opportunity to journalists and civil society watchdogs to check its accuracy. Global Witness identified five supposed beneficial owners who control more than 6,000 companies, and found that another 7,000 companies had identified offshore legal entities as their beneficial owners, violating the PSC rules.¹⁵¹ Their analysis also helped Companies House to improve data quality by making minor technical adjustments to reduce spelling mistakes and other inadvertent errors.

While the UK should be commended for becoming the first country to roll out a beneficial ownership registry, a lack of independent data verification and enforcement have undermined this progress. The UK’s continued troubles with money laundering and financial crime suggests that, to be effective, a beneficial ownership registry must be accompanied by active enforcement and a sufficiently dissuasive sanctions regime. Money launderers, by their very nature, seek out ways to circumvent the law and will continue to defy registry rules unless faced with the meaningful risk of being detected, prosecuted and subject to significant sanctions.

A 'Made-in-Canada' Registry

Beneficial ownership reforms are crucial if Canada is to have a working AML regime that is in line with international standards. Requiring companies to collect that information is a necessary first step, but the data is practically useless without a registry through which it can be accessed and analyzed. In order to be effective, that registry would need to:¹⁵²

- **Centralize information.** There are 14 jurisdictions within Canada in which one can establish a company, and 14 separate registries that administer corporate information. The federal, provincial and territorial governments need to harmonize the information that is collected and disclosed by companies, and create a centralized system whereby users can search all Canadian entities.
- **Ensure data quality.** Independent verification is vital to preserving data quality. As the data held by UK Companies House has shown, a lack of verification undermines the ability of businesses to conduct due diligence and of authorities to investigate wrongdoing. Without independent verification, a cottage industry of nominee beneficial owners is likely to emerge just as it has for shareholders and directors.¹⁵³ Data quality also depends on companies updating any changes to their information in a timely manner, which needs to be legislated and enforced. Other technical measures can be taken to enhance data quality, such as issuing unique identifiers for beneficial owners, avoiding free-form data fields and prompting registry users to double-check entries.¹⁵⁴
- **Make it free and open.** A registry will only be effective if it is widely used and can be cross-referenced with other datasets. In 2016, the UK removed a nominal £1-per-search fee from its corporate registry, and saw searches increase from 6 million in 2014-2015 to over 2 billion in the first year after implementing that change.¹⁵⁵ If the data is available in open format, it can be analyzed in novel ways and linked to other datasets such as sanctions lists and databases of PEPs and HIOs.
- **Be proactive.** Registrars need to be equipped with the power to compel and verify company information, analyze data for unusual and suspicious activity, and apply dissuasive sanctions for non-compliance. They should have a strong foundation in corporate law and white-collar crime in order to take a risk-based approach to managing their registries. Enhanced registrars would be a valuable source of AML intelligence for FINTRAC and could act on information received from the agency.

Real Estate-Focused Registries

The concept of beneficial ownership registries can be applied to property as well as companies and trusts. Responding to real estate crises in London and Vancouver, the UK and BC governments have drafted legislation to create public registries of beneficial owners of property in their respective jurisdictions. Both laws preserve the ability of legal entities to own property – and the associated benefits of limited liability and legal tax advantages – while stripping away the anonymity that facilitates money laundering and tax evasion.

The UK's draft *Registration of Overseas Entities Bill* was tabled in July 2018 and targets the approximately 91,000 properties that are owned through offshore entities, and will require them to identify their beneficial owners in order to buy or sell UK property.¹⁵⁶ That information will be submitted to Companies House and published through the PSC register. As British companies are already required to disclose their beneficial owners, the bill seeks to apply the same standards to overseas entities.

In June 2018, the BC government drafted the *Land Owner Transparency Act* (LOTA) to address opaque ownership of real estate in the province.¹⁵⁷ If enacted, the LOTA would compel title-holding companies, partnerships and trusts to disclose their beneficial owners, and would make that information accessible through a public registry administered by the Land Title and Survey Authority. A separate regulation, already in force under the Property Transfer Tax Act since September 2018, requires beneficial owners of companies and trusts to be identified in property transfer tax returns.¹⁵⁸

For these registries to be effective, it is vital that they capture all types of opaque ownership – including individual nominees as well as companies and trusts. Otherwise, those with an interest in circumventing the law will identify the loopholes and exploit them. Like other policy solutions, these registries will only work if they are widely complied with, which requires adequate sanctions and active enforcement.

