This One's a Fixer Upper: Anti-Money Laundering Policies for Ontario's Real Estate Sector

by

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Abstract

As British Columbia strengthens its anti-money laundering policy regime, Ontario is poised to become Canada's new centre for money laundering in real estate—a problem which its provincial government is not making sufficient policy efforts to address. Should Ontario neglect to adequately safeguard against money laundering in its real estate market, it risks facing inflated housing prices and a stained legal and economic reputation. Based on a scan of anti-money laundering policies that have been implemented in the United Kingdom and British Columbia, this paper identifies and explores three policy options that may help strengthen Ontario's framework. Ultimately, it recommends that Ontario introduce a beneficial ownership registry for properties, and that it assemble an Expert Panel to prepare a report on money laundering in Ontario real estate.

Keywords: Money laundering; Anti-money laundering policy; Beneficial ownership; Real estate; Ontario

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List of Acronyms

AML	Anti-money laundering
BC	British Columbia
BCCLA	BC Civil Liberties Association
CFA	Criminal Finances Act (UK)
FATF	Financial Action Task Force
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FSRA	Financial Services Regulatory Authority of Ontario
GTA	Greater Toronto Area
HMT	Her Majesty's Treasury (UK)
ISC	Individual with Significant Control (Ontario)
LOTA	Land Owner Transparency Act (BC)
LOTR	Land Owner Transparency Register (BC)
LTSA	Land Title and Survey Authority (BC)
NCA	National Crime Agency (UK)
NRA	National Risk Assessment (UK)
OMF	Ontario Ministry of Finance
PCMLTFA	Proceeds of Crime (Money Laundering) and Terrorist Financing Act
POCA	Proceeds of Crime Act of 2002 (UK)
PSC	People with Significant Control (UK)
ROE	Register of Overseas Entities (UK)
UK	United Kingdom
UWO	Unexplained Wealth Order

Glossary

Term	Definition
Beneficial owner	The natural person(s) who ultimately benefit from ownership of an asset.
Integration	The third phase in the money laundering process, which fully integrates the funds into the legitimate financial system and makes them available for use.
Layering	The second phase in the money laundering process, which involves passing funds through a network of complex transactions and/or parties in such a way that obfuscates their true source and ownership.
Legal owner	In the context of real estate, this refers to the owner registered on property title. Legal owners may be natural persons, or they may be legal entities or arrangements such as corporations, partnerships, or trusts.
Legal person	A legal entity that can carry out the same activities as a natural person under the law (e.g., enter contracts, hold property), but is not itself a natural person. Companies and corporations are legal persons.
Money laundering	The process used to disguise the source of money or assets derived from criminal activity.
Natural person	An individual human being who has personhood under the law.
Partnership	A legal arrangement in which two or more persons share the responsibility and profit associated with a business.
Placement	The first phase in the money laundering process, which involves placing the proceeds of crime into the legitimate financial system.
Shell company	A company that was formed to carry out a transaction or hold an asset while concealing the true beneficial owner(s). Shell companies do not conduct business operations.
Trust	A legal arrangement in which a third party, known as a trustee, holds and controls an asset for the benefit of one or more beneficiaries.

Chapter 1. Introduction and Policy Problem

Ontario is poised to become the new centre for money laundering in real estate—a problem which its government is not making sufficient policy efforts to address. According to the Chief Superintendent of Criminal Intelligence Services Canada, Ontario has the highest number of organized crime groups thought to be involved in money laundering of any province in Canada (Cullen, 2022, pg. 156). Expert modelling suggests that Ontario has one of the most pronounced money laundering problems in the country (Maloney, Somerville, & Unger [Maloney et al.], 2019, pg. 126), and without intervention the problem will likely worsen. This is particularly true in relation to real estate, a vulnerable sector that Ontario has neglected to adequately safeguard.

Money laundering is "the process used to disguise the source of money or assets derived from criminal activity" (Financial Transactions and Reports Analysis Centre of Canada [FINTRAC], 2022e). Money laundering consists of three broad stages, the first being *placement*. This stage involves placing proceeds of crime into the financial system. The next stage is *layering*, wherein funds are passed through a network of complex transactions to conceal their true source and ownership. The final stage is *integration*, during which the funds are made available for use in the legitimate economy (FINTRAC, 2019). This process is built on criminals' ability to remain anonymous in their financial transactions and asset holdings; that is, to separate the legal owner of an asset from the beneficial owner.

In recent years, British Columbia (BC, hereinafter) developed a reputation as Canada's hub for money laundering, particularly in its costly urban real estate markets. Estimates suggest that in 2018 alone, $7.4 billion were laundered through BC, anywhere from $800 million to $5.3 billion of which flowed through the real estate market (Maloney et al., 2019, pg. 52). In response, BC introduced a policy that requires property owners to disclose beneficial ownership of property in a public registry (Danakody & Brown-John, 2020). To avoid the increased scrutiny deriving from this policy, launderers attracted to Canada's shining international reputation and expensive real estate markets may instead turn to Ontario, which has the second highest real estate prices in the country after BC (Canadian Real Estate Association [CREA], 2022).This would not be without precedent—a similar migration occurred when BC cracked down on casino

laundering in 2018 and, between 2017 and 2019, 'suspicious persons' reports coming out of Ontario casinos more than doubled (Cooper, Russell, & Hill, 2020).

There is a general lack of data on the nature and extent of money laundering in Ontario real estate. However, it is important to note that a lack of data does not denote a lack of money laundering activity. Money laundering is an inherently underground activity, making its precise reach difficult or even impossible to accurately quantify. Nonetheless, the literature warns that money laundering is a Canada-wide issue, with Ontario being one of the highest-risk jurisdictions (Ross, 2019, pg. 3; Maloney et al., 2019, pg. 126; CISC, 2020, pg. 8). As BC actively expands its AML regime, Ontario and its high-value real estate market only become more vulnerable.

Even before BC's policy offensive, Ontario saw considerable suspicious activity in its real estate markets. In 2019, Transparency International Canada released a report entitled *Opacity: Why Criminals Love Ontario Real Estate (and How to Fix It)*, which currently constitutes the most robust source on money laundering in Ontario's property market. The report shines light on the abundance of potentially suspicious real estate transactions that take place in the Greater Toronto Area (GTA, hereinafter); namely, those that take advantage of opaque beneficial ownership structures. Among its key findings, the report found that corporate entities purchased $28.4 billion in GTA housing between 2008 and 2018; "the vast majority" of those companies are private and do not maintain beneficial ownership information (Ross, 2019, pg. 5). During this period, companies purchased $9.8 billion in GTA housing without obtaining external financing, often bypassing standard AML checks on source of funds and beneficial ownership (pg. 11). While the mere fact of anonymous ownership does not denote illegality, it has been flagged by the FATF as conducive to illegal laundering activity (FATF, 2012).

A potential uptick in real estate laundering should be cause for concern amongst Ontarians. Money laundering is not a victimless crime, merely ancillary to its predicate offense. Rather, it is the "heart of the criminal economy," the very act that motivates and enables profit-oriented crime (Cullen, 2022, pg. 156). From an economic perspective, money laundering sullies the integrity of a jurisdiction's financial markets and, if left unchecked, can stain a country's international reputation. (Maloney et al., 2019, pg. 14-15; McDowell & Novis, 2001, pg. 8). From a societal perspective, money laundering creates incentive to commit crimes by allowing criminals to reap financial profits from

illicit activities that are deleterious to society, such as the illicit drug trade (pg. 13-14). Money laundering in real estate may also be associated with inflated real estate prices (pg. 57), either by fraudulently inflating property values or simply increasing demand.[1] As such, it is important for policymakers to take potential money laundering vulnerabilities seriously and ensure they are counterbalanced by a robust anti-money laundering (AML, hereinafter) policy framework.

That said, in attempting to prevent money laundering in any sector it is necessary to balance the aim of curbing laundering activity with that of ensuring law-abiding citizens are not unduly burdened. Although anonymity is a major enabler of criminal activity (Financial Action Task Force [FATF], 2021), anonymous ownership structures are also used by legal actors for legitimate purposes. For example, public figures or victims of domestic abuse may set up anonymous ownership structures to ensure their personal information is kept private for safety reasons. Nonetheless, many AML policies involve limiting the use of anonymous structures such as shell companies and trusts, and thus risk constraining legitimate actors alongside illegitimate ones. This is particularly true for policies that make information on beneficial ownership of properties accessible to the general public, as BC's aforementioned registry does.

The acceptability of any proposed AML policy will depend on whether Ontario's policymakers and those who vote for them perceive it as necessary, justifiable, and unintrusive. Based on previous statements made by government representatives, such perceptions will hinge on the proposed policy's foreseen effect on law-abiding businesses. According to one spokesperson for the Ontario Ministry of Finance, "The [Ontario] government will continue to review and evaluate the best approach to enhancing (beneficial ownership) transparency while not creating unnecessary burdens for Ontario businesses" (Angelovski & Dubinsky, 2021).

