10-Year Evaluation of Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime

FINAL EVALUATION REPORT

Presented to
Department of Finance

by
Capra International Inc.

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December 7, 2010
# LIST OF ACRONYMS

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<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADM</td>
<td>Assistant Deputy Minister</td>
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<tr>
<td>AG</td>
<td>Auditor General of Canada</td>
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<td>AML/ATF</td>
<td>Anti-money laundering and anti-terrorist financing</td>
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<td>AMP</td>
<td>Administrative Monetary Penalty</td>
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<td>APG</td>
<td>Asia/Pacific Group on Money Laundering</td>
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<td>BSO</td>
<td>Border Services Officer</td>
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<td>CBCRs</td>
<td>Cross-Border Currency Reports</td>
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<td>CBSA</td>
<td>Canada Border Services Agency</td>
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<td>CBSRs</td>
<td>Cross-Border Seizure Reports</td>
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<td>CDD</td>
<td>Customer Due Diligence</td>
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<td>CDRs</td>
<td>Casino Disbursement Reports</td>
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<td>CFATF</td>
<td>Caribbean Financial Action Task Force</td>
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<td>CHARTER</td>
<td><em>Canadian Charter of Rights and Freedoms</em></td>
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<td>CIC</td>
<td>Citizenship and Immigration Canada</td>
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<td>CRA</td>
<td>Canada Revenue Agency</td>
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<td>CRA-Enforcement</td>
<td>Enforcement and Disclosures Directorate (Income Tax-GST/HST) CRA</td>
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<td>CRA-Charities</td>
<td>Charities Directorate of the CRA</td>
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<td>CRSI</td>
<td><em>Charities Registration (Security Information) Act</em></td>
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<td>CSE</td>
<td>Communications Security Establishment</td>
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<td>CSIS</td>
<td>Canadian Security Intelligence Service</td>
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<td>CTCB</td>
<td>Counter-Terrorism Capacity Building</td>
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<td>DFAIT</td>
<td>Department of Foreign Affairs and International Trade</td>
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<td>DPR</td>
<td>Departmental Performance Report</td>
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<td>EFTRs</td>
<td>Electronic Funds Transfer Reports</td>
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<td>FATF</td>
<td>Financial Action Task Force</td>
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<td>FC</td>
<td>Foreign country</td>
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<td>FIAC</td>
<td>Financial Intelligence Analysis Course</td>
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<td>FIs</td>
<td>Financial institutions</td>
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<td>FINANCE</td>
<td>Department of Finance Canada</td>
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<td>FINTRAC</td>
<td>Financial Transactions and Reports Analysis Centre of Canada</td>
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<td>FIU</td>
<td>Financial Intelligence Unit</td>
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<td>FRFI</td>
<td>Federally Regulated Financial Institution</td>
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<td>FSRB</td>
<td>FATF-Style Regional Body</td>
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<td>FTEs</td>
<td>Full-time equivalents</td>
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<td>GAFISUD</td>
<td>Financial Action Task Force in South America</td>
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<td>G-7</td>
<td>Group of 7 Nations</td>
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<td>G-8</td>
<td>Group of 8 Nations</td>
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<td>G-20</td>
<td>Group of 20 Nations</td>
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<td>GoC</td>
<td>Government of Canada</td>
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<td>IAG</td>
<td>International Assistance Group (in Department of Justice)</td>
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<td>ICA</td>
<td>International Compliance Association</td>
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<td>ICP</td>
<td>International Compliance Program</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IPOC</td>
<td>Integrated Proceeds of Crime Unit</td>
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<td>JUSTICE</td>
<td>Department of Justice Canada</td>
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<td>LCTR</td>
<td>Large Cash Transaction Reports</td>
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<td>MER</td>
<td>Mutual Evaluation Report</td>
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*Capra International Inc.*
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ML</td>
<td>Money Laundering</td>
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<tr>
<td>MLA</td>
<td>Mutual Legal Assistance</td>
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<td>MLAT</td>
<td>Mutual Legal Assistance Treaty</td>
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<td>MLUs</td>
<td>Money Laundering Units</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>MSBs</td>
<td>Money Services Businesses</td>
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<td>NCR</td>
<td>National Capital Region</td>
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<td>NICML</td>
<td>National Initiative to Combat Money Laundering</td>
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<td>NPO</td>
<td>Non-profit Organization</td>
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<td>OSFI</td>
<td>Office of the Superintendent of Financial Institutions</td>
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<td>PCMLTFA</td>
<td>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</td>
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<td>POC</td>
<td>Proceeds of Crime</td>
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<td>PPSAC</td>
<td>Public/Private Sector Advisory Committee</td>
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<td>PPSC</td>
<td>Public Prosecution Service of Canada</td>
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<td>PS</td>
<td>Public Safety Canada</td>
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<td>PSAT</td>
<td>Public Safety and Anti-Terrorism (Initiative)</td>
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<td>RCMP</td>
<td>Royal Canadian Mounted Police</td>
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<td>REGIME</td>
<td>Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime</td>
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<td>STRs</td>
<td>Suspicious Transaction Reports</td>
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<td>TF</td>
<td>Terrorist Financing</td>
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<td>UN</td>
<td>United Nations</td>
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<td>VIRs</td>
<td>Voluntary Information Records</td>
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EXECUTIVE SUMMARY

Money laundering (ML) and terrorist financing (TF) are crimes that are transnational in nature and affect all Canadians. To address this criminal activity, Canada's Anti-Money Laundering (AML) Regime was established in 2000, with the Anti-Terrorist Financing (ATF) mandate being added in 2001, as a horizontal initiative comprising both funded and non-funded partners. Over the past 10 years, it has matured to its current form. The funded partners now include the Department of Finance Canada (Finance), the Department of Justice Canada (Justice), the Public Prosecution Service of Canada (PPSC), the Financial Transactions and Reports Analysis Centre (FINTRAC), the Canada Border Services Agency (CBSA), the Canada Revenue Agency (CRA) - Enforcement and Disclosures Directorate (Income Tax – GST/HST), the Canada Revenue Agency – Charities Directorate, the Royal Canadian Mounted Police (RCMP), and the Canadian Security Intelligence Service (CSIS). The non-funded partners now include Public Safety Canada (PS), the Office of the Superintendent of Financial Institutions (OSFI), and the Department of Foreign Affairs and International Trade (DFAIT).

Canada’s AML/ATF Regime (or the Regime) consists of the activities of the funded and non-funded partners as well as those of contributing provincial/regional/municipal regulatory and law enforcement bodies, and the private sector entities with obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and its regulations. The operation of the Regime is governed by the terms of the PCMLTFA and other laws such as the Criminal Code of Canada, Customs Act, Charities Registration (Security Information) Act, Income Tax Act, among others. The interests of the Canadian Regime are represented internationally at the Financial Action Task Force (FATF) on ML and TF.

This evaluation, which covers the period 2000-2010, is mandated by Treasury Board. The evaluation findings are needed to contribute to decision-making regarding the ongoing funding of the Regime partners. They will also contribute to the upcoming five year parliamentary review of the PCMLTFA. Two core issues are addressed in the evaluation through the use of multiple lines of evidence: (1) Relevance of the Regime (need for the Regime, its alignment with the Government’s priorities, and its alignment with federal roles and responsibilities); and (2) Performance of the Regime (effectiveness [achievement of expected outcomes], Regime implementation, and efficiency and economy).

Data were collected by several means and from several sources, and were subsequently integrated in a triangulation of findings to support conclusions and recommendations. The data collection methods were:

- Document and file review, in which some 166 documents and files were reviewed;
- Database review and analysis involving the collection of performance data from the Regime partners, provision of budget information, and the conduct of a financial expenditures survey among Regime partners;
- Interviews with 34 individuals considered to be key informants about Regime operations;
- Conduct of 10 focus groups (six in the public sector and four in the private sector);
- Completion of 13 detailed case studies on Regime operations; and,
• Administration of a web survey, for which there were 256 respondents.

CONCLUSIONS

Based on the analysis of the information gathered, the following conclusions were reached regarding the evaluation issues:

1. Canada’s Regime is needed to combat the threat from ML and TF, which has not diminished since the Regime was implemented in 2000. The Regime is an appropriate response to the global threat from ML/TF. The Regime continues to be relevant because its operations support the Government of Canada’s (GoC) priorities related to justice, financial systems, national security and privacy, and the Regime’s objectives are perceived to be in alignment with the mandates of the Regime partners, although the mandates of all partners except for FINTRAC are broader than AML/ATF.

2. The Regime has made progress in achieving the expected outcomes by:

   a. Meeting its international obligations to the United Nations (UN) and commitments to the FATF (Canada is considered to be compliant or largely compliant with 36 of the 40+9 Recommendations on AML/ATF made by the FATF);
   b. Meeting its AML/ATF responsibilities while respecting the balance between enforcement, and privacy and the provisions of the Canadian Charter of Rights and Freedoms (Charter);
   c. Enhancing the Regime’s coordination and intelligence networking and improving its exchange of information with international partners through: extensive partner participation and leadership in international activities and fora; the provision of education and training in the AML/ATF area; and continued execution of mutual legal assistance (MLA) and extradition requests;
   d. Improving domestically the Regime’s levels of liaison, cooperation and information sharing over the past five years through: secondments of staff from one partner to another; joint operations; memoranda of understanding (MOUs) on compliance information sharing; and MOUs on database access;
   e. Improving the quality of data that is reported to FINTRAC under the provisions of the PCMLTFA;
   f. Increasing the number of disclosures made by FINTRAC to Regime and international partners by some 200 percent from 2006 to 2010; and,
   g. Continuing to seize and retain funds related to ML/TF.

3. The Regime likely contributed to the creation of an environment that is hostile to ML/TF and/or that has been effective in deterring ML/TF and that has reduced the profitability of crime and the likelihood of terrorist activities.

4. The Regime is considered to be economical, to the extent that economy can be determined from the available financial and performance information, because direct Regime funding
has leveraged the use of funds from other sources by Regime partners, and more economical alternatives to the current Regime were not conclusively identified.

5. The efficiency of the Regime has improved, particularly since 2008, but inefficiencies were found related to the full use of FINTRAC proactive disclosures. These stem from organizational mandates and perhaps the allocation of Regime funds, and limitations in information sharing attributable to certain legislative and regulatory provisions.

6. Conclusions regarding changes over time in the number of investigations leading to the laying of charges and attainment of convictions for ML offenses cannot be made because the kind of data required for such a determination are not available.

7. It cannot be determined if the public’s awareness of AML/ATF initiatives has increased over the past 10 years because the public has not been surveyed on this issue. The public was surveyed in 2006 to gauge their impressions of the extent and threat to society of ML and TF, but the public’s knowledge and views about the Regime’s AML/ATF activities were not sought.

8. The question of unintended impacts was assessed in the conduct of this evaluation. The evaluators found no unintended impacts during the study of this program.

**RECOMMENDATIONS**

Based on the findings and conclusions of this evaluation, the following recommendations are made.

1. The Regime should be continued as a horizontal initiative with at least the same level of resourcing provided as currently exists. In addition, Finance, in consultation with the Regime partners, should conduct a review and provide recommendations regarding the funding allocations for the Regime partners that include a detailed assessment of the appropriateness and use by the partners of the current funding levels relative to their responsibilities for AML/ATF activities.

2. Finance should lead an Interdepartmental Working Group with representation from Regime partners to determine future steps for continuing to improve the Regime’s compliance with international commitments and to examine the following key issues:

   a. Regime-related legislation and regulations (*PCMLTFA* and related enabling legislation of Regime partners) that may be constraining information sharing with the aim of identifying possible solutions that may require either legislative/ regulatory amendments or operational changes to remove barriers to effective and efficient Regime operations;

   b. Concerns raised by reporting entities, as cited in this evaluation report, with a view to addressing their issues, as appropriate, regarding how requirements under the *PCMLTFA* are being complied with;
c. The inconsistencies identified in the Regime performance data and statistics to facilitate the Regime’s ability to accurately report on its achievement; and,
d. Whether updates are required to the Regime’s management and accountability framework and Logic Model, particularly in relation to the Regime roles and responsibilities of OSFI, Justice (as it now exists after the creation of the PPSC), and the RCMP-ML unit, and in relation to the current expected outcomes that do not include reference to measures of the number of ML/TF charges laid and the number of convictions obtained.

3. Finance should consider conducting a public opinion survey to determine the level of public awareness of the ML/TF threat and of the AML/ATF actions of the Regime. This survey would provide a baseline of information to be used in future evaluations, and to assess the extent of public acceptance of the Regime.
1. BACKGROUND

1.1 Program Origins and Development

Money laundering (ML) and terrorist financing (TF) are global problems requiring a concerted international response. Consequently, the G-7 established in 1989 the Financial Action Task Force (FATF) to help countries coordinate their anti-money laundering efforts. In 2001, the FATF’s mandate was expanded to include the combating of terrorist financing. The FATF is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat ML and TF. The FATF is a "policy-making body" that works to generate the necessary political will to bring about national legislative and regulatory reforms aimed at combating ML and TF. To date, 180 jurisdictions have pledged to comply with the FATF 40 Recommendations on anti-money laundering and Nine Special Recommendations on anti-terrorist financing. As well, the FATF regularly reviews the compliance of members with the 40+9 Recommendations and suggests areas for improvement.

The FATF monitors members' progress in implementing necessary measures, reviews ML and TF techniques and countermeasures, and promotes the adoption and implementation of appropriate measures globally. In performing these activities, the FATF collaborates with other international bodies involved in combating ML and TF.

In 2000, Canada adopted the Proceeds of Crime (Money Laundering) Act (PCMLA). It created a mandatory system for reporting suspicious financial transactions, large cross-border currency and monetary instruments transfers, and certain prescribed transactions. The legislation established the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to collect and analyze these financial transaction reports and to disclose pertinent information to law enforcement and intelligence agencies. In December 2001, the PCMLA was amended to include measures to fight TF activities and was renamed the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).

The National Initiative to Combat Money Laundering (NICML) was established in 2000 and was later expanded to what is now known as Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime (referred to as the Regime). In December 2006, amendments to the PCMLTFA received Royal Assent that upgraded Canada's legislation to be more consistent with international AML/ATF standards, as set out by the FATF, and that addressed areas of domestic risk. Amendments included enhanced customer identification requirements, the creation of a registration scheme for money services businesses, and the establishment of administrative monetary penalties that deal with serious and minor compliance violations as an alternative to a criminal penalty. The bulk of the regulatory changes went into effect in June 2008.

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1 FATF Annual Report, July 2010
In 2010, further to the federal budget, consequential amendments were made to the *PCMLTFA* to reflect amendments to the *Criminal Code Regulations* that now make tax evasion a predicate offence for money laundering in Canada. Additionally, a new part was added to the *PCMLTFA* (which has not yet come into force) to allow the Government to take action to safeguard the Canadian financial system from ML/TF threats emanating from foreign jurisdictions and entities that lack sufficient and effective AML/ATF controls.

### 1.2 Program Structure

Canada’s AML/ATF Regime is a horizontal initiative comprising both funded and non-funded partners. The funded partners now include the Department of Finance Canada (Finance), the Department of Justice Canada (Justice), the Public Prosecution Service of Canada (PPSC), the Financial Transactions and Reports Analysis Centre (FINTRAC), the Canada Border Services Agency (CBSA), the Canada Revenue Agency (CRA) - Enforcement and Disclosures Directorate (Income Tax-GST/HST), the Canada Revenue Agency – Charities Directorate, the Royal Canadian Mounted Police (RCMP), and the Canadian Security Intelligence Service (CSIS). The non-funded partners now include Public Safety Canada (PS), the Office of the Superintendent of Financial Institutions (OSFI), and the Department of Foreign Affairs and International Trade (DFAIT).

The Regime embraces the legislative, regulatory and policy framework that underpins the AML/ATF mandates and activities of the Regime partners. It includes the AML/ATF activities of the Regime partners, as well as those of contributing provincial regulatory and law enforcement bodies, and those entities with reporting and other obligations under the *PCMLTFA* and its related regulations. Regime partners are also responsible for reporting annual performance measurements related to AML/ATF activities to Finance.

Canada is an active member and participant in the FATF and the Asia/Pacific Group on Money Laundering (APG) and an observer to the Caribbean Financial Action Task Force (CFATF) and the South American Financial Action Task Force (GAFISUD). The Regime partners also have the responsibility for participating in international activities and sharing their knowledge and expertise with respect to the FATF standards, emerging ML/TF trends and typologies, and AML/ATF best practices.

### 1.2.1 Role of the Department of Finance Canada

Along with the broad responsibility for the regulation of the financial sector, the Department of Finance Canada (Finance) has overall responsibility for the Regime. Finance develops anti-money laundering and anti-terrorist financing policy including the *PCMLTFA* and its regulations in cooperation with Regime partners, other government departments and agencies, provincial governments, the private sector (including industry associations), and non-governmental bodies. It leads an assistant deputy minister (ADM)-level Steering Committee, an Interdepartmental Working Group, an Illicit Financing Advisory Committee comprised of Regime partners, and a Public/Private Sector Advisory Committee with representatives from the private sector and Regime partners. Finance also participates in strategic domestic and international policy development activities that support the Canadian Government’s AML/ATF commitments.
Finance heads the Canadian delegation to the FATF, the Caribbean Financial Action Task Force (CFATF), the Asia/Pacific Group on Money Laundering (APG), and the South American Financial Action Task Force (GAFISUD). Finance also collects performance measurement indicators from Regime partners on an annual basis.

1.2.2 Role of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

FINTRAC is Canada’s financial intelligence unit (FIU). Its mandate is set out in the PCMLTFA. Its principal purpose is to collect and analyze financial transaction information that can be used to detect, apprehend and prosecute individuals involved in ML/TF activities.

FINTRAC was established as an independent agency, operating at arm’s length to the police and other departments and agencies of government to whom it can provide financial intelligence, for example, the Canadian Security Intelligence Service (CSIS). Its mandate and powers were designed, among other things, to safeguard individual privacy and Charter rights. It reports to the Minister of Finance, who is accountable to Parliament for FINTRAC’s activities. FINTRAC operates within the scope of the PCMLTFA and its regulations. FINTRAC:

- Collects and analyzes information on financial activities reported as suspicious, and also information on large cash transactions and large electronic funds transfers;
- Ensures compliance with customer identification, reporting, record keeping and other compliance obligations;
- Makes case disclosures of financial intelligence to the appropriate law enforcement agency, CSIS, or other agencies designated by legislation in support of investigations and prosecutions;
- Enhances public awareness and understanding of matters related to ML/TF;
- Conducts its activities while ensuring the protection of the personal information under its control;
- Registers money services businesses; and,
- Administers monetary penalties for non-compliance with the PCMLTFA.

Reporting Entities

A large number of entities across a diverse range of financial and non-financial business sectors have obligations under the PCMLTFA and its regulations, including reporting suspicious and other prescribed financial transactions to FINTRAC, and are required to assess the risk of ML/TF through their organizations’ operations. These entities comprise:

- Authorized foreign banks within the meaning of section 2 of the Bank Act in respect of their business in Canada, or banks to which that Act applies;

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4 FINTRAC Annual Report, March 31, 2009
5 PCMLTFA
- Cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;
- Life insurance companies or foreign life insurance companies to which the *Insurance Companies Act* applies or life insurance companies regulated by a provincial Act;
- Companies to which the *Trust and Loan Companies Act* applies;
- Trust companies regulated by a provincial Act;
- Loan companies regulated by a provincial Act;
- Persons and entities authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments, or to provide portfolio management or investment advising services;
- Persons and entities engaged in the business of foreign exchange dealing, of remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network, or of issuing or redeeming money orders, traveller’s cheques or other similar negotiable instruments except for cheques payable to a named person or entity;
- Persons and entities engaged in a business, profession or activity described in regulations made under paragraph 73(1)(a) of the *PCMLTFA*;
- Persons and entities engaged in a business or profession described in regulations made under paragraph 73(1)(b) of the aforementioned Act while carrying out the activities described in the regulations;
- Casinos, as defined in the regulations, including those owned or controlled by Her Majesty;
- Departments and agents of Her Majesty in right of Canada or of a province that are engaged in the business of accepting deposit liabilities, that sell money orders to the public or that sell prescribed precious metals, while carrying out the activities described in regulations made under paragraph 73(1)(c) of the aforementioned Act; and,
- Employees of a person or entity referred to in any of the preceding categories.

### 1.2.3 Role of the Royal Canadian Mounted Police (RCMP)

As the national police force, and as the provincial or local police force in many jurisdictions across Canada, the RCMP plays a fundamental role in Canada’s AML/ATF Regime. The RCMP investigates ML/TF cases, lays ML/TF charges, makes arrests, and seizes funds or assets suspected of being proceeds of crime (POC) or used (to be used) in support of terrorist criminal activity. The RCMP acts as a liaison in exchanging criminal intelligence with international police forces. RCMP liaison officers around the globe assist in pursuing AML/ATF cases.

The Money Laundering Units (MLUs) of the RCMP are major recipients of suspected ML intelligence, or what is referred to in the *PCMLTFA* as “disclosures” from FINTRAC. The MLUs also receive intelligence from a number of other sources (e.g. from CBSA in relation to the CBSA’s Cross Border Currency Reporting Program; from reporting entities that provide voluntary information; from other RCMP units, law enforcement and intelligence agencies; and from financial institutions and the public). Upon receipt of intelligence, the MLUs make an investigative assessment to determine if a criminal investigation is warranted. Where further action is deemed appropriate, the units will refer the matter to the appropriate Integrated...
Proceeds of Crime (IPOC) Unit. The MLUs can also provide Voluntary Information Records (VIRs) to FINTRAC to be analyzed alongside other information in FINTRAC’s database. A VIR is a record of information voluntarily submitted to FINTRAC about suspicions of ML or TF activities. If the VIR, along with other information, causes FINTRAC to reach a legal threshold of reasonable grounds to suspect that the information would be relevant to an investigation and/or prosecution of ML or TF offences, FINTRAC will disclose the relevant information to the RCMP.

The Anti-Terrorism Financing (ATF) Units of the RCMP are another recipient of disclosures from FINTRAC, domestic and foreign law enforcement and intelligence agencies. These units receive disclosures from FINTRAC and provide VIRs to FINTRAC regarding suspected TF, and conduct investigations using the disclosures where appropriate. They detect and identify persons or entities involved in raising and moving terrorist funds, obtaining evidence where possible for prosecution. They also assist foreign TF investigations in this regard. The ATFs may identify gaps or weaknesses in the financial system. In cases where charities appear to be involved in TF, the units refer cases to the CRA (Charities Directorate). The ATFs play an important role in supporting: the training and certification programs related to AML of the International Compliance Association (ICA); the Criminal Code listing regime; and the UN listings of terrorist organizations.