Unexplained Wealth Orders

The Unexplained Wealth Order (UWO) is a novel tool recently introduced in the UK to help law enforcement agencies gather evidence of money laundering and seize assets acquired by criminals and corrupt officials. It was devised in response to concerns that the UK has become a beacon for corrupt money from around the world, and that existing civil recovery tools were not suited to address transnational crime and grand corruption.¹⁵⁹

UWOs were designed with foreign criminals and corrupt officials in mind, and address the practical difficulties of recovering the proceeds of crimes committed abroad.¹⁶⁰ Prior to UWOs, there was no legal tool UK law enforcement could use to require a foreign government official to explain a suspicious transaction.¹⁶¹ Moreover, civil recovery investigations depended upon the help of foreign governments to obtain evidence of crimes committed abroad, which is practically impossible without political will, established channels for information sharing, and adequately resourced authorities in the corresponding country.¹⁶²

By shifting the burden of proof to the respondent to show that his or her assets were legally obtained, the UWO overcomes the often insurmountable difficulties of obtaining convictions for underlying crimes and cooperation from the country of origin.

How It Works

Armed with a UWO, law enforcement agencies can compel an individual to explain the source of wealth used to purchase a property or other asset. To ensure this tool is used only when justified, enforcement authorities must apply to the High Court and convince a judge that the following three criteria are met:

- 1 The target of the order is a PEP outside the European Economic Area, or there are reasonable grounds to suspect that he or she is or has been involved in serious crime.
- 2 There is clear inconsistency between their apparent legal income and their visible assets in the UK.
- 3 The asset in question is valued at more than £50,000.¹⁶³

If a target of a UWO fails to respond or gives an inadequate explanation, it can be used to support separate civil recovery proceedings under the UK's Proceeds of Crime Act.

UWOs in Practice

Within a month of the legislation coming into force in January 2018, the National Crime Agency (NCA) successfully applied for its first UWO against two properties suspected to be the proceeds of corruption.¹⁶⁴ The properties – a home in London's affluent Knightsbridge area and a golf club in Ascot – were acquired through shell companies registered in the British Virgin Islands (BVI) and Guernsey beneficially owned by a corrupt Azerbaijani government official and his wife. The subject of the UWO is Zamira Hajiyeva, whose husband Jahangir Hajiyev chaired the state-owned International Bank of Azerbaijan and is currently serving a 15-year sentence on fraud and embezzlement charges.

Hajiyeva, who denies wrongdoing, failed in her attempt to appeal the UWO and is faced with having to demonstrate that the properties were acquired with legitimately sourced wealth. If she is unable to do so, the properties could be seized. Having cleared its first legal challenge, the NCA says it intends to apply for UWOs to support other cases.¹⁶⁵

Though the UK is the only country with a corruption-focused UWO regime, Australia, Colombia and Ireland have similar civil recovery tools that reverse the burden of proof. While the Irish mechanism has been used effectively to fight organized crime, its Australian and Colombian counterparts have had mixed results. The experiences of those countries highlight the need for political will, appropriate resources, interagency cooperation and investigators with expertise in complex financial crime.¹⁶⁶

In Canada, civil recovery tools have been criticized for a lack of due process, a historic focus on low-level criminals, and negative externalities for innocent third parties such as tenants, lien holders or business partners.¹⁶⁷ The UWO addresses many of these concerns with a built-in oversight mechanism and an explicit focus on serious crime and corruption. It also serves as an opportunity to improve the action rates of FINTRAC disclosures, which would likely identify many of the leads for potential UWOs. As a country with an existing non-conviction-based asset recovery regime, it would be a relatively small step for Canada to provide law enforcement with a UWO-type mechanism. So long as steps are taken to prevent authorities from co-opting them for unintended purposes, the UWO shows exceptional promise as a civil forfeiture tool.