The proceeding research asks the following questions: What policies could Ontario's government adopt to effectively safeguard against money laundering in real estate? Of those policies, which options would be the most feasible and acceptable? Finally, how can Ontario prevent and address money laundering in real estate without unduly burdening Ontarians engaged in legal activity? The first section of this report

[1] See Chapter 2.3 for detailed review of the consequences of money laundering

provides background information on AML frameworks and best practices. The second section explores relevant policy measures that have been adopted in comparable jurisdictions, namely the United Kingdom and BC, and surveys Ontario's real estate policy landscape as it relates to AML. Finally, the third section uses multi-criteria analysis to explore three potential policy options. These options are as follows: 1) introduce Unexplained Wealth Orders, 2) assemble an Expert Panel on Money Laundering in Real Estate in Ontario, and 3) establish a Register for Beneficial Ownership of Property. Ultimately, this study recommends that the government of Ontario call an Expert Panel and introduce a Beneficial Ownership Register.

Chapter 2. (Anti) Money Laundering 101

2.1. What is Money Laundering?

FINTRAC defines money laundering as "the process used to disguise the source of money or assets derived from criminal activity" (FINTRAC, 2022e). Simply put, money laundering is the process through which "dirty" proceeds of crime, which cannot be used in the legitimate economy without drawing suspicion, are moved and obfuscated until they can no longer be traced to their illicit source—in other words, until they appear "clean." Although the primary intent behind money laundering is "to conceal the true origins and ownership of illicit funds," thorough money laundering operations also strive to create a guise of legitimacy surrounding those funds (Cullen, 2022, pg. 72). Beyond merely obfuscating the source of funds, this involves making the funds seem as if they were obtained through legitimate sources, such as a legal business or real estate holdings (pg. 72). Criminals who possess large amounts of criminal revenue must launder their money if they want to use it without detection by law enforcement.

It is important to understand that money laundering does not occur in a vacuum; rather, it is indivisibly linked with its predicate offense. A predicate offence is "an offence whose proceeds may become the subject of… money laundering offences" (OECD, n.d., pg. 119). Examples of such offences include but are not limited to drug trafficking, fraud, tax evasion, counterfeiting and piracy, evasion of customs and excise obligations, smuggling of contraband goods, human smuggling, and human trafficking. (Dept. of Finance Canada, 2015, pg. 19; FINTRAC, 2021, pg. 11). These offenses share a common thread: they are profit-oriented; their "primary objective (is) the generation of illicit funds through criminal activity" (Cullen, 2022, pg. 73). Money laundering is the very act which allows criminals to reap the profits of such offences. By allowing criminals to use illicitly obtained funds in the legitimate economy, money laundering reinforces the incentive to commit profit-oriented crimes.

Most comprehensive money laundering operations involve three broadly recognized phases: placement, layering, and integration. Each phase will be described in further detail throughout the proceeding subsections.

2.1.1. Placement

The placement stage involves placing the proceeds of crime into the financial system (FINTRAC, 2022e). This stage serves two primary functions: it relieves the criminal of holding stockpiles of physical cash obtained from crime, and it introduces the criminal funds into the legitimate financial system (UNDOC, 2018). Placement is the most difficult stage for money launderers, as it is the stage at which they are most susceptible to detection by authorities. This is because most existing anti-money laundering regulations target the placement stage (Cullen, 2022, pg. 85). For example, Canadian financial institutions are required to report cash deposits of over $10,000 to FINTRAC (pg. 85), and lawyers are prohibited from accepting cash over $7,500 on any given client file (Law Society of Ontario, 2022). Nonetheless, criminals find ways to circumvent these regulations. Common placement techniques include but are not limited to making a series of bank deposits in amounts below the $10,000 reporting threshold, combining proceeds of crime with legitimate revenue from a cash-heavy business, and converting cash into casino chips, paying cash to contractors for new-build homes or renovations (Cullen, 2022, pg. 85; Maloney et al., 2019, pg.18).

2.1.2. Layering

The layering stage aims to further conceal and separate illicit funds from their underlying predicate offense. This involves passing the funds through a network of complex transactions and/or parties in such a way that obfuscates their true source and ownership (Dept. of Finance Canada, 2018, pg. 8). The primary objectives of layering are to disguise the funds' beneficial owner, create an appearance of legitimacy, and make it difficult or impossible for authorities to trace the funds back to their criminal origins (Maloney et al., 2019, pg. 18). There are many means by which to accomplish these objectives; once the money has been placed, criminals have "all of the complexity of the international financial system" at their disposal (pg. 18). Examples of common layering mechanisms include the use of nominee ownership, shell companies, and foreign jurisdictions with rigid secrecy laws and relaxed AML regulations (Cullen, 2022, pg. 86-89). Notably, none of these mechanisms are illegal or nefarious in and of themselves; they can be used by legitimate actors for legal purposes. However, these and other anonymous ownership structures are nonetheless highly vulnerable to exploitation for criminal ends (FATF, 2012).

2.1.3. Integration

The integration stage sees the criminal funds fully integrated into the legitimate financial system. This stage renders the laundered money "available to fund expenditures or activities without giving rise to questions about the source of the funds" (Maloney et al., 2019, pg. 18). Rather than being seen solely as a discrete stage in the process, integration may also be considered the end goal of a money laundering operation (Cullen, 2022, pg. 89). Methods of integration are varied, but notable examples include depositing funds into a bank account under the pretense of legitimate business revenue, selling assets purchased with the proceeds of crime, and paying out fraudulent loans with dirty cash (pg. 89; Maloney et al., 2019, pg. 18).

2.2. Money Laundering in Real Estate

The FATF estimates that real estate accounts for almost one third of criminal assets seized globally, emphasizing the real estate market's susceptibility to criminal manipulation (FATF, 2013, pg. 24). A 2015 Department of Finance Canada report found that numerous professionals involved in Canada's real estate sector are highly vulnerable to being knowingly or unknowingly exploited by money launderers, including real estate agents, developers, lawyers, banks, and other mortgage providers (Dept. of Finance Canada, 2015, pg. 32).

There are a variety of reasons why real estate may attract large quantities of illicit funds. Most obviously, as stated by BC's *Expert Panel on Money Laundering in Real Estate*:

> Real estate is a large and diffuse market with high-value assets that is simple to enter. Placing large sums in individual assets without arousing suspicion doesn't require expertise. Large transaction volumes occur in both the purchase and financing of real estate, allowing transactions to take place without the detailed regulatory oversight of transactions in financial markets (Maloney et al., 2019, pg. 16).

Criminals benefit from owning real estate in many ways. They may reside in the property or use it as a location for criminal operations (Schneider, 2004a, pg. 29-30; FATF, 2013, pg. 44; Ferwerda & Unger, 2011, pg. 268-269). They may also use the property to generate income via collecting rents, property value appreciation, or as a venue for conducting legitimate business (Schneider, 2004a, pg. 37-38; Ross, 2019, pg.

20-21). Property ownership also opens doors to further money laundering through construction or renovation, which increases the property's value and can be paid for with dirty cash (Cullen, 2022, pg. 774).

There are also a variety of practical incentives associated with laundering through the real estate sector. From an investor's perspective, real estate is perceived as a "safe" investment with high potential for return and low potential for loss (Cullen, 2022, pg. 773; Criminal Intelligence Service Canada [CISC], 2020, pg. 13). Due to their relative accessibility, real estate transactions can be used in both basic and sophisticated money laundering operations (pg. 11). Additionally, the subjectivity associated with property value can be manipulated to a launderer's advantage (German, 2019, pg. 54; CISC, 2020, pg. 13; Ferwerda & Unger, 2011, pg. 268 & 272). For example, a criminal may "access financing by taking out loans on overvalued properties" and repaying the loans with illicit funds (Ross, 2019, pg. 20). When purchasing a property, a criminal may arrange an "under-invoicing scheme" with the seller that allows them to underpay on-paper and provide the remainder of the purchase price under the table using dirty cash (Schneider, 2004a, pg. 38;). Finally, regulatory gaps simplify the laundering process. Professionals involved in the real estate sector have few or, in the case of lawyers, no responsibilities under Canada's AML regulations, and compliance with these regulations is estimated to be relatively low compared to other sectors (German, 2019, pg. 54; Martini, 2017, pg. 24, FATF, 2016, pg. 85).

A considerable regulatory incentive to launder money through real estate derives from transactors' ability to use complicated ownership structures to obscure beneficial ownership of property (FATF, 2016, pg. 162-170; CISC, 2020, pg. 5 & 13; Ross, 2019, pg. 26; Martini, 2017, pg. 14; Ferwerda & Unger, 2011, pg. 269). The term "beneficial owner" refers to the natural person who financially benefits from ownership of an asset. The beneficial owner of a property may or may not also be the "legal owner," a term which, in the context of real estate, refers to the owner registered on property title. Legal owners may be natural persons, or they may be legal arrangements such as companies, partnerships, or trusts.[2] Legal owners may also be nominees; nominees are legal entities or natural persons who hold title to a property on behalf of the beneficial owner. Property

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[2] A partnership is a legal arrangement in which two or more persons share the responsibility and profit associated with a business. A trust is a legal arrangement in which a third party, known as a trustee, holds and controls an asset for the benefit of one or more beneficiaries.

title registration systems generally offer "certainty of legal ownership, but many ways to hide beneficial ownership" (Maloney et al., 2019, pg. 16). Generally, the activities that criminals partake in to launder funds through real estate are not in themselves illegal. Common transaction types that are conducive to criminal manipulation include purchases, sales, mortgaging, and construction (Dept. of Finance Canada, 2015, pg. 53). As such, when criminals separate a property from its criminal ties by concealing beneficial ownership, it becomes far more difficult for authorities to definitively identify illegality.