Finally, the RCMP plays a significant training and awareness-raising role among AML/ATF partners and the private sector, and in international and regional fora including the FATF, APG, and CFATF. Indeed, the RCMP has provided direct technical assistance and training to police forces in developing countries to help them conduct AML/ATF investigations and enhance their investigative techniques.

1.2.4 Role of the Canada Border Services Agency (CBSA)

The CBSA is responsible for the administration and enforcement of Part 2 of the PCMLTFA which requires every person or entity to report to a CBSA officer the importation or exportation of currency or monetary instruments valued at $10,000 or more. Under the PCMLTFA, or any other legislation, there are no restrictions on the amount of currency and/or monetary instruments that a person can bring into or take out of Canada.

The obligation to report under the PCMLTFA resides with the individual or entity importing or exporting currency/monetary instruments. To facilitate these reporting requirements, the CBSA has created the following forms:

- The Cross-Border Currency or Monetary Instruments Report [Individual (E677) form] - this form is used to report situations where the importer or exporter physically carries the currency or monetary instruments into or out of Canada;
- The Cross-Border Currency or Monetary Instruments Report [General (E667) form] - this form is used to report all other situations such as mailing, shipping by courier, or transporting on someone else's behalf; and,
- The Cross-Border Currency or Monetary Instruments Report Made by Person in Charge of Conveyance (E668) form - this form is used to consolidate all currency and monetary
instruments transported by the person in charge of a conveyance. In addition, the importer or exporter also has to complete an E667.

Border Services Officers (BSOs) have the responsibility to enforce the physical cross-border reporting obligation including the examination of baggage and conveyances, and to question and search individuals for unreported or falsely reported currency and monetary instruments. BSOs can seize currency and monetary instruments if they are not reported and are greater than the reporting threshold. Seized non-reported currency and monetary instruments are forfeited with no terms of release when the BSOs suspect that the seized currency or monetary instruments are proceeds of crime or funds for use in TF activities. In all other instances, the seized amount will be returned upon payment of a penalty. BSOs are trained to recognize various monetary instruments and potential instances of non-compliance.

Under the Regime, the CBSA enforces the Cross-Border Currency Reporting (CBCR) program, and has the responsibility of transmitting information from reports and seizures to FINTRAC. The organization also passes intelligence on to the RCMP and other appropriate police forces (e.g., provincial police services and those of other countries). CBSA works closely with Citizenship and Immigration Canada (CIC) to prevent the entry into, or effect the removal from Canada of non-citizens who engage in ML or TF activities.

1.2.5 Role of the Canada Revenue Agency (CRA)

In numerous instances, ML/TL activities involve the evasion of taxes as imposed by the Income Tax and/or the Excise Tax Acts. These Acts are administered by the CRA. The Enforcement and Disclosures Directorate (Income Tax-GST/HST) of the CRA receives disclosures from FINTRAC when analysis indicates there is reasonable grounds to suspect that the information would be relevant to an investigation and/or prosecution of ML/TF offences, and if FINTRAC determines that the information is relevant to a tax or duty evasion offence. The Directorate initiates compliance actions based on FINTRAC disclosures that are provided with a view to determining whether or not attempts to evade taxes administered by the CRA have taken place. As a result of the compliance actions that are initiated, CRA-Enforcement provides statistical results, general information and disclosure feedback to FINTRAC.

Another part of the CRA, the Charities Directorate, administers the scheme for the registration of charities under the Income Tax Act. While all non-profit organizations (NPOs) in Canada, including registered charities, are subject to the terrorism provisions of the Criminal Code of Canada, the CRA is responsible for the detailed regulation only of charities that are registered

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6 It should be noted that in Canada, "charity" and "non-profit organization" (NPO) are not synonymous or interchangeable terms, but are legally distinct entities. The CRA regulates charities (as defined by the common law and the Income Tax Act) in some detail for the purposes of the Income Tax Act, which offers tax-exempt status to registered charities and tax benefits to their donors. CRA (Charities) has a regulatory role only in relation to registered charities, not other NPOs. Registered charities must be non-profit, but not all NPOs are eligible for registration as charities under the Income Tax Act. While neither registered charities nor NPOs pay tax on their income, only registered charities can issue official donation receipts for income tax purposes. The CRA receives annual returns from other NPOs (just as it does from individuals and businesses), to ensure that they remain non-profit and therefore exempt from income tax, but otherwise has no regulatory role in relation to them. Both registered charities and other NPOs are also subject, to varying degrees, to a variety of federal or provincial/territorial supervision depending on where and how they are established.
for the purposes of the *Income Tax Act*. The CRA-Charities’ screening and review activities are aimed at preventing organizations with ties to terrorism from obtaining registration and detecting and revoking already registered charities with ties to terrorism. CRA-Charities makes the fullest contribution it can to the overall Government effort to combat TF through appropriate sharing of program information. In particular, the CRA-Charities Directorate may disclose to the RCMP, CSIS and FINTRAC, either proactively or following receipt of a request for information, specified information related to national security criminal investigations, subject to prescribed circumstances set out in Section 241 of the *Income Tax Act*.

The Directorate receives information from the RCMP, CSIS and FINTRAC that complements its consideration of the denial or revocation of charitable status as appropriate. The CRA, in collaboration with Public Safety (PS), is also responsible for specific aspects of Regime operations under the *Charities Registration (Security Information) Act* (CRSIA) that aims to prevent the use of charities for TF.

### 1.2.6 Role of Canadian Security Intelligence Service (CSIS)

CSIS has a mandate to collect, analyze and report to the GoC information and intelligence concerning threats to Canada's national security. Information collected by CSIS may also be disclosed to other Regime partners to assist in the performance of their activities within the Regime. For example, CSIS works closely with domestic partners such as CRA Charities Directorate to prevent the exploitation of registered Canadian charities to finance terrorist activities. CSIS provides VIRs to FINTRAC on activity suspected to be a threat to the security of Canada and receives disclosures from FINTRAC on this activity. As well, CSIS liaises with the RCMP on a regular basis on ATF-related issues.

### 1.2.7 Role of the Department of Justice Canada

The Minister of Justice/Attorney General of Canada heads the Department of Justice Canada (Justice). Justice is responsible for the drafting and amending of statutory provisions dealing with criminal law and procedure based on directions from the executive branch, as well as the necessary consultations within Canada in relation to such drafting and amending. In that capacity, Justice provides legal advice on ML/TF offences to the other Regime partners. The Minister of Justice and his designated officials, the International Assistance Group (IAG), are responsible for operations under the *Mutual Legal Assistance in Criminal Matters Act* and the *Extradition Act*, the two main statutes in relation to Canada's ability to provide international cooperation to Canadian Regime partners on the one hand, and to Canada's international treaty partners on the other.

The IAG negotiates and administers Canada's treaties for mutual legal assistance (MLA) and extradition. The IAG provides (both to Canadian partners and to foreign authorities) both MLA, which consists of providing evidence for use in criminal cases, and extradition, which is the transfer to or from Canada of individuals wanted for prosecution in Canada or abroad, as the case may be. MLA and extradition operations accomplish two important objectives of the Regime: (1) Support for Canadian investigations and prosecutions involving evidence and/or individuals located abroad; and (2) Fulfillment of Canada's international commitments in AML/ATF. The need for MLAs is also incorporated into the FATF Recommendations, specifically
Recommendation 36, which calls on jurisdictions to provide the widest range of mutual legal assistance in relation to ML and TF investigations and demonstrate the effectiveness of the MLAs.

There has been a significant change within the Department of Justice Canada during the evaluation period. In December 2006, the Public Prosecution Service of Canada (PPSC) was created. It assumed the mandate of prosecuting criminal offences under federal jurisdiction, but it did not take on the international aspects of Justice’s activities. These remained with Justice under the IAG. Before 2006, the IAG’s role was not considered distinctly, but was incorporated within the general “prosecution” function of Justice.

Justice is also responsible for annual reporting of its MLA activities in support of the Regime. As well, the Criminal Law Policy Group provides support to the Regime through attendance and contribution to the FATF, while the National Security Group provides advice and support in relation to terrorism and ATF.

1.2.8 Role of the Public Prosecution Service of Canada (PPSC)

The PPSC is a federal government organization, created in December 2006, pursuant to the Director of Public Prosecutions Act. The PPSC fulfills the responsibilities of the Attorney General of Canada in the discharge of his criminal law mandate, by prosecuting criminal offences under federal jurisdiction and by contributing to strengthening the criminal justice system. The PPSC is an independent organization, reporting to Parliament through the Attorney General of Canada. The PPSC also provides Charter and constitutional legal advice, and if needed, litigation assistance. It is responsible for providing legal advice to enforcement agencies over the course of their investigations, and for undertaking prosecutions that arise out of those investigations.

1.2.9 Role of Public Safety Canada (PS)

PS’s support to the Regime is multi-dimensional and touches on many aspects of the Regime. PS contributes to the development of AML/ATF policies and programs. The RCMP, CSIS and CBSA are united under a single portfolio in PS and report to the same Minister. In addition, PS works with the RCMP, CSIS and CBSA on issues of horizontal or mutual interest. PS chairs the Interdepartmental Coordinating Committee on Terrorist Listings, in support of the Minister of Public Safety’s statutory responsibilities to recommend terrorist entities to be listed pursuant to the Criminal Code of Canada. PS, in collaboration with CRA, is also responsible for a critical aspect of Regime operations under the Charities Registration (Security Information) Act (CRSIA) that aims to prevent the use of charities for TF.

1.2.10 Role of the Office of the Superintendent of Financial Institutions (OSFI)

OSFI derives its mandate from the Office of the Superintendent of Financial Institutions Act (OSFI Act) and legislation governing federally regulated financial institutions (FRFIs) (the Bank Act, the Insurance Companies Act, the Trust and Loan Companies Act, and the Cooperative
Credit Associations Act). OSFI regulates and supervises FRFIs, which comprise banks, federally regulated insurance companies, cooperative credit associations, and federally regulated trust companies and loan companies. FRFIs comprise roughly 80 percent of the regulated financial sector in Canada. All FRFIs except for federally regulated property and casualty insurance companies are subject to the PCMLTFA. Under the OSFI Act, OSFI’s objectives are to supervise FRFIs to determine whether they are in sound financial condition and are complying with their governing statute law and supervisory requirements under that law; to promote the adoption by financial institutions of policies and procedures designed to control and manage risk; and to monitor and evaluate system-wide or sectoral events or issues that may have a negative impact on the financial condition of FRFIs.

OSFI is a member of the Basel Committee on Banking Supervision, which includes in its Core Principles provisions requiring supervisors to be satisfied that banks have adequate policies and processes in place, including strict “know-your-customer” rules that promote high ethical and professional standards in the financial sector and prevent banks from being used, intentionally or unintentionally, for criminal activities. Similar provisions formulated by the International Association of Insurance Supervisors apply to the life insurance sector.

OSFI and provincial financial regulators are not mentioned in the PCMLTFA and accordingly have no direct authority to ensure compliance with or otherwise enforce it in their respective sectors; this is entirely within the mandate of FINTRAC. However, OSFI issues guidance to FRFIs on the adoption by financial institutions of policies and procedures designed to control and manage risk, and has issued AML/ATF guidance as part of a series of guidelines outlining sound business and financial practices.

OSFI plays a supervisory role for the Regime by assessing FRFIs’ risk management controls, and in doing so addresses issues that weaken their procedures for complying with the Regime’s legal requirements. OSFI7 and FINTRAC are authorized under the PCMLTFA to exchange information with each other for the purposes of FRFI compliance with Part 1 of the PCMLTFA, and have entered into an MOU with each other to operationalize this authority.

OSFI supports the terrorist listing process (under the United Nations Act as well as the Criminal Code of Canada) by creating, posting and updating consolidated lists of names described in section 1.2.11 below, including notifying the financial sector of updates. OSFI is not under a legal obligation to do these postings, but does so voluntarily to ensure that financial institutions understand their importance. Financial institutions to which these measures apply are required to screen their customers on a continuing basis, and report monthly to their financial regulators (which, in the case of FRFIs, is OSFI) on the aggregate amounts frozen.

1.2.11 Role of the Department of Foreign Affairs and International Trade (DFAIT)

DFAIT has responsibility for implementing elements of Canada’s efforts to combat TF. DFAIT is responsible for the designation of entities and individuals in Canada associated with terrorist

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7 The Public Safety Act introduced the measures in the PCMLTFA to authorize FINTRAC to exchange information, relating to compliance with Part 1 of the PCMLTFA, with provincial regulators.
activities listed by the United Nations 1267 Sanctions Committee or under Resolution 1373 of the United Nations Security Council. This designation is implemented in Canada through the United Nations Act and its regulations, and effectively freezes an entity’s assets and prohibits fundraising on their behalf.

DFAIT is also the primary interlocutor and negotiator for Canada in respect of UN Conventions and treaties that Canada has ratified. Some of these address ML, TF and other related public safety issues, such as bribery, corruption or illicit drugs. Since 2005, DFAITs Counter-Terrorism Capacity Building Program (CTCBP) has responded quickly and effectively to the needs of recipient States lacking the laws, policies, plans, training, or operational expertise to prevent and mitigate acts of terrorism. More than 15 federal departments and agencies collaborate to advance the best capacity-building programming possible for eligible states whose counter-terrorism interests intersect with Canada’s. CTCB funding has been directed to AML and ATF projects supported by Regime partners in key jurisdictions and organizations in the Caribbean and Asia-Pacific.

1.2.12 Role of Provincial Entities

A number of provincial departments and agencies, regulators and self-regulatory organizations contribute to the AML/ATF Regime. Provincial, territorial and municipal law enforcement agencies, such as the Ontario Provincial Police, la Sûreté du Québec, and municipal police forces participate as part of various Integrated Proceeds of Crime (IPOC) units. Provincial Crown prosecutors and courts may participate in prosecutions of AML/ATF cases. Provincial and territorial financial sector regulators, such as the Financial Services Commission of Ontario, the Ontario Securities Commission, and L’Autorité des marchés financiers du Québec provide support in policy and regulatory development and advice on operational enforcement. As well, self-regulatory organizations such as the Investment Industry Regulatory Organization of Canada and the Canadian Institute of Chartered Accountants may provide assistance with education and liaison activities related to AML/ATF.

1.2.13 Related Legislation and Bodies

The Regime, along with its underlying legislation (the PCMLTFA and regulations, and federal and provincial financial sector legislation and regulations) must be considered within the context of other legislation and initiatives at the national and international level that contribute to the achievement of the longer-term objectives of the Regime. At the national level, there are a number of other initiatives and legislation that link to the Regime.

- The National Coordinating Committee (NCC) on Organized Crime (1997) and the National Agenda to Combat Organized Crime (2000) - the NCC and its five Regional/Provincial Coordinating Committees (RCCs) work at different levels to a common purpose (i.e., to create a link between law enforcement agencies and public

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8 Note that the Department of Finance remains the primary interlocutor and negotiator for Canada with respect to FATF Standards.
policy makers to combat organized crime). The NCC is the primary forum that reviews progress of the National Agenda to Combat Organized Crime. This agenda was adopted by federal, provincial and territorial ministers. ML was identified as a specific priority.

- The RCMP Integrated Proceeds of Crime (IPOC) initiative is an interdepartmental initiative that aims to contribute to the disruption, dismantling and incapacitation of targeted organized criminals and crime groups. Public Safety provides policy coordination and chairs the IPOC Senior Governance Committee, and coordinates the working level IPOC Partners Advisory Committee.

- The Public Security and Anti-Terrorism (PSAT) Initiative and the Anti-Terrorism Act (ATA) and Public Safety Act (PSA) — following September 11, 2001, an ad hoc Cabinet Committee on Public Security and Anti-Terrorism was established and tasked with developing a response to possible terrorist threats. Funding was allocated to heighten border security and undertake a number of initiatives to enhance the security of Canadians. The ATA and PSA introduced measures to amend key legislation. The ATA aims to combat terrorism through provisions that are intended to support the detection, disruption and disabling of terrorist activities and groups. The PSA introduced amendments to the PCMLTFA to provide FINTRAC with the ability to collect information relevant to ML or TF that is stored in national security databases and to exchange information with sector regulators on compliance with Part 1 of the PCMLTFA.

- The Charities Registration (Security Information) Act (CRSIA) was enacted in December 2001 under Part 6 of the Anti-Terrorism Act. There are three objectives of the CRSIA, including to demonstrate Canada’s commitment to participate in international efforts to deny support to those who engage in terrorist activities; to preserve the integrity of Canada’s registered charities system by preventing organizations that support terrorist activities from obtaining or continuing to have registered charity status under the Income Tax Act; and to maintain the confidence of Canadian taxpayers that the benefits of charitable registration are only available to organizations that operate exclusively for charitable purposes. The legislation was specifically designed to protect the use of sensitive information in the decision-making process as to whether to grant or revoke a charitable registration.

- The Amendments to the Criminal Code of Canada in 1989, which created Part XII.2 and the various procedural tools to deal with possession of POC and ML - There have been a series of related amendments, each of which builds on, or significantly improves upon the criminal law’s authority to investigate, prosecute and address POC and criminal instrumentalities. These amendments deal with all aspects of POC including the identification of specific offences, special search warrants, restraint orders and a confiscation regime. The legislation provides the authority to seize or restrain the proceeds of certain crimes and provides immunity to people who voluntarily report suspicious transactions to the police.

- The Immigration and Refugee Protection Act stipulates that a permanent resident or a foreign national cannot be admitted to the country for engaging in criminal activities such as ML across national borders.

- Market entry measures to prevent criminals or their associates from holding a significant or controlling interest or holding a management function in a financial institution are contained in federal and provincial financial legislation (for example, section 27 of the Bank Act). These measures also include the evaluation of directors and senior
management of financial institutions subject to the Core Principles on the basis of “fit and proper” criteria, including those relating to expertise and integrity. For example, in the federal sector, such measures are contained in the Bank Act, the Trust and Loan Companies Act, the Insurance Companies Act and the Cooperative Credit Associations Act.

- The CBSA is responsible for providing integrated border services that support national security priorities and facilitate the free flow of persons and goods that meet all requirements under the program legislation. The Customs Act is one of the key pieces of legislation governing the CBSA’s mandate and also provides legislative authority to administer and enforce the collection of duties and taxes that are imposed under separate taxing legislation, such as the Customs Tariff, the Excise Tax Act, the Excise Act and the Special Import Measures Act. The Customs Act was revised in 1986 to maintain the original Act’s three purposes and to allow for greater flexibility in new transportation, communication, trade and business practices. Since 1986, the Customs Act has been amended several times in response to free trade and other related international agreements. In June 2009, amendments were made to support the GoC’s strategy to strengthen security and facilitate trade. With these changes to the Customs Act, the CBSA is able to strengthen the systems used for obtaining advance data on goods and people arriving in Canada and better manage risk at air and sea ports.

In addition to the FATF, the GoC is committed to a number of international initiatives and organizations that contribute to, or are consistent with, the Regime (the key ones were referenced in the section describing the role of DFAIT).

1.3 Program Objectives

The detection and deterrence of the laundering of criminal proceeds and the financing of terrorist activities is vital to the public safety of Canadians and the integrity of their financial system. Given the real threat from ML/TF, the GoC established the AML/ATF Regime and set out its objectives, which are to:9

- Implement specific measures to detect and deter ML and TF activities, and to facilitate the investigation and prosecution of ML and TF offences;
- Respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves; and,
- Assist in fulfilling Canada’s international commitments to participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist financing activity.

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9 Departmental Performance Report (DPR) – Horizontal Initiative: Canada’s AML and ATF Regime (2008-2009), and 10-yr Evaluation of Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime For the Department of Finance, Financial Sector Policy Branch, Jan 2010


### 1.4 Program Logic Model

The Evaluation Framework and Logic Model for the Regime were updated in December 2007. The updated Logic Model outlines the outputs and outcomes for the Regime’s six identified activities:

1. Operationalizing National and International Obligations and Commitments;
2. Liaison, Cooperation and Education;
3. Facilitating and Monitoring Compliance;
4. Intelligence Gathering and Analysis;
5. Investigation; and,
6. Adjudication and Sanctioning.

The Logic Model illustrates the relationships between each of these elements. The framework contains detailed performance indicators and issues, and specifies the appropriate data source. The framework also proposes a set of evaluation issues and questions to be addressed in the 10-year evaluation.\(^\text{10}\) These evaluation issues and questions were modified to ensure their compatibility with the requirements of the Treasury Board 2009 Policy on Evaluation.\(^\text{11}\) The modified evaluation issues and questions are shown in Appendix 1. The Logic Model is included as Appendix 2.

### 1.5 Expected Results

The ultimate outcomes expected from the implementation of the Regime are to contribute to the control and deterrence of ML, organized crime and TF activities, and to facilitate the investigation and prosecution of ML and TF offences. The intermediate outcomes are:\(^\text{12}\)

- Enhanced detection of ML and TF activities;
- Increased public acceptance of the Regime;
- Enhanced protection of the integrity of the financial, economic and charitable sectors;
- Creation of an environment hostile to ML and TF; and,
- Reduction in the profitability of crime.

The achievement of the intermediate outcomes is dependent on the achievement of a number of immediate outcomes from key activities. These key outcomes fall within the six activity areas mentioned in the previous section (1.4).

\(^{10}\) Evaluation Framework for the AML/ATF Regime, Financial Sector Division Department of Finance, prepared by Goss Gilroy Inc. Dec 2007

\(^{11}\) Treasury Board of Canada, Directive on the Evaluation Function, April 2009

1.6 **Program Reach - Target Population**

The Regime directly involves all of the funded partners in the operational delivery of the Regime or in a supporting role. It also requires support from the non-funded partners. Further, a variety of financial and non-financial entities have obligations under the *PCMLTFA*, including customer identification and the requirement to report certain financial transactions to FINTRAC. All of these entities constitute the target population of the Regime.

Regime partners, as well as the international and regional organizations with whom they cooperate, benefit from the Regime. The Regime is expected to provide protection to the Canadian financial and charitable sectors from abuse by criminal elements, leading to enhanced integrity and stability of these sectors. All Canadians are presumed to benefit from the Regime in that it provides a hostile environment to ML, organized crime and TF, resulting in an enhanced ability to attract investment, and enhanced integrity of the financial and charitable sectors and the detection and prevention of crime.

1.7 **Program Governance**

An interdepartmental ADM-level group and a working level group, consisting of Regime partners and led by Finance, have been established to advise the Government's efforts to combat ML and TF activities. In addition, the Public/Private Sector Advisory Committee, which is comprised of Regime partners and private sector entities covered by the *PCMLTFA*, is a high-level discussion forum tasked with addressing emerging issues and providing general guidance for Canada’s overall AML/ATF policy.

1.8 **Program Resources**

The resources applied to a program are an element of the overall program description that helps the audience of a program evaluation to understand the breadth and depth of the program. The Regime funding grew from $26 million in 2000-01 to over $66 million in 2009-10. However, the budget figures do not tell the whole story, as Regime partners made use in their Regime operations of funding from other sources such as the Public Safety and Anti-terrorism (PSAT) funds, as well as funds from their own internal (A-base) sources. This is discussed later in section 4.4.1.

