

# **MONEY LAUNDERING: A DOMESTIC AND GLOBAL CRISIS**

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## **OUTLINE**

This paper covers the following topics:

1. What is money laundering?
2. How it has created a crisis in Canada;
3. Shell companies and partnerships; their role in money laundering;
4. History of Canada's money laundering laws;
5. Curbing money laundering through a beneficial ownership registry; definition; whether the registry should be publicly accessible or more restrictive;
6. American approach and President Biden's 2021 Strategy on Countering Corruption;
7. 'Lex Duvalier' and the repatriation of stolen assets;
8. Curbing money laundering through an International Anti-Corruption Court;
9. Conclusion

## **WHAT IS MONEY LAUNDERING?**

Money laundering is the practice of making money gained through criminal means, including human trafficking or weapons sales, appear as if it came from legitimate business activity.

Generally, three steps are used to launder the money. The first, known as placement, is the process of assimilating proceeds of crime into financial systems via cash, cheques, bank drafts and wire transfers. The next stage is known as layering. It involves concealing the source of the proceeds of crime through a series of complex financial transactions, through shell companies, invoice payments, electronic transfers, and through the use of offshore bank accounts. In the third and final stage, known as integration, the money launderer fabricates a legal origin for the proceeds by buying or selling stocks, real estate, luxury goods or stock market investments.<sup>1</sup>

To illustrate, here is a real-life example from Vancouver. In 2015, the RCMP uncovered a downtown Richmond loan shark with international connections to Asia. Paul King Jin was running an underground bank, called Silver International, located in a Richmond office tower. While Silver International was incorporated as a money services business, which transmits or converts money, Paul King Jin was operating it as an illegal bank in broad daylight.

Drug dealers were delivering suitcases full of dirty cash to Silver International every day. Equally, Silver International was alleged to facilitate capital flight from China. In order to inject the so-called dirty money into the financial system, a process known as "laundering", Paul King Jin recruited VIP gamblers from Macau and China to convert the drug money to casino chips. Paul King Jin would meet them in the parking lot of casinos, like Richmond's River Rock Casino or nearby New

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<sup>1</sup> *National Criminal Intelligence Estimate of the Canadian Criminal Marketplace, Money Laundering and Fraud*, September 28, 2020, Criminal Intelligence Services Canada, at page 9.

Westminster's Starlight Casino—both Canadian Crown Corporations operated and run by BC Lotteries Corporation— with hockey bags filled with cash to convert the drug money to casino chips.<sup>2</sup> Estimates are that up to one billion dollars per year was being laundered through the network.<sup>3</sup>

In another form of money laundering, criminals will launder using a legitimate business as a front to normalise their cash flow and avoid detection. By methods which include exaggerating operating costs, such as renovations or the cost of services, under, over or multiple invoicing and phantom shipping, illegally obtained money is gradually injected into the revenue streams of legitimate businesses. This is the type of money laundering typified in the television series, *Ozark*.

A more modern means of money laundering involves human trafficking, being the criminal trade of men, women, and children for the purposes of commercial sex, forced labour and other forms of exploitation. According to the Financial Action Task Force, known by its acronym FATF, the Paris-based world authority on money laundering, the proceeds from this form of trade had reached \$150 billion by 2018.<sup>4</sup> Every day, thousands are trafficked worldwide with an estimated 25 million victims around the world.<sup>5</sup> The corrupt actors transform their proceeds into the legitimate economy through money laundering. One of the red flags include large deposits and withdrawals in international border towns as the money launderer will accompany the victims to open bank accounts where money is deposited, then quickly withdrawn, or transferred back to the launderer.

In light of this, money laundering must be considered a predicate offence, that is, a crime that is a component of a much more serious one, such as human trafficking, or other crimes, such as terrorism, kidnapping and extortion.

Since 1993, the FATF has sought to persuade the international community of the need to implement aggressive anti-money laundering laws to better address this modern threat landscape. It has urged states to expand the list of crimes that qualify as money laundering predicate offenses. In December 2020, the E.U. ordered member states across the bloc to harmonize the definition of money laundering by expanding predicate offences to include 22 crimes, such as human trafficking, and migrant smuggling.

Others have argued along these same lines. Canada's former Minister of Foreign Affairs, Lloyd Axworthy is best known for his work in developing and maintaining important global relationships to deal with the standalone crimes, such as arms sales, corruption, human trafficking, and migrant smuggling, all tied in with money laundering. He is known for putting in place measures to leverage an international response to corruption and the threat to human security and financial integrity created by a shadow economy. He argues for an International Anti-Corruption Court to deal with these crimes.

In his mandate letter of December 16, 2021, the Prime Minister directed the Minister of Foreign Affairs, Mélanie Joly to establish an International Anti-Corruption Court, enlisting the help of like-minded international partners. The Minister was also instructed to ensure the standards in Canada's *Magnitsky Law* and the *Justice for Victims of Corrupt Foreign Officials Act* were globally adopted by like-minded countries.

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<sup>2</sup> For further details, see: *Wilful Blindness: How a Network of Narcos, Tycoons and CCP Agents Infiltrated the West*, Sam Cooper, 2021, Optimum Publishing International, Toronto, Canada.

<sup>3</sup> *Money Laundering in British Columbia, A Review of the Literature*, Dr. Stephen Schneider, submitted to the Cullen Commission on May 11, 2020, at page 118 and following.

<sup>4</sup> *Financial Flows from Money Laundering*, Financial Action Task Force (2018)

<sup>5</sup> *Cracking the \$150 billion Business of Human Trafficking*, Forbes, February 2, 2020, Carmen Neithammer.

This paper takes the position that Canada has historically taken a complacent attitude to anti-money laundering laws and their enforcement on its own shores. On the world stage, however, Canada has been highly respected for its foreign policy initiatives and is suited to establish an International Anti-Corruption Court.

The Ottawa Treaty banning land mines, Canada's work in establishing the International Criminal Court, the Protocol on Child Soldiers, and the Responsibility to Protect doctrine—a political commitment to protect populations from genocide, ethnic cleans, and other atrocities—have worked towards establishing that international acclaim. As a result, Canada may be well positioned to take a lead role on the creation of the Court.

## **MONEY LAUNDERING HAS CREATED A CRISIS IN CANADA**

In May 2019, British Columbia established the Cullen Commission to inquire into money laundering in the province, an inquiry mandated with examining whether systemic regulatory failures allowed money laundering to take root in BC casinos and real estate. This was the fourth detailed review of money laundering in the past four years in BC.<sup>6</sup>

Money laundering “exact[s] substantial costs to individuals and institutions” with “devastating impacts on society”, the Government of Canada wrote in its July 2021 closing submission to the Cullen Commission. It leads Canada to suffer reputational and influence loss internationally. Domestically, it lowers government revenues and emboldens criminal gangs.