A basic example of how a criminal may use hidden beneficial ownership structures to aid in money laundering through real estate is as follows: A criminal holds a company, hereinafter referred to as Company A, which was incorporated in a jurisdiction that does not require any disclosure of beneficial ownership information; this may be an offshore jurisdiction or a Canadian province that does not have disclosure requirements. Company A holds a bank account into which the proceeds of crime have already been placed. If the funds have also already been layered, Company A can purchase real estate without a mortgage to acquire additional income from rent or capital gains, eventually selling the property and integrating the funds (Maloney et al., 2019, pg. 20). If the funds have not been layered, Company A can purchase real estate using a large mortgage received via an unregulated private lender. Paying down the mortgage will help layer the funds and, if the private lender accepts cash payments, may also allow for the placement of additional funds (pg. 20). Because the property was registered as belonging to Company A, which is not required to maintain or disclose beneficial ownership information, and the activities that Company A engaged in were not illegal at first glance, it would be challenging for authorities to detect and prove this instance of money laundering.

Notably, due to the nature of transactions involved, real estate money laundering mostly occurs after illicit funds have been placed in the financial system, and often after they have been layered (Maloney et al., 2019, pg. 21; CISC, 2020, pg. 13).

2.3. Consequences of Money Laundering

The Government of Canada characterizes money laundering as "a serious crime that affects Canadians' safety, security, and quality of life" (Public Safety Canada, 2022).

From an economic perspective, money laundering may sully the integrity and stability of a jurisdiction's financial markets by distorting them and leading to misallocation of resources (Maloney et al., 2019, pg. 14). If left unchecked, money laundering can stain a country's international reputation and deter legitimate foreign actors from investing in the economy (pg. 15-16; McDowell & Novis, 2001, pg. 8). From a societal perspective, as discussed in Section 2.1, money laundering opportunities can encourage criminal activities by providing a way for criminals to legitimize their illegal funds and use them to finance further criminal activity. Further, money laundering may exacerbate inequities by shifting "economic power from the market, government, and citizens to criminals (pg., 8).

Money laundering may also be associated with inflated real estate prices, thus contributing to the affordability crisis in housing. In theory, parties in real estate transactions have competing interests; the buyer wants to spend as little as possible, while the seller wants to receive as much as possible. The agreed upon selling price is, thus, the fair market price (Punwasi 2019). Because price manipulation is a prominent strategy in real estate laundering, money launderers do not necessarily adhere to this model. Rather, money launderers often have incentive to pay the seller's initial asking price or make exorbitant offers, as this allows them to integrate more illicit funds into the financial system. This may artificially inflate the property value and, in turn, may do the same for surrounding properties (Punwasi, 2019). Additionally, money laundering may inflate housing prices by simply increasing demand (Novaro, Piacenza, & Turati, 2022, pg. 688). By driving up real estate prices, money laundering may contribute to a decline in the availability of affordable housing within a jurisdiction (Remeur, 2019, pg. 7).

That said, the literature is divided as to the extent of money laundering's effect on overall real estate prices. While some argue that money laundering does have a significant impact on real estate inflation (Maloney et al., 2019, pg. 2; Novaro, Piacenza, & Turati, 2022, pg. 688; Remeur, 2019, pg. 7), others argue that there is insufficient evidence to conclude that money laundering discernibly contributes to housing unaffordability and that further research is needed (Cullen, 2022, pg. 960; Schneider, 2004b, pg. 115).

In his final report for the *Commission of Inquiry into Money Laundering in BC,* the Hon. Austin Cullen described the deleterious effects of money laundering and the imperative of a policy response:

> In my view, the failure to respond to money laundering activity… would send a message that unlawful and socially destructive behaviour will be tolerated and allow those who prey on the most vulnerable in society to continue if not expand their operations and reap the rewards of their unlawful conduct. It would also result in a lost opportunity to target and disrupt the activities of organized crime groups and other criminal actors (Cullen, 2022, pg. 159).

Even if money laundering has not progressed to the point of staining a jurisdiction's economic reputation, distorting its financial markets, or inflating its real estate prices, it must still be addressed. Should policymakers neglect to confront this problem, it will merely perpetuate the belief that that crime— quite literally— pays.

Chapter 3. AML in Ontario and Beyond

Because money laundering is a transnational and cross-jurisdictional problem, tackling it requires cooperation and coordination at the provincial, federal, and international levels. Ontario's AML framework is inherently tied to Canada's federal regime and to global standards of best practice. Thus, before reviewing Ontario's AML policy landscape it is first necessary to understand the broader frameworks it operates within. The proceeding subsections will describe the most relevant of such frameworks, both internationally and nationally.

3.1. The Financial Action Task Force

When countries want to ensure their AML policy frameworks are aligned with international standards of best practice, they look to the Financial Action Task Force (FATF, hereinafter) for guidance. Founded in 1989 by the G7 Nations, the FATF is an intergovernmental watchdog that sets AML policy standards for over 200 member and observer states. The FATF's objectives include setting standards and advancing "effective implementation of legal, regulatory, and operational measures for combatting money laundering… and other related threats to the integrity of the financial system" (FATF, n.d.). In pursuing these objectives, the FATF evaluates its member states' progress towards meeting its standards, studies emerging money laundering methods and countermeasures, and advocates for the adoption of its standards across the globe (FATF, n.d.).

The FATF's AML standards are cemented in its flagship publication, *The FATF Recommendations*. The Recommendations "set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering" (FATF, 2012, pg. 7). Specifically, the Recommendations delineate how countries should engage in essential AML practices including risk assessment, prevention, enforcement, transparency, and international cooperation (pg. 7). The FATF recognizes that countries have different structures of governance and financial systems; therefore, the Recommendations allow space for countries to implement varied, nuanced policies while still pursuing the same broad standards of AML best practice.

The FATF recommendations most pertinent to this work are those related to beneficial ownership transparency. In March 2022, the FATF adopted amendments to Recommendation 24, which seeks to ensure that countries have comprehensive, up-to-date access to beneficial ownership information for all companies within their jurisdiction. These amendments were the culmination of a two-year evaluation, which found that countries were not doing enough to prevent the misuse of corporations and partnerships to facilitate global money laundering. They are intended to guide and motivate jurisdictions to "do more to implement the current FATF standards promptly, fully, and effectively" (FATF, 2022a). Similarly, the FATF is currently evaluating Recommendation 25 on beneficial ownership of trusts, with an aim of promoting consistent, appropriate, and feasible beneficial ownership standards (FATF, 2022a).

The amended Recommendation 24 demands that jurisdictions adopt multiple concurrent mechanisms to ensure beneficial ownership information is readily available to authorities. According to the amendments, companies should be required to maintain internal records of beneficial ownership and make them available to authorities upon request. Additionally, governments should maintain beneficial ownership registries or some equivalent mechanism containing corporate beneficial ownership information. Finally, jurisdictions should implement any supplementary measures that are needed to confirm beneficial ownership of a company, including holding beneficial ownership information acquired by regulated financial institutions and professionals (FATF, 2022a). Recommendation 24 instructs countries to adopt a risk-based approach when considering companies under their jurisdiction, meaning they must "assess and address the (money laundering) risk posed" by companies created domestically and "by foreign-created (companies) which have sufficient links to their country" (FATF, 2022a).

Notably, some policy experts have criticized the current FATF paradigm as insufficient to challenge the increasingly complex and transnational problem of money laundering. Some have claimed that the proliferation of global money laundering activities and the FATF's lack of "specific, measurable" success metrics render it an outright policy failure (Pol, 2020, pg. 73-75). Others simply note that, while criminals can take advantage of the globalized financial system to move and conceal illicit funds, the FATF and its member states are constrained by "traditional conceptualizations of sovereignty and… the legal boundaries of their jurisdictions" (Nance, 2018, pg. 113).

Nonetheless, in the absence of a comparably reputable and agreed upon framework, the FATF remains the prevailing global figure in AML policy.

3.2. Canada's AML Regime

Canada's AML regime is comprised of legislation and regulations, government bodies, law enforcement, and reporting entities, all of which function cooperatively via "three interdependent pillars" (Dept. of Finance Canada, 2018, pg. 9). The first pillar is Policy and Coordination, led by the Department of Finance Canada. The Department provides advice regarding AML policy, regulatory, and administrative measures, and leads Canada's delegation to the FATF (pg. 9). The second pillar is Prevention and Detection, which involves preventing illicit funds from being placed into the financial system and detecting illicit financial flows. At the core of these measures are the 31,000 financial institutions and designated business professionals—known collectively as "reporting entities"—who serve as "gatekeepers to the financial system" by implementing risk-based AML checks on their clients (pg. 9-10). Reporting entities' participation in this system is mandated and overseen by federal agencies. The third and final pillar is Disruption, in which money laundering activities are disrupted and quelled by police investigators, public sector accountants, prosecutors, and border services agents (pg. 10). As of now, the provinces have largely deferred to the federal government as the head in AML policy; many provincial frameworks, including Ontario's, lean heavily on Canada's broader system.