Geographic Targeting Orders

In an effort to tackle the growing problem of money laundering in real estate using shell companies, the US Treasury Department's enforcement branch – the Financial Crimes Enforcement Network (FinCEN) – launched a pilot program in January 2016 that required companies buying high-end residential properties with cash to identify their beneficial owners to the government.¹⁶⁸

FinCEN used a regulatory tool called a Geographic Targeting Order (GTO), which is legislated under the *Bank Secrecy Act*¹⁶⁹ and allows the agency to compel domestic financial institutions to report on transactions over a certain value in a specified geographic area. The initial real estate GTOs focused on all-cash purchases by companies of residential property in Manhattan and Miami, with threshold values of US\$3 million and US\$1 million, respectively.¹⁷⁰ FinCEN has since expanded the program to a dozen metropolitan areas across the US, and has lowered the reporting threshold to US\$300,000.¹⁷¹

How It Works

Real estate GTOs specifically target all-cash purchases, and not purchases with external financing, as financed deals are already subject to 'know-your-customer' checks by financial institutions. In order to implement the program, FinCEN has relied on title insurers to collect and file beneficial ownership information for companies acquiring residential property.¹⁷² FinCEN is not empowered to impose regulations on buyers themselves, which would have been the most direct way to compel disclosure of beneficial ownership information.

Through real estate GTOs, FinCEN has been able to remove the absolute anonymity of corporate purchases without impacting the limited liability and legitimate tax advantages they offer. The owners of a company simply need to identify themselves to the government and they can proceed with a transaction. While that beneficial ownership information is made available to law enforcement through a FinCEN database, it is not released into the public domain.¹⁷³

Impacts of Real Estate GTOs

Prior to the launch of the first real estate GTO in early 2016, all-cash purchases by corporate entities accounted for 10% of residential real estate transactions, according to a 2018 study on the impacts of real estate GTOs.¹⁷⁴ That study found that in the first 10 months of the program, all-cash purchases by companies dropped nationally by about 70%. In some of the counties targeted by the GTOs, they fell by more than 95%.¹⁷⁵

The study also revealed that luxury home prices and sales volumes declined more in counties that were targeted by GTOs, and particularly in counties with the most corporate buyer activity before a GTO was issued.¹⁷⁶ This suggests that anonymous ownership drives up prices by attracting investors who would otherwise keep their money out of the market, all other things being equal.

In order to better understand the use of legal arrangements in laundering money through real estate, FinCEN recently extended the reach of GTOs to include trusts and corporate entities.¹⁷⁷ To level the playing field and curb redirection of laundered funds to non-targeted counties, stakeholders in the real estate sector have called for the program to be applied nationally.¹⁷⁸

GTOs can be a valuable policy tool not only for addressing money laundering in real estate, but for AML intelligence-gathering and deterrence across other sectors of the economy. In recent years FinCEN has deployed GTOs to gather intelligence on other suspected money launderers, including money services businesses in New York, electronics exporters and cheque-cashing businesses in Florida, retailers in the garment district of Los Angeles, and armoured car transporters on the US-Mexico border.¹⁷⁹

The US example shows that GTOs can be an effective deterrent to money laundering in real estate. They also enable regulators to collect valuable intelligence on financial transactions and test hypotheses in a manner that does not require new legislation, without adding to the private sector's compliance burden. Due to their geographically targeted nature, however, there is a certain risk of displacing money laundering activity to other parts of the country. In the context of addressing the risks of opaque property ownership, the policy objective of GTOs could be better accomplished through legislation requiring titleholders to identify their beneficial owners.

“The US example shows that GTOs can be an effective deterrent to money laundering in real estate.”

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- 26 We define unregulated lenders as any mortgage provider that is not covered by the PCMLTFA. Regulated lenders include banks, credit unions, life insurance companies and trust companies.

- 27 This includes 10,781 named corporations and an estimate of 12,140 numbered companies. The true figure for numbered companies may be lower, however, as 12,140 reflects the number of transactions and not the number of title-holding entities. Some entities may hold multiple titles, which would reduce the overall number.
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