By not addressing illicit money flows, the federal government submitted, criminals are allowed to profit from “some of the most damaging crimes”, including “drug trafficking, human trafficking, and violent crime” as well as fueling “the opioid crisis that has harmed communities across the country.”

A 2020 report by the Criminal Intelligence Service of Canada found a strong correlation between organized crime gangs involved in money laundering and those involved in two priority drug markets in Canada, finding 65 per cent of money laundering gangs were involved in cocaine trade, and 25 per cent in the traffic of methamphetamine.<sup>7</sup>

In British Columbia right now over 100 people per day overdose on opioids—almost seven fatally—straining ambulance service providers, hospitals, and medical personnel. In 2021, there were 2,224 overdose deaths in British Columbia, up from 1,716 deaths recorded the previous year.<sup>8</sup>

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<sup>6</sup> *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia*, Peter M. German, Q.C., March 31, 2018; *Vancouver at risk—turning the tide—an independent review of Money Laundering in B.C. Real estate, Luxury Vehicle Sales & Horseracing*, Peter M. German, Q.C., March 31, 2019; *Real estate Regulatory Structure Review* (2018), Dan Perrin; *Combating Money Laundering in BC Real Estate*, Maureen Maloney, Tsur Sommerville and Brigitte Unger, March 31, 2019

<sup>7</sup> *National Criminal Intelligence Estimate on the Canadian Marketplace: Money Laundering and Fraud* (2020), Criminal Intelligence Service of Canada at page 10.

<sup>8</sup> *B.C. paramedics, dispatchers responded to record-setting 35,525 overdose calls in 2021*, Global News, January 12, 2022, Elizabeth McShaffey.

By 2019, British Columbia Attorney-general, David Eby warned that substantial money was being laundered through real estate and Lower Mainland casinos, contributing to a red-hot property market, and putting homes out of the reach of many. "I started pulling on the thread of this casino laundering that was taking place and it has led to a real rat's nest of rot, really, in the system," Eby told CBC News. "I think that all BC should be concerned about what's been happening, including, potentially, at a very high level in the real estate market."

A 2019 expert panel on money laundering in the province's real estate sector contained troubling data, including that Vancouver house prices had risen more than 70 per cent in five years; that one out of every five British Columbia property purchases are cash transactions; that underground banks thrive in B.C.; that 10 per cent of mortgages are held by "private lenders". Private lenders, unlike banks, are not legally required to report transactions under anti-money laundering laws. Vancouver's real estate sector remains "ripe for money laundering", it concluded, adding that it was not unusual to find mortgages with declining interest rates; that hundreds of properties were encumbered by mortgages registered and repaid in rapid succession, often within 30 days of their registration, a circumstance considered a "red flag" for money laundering.<sup>9</sup>

Since that report, housing prices have continued to climb with 2022 estimates of a 45 per cent increase in prices in the Vancouver region and 22 per cent in the province overall. "It took at least 15 years to turn Metro Vancouver into a housing-affordability nightmare and a gangland playground," journalist Terry Glavin wrote in *Macleans* in 2018.<sup>10</sup>

According to *Better Dwelling*, a Vancouver-based financial media company, Canada has seen the largest annual housing price increases in the G7. US home prices, it noted, look "tame in comparison." Real home prices in the U.S. were 7.75% higher than the same quarter a year before, an amount "a third the size of Canada."<sup>11</sup>

"Real estate provides a really easy way to hide ill-gotten gains with little oversight and few questions asked." Lakshmi Kumar, policy head of Global Financial Integrity, a Washington-based think tank told the International Consortium of Investigative Journalists, following the release of a report he co-authored. Although this was "clearly a systemic issue globally", he pointed to Canada, where "a lot of money laundering cases were "really concentrated" in "just a few real estate hubs", primarily Vancouver and Toronto.<sup>12</sup>

The Financial Transactions and Reports Analysis Centre of Canada, better known by its acronym, FINTRAC, has also witnessed a growing problem in the real estate sector. FINTRAC, the country's top financial intelligence unit and a branch of the Department of Finance, completes annual reviews of about a dozen industries that are required to report to it. These reviews are based on "the likelihood of an entity's non-compliance." In 2020, more than 40 per cent of FINTRAC reviews were of the real estate sector, 146 of 399. By 2015, the Finance Department had identified mortgage fraud as an area of money laundering risk.

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<sup>9</sup> *Vancouver at risk—turning the tide—an independent review of Money Laundering in B.C. Real estate, Luxury Vehicle Sales & Horseracing*, Peter M. German, Q.C., March 31, 2019, at Chapter 2-1, page 51

<sup>10</sup> *Dirty Money is Destroying Vancouver's Civic Fabric and Causing Lasting Damage*, *Macleans*, July 6, 2018, Terry Glavin

<sup>11</sup> *Canada's Real Estate Bubble Grew Faster Than Any G7 Country In The Past 30 Years*, *Better Dwelling*, October 12, 2021

<sup>12</sup> *Acres of Money Laundering: Why US Real estate is a Kleptocrat's Dream*, August 2021, Lakshmi Kumar & Kaisa de Bal

The Criminal Intelligence Service of Canada estimates that as much as \$133 Billion annually is being laundered in Canadian real estate and other ventures. It found that in 2017, 176 organized crime gangs are now fully integrated into the country's economy. Of those, 50 per cent maintain international ties.<sup>13</sup> To provide perspective, the U.S. Treasury estimates that some \$300B is laundered into the U.S. each year. The U.K.'s National Crime Agency claims that \$125B, or 4 per cent of GDP, is being laundered in the U.K. each year.<sup>14</sup>

A common element in money laundering and the crimes it facilitates is the use of shell companies and partnerships to hide the identities of those moving dirty money. They have been dubbed by *The Economist* as the "getaway cars" of financial crime.<sup>15</sup>

## **THE GETAWAY CARS: SHELL COMPANIES AND PARTNERSHIPS**

A shell company, such as Silver International, the underground bank from the first section, is a company that exists on paper alone. It has few or no employees, none, or a limited amount of production and a physical presence often limited to a cell phone, laptop, or rented office space. The purpose of shell companies is to shelter illicit money and facilitate its flow into the legitimate economy.

Through a series of complex transactions, a shell corporation can function with no indication of who the owner of the corporation really is. One way they do this is by creating so-called straw men, known as nominee directors. A nominee director is the person who acts as a director on behalf of another person and allow the real or controlling owner to have his or her name off the paperwork. Chandrawat & Partners, a Hong Kong law firm, offers nominee services for "people who do not want to show their direct relationship in a company". The firm will provide a power of attorney allowing a nominee director to act on behalf of the person who wishes to hide his or her name. Owners can structure corporations to use nominees to avoid taxes by claiming a house as a principal residence or accessing first-time homebuyer exemptions.

Corporate structures such as these originated from a single Panamanian law firm, known as Mossack Fonseca in the 1980s. One of Mossack Fonseca's secretaries was listed as director of 27,000 companies.