3.2.1. Proceeds of Crime (Money Laundering) and Terrorist Financing Act

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA, hereinafter) and its associated regulations provide the central legal framework by which Canada's AML regime functions. Established in 2000, the PCMLTFA was created to prevent and disrupt money laundering and the financing of terrorist activities in Canada, and to enable the investigation or prosecution of such offences. It assigned formal policy authority to the federal Minister of Finance, including the ability to issue directives altering the responsibilities of reporting entities when circumstances necessitate (PCMLTFA, s 11.42[1]). It also established the Financial

Transactions and Reports Analysis Centre of Canada (FINTRAC, hereinafter), Canada's financial intelligence unit (PCMLTFA, s 41.1).

One of the PCMLTFA's primary functions is to outline the legal obligations of reporting entities. This involves delineating recordkeeping and client identification requirements for financial service providers and professionals who engage in activities considered "susceptible to being used for money laundering and the financing of terrorist activities" (FINTRAC, 2022a). Reporting entities under the PCMLTFA include but are not limited to banks, credit unions, real estate agents and brokers, real estate developers, securities dealers, accountants, casinos, and money services businesses (FINTRAC, 2022b). These reporting entities are also required to report suspicious transactions, cross-border transfers of funds, and cash transactions or casino disbursements of $10,000 or more to FINTRAC (FINTRAC, 2020, pg. 39). To ensure compliance with their obligations under the PCMLTFA, reporting entities are required to create and enforce internal compliance programs (PCMLTFA, s 9.6[2]).

The PCMLTFA plays an important role in Canada's fight against crime, both domestically and transnationally. At the domestic level, the PCMLTFA "responds to the threat posed by organized crime by providing law enforcement officials (at the international, federal, provincial, territorial, and municipal levels) with the information they need to investigate and prosecute money laundering and terrorist financing offenses" (FINTRAC, 2022a). At the transnational level, it furthers Canada's commitment to collaborate with the international community in combatting transnational crime, with specific regard to global money laundering and terrorist financing activities (FINTRAC, 2022a). However, it is not without fault, and is widely acknowledged to require reforms to improve its effectiveness. For example, with specific regard to safeguarding the real estate sector, best practices suggest that mortgage lenders and brokers should be added as reporting entities under the PCMLTFA and that reporting requirements should be better tailored and communicated to the various industries required to report (Maloney et al., 2019, pg.). To this end, the federal government reviews the PCMLTFA every five years, and introduced a series of regulatory enhancements in 2021.

3.2.2. Financial Transactions and Reports Analysis Centre of Canada

FINTRAC is Canada's financial intelligence unit. Established under the PCMLTFA, its mandate is to "facilitate the detection, prevention, and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of personal information under its control" (FINTRAC, 2022c). FINTRAC is the primary administrator of Canada's AML regime. Its duties include managing information relating to money laundering and terrorist financing, disclosing information to law enforcement and other designated agencies, improving public awareness, protecting the privacy of personal information under its control, and ensuring that reporting entities comply with their obligations under the PCMLTFA (s 40).

The financial intelligence that FINTRAC discloses can be divided into two categories: strategic intelligence and tactical intelligence. Strategic intelligence describes broad data on the patterns and threats associated with money laundering and terrorist financing. It is shared for the benefit of policymakers, intelligence agencies, reporting entities, and other stakeholders (FINTRAC, 2022d). Tactical intelligence derives in large part from reporting entities and government bodies, and concerns "specific information about individuals or entities, such as their name, date of birth, and activities" (Cullen, 2022, pg. 194-195). It is shared only with relevant agencies in strict accordance with parameters outlined in the PCMLTFA; namely, where "reasonable grounds" suggest that the information would be relevant to investigating or prosecuting a money laundering or terrorist financing offense (FINTRAC, 2022d). In 2021-22, FINTRAC provided 2,292 financial intelligence case disclosures to law enforcement; the top three related predicate offenses were fraud, drug offenses, and tax evasion (FINTRAC, 2022f; FINTRAC, 2021, pg. 11).

Canada's is unique in its approach to financial intelligence disclosure. Whereas other jurisdictions tend to situate their financial intelligence units within law enforcement, FINTRAC is part of the federal Department of Finance and is markedly independent from law enforcement (Cullen, 2022, pg. 193). This separation helps to safeguard transactors' privacy rights in accordance with *The Canadian Charter of Rights and Freedoms* (Dept. of Finance Canada, 2018, pg. 11). However, it also acts as a bureaucratic hurdle to law enforcement, which cannot access FINTRAC data without engaging in a formal request process. In turn, many law enforcement officials argue that they could conduct better

money laundering investigations if they had “direct and real-time access to information in the FINTRAC database” (Cullen, 2022, pg. 195). Additionally, experts express concern that FINTRAC lacks the ability to “follow up with reporting entities (upon receiving suspicious transaction reports) to collect additional information concerning money laundering activity,” which limits its intelligence gathering capabiltiies (pg. 207).

This feedback is particularly pertinent to Canada, given that international experts identify Canada as having a low money laundering conviction rate in relation to its level of money laundering risk (US Dept. of State, 2019, pg. 74). For example, between the years 2000 and 2016 Canada had just 316 money laundering convictions, while the United Kingdom had 1,435 convictions in 2017 alone (German, 2019, pg. 285). This is largely because the UK lacks a constitutional parallel to Canada’s *Charter of Rights and Freedoms*, and has thus been able to implement a more stringent national AML regime without the threat of legal challenges.

3.2.3. Beneficial Ownership Transparency in Canada

In recent years, the federal government has taken substantial steps towards pursuing beneficial ownership transparency in Canada. *Budget 2021* allocated $2.1 million to Innovation, Science and Economic Development Canada to support the creation of a “publicly accessible corporate beneficial ownership registry” by 2025 (Dept. of Finance Canada, 2021). *Budget 2022* expanded upon and accelerated this promise, committing to “implementing a public and searchable beneficial ownership registry… before the end of 2023” (Dept. of Finance Canada, 2022). The registry will include federally registered corporations and will be open to additional data from provinces and territories that opt-in to participating (Dept. of Finance Canada, 2022). Additionally, *Budget 2022* confirmed the federal government’s intention “to advance a national approach to a beneficial ownership registry of real property” (Dept. of Finance Canada, 2022).

Notably, although these policies will improve transparency to at least some extent, they require provincial and territorial cooperation to achieve their full and intended effect. This is because provincial corporations and property titles are administered at the provincial and territorial level; the federal government will not have access to fulsome date without the participation of all provinces and territories. To this

end, the federal government is engaging provincial and territorial governments to pursue a united approach to beneficial ownership transparency (Dept. of Finance Canada, 2022).

3.3. Ontario's AML Framework

Like many Canadian provinces, the public policy guiding Ontario's AML regime hinges predominantly on the PCMLTFA and FINTRAC. That said, regional law enforcement, regulatory authorities, and regulated sectors play considerable roles in AML activities and are guided by legislation to at least some extent. Most notably, Ontario has some of the most modernized mortgage broker legislation in Canada (BCFSA, 2022), which is important as mortgage provision is a high-risk field for money laundering (Dept. of Finance Canada, 2015, pg. 32). The *Mortgage Brokerages, Lenders and Administrators Act, 2006*, administered by the Financial Services Regulatory Authority of Ontario (FSRA, hereinafter), includes strong consumer protections and allows for high transparency in the sector. Crucially, it requires that brokerages file yearly reports to the regulator, which assist FSRA in "risk assessment and oversight of mortgage brokers and administrators" (FSRA, 2023). The information disclosed includes the "total number and dollar value of mortgages brokered the prior year;" having access to this information improves the regulator's ability to identify risks and appropriately allocate resources (Cullen, 2022, pg. 865). Ontario's legislation is so robust that BC recently used it as a model when updating its own brokerage legislation per the recommendation of its recent Commission of Inquiry into Money Laundering (BCFSA, 2022).

This year, Ontario took its first stride towards beneficial ownership transparency. As of January 1, 2023, privately-held Ontario corporations are required to maintain a record of their beneficial ownership information which can be provided upon request to law enforcement, regulatory, and tax authorities (Ontario Ministry of Finance [OMF, hereinafter], 2022). A beneficial owner, known in Ontario' as an Individual with Significant Control (ISC, hereinafter), is defined as individual who "owns, controls, or directs" 25% or more of the corporation's voting shares or total shares (OMF, 2022). ISCs may also have "direct or indirect influence over the corporation without owning at least 25% of the shares, or own or control a significant number of shares jointly with other people" (OMF, 2022). If close family members collectively control at least 25% of

the corporation's shares, they are also considered ISCs. For each ISC information recorded must include but is not limited to their name, date of birth, address of residence, jurisdiction of residence for tax purposes, and the nature of their interest in the corporation (OMF, 2022). Notably, this policy is not a transparency registry; companies need only keep the information on file in their registered office and update it promptly when changes occur. Introducing private recordkeeping of corporate beneficial ownership aligns Ontario with many other Canadian provinces, including BC; however, without a government registry, the province still falls short of the FATF's *Recommendation 24*.