Table 1.1 provides the Regime funding and actual expenditures of those funds for each funded partner over the last five years.
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<td>100</td>
<td>100</td>
<td><strong>3,804</strong></td>
<td></td>
</tr>
<tr>
<td><strong>PPSC</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available Regime Funding</td>
<td>-</td>
<td>-</td>
<td>2,154</td>
<td>2,154</td>
<td>2,154</td>
<td><strong>6,462</strong></td>
<td></td>
</tr>
<tr>
<td>Actual Expenditures (DPR)</td>
<td>-</td>
<td>-</td>
<td>2,000</td>
<td>2,269</td>
<td>3,028</td>
<td><strong>7,297</strong></td>
<td></td>
</tr>
<tr>
<td><strong>CBSA</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available Regime Funding</td>
<td>4,500</td>
<td>7,791</td>
<td>7,727</td>
<td>7,727</td>
<td>7,727</td>
<td><strong>35,472</strong></td>
<td></td>
</tr>
<tr>
<td>Actual Expenditures (DPR)</td>
<td>4,300</td>
<td>7,500</td>
<td>7,500</td>
<td>7,432</td>
<td>7,745</td>
<td><strong>34,477</strong></td>
<td></td>
</tr>
<tr>
<td><strong>CRA (Income Tax – GST/HST)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available Regime Funding</td>
<td>2,200</td>
<td>2,200</td>
<td>2,200</td>
<td>2,200</td>
<td>2,200</td>
<td><strong>11,000</strong></td>
<td></td>
</tr>
<tr>
<td>Actual Expenditures (DPR)</td>
<td>2,200</td>
<td>2,174</td>
<td>2,228</td>
<td>2,200</td>
<td>2,413</td>
<td><strong>11,215</strong></td>
<td></td>
</tr>
<tr>
<td><strong>CRA-Charities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available Regime Funding</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2,453</td>
<td>4,976</td>
<td><strong>7,429</strong></td>
<td></td>
</tr>
<tr>
<td>Actual Expenditures (DPR)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2,123</td>
<td>3,631</td>
<td><strong>5,754</strong></td>
<td></td>
</tr>
<tr>
<td><strong>RCMP-ML</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available Regime Funding</td>
<td>4,900</td>
<td>8,182</td>
<td>6,872</td>
<td>6,872</td>
<td>6,872</td>
<td><strong>33,698</strong></td>
<td></td>
</tr>
<tr>
<td>Actual Expenditures (DPR)</td>
<td>4,100</td>
<td>7,805</td>
<td>6,704</td>
<td>6,481</td>
<td>5,165</td>
<td><strong>30,255</strong></td>
<td></td>
</tr>
<tr>
<td><strong>RCMP-TF</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available Regime Funding</td>
<td>-</td>
<td>7,463</td>
<td>5,158</td>
<td>5,158</td>
<td>5,158</td>
<td><strong>22,937</strong></td>
<td></td>
</tr>
<tr>
<td>Actual Expenditures (DPR)</td>
<td>-</td>
<td>4,505</td>
<td>3,258</td>
<td>4,102</td>
<td>5,579</td>
<td><strong>17,444</strong></td>
<td></td>
</tr>
<tr>
<td><strong>All Funded Regime Partners</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available Regime Funding</td>
<td><strong>34,400</strong></td>
<td><strong>65,740</strong></td>
<td><strong>63,111</strong></td>
<td><strong>64,364</strong></td>
<td><strong>66,987</strong></td>
<td><strong>294,602</strong></td>
<td></td>
</tr>
<tr>
<td>Actual Expenditures (DPR)</td>
<td><strong>35,100</strong></td>
<td><strong>51,785</strong></td>
<td><strong>57,886</strong></td>
<td><strong>65,279</strong></td>
<td><strong>66,763</strong></td>
<td><strong>278,321</strong></td>
<td></td>
</tr>
</tbody>
</table>
Table 1.1 Notes

1. Sources
Available funding levels are taken from the Evaluation Framework (Table 2 on page 14), updated to account for funding provided to CRA-Charities starting in 2008-09. This excludes re-profiling of FINTRAC’s AML/ATF Regime funding subsequent to the Evaluation Framework (published in December 31, 2007). Actual expenditures are taken from the DPRs on the NICML Horizontal Initiative. For FINTRAC, expenditures for the last three fiscal years reflect additional resources made available from re-profiled NICML funding. Strategic Review Reinvestments, Secretariat adjustments for Paylist requirements (Vote 30), and Employee Benefits Plan for year-end adjustments.

2. Expenditures for 2008-09 were provided by CRA Charities.

3. Additional funding to bolster prosecution capability was reported by Justice in 2006-07 and by PPSC in subsequent years.

4. Financial data for 2008-09 were provided by CRA-Charities.


6. Available funding for Justice revised to $100,000 starting in 2007-08.

7. Expenditures in 2009-10 exclude allocated overheads ($1.41M in 2008-09). The RCMP received $6,872,000 under Regime funding in 2009-10. However, as a result of internal re-allocation of resources within the RCMP, the actual budget for direct expenditures under the AML/ATF Regime for the RCMP-ML program consisted of $5,165,000. This difference between funding and direct expenditures does not reflect a program lapse.

2. EVALUATION CONTEXT

The objective is to conduct an evaluation of the Regime using the 2007 Evaluation Framework and Logic Model as a base while ensuring adherence to the 2009 Treasury Board Policy on Evaluation. The evaluation is mandated by Treasury Board. The evaluation findings are needed to contribute to decision-making regarding the on-going funding of the Regime partners. They will also contribute to the upcoming five year parliamentary review of the PCMLTFA.

There are multiple clients for the evaluation including (chiefly) the Department of Finance, the Regime partners and Treasury Board. Other government departments and agencies will also be interested in the evaluation (e.g., Privy Council Office, Office of the Privacy Commissioner, etc.) in addition to international partners and bodies. The private sector, provincial regulars and self regulatory organizations will also be interested in the evaluation findings.

The evaluation is to include the inputs (e.g., resources used, activities undertaken) and the achievements relative to expectations expressed in the 2007 Evaluation Framework and Logic Model of the funded and non-funded Regime partners, as well as of the provincial, regional and municipal Regime participants and the reporting entities. The period covered by the evaluation is 2000 to 2010. This evaluation study was conducted between the period of March and November 2010.

Two core issues are addressed in the evaluation:

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1. Relevance of the Regime (need for the Regime, its alignment with the Government’s priorities, and its alignment with federal roles and responsibilities); and,
2. Performance of the Regime (effectiveness [achievement of expected outcomes], Regime implementation, and efficiency and economy)

The questions addressed in the evaluation that guided data collection and analysis are shown in Appendix 1.

3. EVALUATION METHODOLOGY

3.1 Overview of the Methodology

The aim of the evaluation is to address the preceding two core issues through research that utilizes multiple lines of evidence. This approach is expected to provide decision-makers with as much evidence-based information as possible about the implementation of the Regime. Data on results achieved are expected to help Regime partners to determine if changes are needed in the design or approach to delivery of the Regime in view of environmental changes since the Regime’s introduction in 2000 and the last update of the Regime objectives and structure in 2007. Data collected in the evaluation are to provide evidence on what has taken place in the implementation of the Regime, what has worked best, and on the extent of achievement of results.

Data were collected by several different means and from several sources. These data were recorded in an Evaluation Question Matrix (a template of evaluation questions listed against the data collection methods). The data were subsequently integrated in a triangulation of findings to support conclusions and recommendations. Triangulation involves the cross-checking and validating of data from one source with data drawn from the other sources for each of the evaluation questions included in Appendix 1. Findings from a particular method that deviated from those obtained using the other methods are investigated with the objective of uncovering the underlying reasons for the deviations (e.g., the presence of bias; legitimate differences in perceptions of the same evidence). This approach adds a level of rigor to the evaluation that is recommended by the Treasury Board of Canada Secretariat.14

3.2 Limitations of the Evaluation

In this evaluation, there are significant constraints to attributing and demonstrating results directly to the Regime. The most significant constraints follow.

- It is difficult to attribute outcomes observed in the areas related to Regime activities to the Regime itself as one progresses from immediate expected outcomes (e.g., enhanced coordination and expansion of intelligence networks) to the ultimate expected outcome (contributing to the control and deterrence of money laundering, organized crime and

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14 Treasury Board of Canada Secretariat, Program Evaluation Methods, Measurement and Attribution of Program Results Third Edition - March 1998
terrorist financing activities). Attribution is complicated by the fact that many people who will have participated in, or benefited from the Regime may not be able to delineate the extent of the contribution made by the Regime as many factors contribute to the outcomes (e.g., the AML/ATF actions within other countries; changes of technologies used in financial transactions). This is a challenge faced in most evaluations of government programs as longer-term outcomes are multi-factorial with many being outside the direct influence of the Regime.

- To determine causality, the outcome of an intervention has to be compared to the outcome that would have occurred in the absence of the intervention. This requires a comparative evaluation design that cannot be implemented in this case because the initiative cannot be experimentally manipulated. For example, it is not feasible to form a comparison group of those engaged in ML/TF activities that have not been exposed to the Regime’s activities and requirements. In addition, many of the causal effects that related to deterrence/prevention are not directly observable. For example, it is difficult to measure the extent to which compliance requirements encourage effective implementation of the PCMLTFA and thereby prevent criminal activities.

- For the Regime, a statistical approach that includes pre- and post-test measures is not feasible because of the absence of baseline data on ML/TF activities. Legislative and policy changes since the inception of the Regime would influence criminal statistics, making before and after comparisons problematic. Moreover, it is recognized that the extent of ML and TF cannot be accurately determined.

- Statistics on ML/TF are not maintained in a single database, or in the same format based on common categories, among the different organizations involved in AML/ATF. Audit trails are not maintained on individual ML/TF cases from suspicion, to investigation, to charges laid, to prosecution, to conviction. Thus, the use of departmental/agency or even national criminal statistics will not give an accurate picture of the success of the Regime.

- Some information on Regime operations and outcomes could not be made available for reasons of national security, the protection of investigative methods of law enforcement and intelligence agencies, and because of privacy issues. This has not, in the view of the evaluators, detracted from the veracity of the findings or conclusions, but did reduce the extent of explanations and examples that otherwise might have been provided in this report.

- A snowball sample was used to recruit respondents to the online survey used as a data source in this evaluation. Snowball sampling is a non-probabilistic method for developing a research sample whereby potential respondents, that are not selected randomly, are asked to recruit future subjects from among their associates. In this case, the total population was unknown or hidden and was not available to the researchers to ensure privacy. When using a non-probabilistic sampling technique such as snowballing, the degree to which the sample differs from the population remains unknown and therefore, a margin of error cannot be calculated. Snowball samples are also subject to bias. For example, respondents who have many associates are more likely to be recruited.
into the sample and can be recruited more than once. This is why the letter sent out to the total list of potential respondents asked them to fill out the survey only once. The principal advantage of this technique is that experts in a particular field are quickly found as potential respondents and often know other experts in their field. This facilitates the inclusion of experts in the sample of respondents.

To address the attribution issues, particularly those related to the longer-term outcomes, evidence of achievement of immediate and intermediate outcomes is used as fully as possible in this evaluation to indicate the likelihood of the achievement of the longer-term outcomes.

### 3.3 Data Collection and Analysis Methods

The following data collection methods were used. Each is discussed in detail in the subsequent sub-sections:

- Document and File Review;
- Database Review and Analysis;
- Key Informant Interviews;
- Focus Groups;
- Case Studies; and,
- Online Survey.

#### 3.3.1 Document and File Review

Documents and files were provided to the evaluators by Finance (the Project Authority). They were reviewed using a Document Review Template to standardize the types of information collected and reported. Some 166 documents and files were reviewed.

The documents reviewed fall into the following categories:

1. Public documents relating to the context of the Regime;
2. Relevant Treasury Board documents;
3. Documents relating to the role in the Regime of each Regime partner;
4. Summaries of Regime operations and activities produced by the Regime partners and included in various annual and special reports, as well as those provided directly to the evaluators by the Regime partners;
5. International agreements and resolutions to which Canada is a signatory; and,
6. External reviews and reports.

#### 3.3.2 Database Review and Analysis

Two types of program/statistical data were available for use in this evaluation. They were performance data and financial data. Access to the performance data was limited for security reasons as well as practical reasons of data availability. For these data, the Department of Finance Canada provided the evaluators with data files from those submitted by the Regime...
partners. Financial data were compiled from the Regime’s Department Performance Report and Treasury Board Submissions that describe those expenditures directly drawn from the Regime budget. In addition, financial data were obtained from the Regime partners by surveying them.

3.3.3 Key Informant Interviews

The interviews were semi-structured in nature and typically ranged from 30 to 60 minutes in length, depending on the type of organization represented. The interviews were conducted face-to-face in the National Capital Region (NCR) and by telephone elsewhere. A total of 34 key informants were interviewed with representation as shown in Table 3.1. The Project Authority provided an initial list of proposed interviewees, from which the evaluator selected the interviewees based on representation and availability. All interviewees were considered by the Project Authority and the represented Regime partners as key informants: in other words, experts in their fields.

Interviewees were provided with a copy of the questions in advance to allow them time to prepare for the interviews. Each interviewer recorded responses in an approved template without recording the name of the respondent. All of the responses were subsequently summarized and integrated into the Evaluation Evidence Matrix.

Five versions of the key informant questionnaire were required because the key informants represented five categories of roles in the Regime as follows: (1) for Regime partner staff; (2) for representative(s) of the Office of the Privacy Commissioner; (3) for representatives of organizations involved in the Regime at the provincial/territorial level (e.g., Provincial Attorneys General, financial sector regulators other than OSFI, provincial law enforcement, and Crown prosecutors); (4) for representatives of Regime reporting entities; and (5) for academic and other independent experts, including international officials. All questionnaires were pre-tested and revised as necessary before use.

For analysis purposes, it was necessary to break out the Group 1 respondents into four subgroups as follows: (1) policy – Finance, Justice, Office of the Privacy Commissioner (included in Group 1 interviews using the Group 1 questions as they turned out to be more applicable to the respondent than a separate set of questions that had initially been prepared for the Office of the Privacy Commissioner and labeled as Group 2 questions); (2) law enforcement and intelligence service – RCMP, CBSA, CRA, CSIS; (3) operations – FINTRAC, PPSC; and (4) non-funded partners – OSFI, PS, DFAIT.
TABLE 3.1
Number of Key Informant Interviews by Interview Questionnaire Version and Group

<table>
<thead>
<tr>
<th>Target Group</th>
<th>Number of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1 (Interview Questionnaire 1) Regime Partners</td>
<td>19</td>
</tr>
<tr>
<td>1.1 Policy (includes previously assigned Group 2 respondent)</td>
<td>5</td>
</tr>
<tr>
<td>1.2 Law Enforcement and Intelligence Service</td>
<td>6</td>
</tr>
<tr>
<td>1.3 Operations</td>
<td>5</td>
</tr>
<tr>
<td>1.4 Non-Funded Partners (OSFI, PS, DFAIT)</td>
<td>3</td>
</tr>
<tr>
<td>Group 3 (Interview Questionnaire 3) Provincial/Territorial Entities</td>
<td>4</td>
</tr>
<tr>
<td>Group 4 (Interview Questionnaire 4) Reporting Entities and Financial and Non-financial Entities</td>
<td>9</td>
</tr>
<tr>
<td>Group 5 (Interview Questionnaire 5) Academic and Other Experts Including International Officials</td>
<td>2</td>
</tr>
<tr>
<td>Grand Total</td>
<td>34</td>
</tr>
</tbody>
</table>

3.3.4 Focus Groups

Focus groups were conducted with homogeneous groups of Regime partners to discuss issues of importance related to Regime design, operational practices and results achieved. Discussions also revolved around potential solutions to problems that were identified.

A total of 10 focus group sessions were conducted, as shown in Table 3.2. Six of the groups consisted of public sector participants with key operational roles in the Regime (e.g., ML/TF prosecution, compliance with PCMLTFA and its regulations, provision of FINTRAC disclosures, and ML/TF law enforcement in the context of an integrated law enforcement [with proceeds of crime] strategy). The other four groups consisted of representatives from reporting entities and their associations. In the National Capital Region, the focus groups were conducted face-to-face with a maximum of 11 participants in any session. Outside the National Capital Region, the focus groups were conducted by teleconference with a maximum of eight participants in a session. Some sessions lasted up to 90 minutes.
TABLE 3.2
Focus Group Sessions by Regime Participant Type

<table>
<thead>
<tr>
<th>Group Type</th>
<th>Number of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Private Sector</strong></td>
<td></td>
</tr>
<tr>
<td>Conglomerate Banks</td>
<td>5</td>
</tr>
<tr>
<td>Smaller Banks</td>
<td>8</td>
</tr>
<tr>
<td>Investment and Securities Dealers</td>
<td>8</td>
</tr>
<tr>
<td>Life Insurance Companies</td>
<td>5</td>
</tr>
<tr>
<td><strong>Public Sector</strong></td>
<td></td>
</tr>
<tr>
<td>Crown Prosecutors of IPOC Units (2 sessions: PPSC and Justice; PPSC)</td>
<td>10</td>
</tr>
<tr>
<td>FINTRAC Compliance Officers</td>
<td>11</td>
</tr>
<tr>
<td>FINTRAC Financial Analysts</td>
<td>9</td>
</tr>
<tr>
<td>CBSA</td>
<td>8</td>
</tr>
<tr>
<td>Law enforcement of IPOC Units (RCMP)</td>
<td>8</td>
</tr>
<tr>
<td><strong>Grand Total of Participants</strong></td>
<td><strong>72</strong></td>
</tr>
</tbody>
</table>

The evaluators facilitated the sessions, made a written record of participants’ responses to the issues addressed by the various groups, and derived listings of effective practices, key themes, challenges and solutions from the discussions.

### 3.3.5 Case Studies

Thirteen cases were selected on the basis of the situations they represented. The aim was to ensure that typical situations encountered under the Regime were represented. The evaluators, in collaboration with Regime representatives, listed the types of situations that might be included in the case studies. The Regime partners were asked at the inception of the evaluation to write up descriptions of situations and cases that represented their operations and those draft descriptions were reviewed by the evaluators to determine the extent of fit with listed situations. Where gaps were observed, Regime partners were asked for clarification of existing case study write-ups or agreed to provide an additional case study draft.

A Case Study Template was supplied to the Regime partners for the purpose of standardizing to some degree the content of case studies and soliciting information not provided in the original write-ups. Evaluators also interviewed Regime partner representatives to gather additional information related to the cases.
3.3.6 Online Survey

Two groups were invited to respond to the survey: (1) entities required to report under the Regime; and (2) provincial/territorial entities involved (through law enforcement or public/private sector financial regulatory activities) with AML/ATF efforts.

A single survey questionnaire was used for internet administration. It was hosted by the evaluator in a secure folder that was password protected. The survey was available on-line for at least four weeks. A reminder email was also sent out to all potential respondents after the survey tool had been online for two weeks to encourage a higher response rate. Respondents were able to take the survey in English or French. By using skip patterns, the questionnaire contained different sets of questions that were relevant to the two different groups of respondents.

The survey was formally launched with a letter sent in June 2010 by Finance to their researched list of 1,839 potential respondents informing them on when the survey would be on-line and providing the web address, username and the password to log on. The letter included a statement inviting potential respondents to circulate the letter with the log-on information to other possible respondents that would be interested in participating in the evaluation survey. The letter asked potential respondents to only complete the survey once, as there was recognition that they may receive multiple letters inviting them to complete the survey from multiple sources.

The 1,839 survey invitations were sent to the following:

- 1,359 reporting entities;
- 130 individuals that included the Public/Private Sector Advisory Committee (PPSAC) members and their contacts;
- 300 Federally Regulated Financial Institutions; and,
- 50 law enforcement contacts at the provincial and municipal levels.

Overall, a total of 256 respondents completed the web questionnaire. Given that the sampling method used was based on the snowball technique, whereby known survey respondents are asked to recruit other respondents, the total population is unknown. However, based on the number of potential respondents, the response rate was calculated to be 14 percent.

4. EVALUATION ISSUES AND FINDINGS

Findings were derived in relation to the questions of the Evaluation Question Matrix (Appendix 1). The findings from the different lines of evidence were then integrated using triangulation as explained in Section 3 (Evaluation Methodology). The current section presents the integrated findings for each of the evaluation issues. The findings related to Regime Effectiveness (Achievement of Outcomes) are organized according to the six activity areas of the Regime for each of which the Logic Model presented the expected outputs or outcomes. Those outputs or outcomes are summarized in text boxes. The discussion that follows each text box provides the evaluation findings relative to the stated expected outputs/outcomes.
4.1 Relevance of the Regime

The Regime can be considered relevant if the evaluation evidence indicates that the Regime, as designed and delivered, is an appropriate response to the economic, social and security challenges posed by ML/TF. The appropriateness of the response can be measured by comparing the legislative, regulatory, structural/organizational and operational activities undertaken in Canada through the Regime to the requirements for action specified by various international bodies to which Canada made commitments.

The Regime could also be judged relevant if the program legislation, policies and activities are perceived by the Regime partners and other stakeholders (principally provincial financial regulators and law enforcement as well as reporting entities) as needed and sufficient to counter ML/TF activities. Further, relevancy hinges to a certain extent on the degree of alignment of Regime objectives with the priorities of the federal government and with the strategic goals of the Regime partners.

4.1.1 The Economic, Social and Security Challenges – Indications of Need for the Regime

The need for the Regime that prompted its creation in 2000 has remained unchanged. The AML/ATF initiative was undertaken to protect the public safety of Canadians and the integrity of Canada’s financial system. In fact, the increasing sophistication and adaptability of those involved with ML and TF has required the Regime partners to change and adapt their response to the threat, as explained in this section of the report.

Through Strategic Surveillance Surveys in 2008 and 2009, the FATF noted the emergence of several global ML/TF systemic threats. In the 2010 Global Money Laundering and Terrorist Financing Threat Assessment the FATF notes as an emerging trend:15 “Three particular issues stand out. First the significance of financial crimes, and in particular fraud, cannot be understated. Fraud activity – including various types of internet fraud and tax fraud – appear to represent the primary source of proceeds of crime found to be laundered and this appears to be an increasing trend. Second, despite criminals’ maximizing the opportunities present in new technologies, new financial products and new commercial activities, the abuse of cash remains of concern. Use of cash couriers and bulk cash smuggling continues. Lastly, it should be recognized that ML and TF activities are predominantly global in nature, often involving more than two jurisdictions, with rapid movements and investment of proceeds of crime.”