Another method of hiding ownership is through bearer shares. A bearer share is an equity security wholly owned by the person or entity that holds the physical stock certificate, thus the name "bearer" share. The issuing firm neither registers the owner of the stock nor tracks transfers of ownership. Because the share is not registered to any authority, transferring the ownership of the stock involves only delivering the physical document.

This allows criminals to transfer assets in complete secrecy and had become "one of Mossack Fonseca's more popular offerings," writes author Jake Bernstein in the Pulitzer Prize winning book,

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<sup>13</sup> *National Criminal Intelligence Estimate of the Canadian Criminal Marketplace, Money Laundering and Fraud*, September 28, 2020, Criminal Intelligence Services Canada. Britain's National Crime Agency pegs their money-laundering problem at more than \$160 billion/year.

<sup>14</sup> Testimony of Dr. Anders Aslund, Senior Fellow, Atlantic Council to the European Parliament, January 29, 2019.

<sup>15</sup> *Cracking the Shells: The War on Money Launderers Vehicle of Choice Intensifies*, *The Economist*, June 29, 2019

*Secrecy World*.<sup>16</sup> The World Bank calls legal structures such as these “the building blocks of hidden money trails” and set in place to allow corrupt actors to hide their assets from authorities.<sup>17</sup>

These, and others, including trusts, are the main legal structures that ensure that ownership in the shell company is hard, if not impossible to uncover. While shell companies are often associated with sunny holiday places, such as the British Virgin Islands and the Seychelles, “though not as infamous, Canada is at least as opaque as these offshore jurisdictions”, Transparency International, a non-profit organization that seeks to combat global corruption, reported in 2019. “There are few places on earth where it is easier to set up an untraceable company”, it added.<sup>18</sup> Three years earlier, it had reported that fully one-half of Vancouver’s most expensive homes are owned by shell companies, trusts, or nominee directors.<sup>19</sup>

These are some of the reasons that bearer shares were eliminated from the *Canada Business Corporation Act* in 2019 and eliminated from the *Business Corporations Act* of Ontario in 2022.

FATF, the Paris-based global authority on anti-money laundering measures, called for registries that list so-called ‘beneficial owners’—person who benefit from the asset—by name, address, means of identification, size of their interest in the corporation and its origin, and other material facts. While not all this information may need to be made public to address privacy concerns, this data nonetheless must be compiled.

## **CRACKING THE SHELLS: THE COMMITMENT TOWARDS A BENEFICIAL OWNERSHIP REGISTRY**

In 2012, the FATF alerted its 39 member countries, including Canada, of the need to establish a beneficial ownership registry. To that end and in November 2014, Canada, along with other G20 members, adopted the *10 High-Level Principles on Beneficial Ownership Transparency*, promising “concrete action” on beneficial ownership registries.

In response, and by May 2015, the E.U. had enacted a law compelling all E.U. countries to establish beneficial ownership registries within two years. The U.K. and 24 of 27 E.U. countries now have beneficial ownership registries in place. Registries like these may be either publicly available, as in the U.K. where the registry has been in place since 2016 or as proposed in the U.S. with accessibility limited to federal agencies involved in national security, intelligence and law enforcement, state, and appropriate foreign authorities. Since 2015, the E.U. has been lauded for its strong measures in ensuring that its bloc’s registries are open, both domestically and to foreign competent authorities.

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<sup>16</sup> *Secrecy World*, Jake Bernstein, 2017, Henry Holt and Co., New York at page 26.

<sup>17</sup> *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, World Bank, 2011

<sup>18</sup> *Opacity: Why Criminals Love Canadian Real Estate (And How to Fix It)*, 2019, Transparency International (Canada)

<sup>19</sup> *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*, Transparency International (Canada), Adam Ross

Canada lagged by comparison. By 2015 Department of Finance through its branch, FINTRAC began warning of Canada's money laundering and terrorist financing risks.<sup>20</sup>

By 2016, Transparency International, as earlier stated, reported that nearly half of the 100 most valuable residential properties in Greater Vancouver were held through structures that hide their beneficial owners. The Report noted that only in Kenya and a select few U.S. states is it easier to set up an untraceable company than it is in Canada. By then, even the Panamanian law firm, "Mossack Fonesca was marketing Canada to its clients as an attractive place to set up an anonymous company"<sup>21</sup>

In a detailed 2016 assessment, the Paris-based Financial Action Task Force (FATF)—the first to alert to the worldwide problems with beneficial ownership schemes—sent a wake-up call to Canada on its approach.<sup>22</sup> The FATF considered the country seriously deficient in key anti- money laundering measures.

The FATF reported major shortcomings in Canada's real estate sector. The FATF warned that Canada's real estate sector was "highly vulnerable to money laundering", and was "exposed to high-risk clients, including politically exposed persons, notably from Asia." The FATF report referred to cases from China where "Chinese officials were laundering proceeds of crime through the real estate sector, particularly in Vancouver." The government of Mainland China, the report noted, "has identified Canada as a high priority market for recovering assets bought with stolen public funds."

The FATF found that Canada faces other "important" money laundering risks. This is due to the country's "political and economic stability, well-developed international trade networks, cultural environment and highly developed financial system and regulatory background".

The FATF labelled Canada's legal profession as especially vulnerable to misuse due to its involvement in activities that exposed it to "high money laundering and terrorist financing risk". It listed the areas where lawyers were vulnerable to misuse as: the development of land, the construction and sale of new buildings, the creation of corporations and trusts, and the operation of trust accounts. It termed the exemption of the reporting requirement on lawyers "of significant concern."

The FATF graded Canada "non-compliant" in many important regulatory areas. It cited Canada's lack of regulation in dealing with politically exposed persons, life insurance and securities providers, lawyers, law firms and Quebec notaries as "reporting entities". It cited its absence of a filing timeline for suspicious transaction reporting and the lack of regulation identifying the originator of cross-border money transactions. FINTRAC's took a restrictive approach to its duties, it found, hampering intelligence. FINTRAC saw itself as not authorized to obtain any additional information relative to suspicions of money laundering and terrorist financing from reporting entities.

Where the identity of the true owners of financial accounts and assets are hidden, integrity, transparency, and accountability retreat while corruption flourishes. This fact is implicit in the UN Convention against Corruption's requirement that partner states collect and maintain beneficial ownership registries on corporate entities for anti-money laundering purposes.