In August 2022, two NDP MLAs introduced a bill entitled the *AML in Housing Act* in the Ontario legislature. The Act would "require the Minister [of Municipal Affairs and Housing] to develop and implement a land owner transparency plan… to establish a public registry of beneficial property owners" within 1.5 years of the bill's passage (Bell & Bhutila, 2022). The registry would require corporations, partnerships, and trusts that own property in Ontario to publicly disclose their beneficial ownership information, in a similar manner to BC's existing *Land Owner Transparency Registry*.[3] This would "hold those who profit from Ontario's housing market accountable and ensure that they are fully compliant with all laws, rules and tax requirements… [and] help to make the housing market more accessible to all Ontarians" (Bell & Bhutila, 2022). A beneficial ownership transparency register would be a major step towards adherence to international AML best practice, but the bill has not progressed past its first reading.

[3] See Chapter 4

Chapter 4. Jurisdictional Scan

Transparency International—a leading international anti-corruption association—identified Canada, the United States, Australia, and the United Kingdom as jurisdictions with comparable real estate markets, governments, levels of risk, and international commitments to combat money laundering (Martini, 2017, pg. 8-9). For the proceeding analysis, the UK and BC were specifically selected as case studies based on two factors: Firstly, the extent of their recent AML policy innovations pertaining to real estate, with "recent" being defined as during or after 2017. Secondly, the potential applicability of such policy innovations to the provincial level and the political context of Ontario. The policies explored within the selected jurisdictions are listed in Table 1.

Table 1 - Overview of Jurisdictions

Jurisdiction	Policies Reviewed
United Kingdom (UK)	Unexplained Wealth Orders People with Significant Control Register Register of Overseas Entities
British Columbia (BC)	Expert Panel on Money Laundering in Real Estate Land Owner Transparency Registry Unexplained Wealth Orders

4.1. The United Kingdom

Upon the release of the Pandora Papers, which named the beneficial owners of over 1,500 UK properties purchased using offshore shell companies, one British MP referred to London as "the money laundering capital of the world" (Davies et al., 2021). Estimates suggest that at least £100 billion are laundered through the UK annually, most of which flow through the property market (Zavoli & King, 2021, pg. 745-746). According to the latest National Risk Assessment (NRA, hereinafter) conducted by Her Majesty's Treasury ([HMT, hereinafter], 2022, pg. 26), "serious and organized crime continues to have more impact on UK citizens than any other national security threat." The economic burden of such crimes is estimated at approximately £37 billion per year (pg. 26). The UK's starkest domestic money laundering threats include fraud, tax evasion, and profits derived from the illicit drug market (pg. 27-28). The country's strong, open economy,

along with London's reputation as a renowned global city and financial centre, appeal to legitimate and illegitimate actors alike. The same factors which attract business from around the world to the UK also render it vulnerable to cross-border money laundering (HMT, 2017, pg. 4). In turn, London has become a hub for proceeds of foreign corruption and other illicit financial flows, many of which end up in luxury real estate (Shaxson, 2021; HMT, 2022, pg. 22-23).

The UK has responded to such high rates of organized and financial crime by becoming a global leader in AML policy. With the results of its most recent mutual evaluation by the FATF, which concluded in 2018, the UK achieved the strongest ratings of any country in the assessment cycle thus far (HMT, 2020, pg. 23). Since 2018, its framework has only become stronger as new policies continue to be rolled out and implemented (FATF, 2022b, pg. 2-5). According to the FATF, the UK excels in several key areas, including its understanding of money laundering risks, investigation and prosecution of money laundering, confiscation of illicit proceeds, and prevention of misuse of companies and trusts (FATF, 2018, pg. 14; HMT, 2020, pg. 10). The proceeding subsection reviews the UK's broad AML framework.

4.1.1. The UK's AML Framework

In 2015, HMT conducted its first NRA of Money Laundering and Terrorist Financing in the UK. This illuminated a series of gaps in knowledge, policy, and compliance, especially pertaining to "high-end money laundering" that occurs via complicit or unwitting professional and financial service providers (HMT, 2017, pg. 5). In response to the priority areas of action identified by the NRA, the UK published an *Action Plan* for AML in 2016 (Home Office & HMT, 2016). The action plan concentrated on four key principles: "a stronger partnership with the private sector; improving the effectiveness of the supervisory regime; enhancing the law enforcement response to tackle the most serious threats; and increasing international reach" (pg. 13). This plan became the catalyst for significant legislative, regulatory, and policy change in the UK's AML space.

The UK's public sector AML regime is governed by a series of cooperating laws, regulations, and law enforcement bodies. The foundation of this regime is the *Proceeds of Crime Act* of 2002 (POCA, hereinafter), which established criminal offenses

associated with laundering proceeds of crime in the UK and obliged regulated service providers to report suspicious transactions (HMT, 2017, pg. 9). In 2017, *the Criminal Finances Act* (CFA, hereinafter) amended POCA to expand upon law enforcement and prosecution services' powers to "identify and recover corrupt and criminal funds from those seeking to hide, use, or move them in the UK" (HMT, 2020, pg. 12). That same year, a series of new *Money Laundering Regulations* came into effect. Replacing and strengthening existing regulations enacted a decade prior, the 2017 *Regulations* "place stringent requirements on relevant persons [in regulated industries] for the purpose of preventing and detecting money laundering" (HMT, 2017, pg. 8) Regulated industries include but are not limited to credit and financial institutions, accountants, legal professionals, real estate agents, and company and trust providers, all of which are overseen by sector-specific supervisory bodies to ensure compliance (pg. 15).

The National Crime Agency (NCA, hereinafter) is the leading law enforcement agency in the UK's fight against serious and organized crime, including money laundering (NCA, n.d.). The NCA's AML operations include: "intelligence and evidence gathering; cash seizure and forfeiture; restraint and confiscation; and civil recovery and taxation" (HMT, 2020, pg. 18). The National Economic Crime Centre was established within the NCA in 2018 with a mandate to progress the UK's priorities on economic crime via interagency cooperation between law enforcement and government (pg. 18). Also within the NCA, the UK Financial Intelligence Unit "receives, analyzes, and disseminates" financial intelligence obtained via suspicious transaction reporting (NCA, n.d.). Additionally, law enforcement related to money laundering is carried out by local police, regional organized crime units, border services, and prosecution services, as well as via regulatory and governmental investigations (HMT, 2020, pg. 18-20).

The proceeding subsections explore some of the innovative policies that the UK has recently implemented within its AML regime, with a focus on policies that are relevant to the real estate sector.

4.1.2. Unexplained Wealth Orders

Unexplained Wealth Orders (UWOs, hereinafter) were introduced in 2017 under the CFA with an aim of improving asset recovery and strengthening law enforcement's AML capacity (Teka, 2017). UWOs are investigative court orders that help facilitate the

confiscation of criminal assets, particularly high-value real estate. They are targeted at individuals who hold political office outside the European Union, or who have ties to serious and organized crime. When served with a UWO, an individual is legally bound to "explain their interest in (a given) property and how they obtained it" (Shalchi, 2022, pg.4). If the individual does not comply or cannot explain how the asset was obtained, law enforcement can apply for a separate court order to have the property seized. This has significant potential to improve law enforcement's ability to combat money laundering in real estate. When property is purchased using illicit funds that have already been layered, it can become impossible for authorities to gather enough concrete evidence to prove that a purchase involved proceeds of crime. However, with UWOs, law enforcement gains "the opportunity to confiscate criminal assets without ever having to *prove* that the property was obtained from criminal activity" (pg. 4).

In March 2022, Parliament accelerated the passage of the *Economic Crime (Transparency and Enforcement) Act* in response to Russia's invasion of Ukraine. The *Act* "introduced significant reforms to the UWO regime, intended to make them easier to obtain, enforce, and monitor" (Shalchi, 2022, pg. 5). Specifically, the reforms make it easier for authorities to obtain UWOs for properties that are held under complex ownership structures, and expand the grounds on which UWOs may be granted (Shalchi & Browning, 2022, pg. 22). Law enforcement may now obtain UWOs where "there are reasonable grounds for suspecting" that *either* "the person's known sources of lawfully obtained income are not sufficient to enable them to obtain the relevant property" *or* "the property has been obtained through unlawful conduct" (Shalchi, 2022, pg. 12). The reforms also offer law enforcement additional time to freeze assets while reviewing material received in response to a UWO, and limit law enforcement's liability to legal costs (Shalchi & Browning, 2022, pg. 22).

4.1.3. People with Significant Control Register

In April 2016, alongside the release of its AML *Action Plan*, the UK became the first G20 Nation to launch a "publicly accessible central registry of company beneficial ownership" (Shalchi & Mor, 2022, pg. 9). Labelled the People with Significant Control (PSC, hereinafter) Register, the registry was introduced further to commitments the UK made at the 2013 G8 Summit and was legislated via the *Small Business, Enterprise, and Employment Act* of 2015 (pg. 9). The PSC Register helps ensure that law enforcement

has access to the beneficial ownership information it needs to trace illicit financial flows, and deters money launderers from using UK companies to conceal criminal assets (G7 Research Group, 2021).