According to the Regime documentation, the levels of ML in Canada or worldwide have not been reliably determined due to the illicit nature of the activity and inconsistencies in the way the relevant statistics are collected. However, it is believed that drug trafficking alone generates billions of dollars in illicit funds for criminal organizations every year, and businesses supported by the proceeds from crime create unfair competition and can bankrupt legitimate competition in the market.16

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15 Global Money Laundering and Terrorist Financing Threat Assessment, FATF, July 2010
The more critical issue is the extent to which successful ML activities contribute to the continuation and growth of organized crime.\textsuperscript{17} The vast majority of ML activity is related to organized crime, as shown by FINTRAC analysis of the breakdown of ML disclosures in terms of the predicate offences,\textsuperscript{18} and by a 2004 RCMP study that demonstrated how the financial proceeds of criminal activity (by drug dealers, arms traffickers and other criminals) are laundered through Canada's legitimate economy.\textsuperscript{19}

From key informant interviews and the evaluation survey, it was found that the extent of ML is believed to have increased or remained the same over the past several years, but the methods used by perpetrators are seen as growing more sophisticated and complex in response to AML efforts (e.g., through the use of White Label ATMs, internet banking and e-money, prepaid cards).

TF involves the provision or collection of funds with the intention that they be used to support or carry out terrorist activity. However, TF does not necessarily involve money. It can consist of an exchange of goods and, even if money is used, it may not reach the operating cell if it is exchanged before then for goods. Also, TF can involve the use of influence and need not involve money at all. Unlike ML, the degree of threat posed by TF is not first measured by the size of global flows, but rather by the intent and capability of those individuals and groups involved.

After 9/11, TF was criminalized through amendments to the \textit{Criminal Code of Canada}, and supported through provisions in the \textit{PCMLTFA} and \textit{CRSIA}. Like most criminal offences, the criminalization of TF raises questions of conscience, compliance, cost and penalty among wrongdoers. In particular, it seeks to limit the terrorist's financial capability by diminishing the source, exposing the participants, and disrupting the flow of funding. The intent of TF offences is to diminish or eliminate TF funding by reminding would-be donors or supporters that they are not funding a political or social appeal, but rather criminal violence and terror. The ATF reporting provisions of the \textit{PCMLTFA} itself exposes the participants to scrutiny.

A majority of Regime partners felt that the threat of terrorism to safety and security has increased, particularly through the emergence of "home grown" terrorists, as seen in key informant interviews and the evaluation survey. TF has widened from the financing of larger organizations to financing of home-grown terrorism, involving smaller amounts of funds that are more difficult to detect. Larger terrorist organizations have changed their methods by using more extensively over the past several years the drug trade and gun smuggling to raise funds.\textsuperscript{20} The use of Canadian non-profit organizations to raise funds for terrorism also remains a problem. Approximately one third of FINTRAC’s case disclosures related to TF activities involved Canadian non-profit organizations.\textsuperscript{21}

\footnotesize

\textsuperscript{17} Four case studies demonstrated the linkage between organized crime and ML activity and three case studies showed linkages with terrorist activities
\textsuperscript{18} FINTRAC Annual Report, March 31, 2005; \url{http://www.fintrac-canada.gc.ca/publications/reports-rapports-eng.asp#1}
\textsuperscript{19} Money Laundering in Canada: An Analysis of RCMP Cases, Stephen Schneider, March 2004, page 1
\textsuperscript{20} FINTRAC Annual Report, March 31, 2006
\textsuperscript{21} FINTRAC Annual Report, March 31, 2006
4.1.2 The Regime’s Response to the ML/TF Challenge – Indications of Regime Relevance

The Global Effort and Canada’s Response

The priority of the FATF has been to ensure that global action is undertaken to combat ML/TF. The FATF has been at the forefront of this action. Since its creation, the FATF has taken concerted action to combat the ML/TF threat by focusing its work on three main activities:

- Setting global standards to combat ML/TF;
- Ensuring effective compliance with the standards; and,
- Identifying ML/TF methods and trends.

Canada (through the Regime) and many other countries have joined the international effort to detect and deter ML/TF in an increasingly sophisticated and complex global financial context. One response has been for countries to participate in the development of international standards and action plans aimed at increasing global cooperation to meet the AML/ATF challenge, as evidenced by increased commitment among countries to meet the FATF 40+9 Recommendations on AML/ATF. All of the current 36 FATF members including Canada have taken significant steps to meet the FATF requirements, with a total of some 180 jurisdictions (including the FATF members) having pledged to comply with the FATF Recommendations. The FATF monitors and assesses the extent to which its members and other countries meet the Recommendations through a process of peer reviews and the publication of the resulting mutual evaluation reports (MERs).

Membership in FATF regional-style bodies (FSRBs) has grown significantly in response to the ML/TF threat. For example, one regional body, the Asia Pacific Group on Money Laundering (APG), has seen its membership grow from its original 13 members in 1997 to the current 40. The leadership of the G-20 has urged the international community to go even further to obtain compliance with the FATF 40+9 Recommendations by requesting that the FATF intensify its process of identifying and naming countries with strategic deficiencies in their AML/ATF Regimes. Canada’s commitment to AML/ATF is clearly visible in the leadership role Canada has played internationally, through the Regime, since 2000. Examples of that leadership role are given in section 4.2.1.

In 2000, the GoC established the Regime to respond to the growing threat from ML and TF (2001). Legislative and regulatory changes made since then within Canada and other countries are a strong signal of a continuing commitment to the FATF 40+9 Recommendations. In the FATF’s last mutual evaluation of Canada, presented in February 2008, a number of deficiencies were identified. Many of the deficiencies had already been addressed in the 2006 amendments to the PCMLTFA (An Act to amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to

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22 FATF Annual Report, July 2010
23 FATF Annual Report, July 2010
24 FATF Annual Report, July 2010
but were not all reflected in the mutual evaluation as some measures came into force after the FATF conducted its assessment. Additionally, a new part was added to the *PCMLTFA* in 2010 (which has not yet come into force) to allow the Government to take countermeasures against jurisdictions and foreign entities that lack sufficient and effective AML/ATF controls and to include tax evasion as a predicate offence to ML and TF. These amendments will bring the Regime even closer to meeting all international standards.26

The aim of the legislative and regulatory changes was to counter the adaptations made by criminals in their ML and TF methods that attempted to circumvent the existing financial laws and regulations (e.g., through the use of cash intensive businesses, real estate, jewelry, precious metals and precious stones, and the registration of MSBs). With these efforts Canada is now considered to be compliant or largely compliant with 36 of the FATF 40+9 Recommendations.

**The Need for Federal Leadership with Provincial, Regional, Municipal and Private Sector Cooperation**

Canada’s response to the ML/TF challenge is federal, provincial and municipal in nature. The legislative authority for AML/ATF measures in Canada lies with the federal government. The foundation for the current Regime is the *PCMLTFA*27 and its regulations. The federal government has the lead role in developing the Regime in the legislative, regulatory and policy areas (through Finance), and in the enforcement of compliance and penalties for non-compliance with the *PCMLTFA* (through FINTRAC). Law enforcement activities under both the *PCMLTFA* and the relevant provisions of the *Criminal Code of Canada*, and the regulation of certain financial entities, are a shared responsibility with other government departments and with the provinces. Consequently, it is essential to the success of the Regime that provincial financial regulatory bodies and provincial, regional and municipal law enforcement bodies see themselves, and are seen by the federal Regime partners, as important players in the investigation, enforcement and prosecution of ML/TF offences.

An indication that provincial/municipal players see the Regime as important in helping them meet their regulatory and law enforcement mandates was observed in the on-line evaluation survey. Most (88 percent) of the provincial entities28 (except for self-regulated organizations) that responded to the survey (total of 20) expressed the view that they have a large stake in the operation of the Regime because Regime activities are largely supportive of their organization’s

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26 Written update from Department of Finance Canada dated October 4, 2010
27 The PCMLTFA consists of five parts:
   Part 1 - Requires keeping records on financial transactions, client identification and the reporting of suspicious and prescribed financial transactions;
   Part 2 - Creates the obligation to report to the Canada Border Services Agency the importation or exportation of currency or monetary instruments of a value equal to or greater than $10,000 (CAD) or its equivalent;
   Part 3 - Establishes FINTRAC as an independent agency to collect, analyze, assess and disclose designated information on financial transactions to assist in the detection, prevention and deterrence of money laundering and the financing of terrorist activities, while protecting Canadians’ privacy;
   Part 4 - Authorizes the Governor in Council to make regulations; and
   Part 5 - Creates offences, including the failure to report suspicious financial transactions and the prohibited use of information under the control of FINTRAC.
28 As noted in section 3.2.6 of this report, these entities consist of: PPSAC members (includes private self-regulated organizations); FRFIs; and provincial/municipal law enforcement personnel
priorities related to criminal justice, privacy rights, financial sector regulation, and security. Provincial efforts to support Regime operations are also evident in responses to the survey since most (93 percent) of the provincial entities indicated that their organization had to increase the scope of their AML/ATF operations in order to adjust to the legislative changes made over the past number of years by the federal government.

Provinces have made use of civil law rather than criminal prosecutions to seize funds believed to be derived from criminal activities. For example, it was noted in the key informant interviews that Ontario legislation extends this kind of seizure provision to all financial offences, including white collar crime. The scope of Ontario Provincial Police (OPP) operations has expanded over the past four years to include ML and the use of disclosure reports. The OPP is responsible for the Asset Forfeiture program, the Provincial Anti-Terrorist Team and is establishing the FINTRAC Disclosure Review Team (according to focus group participants) to support the Regime.

**Demand for Regime Assistance**

The continuing demand for Regime assistance internationally and domestically is one indication of the need for the Regime. The 2006 amendments to the *PCMLTFA* and its regulations increased the number of organizations subject to compliance obligations under the Regime (e.g., adding B.C. notaries, dealers in precious metals and stones, and real estate developers as reporting entities; requiring money services businesses [MSBs] to register with FINTRAC), and broadened the range of information that FINTRAC can include in its financial intelligence disclosures to law enforcement, national security agencies and foreign financial intelligence units (FIUs). One result of those changes has been an increase in the demand from reporting entities for specific assistance such as guidance, outreach and interpretation of requirements.

FINTRAC has expanded its operations to meet a growing demand for strategic analysis reports from some Regime partners and reporting entities, reallocating some of its resources to do this, as shown in Regime performance data. The demand from reporting entities was verified through the evaluation survey in which most (85 percent) of the 220 reporting entities indicated they had requested information at least once from FINTRAC about its strategic analyses of ML/TF trends.

Regime performance data show that international partners seek information on training and Canadian Regime activities with increasing frequency. For example, the Asia Pacific Group on Money Laundering (APG), a regional FATF group, requested and received CRA – Charities assistance on its “Vulnerabilities in the NPO Sector” project. OSFI was requested to provide seminars and workshops for supervisors in financial regulatory bodies in the Caribbean, Africa, Asia and Latin America. FINTRAC collaborated with Australia’s FIU on a data capture and analysis software initiative; FINTRAC has delivered its International Compliance Program (ICP) to 11 countries (60 total participants); FINTRAC participated in an intensive international examination of the cross-border movement of monetary instruments for the G8. Performance data show that from 2006-07 to 2008-09 FINTRAC experienced a 271 percent increase in case disclosures to foreign FIUs.

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29 FINTRAC Annual Report, March 31, 2007
30 DPR For the period ending March 31, 2007
In several case studies, it was noted that an increased incidence of cross border ML/TF activities had led to increased efforts of other countries to identify, track and prosecute offenders, many of whom are involved in large international conspiracies. Thus, there has been a steady growth in the demand from law enforcement in other countries for RCMP and other Canadian law enforcement information and assistance in training. For example, both ML and TF representatives from the RCMP provided training to the Mexican Federal Police. The RCMP also noted in key informant interviews and focus groups that the number of possible extraditions (involving the legal systems of foreign countries as well as Canada) increased over the past five years as AML/ATF actions have taken effect.

4.1.3 Alignment of Regime Objectives with Government and Partner Priorities

By definition, Regime objectives support GoC priorities related to justice, financial systems, national security and privacy. For example, the GoC made a political commitment to adopt and implement the FATF 40+9 Recommendations and, as a matter of priority, established the legislative, regulatory and policy framework that would meet its FATF commitments.\(^{31}\) At the same time, the GoC aims to ensure that there is a balance between law enforcement and the protections provided by the Privacy Act and Charter. The PCMLTFA, with subsequent amendments and regulations, was written and has been implemented to enable the achievement of its aims while respecting privacy and Charter considerations.

The consistency of the Regime objectives with the strategic priorities of each Regime partner is shown, in part, by the extent of relationships between the partners.\(^{32}\) For example, FINTRAC maintains strong operational and policy linkages with federal partners in the National Initiative to Combat Money Laundering (NICML), renamed Canada’s AML/ATF Regime. CBSA addressed concerns raised in the audit of the Office of the Auditor General report of 2004 by working with FINTRAC to eliminate, through technological solutions, the backlog of cross-border currency reports CBSA inputs into FINTRAC’s database. In response to the audit’s concerns about the number of tax evasion-related disclosures sent to the CRA, FINTRAC analysts engaged in joint-training exercises with the CRA to identify tax evasion indicators and typologies.\(^{33}\)

Regime objectives are perceived to be generally consistent with the mandates of the Regime partners, although the mandates of all partners except for FINTRAC are broader than AML/ATF. The Regime partners are viewed as part of a continuum in combating ML/TF.

4.2 Achievement of Regime Outcomes

The achievement of outcomes is reported for each of the six activity areas identified in the Regime Logic Model. As well, the overall findings are presented about the progress made over the past number of years toward achievement of outcomes.

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\(^{31}\) FATF – Canada’s Mutual Evaluation Report, February 2008

\(^{32}\) Case studies indicated that the Regime was complementary to other programs. However, there are different mandates and priorities (e.g. IPOC, CSIS, CRA, and Justice).

\(^{33}\) FINTRAC Annual Report, March 31, 2005
4.2.1 Achievements in Operationalizing National and International Obligations and Commitments

An important immediate outcome expected of the Regime is the implementation of legislation, regulations, policies, and practices that would fulfill Canada’s AML/ATF commitments to the FATF and other international bodies, and enable the Regime partners to effectively combat ML and TF without violating Canadian Charter of Rights and Freedoms provisions.34

International Commitments

Canada has made significant progress in meeting the FATF 40+9 Recommendations for AML/ATF. In 2008, Canada was considered by the FATF to be compliant or largely compliant with 30 of the 40+9 Recommendations in its third mutual evaluation report (MER).35 A follow-up report to the FATF done in February 2009 considered that Canada was compliant with 36 of the 49 recommendations. Important UN Conventions and Resolutions are built into the FATF 40+9 Recommendations. The MER showed that Canada also meets its AML/ATF-related commitments to the UN. Based on FATF assessments to date, Canada is in the top tier of (FATF) jurisdictions.36 But there are still gaps in the Regime, including the failure to include lawyers as reporting entities and continuing deficiencies in customer identification standards.37

Since Canada’s first follow-up report to the FATF in February 2009, new measures have been put in place to strengthen the Regime and Canada’s compliance with the FATF standards. Budget 2010 announced:38

- New legislative amendments to establish financial countermeasures for jurisdictions and foreign entities that lack sufficient or effective AML/ATF measures. These measures are designed to enable Canada to comply with FATF Recommendation 21;
- Legislative amendments to include tax crimes as a predicate offence for ML; and,
- Increased ongoing funding of $8 million for FINTRAC to help combat ML/TF as well as to meet new responsibilities related to tax evasion as a predicate offence for ML.

National Obligations

Regime Funding

Since its inception, the federal government has directly funded a portion of Regime activities under the AML/ATF budget. The amount provided to Regime partners through that funding is estimated to constitute no more than 74 percent of their total expenditures on AML/ATF in 2008-09 and 2009-10. That means the additional 26 percent required to fund AML/ATF activities must be covered by Regime partners through their A-base funding or through other sources of funding. Some Regime partners get funding that is used for AML/ATF activities from

35 FATF – Canada’s Mutual Evaluation Report, February 2008
36 Email document from Finance provided in response to Point Form Evaluation Report, August 18, 2010
37 FATF – Canada’s first follow-up to its Mutual Evaluation Report, February 2009
38 Budget 2010: Chapter 3.3
other federal government sources. For example the Public Safety and Anti-Terrorism Initiative (PSAT) provides funds to CRA-Charities, FINTRAC and Finance.\textsuperscript{39}

There are some gaps in funding noted in key informant interviews and focus groups. These are:

- Regime funding provides Finance funding for only two of the 12 FTEs used for Regime activities, but Finance also receives PSAT funding;
- Justice, OSFI and DFAIT often could not send representatives to international events, contrary to Canada’s leadership role, because of insufficient funding or other budget constraints;
- The 43 FTEs originally provided to the RCMP-ML units have never been enough to assess FINTRAC disclosures, provide additional analysis/intelligence and then hand them off to the Integrated Proceeds of Crime (IPOC) unit for investigation;
- The RCMP Proceeds of Crime program (where responsibility for the majority of ML investigations lies because ML is part of proceeds of crime investigations) has been receiving the same level of funding since its creation in 1996. Thus, the RCMP has been unable to retain the original number of FTEs (357) and decided to decrease the number of IPOC-funded positions to 256;\textsuperscript{40}
- Justice is funded in the amount of $100,000 per year, partially covering the salary and benefits for one FTE. However, the contribution to the Regime by Justice involves three areas: Criminal Law Policy, International Assistance Group and the National Security Group. The work in the three areas together requires significantly more resources than one FTE;\textsuperscript{41} and,
- Funding for PPSC only partially meets the needs for prosecution services related to terrorism.\textsuperscript{42}

**Gaps in Coverage of the PCMLTFA and Other Legislation**

The Regime is reasonably comprehensive but some legislative and implementation gaps in the coverage remain. These were identified in the context of the evaluation based on document review and other lines of evidence. They include:

- The FATF is still not convinced that the exclusion from the Regime of unregulated financial entities that are in the leasing and factoring businesses\textsuperscript{43} meets the FATF standards;
- Cash deposits made to accounts of a reporting entity are not subject to LCTR reporting requirements if the cash was received by a person or an entity other than the reporting entity or its agent;

\textsuperscript{39} Data were developed from DPRs as well as an additional survey for 2007-08 to 2009-10 made by the evaluators that included all Regime partners.\textsuperscript{40} Figures supported by table of FTE and expenditures provided to evaluators\textsuperscript{41} Email document provided in response to Point Form Evaluation Report, August 2010 and figures are further supported by table of FTEs and expenditures provided to evaluators\textsuperscript{42} Email document provided in response to Point Form Evaluation Report, August 2
\textsuperscript{43} Businesses sometimes receive lease payments to cover ownership costs and these are excluded from financial reporting under the PCMLTFA as are business transactions in which accounts receivable (i.e., invoices) are sold to a third party (called a factor) at a discount in exchange for immediate money with which to finance continued business.
• Lawyers are not included in the reporting requirements under the *PCMLTFA*;
• The Regime does not track the movement of prepaid cards or mobile communications devices, which may hold significant dollar value and be used to carry money across the border, because the definition of “monetary instrument” in the *PCMLTFA* does not capture such means. In addition, issuers of prepaid cards are not required to identify purchasers when such cards are sold by unregulated entities such as gas stations and convenience stores;
• Mortgage loans are not subject to customer identification requirements if the loan was made by a life insurance company or an unregulated financial entity, or by other entities or persons. The FATF defines a financial institution as “…any person or entity who conducts as a business one or more of the following activities or operations for or on behalf of a customer:

  “…2. Lending. (which includes, inter alia, … mortgage credit)”;…
• In relation to beneficial ownership of customers that are legal entities or legal arrangements, the current Canadian requirement does not adequately address the FATF requirements, as (i) the requirement to identify is weaker than the FATF standard (reasonable measures to identify) and (ii) there is no obligation to verify the information obtained. It is also not entirely clear that all necessary requirements apply to trusts;
• Higher risk/enhanced Customer Due Diligence (CDD) and lower risk/exemptions – Canada applies a risk based approach, but the FATF analysis shows that in several areas, the approach taken is not in line with the FATF requirements and that collectively these deficiencies are a concern. The measures to address higher risk situations for which enhanced CDD is required are not in line with the FATF standard since the measures to be taken to address high risk activities are measures required by the FATF to address average or normal risk situations. There are also several deficiencies noted regarding exemptions from CDD obligations;
• Ongoing due diligence - The obligations are not in line either with the international standard since the requirement only applies to higher risk scenarios. In relation to low-risk activities, full CDD and third party determination exemptions are still allowed (and the list of exemptions has even been expanded), contrary to the FATF standards;
• There are significant areas of non-compliance with Recommendation 6 (politically exposed persons);
• There are gaps in Canada’s compliance with Recommendation 7 (correspondent banking44);
• Canada has not introduced measures to comply with Recommendation 9 (introduced business), or Recommendation 11 (attention to complex, unusual large transactions); and,"There is a risk of TF through non-profit organizations (NPOs) that are not monitored by CRA-Charities45.

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44 Use of bank accounts to handle financial transactions for a foreign financial institution
45 In the context of FATF standards, it was noted that a targeted approach in dealing with the terrorist threat to the NPO sector is recommended. Statistics Canada and CRA-Charities data show that the highest TF risk is associated with organizations which in Canada fall within the registered charity segment of the non-profit sector. That is the segment monitored by CRA-Charities.
Perception that the Regime Meets Canada's Obligations for AML/ATF

Most (89 percent) of the respondents from the reporting entities (total of 220) indicated in the evaluation survey that their perception has improved with regard to the federal government meeting its AML/ATF responsibilities. However, only about half (51 percent) of them felt strongly (i.e., to a fair extent or a great degree) that this was the case. It should also be noted that although this view was higher among the banks, it was much less favourable among the securities dealers and the real estate agents.

Balancing Charter/Privacy Rights with Achievement of Regime Outcomes

In implementing the Regime, the federal government had to balance effective intelligence gathering and enforcement with the protection of privacy and Charter rights. Finance, FINTRAC and the Office of the Privacy Commissioner maintained (in key informant interviews) that a good balance exists in the PCMLTFA. Law enforcement interview and focus group respondents were split on the question of balance, with half saying the correct balance has been struck, and half feeling privacy and Charter rights have received too much weight and that there is a need to rebalance in favor of intelligence gathering, investigation and enforcement. The tilt toward protection of privacy is perceived as slowing down the provision of information to the RCMP-ML unit on a timely basis and sometimes in response to very recognizable threats of ML activity.

One area where the RCMP indicated that the PCMLTFA requirements (included in the legislation to ensure privacy provisions were met) are slowing down ML investigations is related to the “production order” process. FINTRAC provides designated information in a case disclosure based on the threshold of "reasonable grounds to suspect". However, in order to receive additional information from FINTRAC relating to a case, the law enforcement or security agency must satisfy the threshold of "reasonable grounds to believe" through the production order process. In this process, the RCMP, CSIS, the CRA and others seek a judicial Order for Disclosure of Information from FINTRAC if they deem it is warranted to obtain additional information related to a case. This production order process is separate and distinct from the process by which FINTRAC makes case disclosures to its partners, and it was designed to be so in order to ensure that there is no unreasonable search and seizure (as specified in the Charter).