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<sup>20</sup> *Assessment of inherent risks of money laundering and terrorist financing in Canada* (2015) at page 32, Department of Finance (Canada), [www.fin.gc.ca/pub/mltf-rpcf-fat-eng.pdf](http://www.fin.gc.ca/pub/mltf-rpcf-fat-eng.pdf)

<sup>21</sup> *No Reason To Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*, 2016, Transparency International (Canada)

<sup>22</sup> *Anti-money laundering and Counter-terrorist financing measures, a mutual evaluation, Canada* (2016) Financial Action Task Force

While Canada was initially slow in responding to the 2012 FATF call to action on a registry, following the FATF's 2016 review, money laundering became an urgent government concern. In 2017, the federal government convened a meeting with the provincial Finance Ministers to discuss their corporation laws, calling on them to commit to a beneficial ownership registry. By 2019, updates to business laws to accommodate new policy on money laundering began. Between February and May 2020, the Government of Canada undertook consultations on the creation of one or more registries that identify beneficial owners of Canadian corporations. In 2021, the federal budget committed to a publicly accessible corporate ownership registry by 2025; by 2022 that date was advanced to 2023.

In its 2021 review, the FATF endorsed Canada's legislative amendments and other anti-money laundering efforts since 2018, upping the country's grading to "largely compliant".

Historically, however, it could be argued that Canada had taken a casual approach to money laundering.

## HISTORY OF ANTI-MONEY LAUNDERING LAWS IN CANADA

Money laundering was not a crime in Canada until January 1, 1989, when Canada's *Criminal Code* was amended to include it under section 462(31). The first attempt to combat money laundering under the *Code* was largely ineffective. The way the initial law was written made it incredibly onerous to prove beyond a reasonable doubt that the crime had occurred. For starters, a guilty verdict required the Crown to prove that the accused *intended* to conceal or convert property from an illegitimate to a legitimate form. The Crown had to also prove that the person did so *knowing* the transferred property was the proceeds of crime.

Further, the general prohibition against money laundering in the *Criminal Code* did not specify which activities Canada considered criminal. By 1993, certain activities that were often part of a wider money laundering scheme—like illicit cross border trade, drug trafficking, bribery, and tax evasion, had in effect been hived off from *Criminal Code* oversight and left dealt with under other statutes. In 1993, the federal *Excise Act* and the federal *Customs Act* dealt with money laundering as a section under those Acts. In 1997, the *Narcotic Control Act* and *Food and Drug Act*, each with their own offences of money laundering, were replaced by the *Controlled Drugs and Substances Act*.

This jumble of laws and approaches allowed loopholes that transnational criminals were quick to recognize.

While each individual Act allowed intervention by the Attorney-General, the large number of Acts had the effect of creating silos, hindering communication and cross-departmental co-operation in dealing with the offences, depending on, for example, whether the money originated from illegal drug sales, bribery, tax evasion or illicit cross-border money trades. Further, the maximum penalties for money laundering varied widely under the individual Acts. Tax evasion carried a maximum term of imprisonment of two years under the *Income Tax Act*—one-fifth the maximum punishment for a *Criminal Code* prosecution of the same crime.

A 2001 *Criminal Code* amendment helped clear up some of the cross-departmental confusion this was creating. Parliament amended the Code to specifically give the Attorney-General of Canada the power to prosecute money laundering if the proceeds of crime were obtained from a "designated offence", generally considered the most serious offences. Money laundering under the various federal statutes (*Excise Act*, *Controlled Drugs and Substances Act*, *Corruption of Foreign Public*

*Officials Act and Crimes Against Humanity and War Criminals Act*) were repealed and prosecutions proceeded under the *Criminal Code* in cases where the proceeds of crime were derived from a serious offence.<sup>23</sup>

A fundamental change occurred in June 2000 when the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* became law, establishing the creation of FINTRAC, the Financial Transactions and Reports Analysis Centre of Canada.

The Act required certain businesses, mostly banks, to scrutinize customers, maintain records and report suspicious activities or transactions to FINTRAC where they are reviewed to determine whether they might involve money laundering or terrorist financing.

In 2019, the federal government took steps to shore up law enforcement.

An amendment to the *Criminal Code* that year increased the scope of those who can be prosecuted for money laundering. As noted earlier in this section, Canada's original 1989 anti-money laundering law made it difficult to convict a person of washing funds. The Crown had to prove that the accused *knowingly* transferred the proceeds of crime — an impossibly high bar. The 2019 amendment was intended to help government catch the intermediaries of the money laundering business, including lawyers, accountants, and other professionals.

Going forward, the Crown no longer had to prove the guilty party intended to convert the proceeds of crime. Being “reckless” as to whether the property in question may be proceeds of crime was sufficient to prove guilt. Recklessness included instances where an accused ignored red flags or failed to make reasonable inquiries as to whether the property had been obtained from illegal activity and continued in the face of evident risk. This opens the door on criminal risk to a casino operator who continues to turn a blind eye to unlawful money exchanges or an accountant who transfers an asset in suspicious circumstances or a banker converting foreign funds to Canadian currency without establishing a legitimate source of the funds.

Whether the lower standard of recklessness will facilitate prosecution of those who actually launder money remains to be seen. The effect, however, may greatly increase the risk of prosecution for countless professionals involved in everyday financial paperwork while creating little change for the criminals who actually launder the money.

## **THE AMERICAN APPROACH TO MONEY LAUNDERING**

In contrast with Canada, the American approach to money laundering is more established and effective. In 1970, the U.S. Congress passed the *Bank Secrecy Act*. Also known as the *Currency and Foreign Transactions Reporting Act*, it imposed record-keeping and reporting obligations on U.S. financial institutions. Since that initial law, which required U.S. banks to assist government agencies to detect and prevent money laundering and tax evasion, the U.S. has continued an aggressive approach to the crime through a series of laws. As early as 1988, it added “persons involved in real estate closings and settlements” to the *Bank Secrecy Act's* definition of financial institutions.

Other notable laws include the 1977 *Foreign Corrupt Practices Act* which prohibits U.S. citizens and entities from bribing foreign government officials to benefit their business interests and the 2010

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<sup>23</sup> See: *R. v. Daoust*, [2004] 1 SCR 217 for legislative history at paragraph 43

*Foreign Accounts Tax Compliance Act* which requires all non-U.S. foreign financial institutions to report the holdings of U.S. clients. Noncompliance by the foreign bank can result in an order losing access to U.S. banking services.

The U.S. has also taken a strong compliance and enforcement approach as witnessed in the Department of Justice's Money Laundering and Asset Recovery Program. Annually, the program lists the recoveries and prosecutions for the year. In 2020, for example, it covered some 50 incidents, including a Goldman Sachs charge of foreign bribery in October resulting in the bank paying a fine of \$2.9 billion USD. In June, it recorded the sentencing of a Chinese national for a multi-million-dollar money laundering scheme with Mexican drug cartels. In July, it catalogued a money laundering charge involving Health Care proceeds valued at \$180 million.<sup>24</sup>

While the U.S. was once considered "in the regulatory forefront" when it came to preventing money laundering, Washington, D.C.-based, Global Financial Integrity claims, that when it came to real estate, "it lost its ground to peers in the U.K. and Europe." Similar to Vancouver, by 2015, the New York Times reported that more than half the sales of high-end residences (over \$5 million) in that city were through shell corporations.<sup>25</sup>

The following year, the Financial Crimes Enforcement Network, known as FinCEN, a bureau of the U.S. Department of the Treasury issued Geographic Targeting Orders on twelve U.S. locales, including New York City. It required title insurance companies to identify the real person behind any all-cash real estate transaction exceeding \$300,000.