The PSC Register is administered by Companies House, the executive agency responsible for incorporating, dissolving, and registering limited companies in the UK (Companies House, n.d.). All private UK companies must file beneficial ownership information with Companies House to be disclosed in the PSC Register. Generally, to qualify as a PSC of a company, one must hold "more than 25% of shares; more than 25% of voting rights; or the right to appoint or remove the majority of the board of directors" (Companies House, 2020). However, PSCs might "control… (a company) by other means," such as by possessing influence over another shareholder or director (Companies House, 2020). In the registry, PSCs must disclose their name, nationality, country of residence, service address, home address (not made public unless also used as service address), level of shares and voting rights, and the date they became a PSC in the company (Companies House, 2020). Any changes to this information must be filed within 14 days. Failure to comply with PSC disclosure requirements or providing false information constitutes a criminal offense for both the company and any complicit persons in control. Such offenses are punishable by fine or a prison sentence of up to two years (Companies House, 2020).

Beneficial ownership information listed in the PSC is publicly searchable via the Companies House website. In 2017 alone, the data was accessed over two billion times (Shalchi & Mor, 2022, pg. 10). Notably, law enforcement does not need beneficial ownership information to be public in order to benefit from it, so long as there are easy methods of access within relevant agencies. A non-public registry would also help safeguard privacy. However, the UK opted for a public registry because "a non-public registry prevents other interested organizations like NGOs and journalists from accessing the data" (pg.7). Publicizing beneficial ownership information can help ensure the accuracy of the registry's data, as external watchdogs and regulated service providers such as banks can scrutinize the information provided (pg. 7; Transparency International, 2018). This benefit may soon be mitigated, however, as Parliament is currently considering a Bill that would require Companies House to verify the identity of all registrants (UK Parliament, 2023).

Introducing the PSC Register aligned the UK with the FATF's *Recommendation 24* (FATF, 2022a), and prompted other jurisdictions to follow suit. Since the UK's policy shift, eight of the British Overseas Territories have agreed to introduce beneficial ownership disclosure requirements, the EU states in the G7 have implemented their own registries, and the US and Canada have agreed to do the same (Home Office & HMT, 2016, pg. 27; G7 Research Group, 2021). This is crucial, as the process of layering illicit funds through hidden ownership structures often involves passing them across multiple jurisdictions, but corporate beneficial ownership registries only create transparency for companies registered domestically. As more jurisdictions create central beneficial ownership registries and share information between each other, law enforcement's capacity to trace money laundering will expand. However, this policy still does not directly address the heart of London's problem; namely, it will not prevent offshore shell companies from anonymously laundering money through luxury properties.

4.1.4. Register of Overseas Entities

Although then-Prime Minister David Cameron announced in 2016 that his government intended to enforce beneficial ownership transparency for UK properties, nothing was legislated until years later (Shalchi & Browning, 2022, pg. 16). In March 2022, the *Economic Crime (Transparency and Enforcement) Act*—the same law that passed the UWO reforms—established the Register of Overseas Entities (ROE, hereinafter). As of August 1, 2022, overseas entities such as companies and trusts must disclose their beneficial ownership information to Companies House prior to buying, selling, or transferring land in the UK. Overseas entities who already own property in the UK are also required to disclose (Companies House, 2022a). As with the PSC Register, the ROE is publicly accessible. The searchable information is similar to that within the PSC. Unlike the PSC Register, Companies House is already required to perform identity verifications on all registrants (Companies House, 2022b). Noncompliance with ROE obligations may constitute a criminal offense punishable by fine or imprisonment up to five years; it will also lead to restrictions on the entity's ability to sell, lease, charge, or transfer their property (Companies House, 2022a).

The ROE was created due to the lack of information surrounding foreign ownership of UK property, and reports of dirty money infiltrating London's luxury real estate market (Shalchi & Browning, 2022, pg. 11; Shaxon, 2021; Osborne, 2020). The

government's stated objectives behind the ROE are as follows: to provide more information to law enforcement so they are better able to track and combat money laundering in real estate; to "require anonymous foreign owners of UK property to reveal their identity" so that criminals cannot hide their assets behind complex ownership structures; and, to "level the playing field with property owned by UK companies," which are already required to disclose their beneficial owners under the PSC register (Companies House, 2022b). Ultimately, the government's stated purpose for the ROE is to "deliver transparency about who ultimately owns and controls overseas entities that own land in the UK… [and to] act as a deterrent to those who would seek to hide and launder the proceeds of bribery, corruption, and organized crime in land in the UK" (Shalchi & Browning, 2022, pg. 12).The ROE has not been in place long enough for significant ex-post evaluation to be conducted; the deadline for existing owners to file was January 31, 2023. As the policy ages, it will be important to evaluate its impact on the real estate market, personal privacy, and suspicious activity.

4.2. British Columbia

Until recently, BC policymakers neglected to address the "thriving criminal economy that has infiltrated many sectors… and [authorities'] inadequate ability to identify and deter money laundering in the province" (Commission of Inquiry into Money Laundering in BC, 2020, pg. 2). Estimates suggest that, in 2018 alone, $7.4 billion were laundered through BC, anywhere from $800 million to $5.3 billion of which flowed through the real estate market (Maloney et al., 2019, pg. 52). Vancouver, in particular, became widely known as a hub for proceeds of the illicit drug trade, with reports of suspected money launderers purchasing multimillion dollar homes in the city's luxury property market (Porter, 2022;).

In 2017, due to a belief among law enforcement that money laundering was "flourishing" in the province (Cullen, 2019), then-Attorney General David Eby ordered four independent investigations into laundering activities in BC, focused mainly on casinos and real estate. The results, which "revealed that BC's real estate market is vulnerable to criminal activity and market manipulation" (BC Ministry of Finance, n.d.), spurred policymakers into action. Such actions culminated in a formal Commission of Inquiry into Money Laundering in BC, a comprehensive three-year investigation led by BC Supreme Court Justice Austin Cullen, which released its final report in June 2022.

The Commission's report provided detailed insights into the nature of money laundering in BC, existing regulatory gaps, the effectiveness of the current regime, and barriers to law enforcement (Cullen, 2022, pg. 1). Now, BC is revolutionizing AML policy in Canada and serving as the nation's test-case for a strengthened, modernized framework.

4.2.1. BC's AML Framework

Like Ontario, BC's AML framework largely revolves around the federal regime governed by the PCMLTFA and FINTRAC. However, the independent reports and Commission of Inquiry made considerable recommendations to expand the provincial mandate. Further to the release of the first independent report, the BC government formed an AML Deputy Minister's Committee and an AML Secretariat within the Ministry of Finance (pg. 589). These bodies were responsible for implementing the recommendations put forth in the independent reports, and for developing "a coordinated, multi-sectoral response to money laundering" in BC (pg. 229). The Commission of Inquiry expanded on this idea, with its first recommendation being that BC should "establish an independent office of the Legislature focused on AML, referred to… as the AML Commissioner" (pg. 230). Should the Province decide to adopt this policy, the AML Commissioner would spearhead the provincial fight against money laundering through policy, research, reporting, performance monitoring, and cooperative efforts (pg. 218). Finally, the Commission recommended that the BC Financial Services Authority, which regulates financial service providers in BC such as real estate professionals and mortgage brokers, be given "a clear and enduring AML mandate" (pg. 19).

4.2.2. Expert Panel on Money Laundering in Real Estate

In September 2018, in the wake of the BC government's recently published *30-Point Plan for Housing Affordability*, the government called together an *Expert Panel on Money Laundering in Real Estate* to help address the ongoing problem in BC. The Panel was comprised of Maureen Maloney, Tsur Sommerville, and Brigitte Unger, who were selected as "leading experts in their respective fields of policy, real estate economics, and money laundering" (BC Ministry of Finance, n.d.). Their mandate was as follows:

> "To advise the Minister of Finance on how regulation… can be used to combat money laundering and market abuse related to the real estate market. Specifically, the Panel was expected to review BC's financial regulatory system, examine international AML best practices, and make recommendations to improve the BC financial regulatory framework and integrate BC's regime into core federal legislation and practice" (Maloney et al., 2019, pg. 10)

Over the next several months, the Panel met with and received submissions from stakeholders involved in AML work, real estate, law enforcement, and regulation. They also received and reviewed online comments submitted by the public (pg. 12). Broadly, their methodology involved describing the problem, estimating its impact on housing prices, scanning international best practices, and exploring how regulation can be used to prevent money laundering in BC (pg. 11-12).

In May 2019, the Panel published their final report entitled *Combatting Money Laundering in BC Real Estate.* Upfront, they concluded that "money laundering significantly damages our society and causes ongoing harm" (pg. 1). They then note that, although money laundering is inherently difficult to quantify, its reach is undoubtedly significant. Through economic analysis and modelling, they estimated that $7.4 billion were laundered through BC in 2018, $5.3 of which ended up in real estate (pg. 52). Perhaps most shockingly, the Panel estimated that money laundering increases BC housing prices by 3.7%-7.5% compared to what they would be otherwise (pg. 57).

The remainder of the report was largely centered around 29 Recommendations pertaining to provincial regulation, the national AML regime, data-sharing, investigation, and interprovincial collaboration (pg. 4-8). Notably, the Panel found that beneficial ownership transparency as "the single most important measure that can be taken" against money laundering (pg. 2). As such, they praised BC's introduction of the *Land Owner Transparency Act*,[4] and recommended the creation of a publicly available corporate beneficial ownership registry (pg. 2 & 5). They also recommended that BC explore the possibility of UWOs, which "could add a valuable new AML tool" (pg. 3 & 5). Finally, they warned that "money laundering is just as significant across the rest of Canada [as it is in BC] and requires the serious attention of every senior government across the country" (pg. 48).