Over the past 10 years, 13 Orders for Disclosure of Information were sought and 12 were granted. Obtaining a production order is a time-consuming process and law enforcement believes that the requirement for production orders has negatively affected Regime Performance. Efforts were made to mitigate this issue in 2006 with the passage of Bill C-25, which significantly expanded the information that FINTRAC can provide in a case disclosure. Since that time, FINTRAC has been advised by law enforcement and security agencies that little additional information is typically needed, beyond what is contained in a case disclosure. However, cases still do arise where the RCMP, CSIS or CRA require information they believe is held by FINTRAC but was not included in the disclosure. They believe the requirement to obtain a production order, which is time consuming, is no longer warranted given that the

46 In key informant interviews it was noted that the time required to obtain Orders of Disclosure of Information averages 60 to 90 days. In one case study, it was revealed that the information release process incurred a wait of five-and-a-half months.
information in FINTRAC disclosures cannot be used as evidence. However, any change to the current process would need to be considered in light of its Charter and privacy ramifications.

There have been five privacy complaints since 2003, none of which were substantiated. No Charter challenges to the Regime have been successfully argued before the courts. According to several key informants interviewed, the lack of Charter challenges indicates that Regime operations have not pushed the boundaries on Charter and privacy issues. These informants believe there is a perception that disclosures are risky and should be avoided (in court or in other settings) if a third party is indirectly involved and could be exposed in the process (because of potential claims for damage). In the case studies, a general caution was expressed that law enforcement needs to follow closely any new cases that come before the Office of the Privacy Commissioner.

The reporting entities, especially the banks, felt (as expressed in the evaluation survey) that the balance is appropriate and that they do not want to be turned into enforcement entities.

### 4.2.2 Achievements in Liaison, Cooperation and Education

| Implementation of the Regime is expected to enhance coordination and expand the AML/ATF intelligence network, and improve the exchange of information between Regime partners, international partners and reporting entities. A related expected outcome is an increase in the public awareness of ML/TF initiatives, as well as an increased knowledge of the Regime’s guidelines, legislation, regulations, policies, procedures and tools among the Regime partners and in the private sector. |

#### International Level

**Liaison and Cooperation**

According to key informants interviewed, law enforcement at the international level has a history of close cooperation. For example, one case study was about a terrorism-related offence that took place overseas, for which Canada disclosed the Crown case and information on the accused held by law enforcement to a foreign government. The accused alleged the disclosure was a violation of the Charter. It was determined that disclosing the Crown case and information and surrendering the accused to the requesting state did not constitute a violation of the principles of fundamental justice protected by the Charter. This was a case illustrating how Canada (through the Regime) provides international assistance while maintaining a balance with Charter rights.

The Canadian Regime partners have demonstrated a strong commitment to sustaining and broadening the cooperative ties that are important in the global effort to fight ML/TF. This position has been enhanced by Canada’s contribution of experts to UN, FATF, International Monetary Fund (IMF) and World Bank (WB) initiatives and activities (including mutual

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47 Email document provided by Justice in response to Draft 1 Final Evaluation Report, October 2010
49 FINTRAC Annual Report, March 31, 2004
evaluations; the IMF actions on AML/ATF; and for the WB AML/ATF assessment of South Africa, Germany and other jurisdictions).\(^{50}\) Finance has been able to leverage capacity building funds at DFAIT through the Counter-Terrorism Capacity Building (CTCB) funding to support a number of initiatives at the international level, in particular five-year trust funds for AML/ATF specific assistance projects that were established at the IMF and WB in 2005. Recently, another iteration of the WB trust fund has been established for $500,000 over five years. As well, a contribution to a $30-million IMF multi-donor trust fund was approved in the amount of $2.3 million over five years. Finance, through CTCB funding, has also been able to support a number of training projects, including strategic implementation planning training for the Asia/Pacific region (approximately $400 thousand), with a similar project forthcoming for the Caribbean.

Canada remains a strong contributor to the development and implementation of the FATF standards. Canada held the presidency of the FATF from July 2006 to June 2007 and hosted a FATF Plenary and a number of working group meetings. Canada also hosted a FATF assessor training workshop in 2009, which helped to develop the technical expertise of participants, including domestic partners. Regime partners have played an active part in the development of FATF policies and different FATF projects, increased participation in the FATF-Style Regional Bodies (FSRBs), and provided technical assistance to lesser developed countries. And the RCMP has hosted the APG typologies working group meeting in Canada. Canada’s reputation as an international leader in AML/ATF liaison and cooperation was certainly reinforced by the Egmont Group’s decision to establish its permanent Secretariat in Toronto, (with funding provided by the GoC).\(^{51}\) The Egmont Group is an international organization of FIUs that provides a forum for cooperation and communication, research and other initiatives, with a focus on facilitating the exchange of information among FIUs. Canada provided $5 million in funding over five years to establish the Egmont Centre.

FINTRAC’s effort to forge stronger multilateral ties has been, to a large extent, focused on the Egmont Group. In 2008, FINTRAC hosted and participated in the Egmont Committee and Working Group’s meetings, attended by 155 international participants.\(^{52}\) FINTRAC currently chairs the Training Working Group, leading the way to expand technical assistance and FIU-related training opportunities globally. FINTRAC also participates in the Operational Working Group, the focus of which is to bring FIUs together on typologies development and long-term strategic analytical projects. FINTRAC’s relationships with the FIUs of other countries are delineated in MOUs with those countries (all of which require Ministerial approval).

Other Regime partners have been heavily involved in supporting the AML/ATF work of the APG. For example, CRA – Charities currently chairs a project team on “Vulnerabilities in the NPO Sector”.

OSFI has been active internationally through its International Advisory Group (IAG). That group worked primarily with supervisors in the Caribbean, Africa, Asia and Latin America, providing hands-on advice and training, seminars and workshops related to prudential banking supervision.\(^{53}\) However, OSFI disbanded its IAG in 2010 due to budget restrictions, and in any

\(^{50}\) FINTRAC Annual Report, March 31, 2008
\(^{51}\) DPR For the period ending March 31, 2007
\(^{52}\) FINTRAC Annual Report, March 31, 2008
\(^{53}\) OSFI website: www.infosource.gc.ca
event IAG did not fund AML/ATF training. OSFI’s AML/ATF international activities are centered on its AMLC Division which tend to export AML/ATF supervisory expertise through its annual involvement in the World Bank Financial Market Integrity Leadership Capacity Development Program, its participation in FATF policy discussions and FATF/IMF mutual evaluation process, its participation in several FATF regional assessor training workshops, and its participation in bank supervisory training workshops in Southeast Asia and the Caribbean. OSFI has also participated in CFATF and APG Plenary meetings (although this activity has been reduced due to budgetary constraints). Much of this activity was funded by the organizers of the events. In addition, OSFI contributes its expertise to the Toronto Centre, an international association which offers educational programs aimed at enhancing the supervisory capacity and improving the crisis preparedness of financial regulators around the globe.

In addition to providing legal advice to the Canadian Regime partners and to international AML/ATF partners, Justice has an operational role to play in the Regime. Through its International Assistance Group (IAG), Justice is responsible for the Mutual Legal Assistance Treaties (MLATs) signed by Canada. The IAG processes Mutual Legal Assistance (MLA) requests, which may include litigation in Canada. MLA requests seek the provision of evidence for use in AML/ATF investigations either in Canada or abroad, depending on whether the request is received by the IAG from Canadian Regime partners or foreign agencies.

In addition to MLA requests, the IAG is responsible for the administration of Canada's treaties for extradition, the processing and the litigating of extradition requests made under these treaties. Extraditions typically involve regular and sometimes very lengthy litigation, whether or not they are successful (though the majority of them are successful). Extraditions are extremely important to the achievement of AML/ATF outcomes because they are often the only means by which a country is put in a position to prosecute an offender, leading potentially to a conviction and in many cases to the possibility of confiscating or forfeiting assets. The extent to which all countries, including Canada, are able to deliver effective assistance in this area is the subject of evaluation at the international level by the FATF.

Performance data provided by Justice for the evaluation demonstrate the volume of MLA and extradition activity related to ML and TF cases. In Figure 4.1, the trend over five years (2005 to 2009) is shown for: the number of new MLA requests made by foreign countries (FCs) to IAG; the number of FC requests (new or more often existing) to Canada that were fulfilled; the number of new MLA requests made by IAG to FCs; and the number of IAG requests to FCs (new or more often existing) fulfilled. Figure 4.2 shows the five year trend for: the number of new extradition requests made by FCs to IAG; the number of FC requests to Canada (new or more often existing) that were fulfilled; the number of new extradition requests made by IAG to FCs; and the number of IAG requests to FCs (new or more often existing) fulfilled.
FIGURE 4.1
Trend in the Number of NEW MLA Requests Made and Requests Fulfilled
(2005 to 2009)

FIGURE 4.2
Trend in the Number of NEW Extradition Requests Made and Requests Fulfilled
(2005 to 2009)

It must be recognized that the data displayed in Figures 4.1 and 4.2 reflect the number of new requests made over the five years. However, the requests fulfilled in a given year did not necessarily reflect the resolving of the new requests in the same year. Most often, the requests fulfilled were launched several years before. Each request received or sent may take as little as a few months to be fulfilled or resolved, but it might also take several years, depending on the complexity. This complexity, the length of time required and the amount of resources expended to reach the close of the processing of a request is not captured in Figures 4.1 and 4.2. This was illustrated in two of the case studies. One case spanned several years and required significant amounts of work in general processing and subsequent litigation. In the second case, it spanned nine years from the point of receiving the request, though the initial litigation, the advice provided to the Minister of Justice and further litigation all the way to the Supreme Court of Canada.

It appears that each new MLA and extradition request adds incrementally to the IAG workload for a period of time that cannot easily be predicted. Thus, the better measure of MLA and extradition activity in support of AML/ATF might be the standing case loads. Looking back over the 10 years covered by this evaluation, there was a growth in the number of active MLA
requests from 43 (incoming and outgoing) in 2000 up to 113 in 2009, an approximate 200 percent increase. Similarly, the number of active extradition requests (incoming and outgoing) almost tripled from 13 in 2000 to 40 in 2009.

Finally, over the last several years, the IAG has had principal responsibility (with contributions from Justice Criminal Law Policy Section) for providing advice to Regime partners (chiefly to Finance in relation to the mutual evaluation process of the FATF), to international partners about Canadian law, and attendance at the FATF meetings to provide on-site advice.

**Education and Training**

Canada is regarded as an international leader in assisting the FATF and other countries to implement AML/ATF measures. For example, Canadian funding has supported training for the FATF mutual evaluations. Canada’s contribution of subject matter experts and trainers (from Finance, the RCMP, Justice, and OSFI) to serve as assessors in the Caribbean Financial Action Task Force (CFATF), for the APG mutual evaluations, and to provide assessor training has improved the perception of Canada’s commitment to meeting its AML/ATF responsibilities. OSFI also indicated in key informant interviews that it has frequently been asked to provide AML/ATF supervisory training in other countries and through international organizations, but has often had to decline due to budgetary restrictions.

FINTRAC’s International Technical Assistance Program (ITAP) has made an important contribution to Canada’s efforts in enhancing cooperation and expanding AML/ATF networks with international partners by providing training and support on different aspects of compliance and financial intelligence analysis to countries such as St. Kitts & Nevis, St. Vincent & the Grenadines and St. Lucia.\(^\text{54}\) FINTRAC also held numerous sessions of its International Compliance Program (ICP), in Canada and in other countries. It has developed and delivered its Financial Intelligence Analysis Course (FIAC) for Regime partners, as well as for participants from FIUs of other countries. FINTRAC provided training, materials and shared its tools with foreign FIUs, the Organization for Economic Cooperation and Development (OECD), the World Customs Organization, the International Working Group on Terrorism Financing (IWG) and the G-8 Roma/Lyon Group.\(^\text{55}\)

OSFI has delivered AML/ATF supervisory training extensively, both in Canada and elsewhere. Examples include its annual Information Session (aimed at FRFIs), presentations in numerous AML/ATF conferences, and events sponsored by the WB, the IMF, the FATF and its regional bodies, and the United States Immigration and Customs Enforcement (ICE) in cooperation with FINTRAC and the RCMP.

The Department of Foreign Affairs and International Trade (DFAIT) has facilitated the provision of AML/ATF technical assistance (mostly training) to low-income countries for AML/ATF, through the department’s Counter-Terrorism Capacity Building (CTCB) fund.\(^\text{56}\) Finance has been able to leverage those funds to support a number of initiatives internationally, such as five-year trust funds for AML/ATF specific assistance projects established at the IMF and WB in 2005.

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\(^\text{54}\) DPR For the period ending March 31, 2008  
\(^\text{55}\) DPR For the period ending March 31, 2008  
\(^\text{56}\) FINTRAC Annual Report, March 31, 2005
The CTCB funds projects of many Regime partners for technical assistance in designated countries.

The RCMP Anti-terrorist Financing Section provides the only training course in Canada on the detection and investigation of TF. A one-week course is held twice a year for 24 participants, of which the majority is from partner agencies of the RCMP, i.e. CSIS, CRA, FINTRAC, CBSA and the Communications Security Establishment (CSE). However, in the past two years, foreign partner agencies, such as the Australian Security Service and the British Security Service, have provided candidates. Over the past four years, seven courses have been held, with over 150 participants having successfully completed the course.

National Level

Liaison and Cooperation

The privacy and Charter safeguards in the PCMLTFA, as well as the enabling legislation of some of the Regime partners (e.g., the Income Tax Act), places limits on what information can be shared and with whom it can be shared (e.g., the Income Tax Act limits the release of information by CRA). As observed in key informant interviews and case studies, security interests may limit the information that intelligence agencies such as CSIS can divulge, even to law enforcement agencies. Efforts to improve this situation have included: FINTRAC expanding its strategic intelligence reporting, issuing more disclosures and establishing compliance information-sharing MOUs with domestic financial and non-financial (such as casino) regulators; and CBSA undertaking joint blitzes on cash couriers at ports of entry with FINTRAC and the RCMP. Despite these efforts, the Regime partners felt, as indicated in interviews and focus groups that more could be done in this area.

Cooperation between FINTRAC and other Regime partners, beyond the provision of disclosures, is clearly evident. FINTRAC has 18 regulator MOUs in place for the purpose of exchanging AML/ATF compliance information.\(^57\) FINTRAC and OSFI have together and separately given a number of seminars and training sessions to Regime partners and private sector players.

Evidence from the evaluation survey indicated that provincial entities felt the Regime has contributed to improved liaison and cooperation by:

- Increasing to some extent (84 percent of 20 respondents agreed) the coordination between their organization and other Regime partners, with 63 percent of the 20 provincial survey respondents indicating that the coordination has increased substantially (i.e., to a fair extent or a great degree) over the years; and,

- Increasing to some extent (84 percent of 20 respondents agreed) the sharing of information (tactical, strategic, or other), with 63 percent of the 20 provincial respondents indicating that the sharing of such information has increased substantially (i.e., to a fair extent or a great degree) over the years.

In the case studies, a number of examples were given of the sharing of resources and assistance, particularly by the RCMP and CSIS. Formal mechanisms (MOUs) are in place between FINTRAC and the RCMP on information sharing. CSIS participates in ad hoc bilateral meetings

\(^{57}\)FINTRAC Annual Report, March 31, 2006
with Regime partners, and to a limited extent in joint exercises with Regime partners. CSIS has a secondment from CRA-Charities and from FINTRAC. And the National Security Criminal Investigations (NSCI) TF Unit has a secondment from CRA-Charities.

Regarding TF, where the PPSC is delegated by the Attorney General of Canada to authorize the laying of charges, formal (e.g., MOUs) and informal mechanisms (e.g., assigning prosecutors to work with investigators on specific cases) were developed to facilitate the exchange of information between enforcement authorities.

The CBSA’s main AML/ATF activity is its Cross-Border Currency Reporting Program (CBCR). Under its mandate, the CBSA has led the conduct of joint blitzes on cash couriers at ports of entry with the cooperation and involvement of the RCMP, CSIS and FINTRAC. Several specific operations exemplify the high level of cooperation between the Regime partners and related international agencies. Project Mantis was a G-8 Law Enforcement Projects Subgroup (G8 LEPSG) project that was sponsored by the United States Immigration and Customs Enforcement. A second similar operation, Operation Atlas, was initiated by the World Customs Organization (WCO). Project Mercury was led by the CBSA and responded to commitments made by the RCMP to its international 5-Eyes policing partner members of the Strategic Alliance Group (SAG). It was a series of AML joint operations involving CSIS, FINTRAC, RCMP and provincial law-enforcement agencies. An important outcome of these cooperative endeavours was the realization that in the future, the partners should conduct analyses in advance of blitzes to better identify targets/areas of interest based on risk. The CBSA has been working with the RCMP and FINTRAC to ensure that all partner agencies/departments spend more time in analysis and planning for future endeavors.

One way of improving liaison and cooperation domestically might be by the use of special-purpose integrated teams, to deal with specific issues or enable a response when any one Regime partner is under-resourced. In the key informant interviews, several respondents referred to the U.S. "Suspicious Activity Report Review Team" as potentially being a useful model for the Canadian Regime. The U.S. Suspicious Activity Report Review Team is run by the US Attorney's Office on a regional basis. Every 90 days, the team meets with all enforcement agencies involved to review all Suspicious Transaction Reports filed in the past 90 days and select those having the greatest potential for investigation. The effectiveness of the program stems from the regular updating of information through Review Team meetings.

**Education and Training**

FINTRAC’s record of cooperation at the provincial level is strong, but its commitment to outreach and cooperation with provincial law enforcement was questioned when the Regional Law Enforcement Liaison Officer (LELO) positions were eliminated across the country. FINTRAC noted that the LELO responsibilities were transferred to analysts within the Financial Analysis and Disclosures Directorate (FADD). FINTRAC indicated that feedback from Ontario law enforcement partners and the RCMP confirmed its belief that the transfer of relationship responsibilities to analysts within the FADD had increased coordination and cooperation. This

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58 FINTRAC Annual Report, September 2009; note from CBSA in response to Draft 1 Final Report, October 2010
59 Email document from FINTRAC in response to Draft 1 Final Report, October 2010
latter assertion is likely correct because in the evaluation survey the provincial entity respondents indicated that FINTRAC has increased (82 percent of 20 respondents agreed) its provision of training and outreach sessions, seminars, guidelines, resources, advice and/or technical assistance, with 59 percent of the 20 provincial respondents indicating that this assistance has increased substantially (i.e., to a fair extent or a great degree) over the years.

FINTRAC has a legislated mandate to enhance public awareness and understanding of ML. As one step in meeting that mandate, FINTRAC surveyed the public about their views of ML and TF and their impact on public life. The results of that 2006 public opinion research are presented in Table 4.1. It seems from this research that the public in general was aware that ML is a problem and that it likely affects them personally. They also seemed aware that TF occurs in Canada, but were less sure about how TF operates.

### TABLE 4.1
Results from FINTRAC’s Public Opinion Research on ML and TF

<table>
<thead>
<tr>
<th>MONEY LAUNDERING (ML)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Have some understanding of ML</td>
<td>90%</td>
</tr>
<tr>
<td>Believe ML is a problem</td>
<td>49%</td>
</tr>
<tr>
<td>Believe ML affects them personally</td>
<td>41%</td>
</tr>
<tr>
<td>Believe ML has an impact on the economy</td>
<td>83%</td>
</tr>
<tr>
<td>Believe ML has an impact on financial institutions</td>
<td>79%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TERRORIST FINANCING (TF)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Believe terrorist financing occurs in Canada</td>
<td>81%</td>
</tr>
<tr>
<td>Believe such activity is supported by crime</td>
<td>31%</td>
</tr>
<tr>
<td>Believe such activity is supported by donations</td>
<td>10%</td>
</tr>
<tr>
<td>Believe such activity is supported by business</td>
<td>8%</td>
</tr>
</tbody>
</table>

Regarding the types of criminal activity the public associated with ML, 56 percent of the public opinion research survey said drug trafficking, 25 percent said organized crime and 16 percent said fraud.

The knowledge and views of the general public about the mandate, activities and achievements of the Regime have not been ascertained through public opinion research. The Regime partners believe (as expressed in interviews and focus groups) that the average Canadian is not aware of the Regime. In the evaluation survey, 100 percent of the 20 provincial respondents indicated that the general public never or rarely seeks information on the AML/ATF mandate and/or activities of their organization.

To increase the public’s awareness of the Regime, FINTRAC has used its website, printed materials, presentations (over 2,700 presentations with over 83,000 participants over six years), reports to Parliament, articles in trade journals and newsletters to improve public awareness. But

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60 DPR For the period ending March 31, 2006
the majority of those efforts were aimed at reporting entities and their sector associations, not the general public.61

Several case studies referred to the provision of key training courses by the RCMP to other Regime partners. RCMP-ML units have enhanced public awareness and understanding of AML through its Merchants Against Money Laundering (MAML) program. In the last five years alone, MAML units have delivered over 6,100 presentations to businesses and associations, reaching over 70,000 people. In recent years, MAML personnel have teamed up with the RCMP’s Commercial Crime unit to include a fraud and counterfeit currency component to the presentations.

4.2.3 Achievements in Facilitating and Monitoring Compliance

Outcomes expected from the Regime include enhanced compliance with the PCMLTFA requirements, and the adoption of enhanced risk-based approaches by reporting entities. Also, improved data for analysis by FINTRAC is expected to follow from improved adherence to reporting requirements.62

**Compliance Examinations**

Following 10 years of laying the foundation for compliance through awareness building and by facilitating reporting, FINTRAC recognized the need to enhance its enforcement activities in order to raise the level of compliance among reporting entities. The Minister of Finance moved to address two of the barriers to better compliance monitoring of reporting entities: (1) insufficient resources at FINTRAC; and (2) insufficient administrative penalties for non-compliance. Both these items were the subject of FATF criticism in the mutual evaluation report (MER). The introduction of the administrative monetary penalty (AMP) provisions in December 2008 is expected to assist in improving compliance among reporting entities.63

FINTRAC received an additional ongoing $8 million in *Budget 2010* to strengthen its compliance activities, as well as to meet new responsibilities related to tax evasion that became a predicate offence to ML in July 2010.

The number of on-site and desk compliance examinations conducted by FINTRAC and others (OSFI and provincial regulators) has been increasing annually in all reporting entity sectors as shown in Figure 4.3.64 FINTRAC conducted compliance examinations in 0.3 percent of reporting entities (referred to as the penetration level) in 2009-10. This is considered an insufficient penetration level to provide a reasonable level of assurance that reporting entities will fully comply with their reporting requirements under the PCMLTFA, even taking into account the number and type of examinations done by OSFI and other regulators. Additional ongoing resources were provided in Budget 2010 to assist FINTRAC in augmenting its coverage rate, although devoting further resources to this activity may be warranted in the future.