Backed by large budgets, U.S. policing and enforcement has been swift and comprehensive. In 2017, for example, the U.S. initiated action against Yahya Jammeh, the former president of Gambia, one of the world's poorest countries. Having ascended to power through a coup, Jammeh was alleged to have removed \$300 million USD from Gambian public accounts, using shell companies to launder illicit proceeds from bribes. His purchase of a six-bedroom, nine-bathroom mansion in Potomac, Maryland is currently under forfeiture proceedings. In 2017, pursuant to the Global Magnitsky Act, his assets were frozen and his U.S. visa as well as those of his immediate family were blocked.<sup>26</sup>

On January 1, 2021, Congress enacted the *Anti-Money Laundering Act* to further its efforts in curbing money laundering and terrorist financing. The Act extends previous subpoena powers by granting the Department of Justice and the U.S. Department of the Treasury subpoena authority over foreign banks with correspondent accounts in the United States to produce their records. Non-compliance can result in fines of up to \$50,000 for each day the subpoena is ignored.

On June 3rd, 2021, the U.S. launched a powerful domestic and multilateral anti-corruption initiative. Calling the fight against corruption "a core national security interest", President Joseph R. Biden said it "threatens United States national security, economic equity, global anti-poverty and development efforts, and democracy itself."<sup>27</sup>

President Biden demanded a comprehensive study on the U.S. approach to corruption, both domestically and internationally. The resulting study, the *United States Strategy on Countering Corruption*, was filed several months later.<sup>28</sup>

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<sup>24</sup> See: <https://www.justice.gov/criminal-mlars/mlars-press-releases-2021>

<sup>25</sup> *A Kleptocrat's Dream: U.S. Real Estate, a Safe Haven for Billions in Dirty Money*, Sean McGoey, August 10, 2021, International Consortium of Investigative Journalists. (On Vancouver homes see:

<sup>26</sup> See: *United States Strategy on Countering Corruption*, December 2021, The White House, at page 25

<sup>27</sup> Remarks by President Biden at the 2021 Kennedy Centre Honorees' Reception, December 5, 2021

<sup>28</sup> *United States Strategy on Countering Corruption*, December 2021, The White House

The *Strategy* addresses money laundering, tax evasion, corruption, kleptocracies and bribery. It requires the government to file reports on suspicious activity and on the frequency and background of deferred prosecution agreements. It will “update tools available to hold corrupt actors accountable at home and abroad”. It pledges to work with international allies on other initiatives to combat corruption.

One of the domestic tools it advances to root out money laundering is the creation of a beneficial ownership corporate registry to address deficiencies in its anti-money laundering regime.<sup>29</sup>

Shell companies, the study reports, are consistently used to “disguise criminal proceeds” and result in U.S. law enforcement agencies “[having] no systemic way to obtain information on the beneficial owners of legal entities.”<sup>30</sup> It proposes a registry that collects the “true owners” of certain companies.

While state corporation laws had not required entities to disclose information about their beneficial owners, many states have compiled beneficial ownership lists which are housed in their secretary of state offices, with notable exceptions being Delaware and South Dakota. The state offices will be required to produce those lists.

The beneficial ownership registry will be overseen and administered by the Financial Crimes Enforcement Network, established in 1990 as a branch of the Office of Terrorism and Financial Intelligence. The public will not have access to the registry.

## **CANADA’S CONSULTATIONS ON A PUBLICLY ACCESSIBLE REGISTRY**

Between February and May 2020, the Government of Canada undertook consultations on the creation of one or more registries that identify beneficial owners of Canadian corporations. On April 6, 2021, it filed its report.<sup>31</sup>

Consultations included 29 organizations and 50 submissions from a range of stakeholders, including law enforcement and tax agencies, industry associations and privacy commissioners, individual Canadians, and civil society. Nearly all parties agreed on the need for the creation of a federal database that will store accurate, up-to-date, and verified information about who owns and controls the millions of private companies in Canada.

The Ministry heard a “clear message” on the need to unmask crooks who hide behind anonymous shell companies. Stakeholders agreed that a registry provides an essential tool for law enforcement and taxing authorities.

However, most stakeholders expressed fears about privacy and security.

Where stakeholders disagreed was on the value of full public accessibility to the registry, claiming privacy and security concerns, such as identity theft, fraud, and kidnapping. When weighed against these concerns, many questioned whether public access to the registry was necessary to prevent misuse by the corporation; one participant worried that a publicly accessible registry might impact

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<sup>29</sup> *United States Strategy on Countering Corruption*, December 2021.

<sup>30</sup> *Supra*, at page 21.

<sup>31</sup> *Public Consultations on Strengthening Ownership Transparency in Canada: What We Heard (April 6, 2021)*.

business investment in Canada given its proximity to the United States where their registry will be restricted to law enforcement authorities.

Most participants preferred a tiered approach meaning that access would only be provided to law enforcement, tax, and other authorities. Members of the public would only be allowed to access a limited, anonymized dataset.

Stakeholders agreed that there was a need to align with emerging international best practices and to minimize the risk of disparities as provinces put in place measures to collect the data.

## **SHOULD A BENEFICIAL OWNERSHIP REGISTRY BE AVAILABLE TO THE PUBLIC?**

In its April 19, 2021, federal Budget, the federal government committed to a publicly accessible corporate ownership registry by 2025, earmarking 2.1 million dollars for its creation.

A publicly accessible registry is said to have many benefits. It would go to the heart of money laundering structures with a database listing the names of corrupt actors who use opaque legal structures to hide and launder their proceeds of crime. Their names will be compelled to appear on a registry.

As well, it would help Canada secure its influence worldwide as a reliable place to do business, an important consideration in attracting investment to the country. Business groups, in fact, officially endorsed the U.K.'s public beneficial ownership registry, stating that "so-called 'anonymous companies', in which the corporate veil is used to conceal illegal activities, have no place in a modern economy and bring the entire business sector into disrepute."<sup>32</sup>

Such a registry helps Canadian businesses and markets understand who they are engaging with. According to a survey by EY, a U.K.-based professional service network, 91 per cent of senior executives surveyed worldwide believed it was important to have information about the beneficial owners of the companies with whom they engage or wish to engage.<sup>33</sup>

A publicly accessible registry acts as a backstop to false entries, allowing civil society organizations and others to ensure it contains accurate information. "Making the register publicly available can help minimise the risk of false information", says Transparency International, "as external watchdogs and even obliged entities (financial institutions and designated non-financial businesses and professions, such as accountants) could help monitor the information provided."<sup>34</sup>

There are, however, drawbacks to public accessibility. One is the risk it may create, such as the potential for identity theft, fraud and harassment, a risk that could be minimized dependant on the extent to the details available.