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[4] The *Land Owner Transparency Act* will be explored in the proceeding subsection

The Panel's findings provoked a decisive response from the media and policymakers. The media largely portrayed the report as a "wake up call" for policymakers on the urgency addressing money laundering (Kirby, 2019; Kane, 2019). The BC government responded by establishing the *Commission of Inquiry into Money Laundering in BC* just one week after the Panel's report was published. However, the Panel's estimates of the dollar value of money laundering activity in BC received media pushback due to their perceived unreliability (Wakefield, 2019; Kane, 2019). Three years later, the Commission of Inquiry echoed this skepticism. The Commission critiqued the Panel's modelling techniques, noting the lack of reliable data inputs or a foundation in economic theory, along with mathematical imperfections (Cullen, 2022, pg. 133-136). That said, such methodological limitations were acknowledged upfront by members of the Panel (Maloney et al., 2019, pg. 46-47), and the report nonetheless serves as a crucial AML policy reference for BC and other provinces alike.

4.2.3. Land Owner Transparency Registry

The BC government did not wait for the results of the Inquiry before drastically expanding its AML regime. In May 2019, lawmakers passed the *Land Owner Transparency Act* (LOTA, hereinafter), which took aim at hidden ownership of real estate in BC. In doing so, its intent was to "crack down on tax fraud, close loopholes, and combat money laundering" (BCFSA, 2021). Under the LOTA, individuals who hold direct or indirect beneficial interest in BC land, either individually or through companies, must disclose their identities to the BC government (Ventresca & Dhesi, 2019). To collect and store this information, the LOTA introduced the Land Owner Transparency Registry (LOTR, hereinafter), which came into effect in November 2020 (Land Title Survey Authority [LTSA, hereinafter], 2023). The BC Ministry of Finance handles policy related to the LOTA, while the LTSA administers LOTR (LTSA, 2022). Like the UK's ROE, the LOTR is a searchable registry containing information on beneficial ownership of property. Unlike the ROE, the LOTR contains information on all individuals and entities who hold interest in land in BC, be they local or foreign.

As of November 30, 2020, whenever an interest in BC land is registered or transferred, the transferee must file a Transparency Declaration. A Transparency Declaration is a form which outlines the property's Parcel Identifier and the names of all transferees, be they individuals or companies. Companies and trusts, referred to under

LOTA as “reporting bodies,” have heightened disclosure requirements and must also file Transparency Reports, which contain far more information. The exact information provided depends on whether the reporting body is a corporation, partnership, or trust, but it broadly revolves around names, addresses, jurisdictions, and specific information regarding the entity. Additionally, all individual interest holders must provide their name, date of birth, Social Insurance Number, citizenship status, and describe the nature of their interest in the property (LTSA, n.d.[a]; LTSA, 2022). Reporting bodies that held an interest in land prior to the LOTR’s enactment must also file Transparency Reports. Noncompliance with one’s disclosure requirements under the LOTA may result in a fine of $25,000-$100,000, or 15% of the property’s assessed value (LTSA, 2022). All LOTR filings must be submitted by a legal professional, who are required by the Law Society to verify client identities (LTSA, n.d. [b]; Law Society of BC, n.d.).

The LOTR’s beneficial ownership data is searchable online via LTSA; those who wish to search the register must make an account on LTSA’s website and pay a fee of $6.75 per search (LTSA, 2021). This is a notable difference from the UK registers, which are free to search. The public has “partial” access to the LOTR’s information on beneficial owners; information such as birth dates and Social Insurance Numbers are withheld for safety and privacy. To safeguard property owners’ privacy, only designated authorities have access to complete information such as Social Insurance Numbers; namely, regulators, tax authorities, and law enforcement (LTSA, 2022). As of February 2, 2022, the public-facing registry had been searched 2,835 times, and authorities had searched the comprehensive registry 351,944 times (Cullen, 2022, pg. 918-919).

As discussed in the UK context, governments do not need beneficial ownership information to be made public in order to benefit from it. To this end, the BC Civil Liberties Association [BCCLA, hereinafter] argued before BC’s Commission of Inquiry that the LOTR should only be accessible to relevant public authorities, as “this would strike a more appropriate balance between privacy and transparency” (Cullen, 2022, pg. 947). Nonetheless, BC opted for a public registry to align with standards of best practice and assist the private sector in identifying suspicious actors (Maloney et al., 2019, pg. 31).

As the first registry of its kind in Canada, the LOTR has the potential to serve as a model for other provincial jurisdictions just as the UK’s PSC Register did at the

international level. With the federal government's promise to work with the provinces and territories on "a national approach to a beneficial ownership registry of real property" (Dept. of Finance Canada, 2022), the push for better alignment with AML best practices in Canada has already begun. Should the LOTR meet its intended objective of curbing money laundering in BC real estate, financial criminals will be displaced, not eliminated. As such, there is a risk of criminal migration to other desirable markets in Canada, and it will be even more important to make such markets less accessible to illicit actors.

4.2.4. Unexplained Wealth Orders

In 2019, the Expert Panel on Money Laundering in BC Real Estate recommended that the BC government "consider introducing UWOs" (Maloney et al., 2019, pg. 81). In 2022, the Commission of Inquiry echoed this sentiment, recommending that "the Province proceed with its plan to develop a UWO regime in BC" (Cullen, 2022, pg. 47). The Commission conceived of a UWO regime akin to that of the UK and incorporated within BC's *Civil Forfeiture Act* (pg. 9-10). According to Cullen, UWOs will be an "additional tool" that the Civil Forfeiture Office can use to investigate "high-value assets in the hands of those involved in serious criminality" (Cullen, 2022, pg. 10). In November 2022, BC Premier David Eby announced that, further to Cullen's recommendation, legislation to allow UWOs would be introduced in the spring of 2023 (Shen, 2022).

On March 30, 2023, the BC government announced that, in keeping with the Commission's recommendation, it would introduce a series of amendments to the *Civil Forfeiture Act* to establish a UWO regime in BC. When issued, a UWO will "require people to explain how they acquired their assets if there is suspicion of unlawful activity" (BC Ministry of Public Safety and Solicitor General, 2023). Notably, UWOs are not forfeiture orders in themselves, but rather an order to provide information that may be used in a forfeiture proceeding. All proceeds derived from successful cases will be used to fund the BC Civil Forfeiture Office (BC Ministry of Public Safety and Solicitor General, 2023).

According to the BC government, UWOs may deter profit-oriented criminals from committing their crimes in BC due to the risk of forfeiture. The criminal activities would

not cease, but they may shift to another jurisdiction. This rationale can be observed in a 2019 briefing note written by the BC Ministry of Finance and in the Commission's report:

> UWOs could potentially be very effective in reducing money laundering in BC because they would raise fear amongst money launderers that their assets could be confiscated. Money launderers would choose other jurisdictions for their criminal activities that do not have UWO legislation (BC Ministry of Finance, 2019, pg. 5).
>
> Many of those involved in profit-oriented criminal activity are rational actors who are aware of the different regulatory requirements in different jurisdictions and consider those differences in determining where to place and launder their ill-gotten gains… to avoid a forfeiture order, these offenders may choose to launder their proceeds and place their wealth in another jurisdiction (Cullen, 2022, pg. 10).

The media has portrayed UWOs as a "provocative" and "controversial" recommendation, and UWOs have been heavily critiqued by organizations such as the BCCLA (Trichur, 2023; Shen, 2022; Lindsay, 2019). The BCCLA has "vigoursly opposed" (McMullen, 2021) the adoption of UWOs, arguing that they "have severe implications for the privacy rights and civil liberties of all Canadians" (Tweedie, 2020). Because authorities need access to individuals' financial information to pursue UWOs, the BCCLA notes that "police referrals, data sharing between government agencies, or increased financial surveillance" would be required for the policy to function. The BCCLA argues that, per court precedents and privacy commissioners, individuals' financial information is "highly sensitive and [deserving] of the highest levels of protection," and should not face increased surveillance for the puspose of civil forfeiture (McMullen, 2021).

Further, UWOs may face legal challenges under the *Charter of Rights and Freedoms* due to possible violation of the presumption of innocence and right to silence, as UWOs place the onus on the asset-holder to prove their funds were lawfully obtained (Chin & Magonet, 2022; Trichur, 2023; Shen, 2022). In response to such concerns, Commissioner Cullen noted that UWOs would be part of civil proceedings, and that any information provided in response to them could not be used for criminal prosecution (Cullen, 2019, pg.10). He also emphasized that "people who legitimately own valuable assets are well placed to show the provenance of those assets" (pg. 10).

Chapter 5. Policy Options & Evaluation Framework

The proceeding analysis is based upon three primary objectives, which are drawn from the urgent need to expand Ontario's AML framework while also ensuring any measures introduced are administratively and politically feasible. The primary aims of this analysis are as follows: 1) to prevent and address money laundering in Ontario's real estate market; 2) to do so in a manner that is realistic given Ontario's political landscape; and 3) to avoid burdening legal actors within Ontario's economy.