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61 DPR for the period ending March 31, 2009; DPR for the period ending March 31, 2007; DPR for the period ending March 31, 2006; DPR for the period ending March 31, 2005; DPR for the period ending March 31, 2004
63 Email document provided by FINTRAC in response to Draft 1 Final Report, September 30, 2010
64 FINTRAC Annual Reports, March 31, 2002 to March 31, 2007; DPR for the period ending March 31, 2005
FIGURE 4.3

Number of Examinations

FINTRAC has made efforts to mitigate the effects of the low examination penetration level.\(^{65}\)
For example, FINTRAC uses a risk-based approach that focuses examination resources on those reporting entity sectors believed to be operating in a high risk ML/TF environment. Recently, FINTRAC developed a new risk-based analysis tool that is intelligence led and will go further in determining the level of monitoring, the type of examinations, the high-risk sectors and reporting entities, the scope of examinations and the follow-up strategies required to ensure compliance. The key benefit will be examinations that respond to several factors, rather than simply a target coverage rate within a given population. Relevant factors may include specific business models, product and services, and transaction volumes.\(^{66}\)

In the federally regulated sector, OSFI’s AML/ATF supervisory assessment program has to compete for resources with other financial sector priorities, and the financial crisis of 2007-09 put pressure on the availability of funds for AML/ATF purposes. OSFI currently applies resources sufficient to assess on average about 15 to 20 FRFIs per year. OSFI estimates it has about 250 FRFIs\(^{67}\) that are subject to its form of a supervisory assessment program. OSFI has increased its penetration rate to about 20 percent. Over the past several years, OSFI has conducted assessments at least once at FRFIs which it considers to be higher risk. OSFI’s AML/ATF assessments are completed as part of its OSFI Act mandate and the information it obtains in the assessments is shared with FINTRAC through an information-sharing MOU.

In 2008, amendments to the PCMLTFA that came into effect apply a risk-based approach to many CDD obligations of financial entities. In general, financial entities must identify higher risks and apply enhanced CDD and monitoring to those situations. Some of these obligations

\(^{65}\) Detailed documentation provided by FINTRAC in response to Draft 1 of the Final Report, September 30, 2010
\(^{66}\) Email document provided by FINTRAC, October 7, 2010
\(^{67}\) OSFI conducts AML/ATF assessments on a consolidated basis across FRFIs that are financial groups. There are about 250 FRFIs subject to the regime, including federally regulated credit union centrals and associations that became reporting entities under the PCMLTFA in July 2010
allow financial entities flexibility or options in choosing reasonable measures to comply with the obligations. This approach is consistent with OSFI’s view of risk management, which requires that more attention be paid to areas of higher risk as a prudent approach to implementing risk controls. Finally, it is noted that the FATF, as part of its review of the 40+9 Recommendations, is giving consideration to defining a risk-based approach to AML/ATF financial supervisory standards, based largely on the long-standing approach to supervision by Core Principles supervisors.

As a result of these developments, OSFI and FINTRAC have set up a working group to ensure that the FRFI sector sees the two agencies as working together to avoid duplication in achieving their individual mandates.

Quality of Data Reported

Continuous monitoring by FINTRAC’s officers led to a marked improvement in the quality of reports submitted by reporting entities, particularly suspicious transaction reports. As a result of quality assurance follow-ups, reporting entities were requested to provide FINTRAC with an action plan to address their deficiencies.  

Key compliance deficiencies identified by FINTRAC and other regulators through questionnaires and examinations were:

- Inadequate compliance regimes put in place by reporting entities (the identification of high-risk situations);
- Failure to properly identify the person(s) conducting the financial transactions or the third parties involved in accordance with prescribed measures; and,
- Deficiencies in reporting to FINTRAC.

As a follow-up to these findings, reporting entities received formal notification of their deficiencies by FINTRAC or their regulator (sometimes both) and, when appropriate, recommendations for improved practices.

For OSFI, the main challenge is to impress upon institutions the need to have strong controls to ensure compliance. To do this, OSFI uses its regular supervisory tools available to it under governing legislation (Bank Act, Insurance Companies Act). The most significant of these is “staging,” where additional supervisory resources are imposed on FRFIs that are assessed as being at higher risk. There is some question as to whether OSFI’s powers to apply directions of compliance or compliance agreements under this legislation can be effectively applied to AML/ATF non-compliance situations. However, OSFI has not had the need to use these supervisory tools thus far in AML/ATF supervision.

From the reporting entities’ perspective, over 90 percent of the 220 respondents to the evaluation survey indicated that the Regime’s efforts to promote and monitor compliance helped them increase the extent and quality of reporting. Most of them noted that the risk assessment requirements actually helped their organization achieve its AML/ATF objectives. However, reporting entities

68 FINTRAC Annual Report, March 31, 2006
69 FINTRAC Annual Report, March 31, 2006
also felt there was a lack of guidance provided by FINTRAC and that FINTRAC was at times too prescriptive, lacking an appreciation of the operational realities of the industry sector. In focus groups, reporting entities suggested that FINTRAC could establish industry-specific consultative groups to provide a venue where issues could be discussed and a greater understanding of industry specific reporting capacity could be gained.

The quality of data emanating from CBSA is an issue. Cross-Border Currency Reports (CBCRs) are completed manually by the travelling public at port of entry and then sent to Ottawa where the information is manually entered into the system for electronic submission to FINTRAC. As a result of the manual system for data entry, data quality and reporting timeliness are an issue and will continue to be so until a system is put in place that allows travelers to enter data electronically at a port of entry. Moreover, the RCMP has noted that they do not receive copies of the reports provided by the CBSA to FINTRAC, and have argued that receiving them would improve their ability to enforce PCMLTFA and Criminal Code of Canada provisions.  

### 4.2.4 Achievements in Intelligence Gathering and Analysis

| Intelligence gathering and analysis is expected to result in an increased understanding by Regime and international partners, and financial service providers, of ML and TF patterns and trends (derived from strategic analysis) with the objective of improving the identification of targets. Further, enhanced tactical information developed through intelligence gathering and analysis is expected to be provided (largely through FINTRAC disclosures) to support investigations. |

#### Intelligence Gathering

FINTRAC’s main source of ML/TF intelligence are the reports submitted by reporting entities as well as Voluntary Information Records (VIRs) from the Regime partners, provincial law enforcement and financial regulatory bodies. The number and quality of reports has improved over the past number of years. For example, the number of Suspicious Transaction Reports (STRs), Large Cash Transaction Reports (LCTRs), Electronic Funds Transfer Reports (EFTRs), Cross-Border Currency Reports (CBCRs) and Cross-Border Seizure Reports (CBSRs) received by FINTRAC has grown steadily over the last four years. Casino Disbursement Reports (CDRs) were received for the first time in 2009-10. This is shown in Figure 4.4.

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70 Section 36 (2) of the PCMLTFA states: “An officer who has reasonable grounds to suspect that information referred to in subsection (1) would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity office may disclose the information to the appropriate police force.

71 Strategic analysis of intelligence refers to the use of information on ML and TF to identify methodologies used in ML and TF, and to help establish trends, patterns and types of activities. Tactical analysis of intelligence refers to the use of information on specific entities and organizations to establish the basis for criminal investigation under the PCMLTFA.


73 FINTRAC Annual Report, March 31, 2009
The VIRs that FINTRAC receives from law enforcement and national security agencies are valuable in helping analysts zero-in on suspected cases of ML/TF in support of current investigations and law enforcement priorities.\textsuperscript{74} The number of VIRs received by FINTRAC from 2007-08 to 2009-10 is shown in Figure 4.5.

\textsuperscript{74} FINTRAC Annual Report, March 31, 2005
Strategic Analysis and Reporting

Documentation shows that FINTRAC has enhanced its expertise and capabilities, and established credibility in the strategic analysis of ML/TF intelligence, with disclosure recipients, reporting entities and foreign FIUs. At the same time, FINTRAC has built a robust set of information in its data holdings for use in analysis and the production of strategic analysis reports.

FINTRAC has shared with its partners both in Canada and internationally what has been learned about typologies and patterns of ML/TF. For example, FINTRAC played a leading role in Canada’s contribution to the development of the FATF Typology Report on Proliferation Financing as well as on the FATF Typology Report on Securities that included input from the private sector. There are a number of case examples in that document that are of Canadian origin. In addition to the typologies, the report includes a list of red flag indicators that could be used by financial institutions to detect suspicious activity. In addition, FINTRAC issues a quarterly review of new articles that summarize relevant group-based, activity-based and country-based ML/TF issues.

In general, the Regime partners’ understanding of ML/TF approaches and methods has improved through the analysis of data at the strategic level and the dissemination of the recent round of FINTRAC reports (Money Laundering and Terrorist Financing Typologies and Trends in Canadian Banking, Money Laundering Typologies and Trends in Canadian Casinos, and Money Laundering and Terrorist Financing Typologies and Trends in Money Services Businesses). In particular, interview respondents noted the value of the recent strategic analysis report on Islamic Banking. In one case study, strategic analysis information (an overview of the ML typologies utilized by the subjects of organizations under investigation) was said to have been instrumental in helping municipal law enforcement investigators pursue their cases.

The reporting entities indicated in the evaluation survey (90 percent of the 220 respondents agreed) that the strategic analysis report on ML in banking helped them understand and more readily identify ML activities.

Strategic analysis of ML/TF data is important to Finance. It is needed to improve Finance’s capability to develop "a fully informed opinion [about needed AML/ATF action] to decision makers within Government". Finance expressed the view in interviews that improvement is needed in this area. In the interviews, a suggestion was made to set up a Strategic Intelligence Committee for the Regime, aimed at setting priorities for the preparation of strategic analysis reports.

Criminal analysts within the RCMP-ML program are seconded from the Criminal Intelligence Program. Their primary function is to analyze ML activities in Canada and to provide strategic intelligence reports to other RCMP divisions and units that identify ML trends and patterns. Examples of the strategic intelligence reports are: Project SHYNE - Strategic Intelligence Assessment, Assessing the Vulnerabilities of Dealers in Precious Metals and Stones to Money Laundering Activities" (June 2009); Project SEEP - Strategic Intelligence Assessment, An Overview of Prepaid Cards in Canada and Their Vulnerability to Money Laundering (May 2009); and Project SATCHEL - Strategic Intelligence Assessment, Money Pick Ups: Colombian

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75 FINTRAC Annual Report, March 31, 2006; and DPR for the period ending March 31, 2009
Organized Crime Money Laundering Networks Operating in Canada (May 2009). The criminal analysts within the ML unit also provide tactical information to RCMP units and divisions.

At the present time, FINTRAC is an important source of strategic analysis reports for the other Regime partners, along with CSIS. However, the FINTRAC information has limits to its usefulness, according to some partners, because it is at too high a level of granularity. Nonetheless, the Regime partners did acknowledge that some of the more granular information they would like to have cannot be provided by FINTRAC because of legislative restrictions. Several Regime partners have indicated an interest in receiving more strategic analysis reports from CSIS, the Integrated Threat Assessment Centre (ITAC), and the RCMP, which could be assembled for the consumption of all the Regime partners on a recurring basis.

**Tactical Analysis and Reporting**

Tactical analysis of FINTRAC’s data holdings is undertaken to determine if information would be relevant to a ML/TF investigation. The tactical analysis product from FINTRAC is the disclosure, and disclosures are issued when the legal threshold of reasonable grounds to suspect a money laundering or terrorist financing offence has been reached.

**FINTRAC Disclosure Activity**

FINTRAC has increased the number of disclosures made to Regime partners over the past four years, as shown in Figure 4.6. This increase is attributed to changes that have been made to FINTRAC’s disclosure review and approval process, rather than from modification in the nature of its disclosures, thus making the disclosure process more efficient and responsive to the needs of recipient agencies. In addition, with the coming into force of the 2006 legislative amendments to the PCMLTFA, FINTRAC was able to provide a significantly expanded range of information, enabling the disclosures to have a greater impact.\(^76\)

\(^76\) DPR for the period ending March 31, 2009
In terms of the disclosure recipients, 63 percent of FINTRAC's case disclosures were delivered, in 2009-10, to the RCMP, while the others were sent to various law enforcement and partner agencies, as well as to foreign FIUs. The most significant change from 2007-08 was the increase in the number of case disclosures provided to the CRA (from 1.5 percent to an average of 24.5 percent over the last two years).\footnote{DPR for the period ending March 31, 2009}

FINTRAC also made disclosures to foreign FIUs. Over the four years (2006-07 to 2009-10) the number of these disclosures increased, as shown in Figure 4.7.
Use of Disclosures in Target Identification and Support to Investigations

From its follow-up questionnaires (Disclosure Feedback Form or DFF), FINTRAC observed that disclosures not only fed into law enforcement and national security agency investigations that were already underway, but also that, in an increasing number of instances, they helped identify completely new cases of suspected ML/TF. While the CBSA and CRA-Charities most often commenced new investigations based on these disclosures, the RCMP-ML unit only undertook investigative assessments, and in these recognized that new targets and situations were identified. The RCMP indicated they have not followed through with new investigations from these proactive disclosures because of resource constraints. In fact, close to half of all disclosures made by FINTRAC provided Regime partners with names of individuals previously unknown to them. Often this was a two-way process. Police and intelligence services provided FINTRAC with information that helped its analysts focus their attention on particular suspect transactions (through VIRs), and as a result, they unearthed details producing valuable leads for investigators.

For CRA-Enforcement, the most useful aspect of the FINTRAC disclosures is the identification of bank accounts related to specific audits. In audits without FINTRAC disclosures, the auditors are not always aware of all of the financial institutions utilized by the target. The disclosure information helps to identify previously unknown financial institutions, transfers of funds, and additional assets. For CRA-Enforcement, the disclosures generally led to the conduct of additional audits, as was outlined in one case study. For CRA-Charities, tactical information was

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78 Email document provided by RCMP, October 2010
79 FINTRAC Annual Report, March 31, 2007

Capra International Inc.
cited as being of utmost importance in identifying previously unknown or suspect targets. In one case study, CRA received information that led to the conduct of a pre-registration audit. The audit corroborated the concerns regarding linkages to a TF-listed entity. As a result, the organization applying for charitable status did not receive registration as a Canadian Registered Charity. This case pointed out the need for tactical information about money flows from offshore to Canadian charities.

For CBSA, both proactive FINTRAC disclosures and those provided as a result of a VIR were seen to be extremely useful for target identification and to support investigations. Disclosures resulting from a VIR often confirmed suspicious activities and bolstered a recommendation of inadmissibility to Canada. More often, FINTRAC disclosures revealed new associates and global connections that were previously unknown and helped direct additional research and analysis. The CBSA has recently begun to see instances where inadmissible persons have been refused entry to Canada due to a recommendation that was based partially on FINTRAC disclosure information.

RCMP performance data show that FINTRAC disclosures (proactive and VIR-generated disclosures together) have been used largely to add information to existing investigations or to provide intelligence. These two types of follow-up together accounted for 80 percent of the use of disclosures from 2002-03 to 2008-09. Less than 20 percent of disclosures (all resulting from VIRs as will be explained shortly) were used to identify new targets as shown in Figure 4.8.

**FIGURE 4.8**
Follow-up of FINTRAC Disclosures by the RCMP

![Follow-up of FINTRAC Disclosures by the RCMP](image)
The RCMP-ML unit makes the most use of FINTRAC disclosures when the disclosures result from a VIR. The RCMP-ML units have increased the number of VIRs generated each year. For example, the RCMP data show 28 VIRs sent to FINTRAC in 2004-05 while, as seen in the FINTRAC data of Figure 4.5, the number increased to 260 in 2007-08 and up to 385 in 2009-10. The majority of VIRs from the RCMP-ML units were related to existing investigations within that unit or being undertaken through the IPOC Initiative.

The RCMP indicated that FINTRAC proactive disclosures are assessed, files are opened and the details uploaded to the Intelligence database. Even though the proactive disclosures might contain information identifying previously unknown targets, the proactive FINTRAC disclosures are generally given a lower priority than the VIR-generated ones. With the resources allocated to it from the Regime budget, the RCMP said in interviews, focus groups and through case studies, it is not able to follow through on proactive disclosures. All of the resources for the IPOC units, where the ML investigations are done, are committed to investigations already underway. Since the inception of the Regime, the RCMP-ML unit said it has been given the responsibility for, and been committed to doing the investigative assessments (i.e., determination of potential for detailed investigation by the RCMP) from proactive disclosures, with the actual investigations of cases being done by the IPOC units. IPOC units have not been in a position to undertake new investigations from the proactive disclosures without additional new resources.

### 4.2.5 Achievements in Investigation, Adjudication and Sanctioning

A major expected outcome from Regime activities is an increase in investigations that provide high-quality evidence facilitating decision-making related to ML/TF offences (e.g., laying/withdrawing charges) and other activities that support adjudications (both criminal and civil). An increased number and dollar value of seizures/forfeitures of proceeds of crime and funds for terrorist use are expected as outcomes from the Regime. The activities of the Regime are expected to contribute to an increased disruption of ML and TF activities through the use of criminal prosecutions and civil sanctions.

**Sanctioning for Non-Compliance in Reporting**

In the document review and analysis of performance data, it was observed that FINTRAC’s disclosures have helped law enforcement and security partners in their investigations by identifying individuals or groups known and often unknown to investigators, and by helping to link together financial transactions and the movement of money with suspected crimes. Getting this kind of impact from the disclosures depends on both the extent (number of entities reporting and number of suspected transactions reported) and quality of reports. Thus, it is important that FINTRAC continually works to improve compliance in reporting under the PCMLTFA and its regulations. One tool for encouraging compliance is the use of sanctions for non-compliance.

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80 The results of files uploaded to the intelligence database are not tracked in terms of how the data are subsequently used.
82 DPR For the period ending March 31, 2009
Two options are possible under the Regime for sanctioning non-compliance:

1. Since December 2008, FINTRAC has been authorized to impose administrative monetary penalties (AMPs) where reporting entities are found to be non-compliant with the requirements of the PCMLTFA. This tool represents a measured and proportionate response to particular instances of non-compliance, and is designed to encourage these reporting entities to correct their behavior; and,

2. FINTRAC may refer (through a non-compliance disclosure) more serious and/or persistent offenders to law enforcement for investigation and possible prosecution.\(^{83}\)

The number of disclosures of non-compliance sent to law enforcement went from 19 in 2008-09 to three in 2009-10 as the AMPs regime came into effect. In 2009-10, the total number of AMPs issued by FINTRAC and publicly named was seven. The use of AMPs seems to some extent to have avoided the need in certain instances for the Regime to prosecute reporting entities for non-compliance.

**Seizures, Forfeitures and other Measures**

The CBSA experienced an increase in the value of currency and monetary instruments seized on a year-over-year basis, as shown in Figure 4.9. The number of seizures has increased as well (shown in Figure 4.10). Cross-border forfeitures stood at $8.12 million, representing 20 percent of the value of forfeitures, in 2008-09. The number of appeals concerning seizures rose in recent years – from 117 in 2007-08 to 343 in 2009-10. However, over the same period the percentage of decisions upholding the seizures remained about the same (80 percent in 2009-10). Financial constraints have prevented the assignment of more adjudicators to deal with currency seizures under the Regime. Further, the CBSA performance data do not separate out the seizures and forfeitures that can be attributed to FINTRAC disclosures.

**FIGURE 4.9**

Value of CBSA Seizures and Forfeitures (2005-06 to 2009-10)

![Graph showing values of CBSA Seizures and Forfeitures](image)

Note to Figure 4.9: Value of forfeitures for 2009-10 not available from CBSA at time of reporting

\(^{83}\) FINTRAC Annual Report, March 2009
For RCMP-ML, the value of seizures linked to FINTRAC disclosures has not shown a trend, as is seen in Figure 4.11. The same is true for the value of forfeitures. On the other hand, the number of seizures has increased somewhat over the past five years, as shown in Figure 4.12. For the RCMP-TF, the number and value of seizures was markedly higher in 2007-08 (five seizures valued at $386,000) than in 2004-05 (two seizures valued at $60,000).

FINTRAC disclosures to CRA-Enforcement led to an increase in the income tax earned by CRA as a result of audits (prompted by the disclosures) over the last five years, as shown in Figure 4.13.
Investigations, Prosecutions and Convictions

The Issue of Inconsistent and Insufficient Data

The FATF cited the insufficiency of data in Canada on ML in the mutual evaluation report (MER) on Canada’s AML/ATF Regime, released in February 2008. Recommendation 32 states this deficiency in the following terms: “Incomplete statistics are kept in relation to ML investigations and incomplete statistics are kept in relation to ML sentencing.”

The difficulty arises because of the absence of a common system for recording data. For example, the RCMP database is organized and referenced by the date on which files are opened. The records do not include the date when charges were reviewed or laid or when convictions or other case outcomes took place. For this reason, it is not possible for the RCMP database to provide information on the number of investigations involving ML resulting in charges being
laid in the year they took place. The PPSC records the types of charges laid and the charge outcomes (acquitted, convicted) separately in any given year. It is therefore not possible to directly reconcile the figures for charges and their outcomes. It is also not possible to reconcile the RCMP-ML data with PPSC data on charges and convictions.

It was also found that, because of the multi-year feature of investigations and the prosecution process, changes in the pattern of charges and prosecutions that may follow from the increases in FINTRAC disclosures over the past five years (discussed in the previous section) have not yet impacted the RCMP or PPSC data.

### Examining the Investigation, Prosecution and Conviction

RCMP data (including only IPOC and ML cases) show that over the five-year period 2004-05 through 2008-09, there were 12,434 POC and ML files opened and 303 were major investigations\(^{85}\) (58 percent of which were still open as of June 2010). From these RCMP POC/ML files, there were 470 POC and 219 ML charges laid with 508 charges laid related to other crimes. Among the POC and ML cases, 237 POC and 78 ML cases are still before the courts. Taking out the cases still before the courts, 233 POC and 141 ML cases have been decided. There were 73 POC and 32 ML convictions.

In the key informant interviews and case studies, RCMP respondents suggested that prosecutors may withdraw POC/ML charges in order to get the individual charged to plead guilty to the offence that generated the proceeds, and in some of these cases the POC are seized and forfeited even though the POC/ML charges were withdrawn. Similarly, it was noted by the PPSC that it may be appropriate to withdraw POC/ML charges, given that they may not be necessary to obtain forfeiture of POC if there is a conviction upon the charge that generated the proceeds.

There have been few cases in Canada where TF charges have been laid. There have been three cases initiated to date. Two resulted in a conviction. However, one of these was outside the evaluation period. One terrorist group was disrupted and there were three seizures of assets.