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<sup>32</sup> Simon Walker, Director-General of UK Institute of Directors: *Ending Anonymous Companies: Tackling Corruption and promoting Stability Through Beneficial Ownership Transparency, The Business Case*, January 2015

<sup>33</sup> *Corporate misconduct—Individual consequences, Global enforcement focuses the spotlight on executive integrity*, 14<sup>th</sup> Global Fraud Survey, 2016, at page 6

<sup>34</sup> Transparency International, *Taking a step back: Why do we care so much about public registers of beneficial ownership?* May 2018

Consistency of approach is key. A May 2021 Transparency International report found that despite public beneficial ownership registries in 24 of 27 countries across the European Union, several had set up overly complex entry requirements to the registry; Belgium, for example, limited access to Belgian citizens or foreign citizens who possess a Belgian tax identification number.<sup>35</sup>

Reliability is equally key. While the U.K. was the first country in the G20 to establish a public registry disclosing its companies' beneficial owners, many of the registry's entries are faulty to the point of being unreliable. This has led to the policy being termed "a curate's egg", or something declared good, but which is actually not good at all.<sup>36</sup>

Responding to a 2019 study by the Department of Business, Energy and Industrial Strategy that claimed even law enforcement "did not consider [the U.K. registry] a reliable source of information about beneficial ownership", Whitehall's March 2022 agenda proposed reforms which included conferring a "querying power" on the Registrar to check, refuse or remove information from the PSC registry.<sup>37</sup>

## **LEX DUVALIER AND THE REPATRIATION OF STOLEN ASSETS: THE KLEPTOCRAT'S WORST NIGHTMARE**

While a beneficial ownership registry serves to penetrate the secrecy that fuels money washing, of equal importance is policy on the recovery and return of despots' stolen fortunes, typically salted away in foreign banks. The February 1986 toppling of Haiti strongman, Jean-Francois (Baby Doc) Duvalier served as a wakeup call on the need for worldwide reform in the area. The untenable prospect of stolen funds being returned to the Duvalier clan coalesced with the weighty influence of the FATF, the world's money laundering expert. This resulted in massive structural changes in the way Swiss banks do business.

The release of the Duvaliers' illicit Swiss accounts had been held in abeyance by the Swiss government for years. The lack of co-operation by the Haitian authorities, however, resulted in the time limits imposed by the Swiss government on its release, being set to expire. This would have resulted in the fortune being returned to the Duvalier family. To avert that possibility, a tailor-made law, known colloquially as Lex Duvalier, followed.

In *The Despot's Guide to Wealth Management*, Lex Duvalier is described as a transformative policy development, one which set in motion further laws freezing a broad range of assets and bypassing resort to the emergency provisions of the Swiss Constitution, as with the Duvalier accounts. Switzerland, says its author, Jason Sharman, went from being "the most secretive and secure host of illicit money to perhaps the most active and effective practitioner and advocate of asset recovery, exemplifying and accelerating broader global normative change."<sup>38</sup>

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<sup>35</sup> *404 Beneficial Owners Not Found: Are E.U. Public Registers in Place Really Public?* May 26, 2021, Transparency International

<sup>36</sup> *Why is London so attractive to tainted money?* The Economist, May 7, 2022. An idiom particular to Britain, a "curate's egg" derives from a drawing in an 1895 edition of Punch magazine. The drawing depicts a curate nervously replying to the bishop's query as to whether the egg the bishop had served him was bad. Not wishing to offend, he responds that "parts are good".

<sup>37</sup> *Registers of Beneficial Ownership*, House of Commons Library No. 8259, February 2021 at page 8 and following. See also: Sweeping Companies House Reforms put a Fast Track for Implementation, *Gowling*, March 9, 2022.

<sup>38</sup> *The Despots Guide to Wealth Management*, by J.C. Sharman, Cornell University Press (2017)

Indeed, in the years that followed and with the demise of the governments of Tunisia (Ben Ali), Egypt (Mubarak), Libya (Khadhafi), and Ukraine (Yanukovych), the Swiss Ministry of Foreign Affairs was tasked with drafting a comprehensive law aimed on freezing of assets. The *Foreign Illicit Assets Act* (FIAA) came into force in July 2016. It provides a multi-staged process in dealing with the issue.

To freeze the assets—including those to which the despot or his associates are beneficial owner—either an investigation under the Swiss Criminal Code must be opened or, alternatively, the affected foreign state may lodge what is termed a request for mutual assistance. (The cases of Ben Ali and Mubarak chose to follow this latter process.) Many autocratic states, however, remain not only controlled by an ousted strongman’s former officials, but also lack the expertise to deal with the complexity of a fair criminal proceeding. As a result, when the kleptocratic state requests the case proceed via a “mutual assistance” process, it is often full of pitfalls and challenges.

The “leitmotiv” of the second step—the confiscation and return of assets—is that crime should not pay, according to the authors of *How to Return Stolen Assets: The Swiss Policy Pathway*.<sup>39</sup> The FIAA outlines a procedure, as equally complex as the first, on the return of the assets, depending on whether the freezing occurred following a Swiss criminal investigation or via the mutual assistance process in the first stage. At the second stage of the proceeding, the asset can be returned to the foreign state through amicable settlement or through a further Court procedure.

However, and despite the effective, and results-oriented nature of the Swiss law, the authors claim there remains room for improvement. The current state of E.U. constitutional law, the authors argue, renders it impossible to enact “a single, full comprehensive act like FIAA at E.U. level.” Lacking a bloc-wide policy on both foreign corruption and asset recovery, it recommends the E.U. nonetheless ensure that laws similar to the FIAA governing the recovery and repatriation of stolen assets cover its member states.

The authors point to the wide variety of asset seizure and confiscation programs, running the gamut from the recent German asset recovery legislative overhaul, which lacks some of the FIAA’s safeguards to that of the U.K. There, while policy on freezing kleptocrats’ assets could be described as comprehensive, the authors find there is little of substance on the restitution side of things, leaving the U.K. to deal with asset repatriation on “either an ad hoc basis or through the negotiation of legal assistance treaties.”<sup>40</sup> France, the authors note, is taking a more far-reaching view with legislation establishing a fund aimed at improving the living conditions of the population, strengthening the rule of law, or combatting corruption in the countries where stolen money or money laundering occurred.

Without an effective framework regulating asset recovery and return, remittance back to the victim state could not only end up facilitating their re-laundering but, equally, would ensure that the corruption that allowed the laundering and theft in the first place continues unaddressed.

The creation of an International Anti-Corruption Court as required by Prime Minister Trudeau’s December 2021 mandate letter to his Minister of Foreign Affairs, Mélanie Joly, would allow Canada to play a key rulemaking role on the important question of recovery of stolen assets.