The PPSC provided data (within the limitations described earlier) on charges laid and convictions (including guilty pleas) for ML achieved over a longer seven-year period (2003-04 to 2009-10). The trend in ML charges laid and convictions attained over the seven years is given in Figure 4.14. The trend in POC charges laid and convictions attained is shown in Figure 4.15. From 2003-04 to 2009-10 the trend was decreasing for the number of ML charges laid but slightly increasing overall for ML convictions. For POC charges laid there was an upward trend over the same time period, while the number of convictions increased slightly overall.

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\(^{84}\) Convictions include guilty pleas

\(^{85}\) Major investigations are defined as involving more than 500 person-hours of investigation resources. Because the investigations are multi-year, the number of major investigations by year of file opening will tend to grow with time. For example, it was noted there are a number of investigations currently in the pipeline that will soon result in a substantial increase in the number of major investigations for the years 2008 and 2009.
FIGURE 4.14
ML Charges Laid and Convictions (Including Guilty Pleas) for 2003-04 to 2009-10

FIGURE 4.15
POC Charges Laid and Convictions (Including Guilty Pleas) for 2003-04 to 2009-10

From a legal perspective, the purpose of an investigation is to determine whether a given behaviour contravenes the law and, if so, to lay charges against an individual or group where there is a reasonable basis to conclude that the individual or group has committed the offence. The prosecution function is to review the charges to determine whether there is a reasonable prospect of conviction based on the evidence and, if so, whether it is in the public interest to prosecute. In some cases, charges may not be appropriate because one of the preceding criteria cannot be met. In other words, the evidentiary threshold needed to obtain an ML conviction is not always met as a result of the investigation, but the evidence is sufficient to prosecute the POC or the predicate offence charges. Thus, the number of convictions is not a measure of the success of the prosecutorial process. The appropriate measure would be the proportion of cases that are decided on their merits.87

86 Email document provided by PPSC October 7, 2010
87 Email document provided by PPSC October 7, 2010
Nonetheless, the FATF considers the number of ML convictions to be important. For Canada, the FATF indicated that “The number of convictions for ML is very low, as is the percentage of convictions in comparison to charges laid.” While the FATF made the foregoing observations, no indication was provided about the number of ML convictions that might be judged as satisfactory, the percentage of convictions in comparison to charges laid deemed to be acceptable, or the methods to be applied in deriving measures related to ML convictions. It is also noted that the Regime Logic Model does not include any specific measures for the number or percentage of convictions among the expected outcomes for the Regime.

4.2.6 Overall Progress in Achieving Regime Outcomes

The intermediate level outcomes expected from the Regime are: enhanced detection of ML/TF, increased public acceptance of the Regime, enhanced protection of the financial/economic and charitable sectors, creation of a hostile environment to ML/TF, and reduction in the profitability of crime.

The general perception among the Regime partners, provincial and reporting entities is that there were improvements in Canada's AML/ATF performance over the past 10 years and that this effort is continuing. There was overall agreement that the legislative, regulatory and structural changes made since 2006 have definitely enhanced the protection of the integrity of the financial/economic and charitable sectors in Canada. The review of documentation showed that improved AML/ATF performance was achieved without contravening Canada’s Privacy/Charter provisions. The overall perception of the Regime and its AML/ATF activities by the Canadian public is not known because surveys on this issue have not been done. Consequently, it is not possible to ascertain if Regime activities have led to an increased public acceptance of the Regime.

Internationally, the general perception is that the Regime has, since its inception, made significant strides toward meeting the FATF and the UN standards for AML/ATF. A persistent criticism of Canada has come from the U.S., whose FATF representatives continue to argue that the number of ML convictions is too low. However, the number of convictions for ML may not be the most helpful indicator of progress because prosecutions (laying of charges) and convictions for ML cannot usually be detached from other crimes (e.g., drug trafficking, gun smuggling) and the possession of proceeds of those crimes, for which the conviction rates are higher than for ML alone. Also, no baseline or standard has been agreed upon to indicate what constitutes a sufficiently high number of convictions or percentage of ML convictions in comparison to charges laid.

According to almost all of the evaluation survey respondents, the Regime has contributed to the creation of an environment that is hostile to ML/TF and/or that has been effective in deterring ML/TF both nationally and internationally. More than half (54 percent) of them actually felt that the Regime has made the situation substantially (i.e., to a fair extent or a great degree) more difficult for money launderers and terrorists financing terrorist activities.\(^{92}\) This finding was corroborated by the findings from all of the case studies and by the majority of key informant interview respondents who indicated that increased hostility is demonstrated by the growing sophistication of criminal organizations aimed at circumventing reporting requirements, and by the increased use of offshore locations to conduct ML activity.

The Regime has also increasingly, over the last five years in particular, contributed to an enhanced detection of ML/TF activities\(^{93}\), a reduction in the profitability of crime as seen in the trends shown in the number and value of seizures and forfeitures related to ML/TF, and in the amount of income tax and/or GST/HST recovered by the CRA as a result of compliance actions prompted by FINTRAC disclosures.\(^{94}\)

In the key informant interviews, respondents were asked to indicate if there had been any unintended impacts of the Regime. Documentation was reviewed with this same question in mind. No unintended impacts of the Regime were found.

### 4.3 Regime Implementation

The expectation was that the Regime would be put in place as a horizontal initiative involving both funded and non-funded partners with an organizational structure, accountability mechanisms and operational practices that would enable it to meet the objectives prescribed in the original submissions for program approval.

#### 4.3.1 Appropriateness of the Organizational Structure

As noted in section 1, the Regime was originally established as a horizontal initiative consisting of the federal government departments and agencies with a role to play in the AML/ATF area. A horizontal initiative is an initiative in which partners from two or more organizations have established a formal funding agreement (e.g., Memorandum to Cabinet, a Treasury Board submission, federal-provincial agreement) to work towards the achievement of shared outcomes.\(^{95}\) In the case of the Regime, the agreement on funding (2000) provided AML/ATF funds for five departments/agencies (Finance, FINTRAC, Justice, CBSA, RCMP-ML). In 2005 the funding was extended to CRA-Enforcement (Income Tax – GST/HST), and in 2006 funding was allocated to the RCMP-TF unit. Also in 2006, the prosecution-related funding for the Department of Justice was reallocated to the newly formed PPSC. In 2008, Regime funding was extended CRA-Charities, whose AML/ATF activities were previously, as an unfunded partner, financed solely by PSAT and A-Base funds.

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93 See performance data summarized in Figures 4.6 and 4.7
94 See performance data summarized in Figures 4.10 to 4.14
95 Treasury Board of Canada Guide for Preparation of Part III of the Estimates: Reports on Plans and Priorities (RPP) and Departmental Performance Reports (DPR)
According to the 2007 Logic Model for the Regime, the funded and non-funded partners each have an important role to play in the achievement of the shared outcomes. Thus, one key to success of a horizontal initiative such as the Regime is that the responsibilities assigned to the partners are the right ones to enable them to contribute to the achievement of shared outcomes without duplication and without leaving gaps in performance.

Regarding the responsibilities assigned to the Regime partners, there was general agreement that the responsibilities mandated in Regime documentation are appropriate, with the following exceptions:

- Responsibilities for international activities were not adequately specified in the original program documentation for the Regime.
  - FINTRAC was not assigned responsibilities for international activities, but as Canada’s FIU, it has been called upon to participate fully in various international activities. As noted in section 4.2.2, FINTRAC has participated in the FATF, the Egmont Group and other international fora.
  - Justice has a clear international role because it is designated within the Regime structure as being the legal component to the Canadian delegations to the FATF, APG and the CFATF. Justice was a very active participant in international activities before the creation of PPSC in 2006, when the prosecution-related funds were reallocated to the PPSC. Since that date, Justice's actual level of participation in the Regime activities relative to the foregoing international bodies has not been as great as Justice would have liked because (according to Justice) their total funding from the Regime budget for those activities and its other operational activities is insufficient.
  - RCMP-ML and TF units have some limited responsibilities for international training and awareness activities. Importantly, the RCMP-ML unit is a key participant on peer reviews that are a part of MERs, and is also responsible for developing Canadian positions at the FATF on law enforcement issues. These responsibilities were not fully articulated in the original program documentation. The RCMP has argued that its direct funding from the Regime budget has not taken the cost of participating in the international area sufficiently into account.

- OSFI’s role in assessing risk management and compliance was not included in the original program documentation. As a result, there have been discussions between OSFI and FINTRAC about their division of responsibilities. In other G-7 countries, financial regulators have enforcement roles in the financial sectors they supervise (e.g., U.S., U.K., Japan, Germany, and France), notwithstanding that, they are prudential regulators as well. OSFI believes that its expertise and knowledge could be more effectively leveraged across the FRFIs, which probably contain around 80 percent of the assets and transactions subject to the Regime. However, FINTRAC was established by the PCMLTFA as the agency authorized to administer and ensure compliance with the Regime. This was done intentionally to ensure consistent compliance and to provide fair and consistent treatment across all industry sectors. Moreover, all existing financial regulators in Canada, including OSFI, already have an established mandate (e.g., the Bank Act for OSFI)
outside of the AML/ATF Regime, and not all industry sectors currently have a prudential regulator.\(^6\)

- The RCMP indicated that FINTRAC’s proactive disclosures are assessed, files are opened and the details uploaded to the Intelligence database\(^7\). Even though the proactive disclosures might contain information identifying previously unknown targets, the proactive FINTRAC disclosures are generally given a lower priority than the VIR-generated ones. With the resources allocated to it from the Regime budget, the RCMP said it is not able to follow through on proactive disclosures. All of the resources for the IPOC units, where the ML investigations are done, are committed to investigations already underway. Since the inception of the Regime, the RCMP-ML unit said it has been given the responsibility for, and been committed to doing, the investigative assessments from proactive disclosures, with investigations of the actual ML cases being done by the IPOC units. Those units have not been in a position to undertake new investigations from the proactive disclosures without additional resources.

Several Regime partners maintained that the organizational structure, as set out in 2001, should be reviewed for better efficiency and consistency; however, there is a lack of consensus around the proposed alternatives. Ideas were presented about alternative reporting structures, such as PS leading the Regime instead of Finance. This alternative is derived from the fact that PS already leads the IPOC initiative, which is intricately linked to the Regime. PS also includes in its portfolio agencies three other Regime partners (RCMP, CSIS and CBSA).

The evaluators were not mandated, nor did they collect the kind of information that could be used, to conduct an organizational review. It is evident from key informant interviews, focus groups and case studies that better communication among the Regime partners and a greater sharing of information would improve effectiveness. The extent to which having PS lead the Regime would substantially remove the communication and information sharing barriers (outlined earlier in section 4.2.2 and later in section 4.3.3) would not likely be large because most of the barriers relate to the application or interpretation of legislation and regulations.

### 4.3.2 Adequacy of the Accountability and Reporting Mechanisms for the Regime

In 2004, the Auditor General (AG) identified performance measurement as an area of Regime operations needing improvement.\(^8\) The Goss Gilroy report of 2007\(^9\) provided a detailed evaluation and monitoring framework, complete with performance indicators for monitoring and evaluation. The report outlined the kind of data that had to be collected and integrated from

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\(^6\) Email documents provided by FINTRAC and OSFI in response to Draft 1 Final Report, October 2010

\(^7\) The results of files uploaded to the intelligence database are not tracked in terms of how the data are subsequently used.

\(^8\) Status report of the Auditor General of Canada to the House of Commons – Chapter 1 National Security: Intelligence and Information Sharing; Report of the Auditor General of Canada to the House of Commons November 2004, Chapter 2 – Implementation of the National Initiative to Combat Money Laundering

among the Regime partners to enable the effective measurement of results. Unfortunately, much of the required data have not been collected consistently. The performance data shortcomings that still need to be addressed are:

- The Regime partners do not collect the kind of performance data that were required by the evaluator to make determinations about the achievement of some expected outcomes (e.g., the number of FINTRAC disclosures received, number of FINTRAC disclosures referred to other agencies/departments, number of FINTRAC disclosures actively used by recipients, number of disclosures per predicate offence, etc). These data were not systematically collected by most Regime partners.
- For individual cases, the Regime partners independently or collectively do not maintain an audit trail from cases disclosed, to cases investigated, to cases prosecuted (or not) to those resulting in, or failing to result in, ML/TF convictions. The absence of these data makes it difficult to ascertain the degree of success for some of the expected Regime outcomes included in the Regime Logic Model.  
- It is not possible to establish trends from RCMP-ML and TF data because of the lengthy multi-year process of investigations and prosecutions, and because of the way in which records are structured. Moreover, the same type of data (charges laid, prosecutions undertaken, convictions obtained) are maintained differently by the PPSC.

### 4.3.3 Effectiveness of Operations

The Regime is a complex horizontal initiative involving 12 federal partners along with provincial, regional and municipal law enforcement. The Canadian Regime has to be responsive to its international partners (principally the FATF and FSRBs). Further, the Regime involves reporting from entities across a diverse range of financial and non-financial business sectors. In these circumstances, coordination and communication are challenges. Over the past 10 years, it seems that the Regime has made progress in meeting these challenges, but improvement is still needed.

In 2004, the AG identified areas for potential improvement of the Regime.  

She noted that restrictions on the type of information FINTRAC was permitted to include in its disclosures to law enforcement and intelligence agencies under the *PCMLTFA* (at that time) limited their usefulness in some cases. As well, the AG recommended that communication and feedback between partners be improved and performance measurement for the overall initiative be strengthened. Many of the recommendations of the AG were echoed by Ekos Research Associates in their evaluation in late 2004.

To address the concerns and recommendations of the AG, as well as to provide for other measures aimed at improving the operation of the Regime, the *PCMLTFA* and certain regulations

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102 Consultation Paper – Enhancing Canada's AML/ATF Regime (June 2005)
were amended in 2006, as discussed previously in section 4.1.2. Restrictions on information sharing remain for reasons of privacy and national security. FINTRAC may only disclose information in ways specifically described in the *PCMLTFA*. The information may be disclosed only to police, specific law enforcement and national security agencies, and foreign MOU partners, and only when established legal thresholds have been met.\(^{103}\)

The ability of Regime partners to share information with other partners is in some circumstances inhibited by the fact that these partners and agencies have legislated mandates which often restrict their ability to share information. Although this issue as it relates to FINTRAC and law enforcement is discussed elsewhere, similar issues affect other Regime partners. OSFI and FINTRAC are specifically allowed to share information with each other regarding the compliance of FRFIs with the *PCMLTFA*. FINTRAC, however, cannot share this information with other Regime partners without OSFI’s consent.

Improved information sharing, as noted by the AG in 2004 and still cited by the Regime partners in 2010 as needing further effort, has the potential to improve the efficiency and effectiveness of Regime operations. Some Regime partners have highlighted a number of areas where information sharing among the partners could be more open, in their view, without jeopardizing privacy or national security. Those areas follow:

- Changes were made to Section 241 of the *Income Tax Act* that allowed for increased sharing and use of information from CRA. However, those changes overlooked the inclusion of information that would allow disclosure of the information that charities are required to file upon the conclusion of operations of the registered charity. That information deals with the disbursement of assets and would be useful to law enforcement and intelligence to track the disbursement of the assets of the charity and allow for their seizure.

- Section 241 of the *Income Tax Act* and Section 295 of the *Excise Tax Act (GST/HST)* restrict CRA-Enforcement’s ability to provide FINTRAC with compliance action case-specific details that would assist FINTRAC in gaining a better understanding of the characteristics and details of potential tax evasion cases. This information sharing would enable FINTRAC to generate more effective tax evasion targeted disclosures.

- Section 107 of the *Customs Act*, which outlined the conditions under which the CBSA can provide customs information to external sources, could inhibit the sharing of information with CRA, RCMP and CSÍS. However, there are similar limitations within the *PCMLTFA* which, like those in the *Customs Act*, can potentially be addressed through an increased awareness and understanding of the actual provisions.

- The *PCMLTFA* does not contain provisions that permit CBSA to share information with CRA-Charities.

- Production orders obtained pursuant to the *PCMLTFA* to give law enforcement access to full information collected by FINTRAC may no longer be warranted given that: (1) the information in the disclosures cannot be used as evidence; and (2) the designated information included in a FINTRAC disclosure was expanded through Bill C-25, such

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\(^{103}\) FINTRAC Annual Report, March 31, 2009
that there is now very little other information law enforcement could receive through a production order.

In interviews, focus groups and the evaluation survey, reporting entities provided considerable detailed information, from their perspective, related to issues that affect Regime efficiency and effectiveness. These issues concern:

- The understanding of reporting entities of certain aspects of the reporting requirements under the PCMLTFA and regulations;
- Interpretation of regulatory requirements;
- Industry-specific guidance on Suspicious Transaction Reports (STRs); and,
- Guidance on Customer Due Diligence.

4.4 Regime Efficiency and Economy

4.4.1 Economy

Economy is achieved when the cost of resources used approximates the minimum amount of resources needed to achieve expected outcomes.104

To obtain information on the cost of Regime operations, the evaluators obtained financial data from official financial records provided by Finance and additionally surveyed all of the funded and non-funded partners to ascertain their estimated costs for Regime operations. Expenditure data were not available from all the partners as of the date of this report. Expenditure data on direct costs were obtained from Finance, FINTRAC, RCMP (ML and TF), CBSA, CRA-Charities, CRA-Enforcement, OSFI, DFAIT and PPSC. Except for FINTRAC, the financial data collected concerned resources directly associated with AML/ATF activities and excluded corporate overheads. For FINTRAC, the entire organization (including corporate overheads) is considered to be dedicated to AML/ATF activities.

A summary of the data from these partners is presented by expense categories in Table 4.2 for the past three fiscal years.

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TABLE 4.2
Total Expenditure Directly Related to AML/ATF Activities

<table>
<thead>
<tr>
<th></th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
</tr>
</thead>
<tbody>
<tr>
<td>FTEs</td>
<td>501</td>
<td>502</td>
<td>512</td>
</tr>
<tr>
<td>Salaries and Benefits</td>
<td>53,767,000</td>
<td>58,075,000</td>
<td>57,575,000</td>
</tr>
<tr>
<td>Other Operations and Maintenance (O&amp;M) Expense</td>
<td>21,637,000</td>
<td>21,956,000</td>
<td>21,719,000</td>
</tr>
<tr>
<td><strong>Total of Other O&amp;M plus Salaries and Benefits</strong></td>
<td><strong>75,404,000</strong></td>
<td><strong>80,031,000</strong></td>
<td><strong>79,293,000</strong></td>
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<tr>
<td>Grants and Contributions</td>
<td>1,401,000</td>
<td>1,334,000</td>
<td>2,116,000</td>
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<tr>
<td>Capital</td>
<td>6,538,000</td>
<td>3,259,000</td>
<td>4,483,000</td>
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<tr>
<td><strong>Total Direct Expenditure</strong></td>
<td><strong>83,343,000</strong></td>
<td><strong>84,625,000</strong></td>
<td><strong>85,892,000</strong></td>
</tr>
<tr>
<td>Available AML/ATF Regime Funding</td>
<td>59,926,000</td>
<td>60,772,000</td>
<td>62,797,000</td>
</tr>
<tr>
<td>Proportion of Expenditures Covered by AML/ATF Funding (percent)</td>
<td>71.9 percent</td>
<td>71.8 percent</td>
<td>73.1 percent</td>
</tr>
</tbody>
</table>

Notes to Table 4.2

1. Direct Expenditures: (a) constitute expenses before amortization and the costs of other Government departments (OGDs) not charged to departments (e.g. PWGSC); (b) for partners other than FINTRAC exclude departmental overheads such as management, human resources, finance, etc.; (c) include all of FINTRAC expenditures; (d) include the salary and benefits of personnel directly associated with AML/ATF activities; (e) include the direct IT support and specific accommodation (e.g. Charities) requirements; (e) all other O&M and capital expenditures related to the support of AML/ATF activities.

2. Includes Finance, FINTRAC, RCMP (ML and TF), CBSA, CRA-Charities, CRA-Enforcement, DFAIT, OSFI and PPSC.

3. Excludes FTEs for RCMP-TF and salaries/O&M for DFAIT but not grants and contributions used for Regime activities.

4. CBSA reported those expenditures allocated to ATM/ATF funding.

5. FTEs represent staffed positions.

6. Includes regional operations.

7. OSFI resources ($1.7M) are funded by a levy on FRFIs; all other funding is from appropriations. Funding from appropriations includes AML/ATF Regime funding plus other sources such as PSAT, departmental A-base, Strategic Review Reinvestments, Secretariat adjustments for Paylist requirements (Vote 30), and Employee Benefits Plan for year-end adjustments.

8. Available AML/ATF funding does not include the impact of re-profiling of AML/ATF (previously referred to as NICML) funding between years.

9. For FINTRAC, available AML/ATF funding was taken from Table 2 of the Evaluation Framework document (published on December 31, 2007)

10. Source of FINTRAC expenditure data is Statement of Operations as set out in FINTRAC Annual Reports and detailed advice provided by FINTRAC.
The funding entries have been labeled as “Available AML/ATF Regime Funding” to emphasize that they do not represent budgets and do not include other sources of funding available to Regime partners.

It is seen that both expenditures and available funding (referring here only to funding provided in the Treasury Board allocation exclusively for the Regime and administered by Finance, and excluding other sources of funding available to the partners such as PSAT) have grown slightly over the last three years and come to $85.9 million and $62.8 million respectively in 2009-10. Available Regime funding in 2009-10 covered 73.1 percent of the total aggregate expenditures by Regime partners in that year. However, the proportion of expenditures covered by AML/ATF Regime funding varies widely among the partners (from zero in the case of OSFI [funded entirely by industry levies] to 90 percent in other cases such as RCMP-TF and CRA-Enforcement (Income Tax – GST/HST)).

Regime partners are dependent on sources of funding other than AML/ATF funding to achieve existing levels of output. The balance of funding (26.9 percent in 2009-10) has been made up of PSAT and departmental A-base resources as well as other sources such as Strategic Review Reinvestments, CTCB (DFAIT), Secretariat adjustments for Paylist requirements (Vote 30), and Employee Benefits Plan for year-end adjustments. OSFI activities are funded through its financial assessment program applied to FRFIs. Several of the Regime partners indicated in the key informant interviews and in the case studies that resources for the Regime are stretched to the limit and it is not possible to do more with the current resources.

The RCMP-ML and Justice noted repeatedly during the evaluation that they are underfunded. No new money has been made available for funded Regime partner activities over the past three years with the exception of:

- New funding for CRA Charities, starting in 2008-09; and,
- Additional funding provided in Budget 2010 for FINTRAC expansion of its compliance mandate as well as to meet new responsibilities related to tax evasion becoming a predicate offence to ML (which will no doubt increase the number of disclosures from FINTRAC to CRA-Enforcement).

Justice observed in key informant interviews and in email documentation that their Regime funding was set arbitrarily at $100,000 per year, without taking into account their ongoing level of MLA and extradition activities and the need for their continued participation in international activities as cited earlier in this report (sections 4.2.2 and 4.4.1). An argument of underfunding can be made in this case.