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<sup>39</sup> *How to Return Stolen Assets: The Swiss Policy Pathway*, Centre for Civil and Political Rights, Anti-Corruption and Human Rights Initiative, Geneva 2020

<sup>40</sup> *Supra*, at page 30, paragraph 90

## AN INTERNATIONAL ANTI-CORRUPTION COURT

The concept of an International Anti-Corruption Court has gained strength. During the 2021 Canadian election, both the Liberal and Conservative parties committed to one. At the Biden Administration's Summit for Democracy in December of that year, the Government of Canada pledged to work towards its creation. The Minister of Foreign Affairs, Mélanie Joly's mandate letter directed her to work with international partners towards its establishment.

There is strong case to be made for an International Anti-Corruption Court. While beneficial ownership registries aim to deter money laundering domestically, they cannot tackle the grand corruption endemic in kleptocracies and terrorist states around the globe. Globally, networks of criminals act "as a private government of organized crime, a government with an annual income of billions, resting on a base of human suffering and moral corrosion," to borrow from the deceased Senator for New York, Robert F. Kennedy.<sup>41</sup>

The U.S. defines grand corruption as occurring "when political elites steal large sums of public funds or otherwise abuse power for personal or political advantage." Corruption, it says, not only "curtails the ability of states to respond to their own public health crises or address climate change, migration and inequities of all forms", it contributes to "state fragility". Terrorist networks, gangs and human traffickers operate with impunity in certain countries and spread to create blocs in others.

Every year, \$88.6 billion leaves the African continent in the form of illicit capital flight.<sup>42</sup> Every year, at least \$1 trillion is paid in bribes around the world.<sup>43</sup>

The result is that democracy—one that allows its citizens the freedoms of expression, of the press, of peaceful assembly, of fair and free elections, with full participation by women—no longer exists and has been replaced by kleptocracies or terrorist states.

The citizens in those states are silenced, creating conditions that allow corruption to spread. In countries where corruption is endemic, the law is often turned on those that dare shed a light on misconduct. In 2014, President Goodluck Jonathon of Nigeria dismissed the country's bank governor for informing the Nigerian Senate that billions of dollars in oil revenues were missing from the Treasury.<sup>44</sup> Sergei Magnitsky, a lawyer who simply followed the instructions of his client, Hermitage Capital Management to investigate the embezzlement of \$230 million from its investment fund, later died in the Buyrka Prison in Moscow. Magnitsky was held there for 11 months without trial. He was denied visits from his family, held in increasingly squalid cells, grew severely ill and died eight days before he would have had to be released had his case not been brought to trial.<sup>45</sup>

In situations like this, foreign countries will often stand by, unable or unwilling to help as interference may harm their relations with the country in question. In 2006, former prime Minister Tony Blair suddenly halted a bribery investigation into British weapons firm, BAE Systems after Saudi Arabia,

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<sup>41</sup> Statement by Attorney-General Robert F. Kennedy, permanent Subcommittee on Investigations of the Senate Government Operations Committee, September 25, 1963

<sup>42</sup> United Nations Conference on Trade and Development's Economic Development in Africa, Report 2020, cited in 2021 US Strategy on Countering Corruption at page 6.

<sup>43</sup> Dev Kar & Sarah Freitas, *Illicit Financial Flows from the Developing World Over the Decade Ending in 2009*, at 12 tbl.C (2011)

<sup>44</sup> Adam Nossiter, *Governor of Nigeria's Central Bank is Fired After Warning of Missing Oil Revenue*, N.Y. Times, February 21, 2014.

<sup>45</sup> Ellen Barry, *Lawyer Held in Tax Case in Russia Dies in Jail*, N.Y. Times, November 18, 2009.

which had accepted BAE's bribe, threatened to cut diplomatic relations with the UK if it continued.<sup>46</sup> In similar vein, Haiti proved unwilling to co-operate in the repatriation of assets stolen from its own country for fear of reprisal from those close to the ousted Duvalier family.

It has reached the stage, explains U.S. retired Judge Martin Wolf, Chairman of Integrity Initiatives International and a lead authority on anti-corruption initiatives, that "the British government is reluctant to charge foreign citizens with money laundering without the explicit approval and co-operation of that client's government."<sup>47</sup> Similarly, with the return of stolen fortunes.

As national and international efforts have been inadequate in dealing with grand corruption, there exists an urgent need for a new approach. An International Anti-Corruption Court, not unlike the International Criminal Court—which investigates and, where warranted, tries individuals charged with genocide and other extreme human rights abuses— would operate on the principle of what is known as "complementarity". That principle grants the national court of an offending country the primary jurisdiction to adjudicate the case. The International Anti-Corruption Court would only intervene where their request was denied.

An advantage of the Court is that as those charged with a crime under the International Anti-Corruption Court could face a travel ban confining corrupt bad actors to their home countries, unable to access their mansions and palaces in the moneyed streets in the world's capitals. There is a reason that London, known as a playground of Russia's super-rich, holds such strong appeal to those criminals. Without worldwide standards, kleptocrats can equally choose to salt their stolen loot in the banks of countries that turn a blind eye to their origin.

While trusts—a legal instrument that allows oligarchs to buy properties anonymously—were what attracted them to the U.K. initially, they stay, says Julia Friedlander, director at the Atlantic Council, a US think tank on international matters, because they can then use the country as a "lily pad jurisdiction" to invest in high-end real estate.<sup>48</sup>

Confining corrupt officials within their own country, says Wolf, could act as a deterrent in itself. Equally, ensuring their stolen loot is never beyond recovery.

Finally, an International Anti-Corruption Court would signal a strong message that the global community is no longer willing to tolerate grand corruption, a directive that would serve as a beacon of hope for those brave people, like Sergei Magnitsky, seeking to expose the corruption destroying their countries.

Two main criticisms about the Court have been raised. First, in order to give the Court authority over criminal abuses occurring at the hands of the leaders of some countries, that country's leader would have to agree to the court's jurisdiction. There would necessarily be reluctance to sign on for the Court in those countries, "and the methods to compel countries to join such a court may be ineffective or counterproductive."<sup>49</sup>

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<sup>46</sup> Paul Carrington, *Law and Transnational Corruption: The Need for Lincoln's Law Abroad*, Law & Contemp. Probs., Autumn 2007, at 109.

<sup>47</sup> Martin Wolf, *The Case for an International Anti-Corruption Court*, Brookings Institute, Governance Studies, July 2014.

<sup>48</sup> *London's Status as a Playground for Kremlin-linked Oligarchs Undermines Britain's Tough-on-Russia Stance*, Washington Post, Adam Taylor, February 1, 2022.

<sup>49</sup> *An International Anti-Corruption Court? A synopsis of the Debate*, U4 Brief, 2019:5, Matthew C. Stephenson and Sofie Arjon Schutte.

Yet Wolf and others argue that membership in the Court should be a condition for membership in the 2003 United Nations Convention against Corruption (UNCAC). That Convention—signed on by 188 countries (as of August 2021), including Russia, Afghanistan, and Egypt—enlists them in the prevention and fight against corruption. If they have signed on to a multilateral Convention to stamp out corruption, how can they turn around and disagree on an enforcement mechanism?

Further, the E.U., by a December 2020 directive, requires member states to change their laws to reflect an expanded list of offences qualifying as money laundering within six months, a move that will help overcome jurisdictional hurdles. Money laundering will include cases of human trafficking, migrant smuggling, fraud, and corruption.

The second criticism is that an International Anti-Corruption Court represents an impossible ideal and will be ineffective. Channeling the powers and resources of major countries, like the U.S. and E.U. will be necessary to counter the argument. While the E.U. has put in place measures that would assist in overcoming jurisdictional deficiencies, the U.S. recently launched a multi-faceted war on corruption.

In its December 2021 *Strategy*, the US outlined the numerous harms associated with corruption, committing the U.S. to continuing to study “the weaponization of corruption” and how it impacts on the United States and other democracies, as well as “how to thwart and build resilience against this evil threat.”<sup>50</sup> Canada, in calling for measures to be in place for an International Court, has adopted an early and strong stand on the issue.

A build-up of firepower against corruption exists in the E.U., Canada and the U.S. The International Anti-Corruption Court is a positive addition. These approaches and initiatives have been endorsed at every step along the way by the numerous organizations, multi-lateral institutions, Commissions of Inquiry, and academics, that have fought for change.

Change could not have taken place without the persistence of journalists. They uncovered the offshore registries and secreted wealth, often putting themselves in perilous situations as they unravelled the puzzle within a puzzle behind the legal structures of shell companies. They shed a needed light on the secrecy and the devastation it was causing. They ensured the public could no longer fail to see the reason for alarm.

## CONCLUSION

Canada has enjoyed a foundational role in past key United Nations initiatives, including the creation of an International Criminal Court, which began operations in July 2002. In fact, Canada had brokered the negotiations that resulted in the so-called Rome Statute of July 1998 that established the Court and was the first country in the world to incorporate the obligations of that Statute into its national laws with the passage of the *Crimes Against Humanity and War Crimes Act* of June 2000.

Much work led to the passage of the *Crimes Against Humanity and War Crimes Act*, including amendments to Canada’s domestic laws governing jurisdictional issues; amendments to key legislation including the Canada’s *Criminal Code* and *Extradition Act*; rulemaking to ensure the integrity of the International Criminal Court processes; and through the creation of supportive funds and networks.

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<sup>50</sup> *United States Strategy on Countering Corruption*, December 2021, The White House.

Canada now seeks a leadership role in the design of an International Anti-Corruption Court. The concept of an international court dealing exclusively with worldwide corruption has grown to the point that it is now endorsed by 125 world leaders from over 45 countries. Not unlike the International Criminal Court, an International Anti-Corruption Court traces its origins to a United Nations initiative, specifically, the United Nations Convention against Corruption (UNCAC).

UNCAC was adopted by the UN General Assembly in October 2003 as the international response to the worldwide problem of corruption. As of August 2021, 188 countries around the world remain bound by UNCAC. Its Articles provide the framework necessary for Canada to work towards an International Anti-Corruption Court (IACC).

While an IACC may face a jurisdictional hurdle, as earlier outlined, its benefit will be overwhelming. It will overcome the inadequacy inherent in the current situation, where corrupt leaders act with impunity, fully able to deny or prohibit a vigorous investigation and prosecution of their activities. Often, those dishonest leaders act with the complicity of other nations that benefit from foreign investment in their country, as under the earlier example with former U.K. Prime Minister Blair. Some complicit nations are motivated by the wealth and boost to their economies of dirty money being stashed away in their countries. An International Anti-Corruption Court can tackle those barriers to curbing corruption.

UNCAC rests on four pillars: prevention and criminalization of corruption, asset recovery and international cooperation.

By the first and second pillars: prevention and criminalization, countries that have signed on to UNCAC are legally required to establish criminal offences dealing with money laundering, bribery, and other forms of corruption. To ensure effective prosecution, Article 12 (2)(c), requires those countries to collect and record beneficial ownership information on corporate entities for anti-money laundering purposes. By Article 14 (1)(a), financial institutions are required to verify such information, particularly for high-value accounts and transactions, including politically exposed persons and their close associates and family members.

To play a brokerage role, the government of Canada will have to ensure its money laundering laws, including the concept of money laundering as a predicate offence, are leading-edge. It will have to ensure it is compliant and current with the requirements of the Financial Action Task Force, the Paris-based money laundering entity. Importantly, it will have to set in place a beneficial ownership registry.

As to UNCAC's pillar on asset recovery, by Chapter V, partner countries are required to have in place asset recovery systems. To meet this bar, Canada will have to establish a functional asset recovery program and may choose to consider Switzerland's *Foreign Illicit Assets Act* (FIAA). Bill C-19, currently under consideration, allows for the forfeiture and disposal of assets held by sanctioned people and entities.

The creation of an International Anti-Corruption Court aligns squarely with UNCAC's final pillar, being a commitment towards international co-operation. Around the globe, rules governing the prevention and criminalization of corruption must, as far as jurisdictionally possible, be consistent, and reliable. The prosecution of corruption must be pursued and banking claims to client secrecy, limited. An International Anti-Corruption Criminal Court must respond to the need for a just and uniform asset recovery arrangement channeling stolen fortunes back to victim countries under conditions that seek to redress their civil or socioeconomic status.

In Budget April 7, 2022, the government proposed substantial and impelling changes to curb money laundering. It promised to strengthen the *Proceeds of Crime (Money Laundering) and Terrorist*

*Financing Act, Criminal Code*, and other legislation, to enhance the ability of authorities to “detect, deter, investigate, and prosecute financial crimes”.<sup>51</sup> The government pledged to substantially shorten the timeline needed to set up a federal beneficial ownership registry and to work with provinces in establishing their registries. The government will introduce legislation on the seizure, forfeiture and disposal of assets held by sanctioned individuals.

In sum, the Budget proposals not only attack money laundering domestically, but also align Canada with the four pillars underpinning UNCAC. While work remains to be done, Canada has established the blueprint necessary for a comprehensive set of anti-money laundering laws and has given itself the stature necessary to champion an International Anti-Corruption Court.

With Russian financial criminals in the global spotlight and armed with the commitment of Canada’s ally, U.S. President Joseph R. Biden who has prioritized the global fight against corruption and vowed to “stand in support with those demanding honest transparent governance”, the timing for Canada to move forward towards the establishment of a Court is now.<sup>52</sup>

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<sup>51</sup> Remarks by the Deputy Prime Minister and Minister of Finance during an appearance before the Standing Committee on Finance in pre-study of Bill C-19, the *Budget Implementation Act*, May 2, 2022.

<sup>52</sup> Statement by President Joseph R. Biden on the National Security Study Memorandum on the Fight Against Corruption, June 3, 2021, The White House