For the RCMP-ML unit, the issue does not seem to be one of under funding from the Regime but is related to their responsibilities in the Regime and the organizational structure of the RCMP with respect to AML. As noted in section 4.2.4, the RCMP-ML unit indicated that its responsibility is to conduct an assessment of FINTRAC’s proactive disclosures, open case files and upload the details to the Intelligence database\(^{105}\). Follow-up on investigations are the

\(^{105}\) The results of files uploaded to the intelligence database are not tracked in terms of how the data are subsequently used.
responsibility of the IPOC Initiative, which has not been in a position to undertake new investigations from the proactive disclosures without additional new resources. Regime funding to the RCMP-ML unit has not been fully used each year for at least the last two years (slippage of roughly $3.4 million (or some 10 percent of its total allocation) over the last five years). Regime funding that is not used by the RCMP-ML unit cannot be transferred or re-profiled for use by the IPOC initiative under Treasury Board regulations.

Reporting entities must comply with the PCMLTFA by absorbing the expenditures for setting up the required systems and rendering the mandated reports as a cost of doing business. Reporting entities said in interviews and focus groups that the costs are significant, and they perceive that the level of investment on their part is disproportionate to the observed benefits. With the exception of FINTRAC, which was created specifically for the Regime, the other Regime partners carry out their Regime activities within a broader departmental or agency mandate (e.g., ML activities of the RCMP are undertaken in relation to the RCMP’s organized crime mandate). Given the contribution of resources made by departments in the context of the overall pressure on departmental resources, it is difficult to argue that the same level of output could be achieved with a lower level of AML/ATF resources. In other words, a minimum amount of resources seem to be used to achieve the expected Regime outcomes.

4.4.2 Efficiency

Efficiency is the extent to which resources are used such that a greater level of output is produced with the same level of input or, a lower level of input is used to produce the same level of output. The level of input and output could be increases or decreases in quantity, quality, or both.\(^\text{106}\)

In key informant interviews, focus groups, and case studies, the respondents affirmed that the efficiency of the Regime has improved with FINTRAC increasing, over the past several years, the number of disclosures and broadening the information contained in both proactive disclosures and disclosures that respond to a VIR. It was asserted in several interviews that any reduction in the availability of information would mean that investigations would be longer and more difficult, thus reducing outputs.

On the other hand, an inefficiency in Regime operations exists because the RCMP-ML unit is not able, within its current commitment to the Regime, to do anything more with FINTRAC proactive disclosures than conduct disclosure assessments. For the RCMP-ML unit, this situation arises not because of the total level of funding provided to the RCMP for Regime activities, but because of the RCMP’s organizational commitment to only undertake investigative assessments from disclosures and not to follow through with actual investigations. The implication is that the proactive disclosures to the RCMP-ML unit are not acted upon, creating the inefficiency.

In the key informant interviews and the case studies, both CRA-Enforcement (Income Tax – GST/HST) and the CBSA said that an increase in resources for their organizations would improve Regime efficiency by increasing their investigative capability, helping them make better

use of FINTRAC disclosures. Similarly, Justice noted that the IAG is not able to adjudicate/litigate with respect to many MLAs because of insufficient resources, again creating inefficiency.

Regime efficiency could be improved, according to key informant interviewees and case study respondents, if FINTRAC were to provide greater context in its case disclosures, something FINTRAC indicated is not possible under the current legislation and regulations.

A final issue is whether alternative approaches to AML/ATF can be identified that might be more efficient than the current Regime structure and at least as effective. At least one alternative organizational structure for the Regime was suggested to the evaluators (PS leading the Regime instead of Finance). However, no suggestions for re-organization of the Regime’s reporting relationships received a strong consensus among the Regime partners, and the evaluators were not mandated to include the kind of detailed analysis of the suggestions that would permit a determination of the extent to which those alternatives might increase efficiency.

5. CONCLUSIONS

Conclusions are presented for each of the evaluation issues.

5.1 Relevance of the Regime

1. Canada’s Regime continues to be relevant since such an initiative is needed to combat the threat from ML/TF, which has not diminished since the Regime was implemented in 2000. ML is a threat to the integrity of Canada’s financial system and to legitimate competition in the marketplace, and terrorists continue to raise funds to conduct their operations, which can threaten the safety and security of Canadians. Further, the vast majority of ML in some way supports organized crime.

2. The Regime continues to be relevant because its operations support GoC priorities related to justice, financial systems, national security and privacy. The GoC has made a commitment to adopt and implement the FATF’s 40+9 Recommendations and establish, as a matter of priority, a legislative, regulatory and policy framework that meets its FATF commitments.

3. The Regime continues to be relevant as an appropriate response to the global threat from ML/TF for three reasons: (1) the legislative and regulatory framework for the Regime (PCMLTFA and its regulations enacted in 2000) has been modified on several occasions to meet the evolving nature of the threat (amendments of 2006 and 2010); (2) the Regime was established as a horizontal initiative that involves the federal Regime partners and participants at the provincial, regional and municipal levels, providing a framework to facilitate cooperation, joint action and the potential use of resources among departments, agencies and jurisdictions; and (3) the Regime’s legislative, regulatory, structural/organizational and operational activities have helped Canada meet 36 of the FATF 40+9 Recommendations on AML/ATF.
4. The Regime continues to be relevant because it is perceived by the Regime partners and other stakeholders (principally provincial financial regulators, law enforcement and reporting entities), and international bodies as needed and largely sufficient to counter the ML/TF threat. Internationally, the key partners consider it necessary that Canada has an effective regime in place that meets the FATF standards, and the Regime was evaluated by the FATF in Canada’s last MER as largely sufficient.

5. The Regime continues to be relevant because the Regime objectives are perceived to be in alignment with the mandates of the Regime partners, although the mandates of all partners except for FINTRAC are broader than AML/ATF.

5.2 Regime Performance

5.2.1 Achievement of Outcomes

Achievements in Operationalizing National and International Obligations and Commitments

6. Canada has made significant progress in meeting its international obligations and commitments through the implementation of the Regime. In 2008, in its third MER, Canada was considered by the FATF to be compliant with 30 of the FATF’s 40+9 Recommendations. By February 2009, Canada was found to be compliant or largely compliant with 36 of the 40+9 Recommendations. The relevant UN Conventions and Security Council Resolutions are built into the FATF 40+9 Recommendations. The main areas in which the Regime does not fully meet the FATF standards are the failure to include lawyers as reporting entities, and remaining deficiencies with respect to customer identification requirements.

7. The Regime has made progress in implementing the PCMLTFA and its regulations, and in adjusting operations to meet the requirements resulting from legislative and regulatory amendments in 2006 and 2008. Some operations, particularly RCMP-ML investigations and Justice’s IAG operations, have not been as extensive as those organizations expected.

8. The GoC is meeting its AML/ATF responsibilities (in the perception of Regime partners; provincial, regional and municipal participants; and reporting entities) while maintaining a balance between enforcement and privacy and Charter of Rights and Freedoms provisions. However, law enforcement remains concerned about what they see as an overly cautious approach to privacy and Charter-related issues that sometimes delays investigations and limits their access to critical information.

Achievements in Liaison, Cooperation and Education

9. The Regime partners expanded their intelligence networks and improved the exchange of information with international partners, particularly over the past five years, through increased participation and broadened cooperative ties with international groups involved in the AML/ATF area (e.g., the FATF and its regional associate members, IMF, WB, and the Egmont Group).
10. Enhanced coordination and intelligence networking was also achieved through the provision of education and training in the AML/ATF area. Internationally, Canadian Regime partners (both funded and unfunded) are regarded as leaders in the provision of education and training, a reputation established through the provision of subject experts and trainers (from Finance, FINTRAC, the RCMP, Justice and OSFI) to international organizations (such as the FATF, its regional associate members, the WB and others), and through the provision of specific training courses to AML/ATF personnel in other countries.

11. Domestically, the Regime partners improved their levels of liaison, cooperation and information sharing over the past five years through secondments of staff from one partner to another, joint operations, and the establishment of MOUs on compliance information sharing. However, legislative and systemic barriers to information sharing still exist, particularly between the investigative Regime partners (e.g., RCMP, CRA-Enforcement and CSIS).

12. The Regime partners have succeeded in improving the knowledge held by provincial, regional and municipal law enforcement, and of reporting and other financial entities, about the Regime’s guidelines, legislation, regulations, policies, procedures and tools.

13. It cannot be determined if one immediate expected outcome of the Regime has been met – that of increased public awareness of ML/TF initiatives. FINTRAC and the RCMP have undertaken public awareness activities (e.g., presentations at businesses, the use of printed materials), but the public has not been surveyed in recent years to determine the extent of general public knowledge and acceptance of the Regime.

Achievements in Facilitating and Monitoring Compliance

14. It cannot be determined if the Regime activities have resulted in measurably enhanced compliance with the PCMLTFA. While the number of compliance examinations conducted by FINTRAC and others (OSFI and provincial regulators) has been increasing annually in all reporting entity sectors, FINTRAC itself still only conducts the examinations in 0.3 percent of reporting entity sectors (termed the penetration level). This is considered an insufficient penetration level to provide reasonable assurance that reporting entities will fully comply with their obligations and requirements under the PCMLTFA, even taking into account the number and type of examinations done by OSFI and other regulators. Additional ongoing resources were provided in Budget 2010 to assist FINTRAC in augmenting its coverage rate, although devoting further resources to this activity may be warranted in the future.

15. The quality of data that is reported and is used in analysis seems to have improved. This has resulted from continuous monitoring by FINTRAC officers and by OSFI’s use of its regular supervisory tools. However, the quality of data emanating from CBSA still needs improvement, something CBSA indicates can be achieved if travellers enter data electronically at the port of entry.
Achievements in Intelligence Gathering and Analysis

16. FINTRAC’s use of its data holdings to develop strategic intelligence and produce comprehensive intelligence reports has matured over the past few years. An improved understanding of ML and TF patterns and trends resulting from strategic analysis reports was observed to have been instrumental in helping law enforcement investigators pursue their cases.

17. FINTRAC’s tactical analysis of its ML/TF data holdings and of data provided by Regime partners in VIRs enabled FINTRAC to increase the number of disclosures made to Regime and international partners (increase of 200 percent from 2006 to 2010).

18. FINTRAC case disclosures aided investigations. Proactive disclosures (those provided by FINTRAC without having received a VIR from a Regime partner) were essential to target identification and ML/TF investigation for the CBSA, CRA-Charities, and CRA-Enforcement (Income Tax – GST/HST). FINTRAC disclosures prompted by a VIR were equally important to investigations for those partners. For the RCMP, VIR-generated disclosures were used as a valuable tool for active investigations.

Achievements in Investigation, Adjudication and Sanctioning

19. Progress was made by the Regime in enforcing compliance reporting through the introduction of administrative money penalties (AMPs) as an alternative to criminal prosecution for non-compliance under the PCMLTFA. Only the more serious and/or persistent non-compliance offenders are referred to law enforcement for investigation and possible criminal prosecution.

20. The Regime achieved positive outcomes related to FINTRAC disclosures for measures such as the number and dollar value of seizures/forfeitures of the proceeds of crime and funds for terrorist use.

21. The Regime evaluation framework developed in 2007 does not provide a statement of expected outcome regarding the laying of charges and achievement of convictions for ML/TF offenses. The FATF and other countries seem to use ML convictions as a measure of AML/ATF achievement, but standards regarding acceptable rates for convictions from charges laid do not exist. The Regime outcome expected in this activity area is an increase in investigations that provide evidence that supports adjudications. For ML cases, the kind of data required to make an unequivocal determination about changes over time in the number of investigations leading to the laying of charges are not available. For TF, three cases were initiated to date with two resulting in a conviction.

Overall Progress in Achieving Regime Outcomes

22. Overall, there were improvements in Canada's AML/ATF performance over the past 10 years. The Regime likely contributed to the creation of an environment that is hostile to ML/TF and/or that has been effective in deterring ML/TF. It seems that the Regime has reduced the profitability of crime by deterring ML, and has reduced the likelihood of terrorist activities by deterring TF.
5.2.2 Regime Implementation

23. The Regime has evolved over the past 10 years in terms of its legislative and regulatory base, organizational structure and operations. In 2001, the PCMLTFA was amended by the addition of measures directed at countering the financing of terrorism. Amendments to the PCMLTFA and certain regulations made in 2006 led to improved information sharing. Nonetheless, information sharing is still constrained for the following reasons:

- Section 241 of the Income Tax Act and Section 295 of the Excise Tax Act (GST/HST) restrict CRA-Enforcement’s ability to provide FINTRAC with compliance action case specific details that would assist FINTRAC in gaining a better understanding of the characteristics and details of potential tax evasion cases. This information sharing would enable FINTRAC to generate more effective tax evasion targeted disclosures;
- Changes were made to Section 241 of the Income Tax Act, which deals with the sharing of taxpayer information allowed for increased sharing and use of information from CRA, but those changes overlooked the inclusion of information that would allow disclosure of the information that charities are required to file upon closure of the registered charity (dealing with the disbursement of assets). As well, CRA still cannot share information related to case specifics;
- Section 107 of the Customs Act, which outlined the conditions under which the CBSA can provide customs information to external sources, could inhibit the sharing of information with CRA, RCMP and CSIS. However, there are similar limitations within the PCMLTFA which, like those in the Customs Act, can potentially be addressed through an increased awareness and understanding of the actual provisions.
- The PCMLTFA does not contain provisions that permit CBSA to share information with CRA-Charities; and,
- Production orders obtained pursuant to the PCMLTFA to give law enforcement access to full information collected by FINTRAC may no longer be warranted given that: (1) the information in the disclosures cannot be used as evidence; and (2) the designated information included in a FINTRAC disclosure was expanded through the 2006 amendments to the PCMLTFA such that there is now very little additional information law enforcement could receive through a production order.

24. The reporting entities require clarification and better guidance on a number of issues in the following areas: their understanding of certain aspects of the reporting requirements under the PCMLTFA and regulations, the interpretation of regulatory requirements, industry-specific guidance on Suspicious Transaction Reports (STRs), and guidance on Customer Due Diligence.

25. The data required for future evaluation of the Regime are not collected and organized in a manner that permits an unequivocal determination of achievement of the expected outcomes for investigation, adjudication and sanctioning. These data collection and organization shortcomings include an inconsistency in the way the Regime partners
collect and present performance data, and an absence of an audit trail from cases disclosed, to cases investigated, to cases prosecuted (or not) to those resulting in, or failing to result in, ML/TF convictions.

5.2.3 Regime Efficiency and Economy

26. The Regime is considered to be economical, to the extent that economy can be determined from the available financial and performance information. Regime activities fit within the broader mandate of the Regime partners (e.g., RCMP mandate relative to organized crime), and other government programs are mandated to partially fund AML/ATF activities (e.g., PSAT). Consequently, the Regime partners collectively have been able to satisfactorily achieve expected outcomes with direct funding of about 73 percent of total expenditures. The conclusion is that the direct funding used for the Regime approximates the minimum amount needed to achieve the expected outcomes.

27. The efficiency of the Regime has improved, particularly since 2008, in part because of the increased number of FINTRAC disclosures and broadening of the information contained in both proactive disclosures and disclosures that respond to a VIR. Without adjustments to Regime funding or the responsibilities currently accepted by the RCMP-ML unit, additional gains in efficiency cannot likely be achieved by having FINTRAC further increase the number of proactive disclosures made annually.

6. RECOMMENDATIONS

Based on the findings and conclusions of this evaluation, the following recommendations are made.

1. The Regime should be continued as a horizontal initiative with at least the same level of resourcing provided as currently exists. In addition, Finance, in consultation with the Regime partners, should conduct a review and provide recommendations regarding the funding allocations for the Regime partners that include a detailed assessment of the appropriateness and use by the partners of the current funding levels relative to their responsibilities for AML/ATF activities.

2. Finance should lead an Interdepartmental Working Group with representation from Regime partners to determine future steps for continuing to improve the Regime’s compliance with international commitments and to examine the following key issues:

   a. Regime-related legislation and regulations (PCMLTFA and related enabling legislation of Regime partners) that may be constraining information sharing with the aim of identifying possible solutions that may require either legislative/regulatory amendments or operational changes to remove barriers to effective and efficient Regime operations;
b. Concerns raised by reporting entities, as cited in this evaluation report, with a view to addressing their issues, as appropriate, regarding how requirements under the *PCMLTFA* are being complied with;

c. The inconsistencies identified in the Regime performance data and statistics to facilitate the Regime’s ability to accurately report on its achievement; and,

d. Whether updates are required to the Regime’s management and accountability framework and Logic Model, particularly in relation to the Regime roles and responsibilities of OSFI, Justice (as it now exists after the creation of the PPSC), and the RCMP-ML unit, and in relation to the current expected outcomes that do not include reference to measures of the number of ML/TF charges laid and the number of convictions obtained.

3. Finance should consider conducting a public opinion survey to determine the level of public awareness of the ML/TF threat and of the AML/ATF actions of the Regime. This survey would provide a baseline of information to be used in future evaluations, and to assess the extent of public acceptance of the Regime.
## Appendix 1: Evaluation Question Matrix

<table>
<thead>
<tr>
<th>Core Issue Relevance</th>
<th>Evaluation Research</th>
<th>Questions</th>
<th>Document and Case Files Review</th>
<th>Database Review and Analysis</th>
<th>Case Studies</th>
<th>Key Informant Interviews</th>
<th>Survey</th>
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<tbody>
<tr>
<td><strong>Issue # 1</strong> Continued Need for Program</td>
<td></td>
<td>X</td>
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<tr>
<td>1.1 Is there a continued need for the Regime?</td>
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<tr>
<td>1.2 To what extent are the objectives of the Regime still relevant (i.e. participation in the domestic and international fight against organized crime and terror)?</td>
<td></td>
<td>X</td>
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<td><strong>Issue # 2</strong> Alignment with Government Priorities</td>
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<td>X</td>
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<tr>
<td>2.1 To what extent does the Regime meet the policy priorities of the government (i.e. with respect to criminal justice, privacy rights, financial sector regulation, and national security)?</td>
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<td>X</td>
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<td>2.2 To what extent does the Regime align with the departmental strategic outcomes of each Regime Partner?</td>
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<td>X</td>
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<td><strong>Issue # 3</strong> Alignment [Consistency] with Federal Roles and Responsibilities</td>
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<td>X</td>
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<tr>
<td>3.1 Is there still a need for the federal government to deliver this Regime?</td>
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<td>X</td>
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<td><strong>Core Issue Performance</strong></td>
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<td><strong>Issue # 4</strong> Achievement of Expected Outcomes</td>
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<tr>
<td><strong>Issue # 4.1</strong> Design and Implementation</td>
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<td>X</td>
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<tr>
<td>4.1.1 Has the Regime been implemented as intended?</td>
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<td>X</td>
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<tr>
<td>4.1.2 To what extent is the Regime organized appropriately to meet its objectives?</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
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<tr>
<td>4.1.3 What have been the challenges, if any, to the implementation of the Regime and how have these challenges been addressed or overcome?</td>
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<td>X</td>
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<tr>
<td>4.1.4</td>
<td>Are appropriate practices and mechanisms in place to monitor the effectiveness and impact of the activities of the Regime?</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
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<tr>
<td>Issue # 4.2</td>
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<tr>
<td>Success</td>
<td>4.2.1</td>
<td>To what extent has the Regime made progress towards achieving its objectives?</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td></td>
<td>4.2.2</td>
<td>To what extent has the Regime contributed to improved national and international liaison and cooperation with respect to combating money laundering and terrorist financing?</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
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<tr>
<td></td>
<td>4.2.3</td>
<td>To what extent has the Regime increased public awareness of money laundering and terrorist financing and support for its efforts in combating them?</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td></td>
<td>4.2.4</td>
<td>To what extent have efforts to promote and monitor compliance with the PCMLTFA contributed to enhanced compliance and improved data for analysis?</td>
<td>X</td>
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<td></td>
<td>4.2.5</td>
<td>To what extent has the Regime contributed to increased understanding of and improved response to money laundering and terrorist financing through strategic analysis?</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
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<td></td>
<td>4.2.6</td>
<td>To what extent has the Regime contributed to an improved ability to identify targets and enhanced support for investigations through tactical analysis?</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
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<tr>
<td></td>
<td>4.2.7</td>
<td>To what extent has the Regime contributed to the quality of investigations of money laundering or terrorist financing-related offences?</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
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<td></td>
<td>4.2.8</td>
<td>To what extent has the Regime contributed to the creation of a hostile environment to money laundering and terrorist financing in Canada?</td>
<td>X</td>
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<td>4.2.9 To what extent has the Regime contributed to increased effectiveness of convictions related to money laundering or terrorist financing offences?</td>
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<td>X</td>
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<td>4.2.10 Has the Regime had any unintended impacts (positive or negative)?</td>
<td></td>
<td>X</td>
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<td>X</td>
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<td>X</td>
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</tbody>
</table>
| **Issue #5**
Demonstration of Efficiency and Economy | | | | | | | |
| 5.1 To what extent has the Regime achieved its results to date efficiently? | | X | | X | | | |
| 5.2 To what extent has the Regime achieved its results to date economically? | | X | | X | | X | X |
Appendix 2: Logic Model

Updated Evaluation Framework and Logic Model for the AML/ATF Regime

<table>
<thead>
<tr>
<th>Activities</th>
<th>Output</th>
<th>Immediate Outcomes</th>
<th>Intermediate Outcomes</th>
<th>Ultimate Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liaison, Cooperation &amp; Education</td>
<td></td>
<td>Increased Fulfillment of G-7/G8 Commitments and Obligations</td>
<td>Increased Public Acceptance of Regime</td>
<td></td>
</tr>
<tr>
<td>Facilitating &amp; Monitoring Compliance</td>
<td></td>
<td>Effective Legislative Balance Between Anti-Money Laundering and Terrorist Financing Goals and Privacy and Charter Concerns</td>
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<tr>
<td>Intelligence Gathering &amp; Analysis</td>
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<tr>
<td>Investigation</td>
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<tr>
<td>Adjudication &amp; Sanctioning</td>
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<tr>
<td>Strategic Analysis Products, Non-Disclosed Tactical Analysis Results, Secondary Screening (Charitable Status), Information, Disclosures, Production Orders, Non-compliance with Sanctions, Adverse Party Watchlists, Financial Intelligence, Intelligence Related to Cross-Border Currency Smuggling, Regulated Compliance</td>
<td>Procedures, Consolidated Audits, Details, Regulatory, Reporting, Sanctions, etc., Information Records</td>
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<tr>
<td>Criminal Adjudications and Sanctions, Civil Sanctions (Tax and Customs, Administrative Monetary Penalties, Bank/Financial Institution of Charitable Status, MSB Penalties), Immigration Decisions, Appeals</td>
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GOSS GILROY INC.

Capra International Inc. 78