Three policy options will be considered based on analysis of existing gaps in Ontario's framework and the case study analysis. The policies are tailored towards implementation at the provincial level and will be considered with Ontario's political climate in mind. The proposed policies have been identified as having the potential to combat money laundering in Ontario real estate, while still being perceived as feasible, acceptable, and minimally intrusive. The final policy options are listed in Table 2.

Table 2 - Policy Options

	Description	Relevant Jurisdiction(s)
Option 1	Unexplained Wealth Orders	UK, BC
Option 2	Expert Panel on Money Laundering in Real Estate	BC
Option 3	Register of Beneficial Owners of Property	UK, BC

5.1. Policy Options

Building upon the reviewed literature, case studies, and objectives given above, three policy options have been selected for analysis. These options are 1) introducing UWOs; 2) assembling an Expert Panel on Money Laundering in Real Estate; and 3) creating a Register of Beneficial Owners of Property. Notably, there is no option stemming directly from the UK's People with Significant Control Register. This is because Ontario has already introduced legislation pertaining to corporate beneficial ownership disclosure and has not expressed interest in expanding its transparency. A PSC register's capacity to prevent money laundering in real estate is limited in the absence of widespread, cross-jurisdictional implementation. As such, Ontario may want

to reconsider its stance once the federal government announces further details surrounding its proposed Canada-wide corporate beneficial ownership registry.

5.1.1. Option 1: Unexplained Wealth Orders

This option would introduce a UWO regime in Ontario. Like the existing regime in the UK and the proposed regime in BC, UWOs would be court orders that help facilitate the seizure of criminal assets—particularly luxury real estate— owned by individuals with ties to organized crime. When served, an individual would be legally required to "explain their interest in (a given) property and how they obtained it (Shalchi, 2022, pg. 4). If the individual fails to provide such explanations within a given timeframe, law enforcement could apply for a separate court order to have the asset seized under the presumption it was obtained illegally. To obtain a UWO, law enforcement should have to establish that "there are reasonable grounds for suspecting" that either "the person's known sources of lawfully obtained income are not sufficient to enable them to obtain the relevant property" *or* "the property has been obtained through unlawful conduct" (Shalchi, 2022, pg. 12). Additionally, to ensure UWOs are used in practice, law enforcement should be given sufficient time to freeze assets while reviewing the case, and their financial liability should be limited in case of unsuccessful court rulings in response to UWOs (Shalchi & Browning, 2022, pg. 22). The UWO regime could be incorporated into Ontario's civil forfeiture legislation, the *Civil Remedies Act.* Ultimately, UWOs would mean that law enforcement no longer has to *prove* that a criminal property was obtained illegally prior to seizure (Shalchi, 2022, pg. 4). This is important as, by design, it is often impossible for law enforcement to meet the burden of proof in money laundering cases, which acts as a significant barrier to combatting money laundering in real estate.

5.1.2. Option 2: Expert Panel on Money Laundering in Real Estate

Based on BC's model, this option would assemble an Expert Panel on Money Laundering in Real Estate in Ontario. The Panel should be comprised of experts in relevant fields, such as public policy, real estate, and money laundering. Broadly, its outputs should include a detailed description of the problem, a review of Ontario's current AML policy and regulatory landscape, a scan of international best practices, the outcomes of consultation with experts and stakeholders, and a list of actionable recommendations. Based on the BC Panel's challenges with providing dollar-value

estimations of money laundering, Ontario's Panel should be cautious in making in any similar attempts, or refrain from providing such estimates altogether. The Panel should be given between six months and one year to conduct its work. Its final product should be a thorough and comprehensive report on money laundering in Ontario real estate that is made available to the public. Through the work of an Expert Panel, Ontario would be able to address many of its knowledge gaps, develop a concrete AML policy agenda, and draw attention to the issue of money laundering in real estate thereby increasing the public's willingness to accept policy change.

5.1.3. Option 3: Register of Beneficial Owners of Property

This option would establish a registry containing data on the beneficial owners of Ontario property. This would require the passing of new provincial legislation, akin to BC's LOTA. Because Ontario already has policy in place regarding disclosure of corporate beneficial ownership for companies formed within the province, it may choose to design this policy in a manner likely to be perceived as minimally intrusive upon Ontarians. Namely, it could opt to follow the UK model of only requiring disclosure from private companies formed in other jurisdictions rather than the BC model of requiring disclosure from all transferees. However, to better align with best practices and avoid gaps in its reporting requirements, the policy may require that provincially established partnerships and trusts also be disclosed in the registry.

Additionally, Ontario could opt to maintain a private register, only accessible to law enforcement, select government bodies, and tax authorities. Notably, this would limit the foreseen effectiveness of the register, as NGOs and the private sector would not be able to use its contents to improve their own AML capacities. However, given the Ontario government's hesitancy to adopt AML policies that could be perceived as unduly burdening businesses, trading some level of transparency for privacy may increase the policy's political palatability. Additionally, choosing not to publicize the information would align the register with Ontario's existing beneficial ownership requirements for provincial companies.

Private companies formed outside of Ontario, partnerships, and trusts should be designated as "reporting bodies," subject to disclosure requirements under the register. As in BC, the information disclosed will vary based on the type of reporting body, but it

should at minimum contain names, addresses, the jurisdiction in which the entity was formed, and any other relevant information about the entity. Individual interest holders should be required to disclose their name, date of birth, social insurance number, location of citizenship, and the nature of their interest in the property. For companies, “interest holder” can be defined in accordance with Ontario’s existing definition of Individual with Significant Control for provincial companies; namely, any individual who “owns, controls, or directs” 25% or more of the corporation’s voting shares or total shares (OMF, 2022).

Any reporting body who is obtaining interest or held pre-existing interest in Ontario land should be subject to disclosure requirements. To ensure compliance, Ontario should follow BC’s example: failure to adhere to disclosure requirements should potentially result in a fine of $25,000-$100,000, or 15% of the property’s assessed value (LTSA, 2022). Such fines should also apply if reporting bodies fail to disclose changes in their beneficial ownership information. All register filings should be submitted by a legal professional who is subject to client identity verification requirements.

The registry should be funded by charging an initial filing fee for all reporting bodies, and an additional fee for any subsequent changes to the information on file. Fee amounts should be set during formal policy design, and may be informed by the fees that currently fund BC’s registry (LTSA, 2023). The policy aspects of the register should be overseen by OMF, while the administrative aspects should fall to the Land Registry arm of ServiceOntario.

5.2. Evaluation Framework

This section outlines the criteria and measures that will be used to evaluate the above noted policy options. The foremost criterion is effectiveness, which is defined as the policy’s projected ability to reduce the occurrence of money laundering within Ontario’s real estate market. The second criterion is the extent to which the policy aligns with international standards of AML best practice set by the FATF. The third is administrative complexity, which describes the ease of policy implementation based on required extent of public-private partnership, the amount of data to be stored, and the level of required oversight and administration. The fourth criterion is the level of policy

acceptance among Ontario's public, government, and professionals in the real estate sector.

The final criterion describes the extent to which a policy has the potential to jeopardize the privacy rights of those implicated under it. This objective is somewhat tied to the stakeholder acceptance criterion, as stakeholders may accept or reject a policy based on its perceived impact on their rights. However, these ideas are evaluated separately for two reasons: 1) people may accept or reject a policy based on reasons unrelated to privacy, and 2) the actual impacts a policy will have may differ from what is perceived by the public.

Table 3 - Criteria and Measures

Criteria	Definition	Measure
Effectiveness (Primary Objective)	Extent to which policy will reduce the occurrence of money laundering in Ontario's real estate market	Significant Reduction
		Moderate Reduction
		Little to No Reduction
Alignment with Best Practices	Extent to which policy is in accordance with standards of international best practice set by the FATF	Highly Aligned
		Moderately Aligned
		Not Aligned
Administrative Complexity	Ease of policy implementation based on the required extent of public-private coordination, public funds, data storage, and/or ongoing administration	Low Complexity
		Moderate Complexity
		High Complexity
Stakeholder Acceptance	Level of acceptance among owners of Ontario property, Ontario's legal sector, real estate professionals, and government	High Acceptance
		Moderate Acceptance
		Low Acceptance
Privacy	Extent to which the policy has potential to compromise privacy rights	High Privacy
		Moderate Privacy
		Low Privacy

Chapter 6. Analysis

Throughout this Chapter, the policy options introduced in Chapter 5 will be analysed via the criteria and measures outlined in Table 3. Results of this analysis are summarized in a heat map, which displays the most desirable ratings in green, moderately desirable ratings in yellow, and least desirable ratings in red. This report's final recommendation will derive from the proceeding analysis.

6.1. Option 1: Unexplained Wealth Orders

Effectiveness (Rating: Little to No Reduction in Laundering)

It is unlikely that UWOs will meaningfully decrease the overall extent of money laundering in Ontario real estate. This is because, based on the UK's experience, they are seldom used and are not always successful. Since their implementation in 2017, only nine UWOs have been issued in the UK, related to four cases, all of which occurred before 2020 (Shalchi, 2022, pg. 4). This low uptake is due to the significant challenges associated with trying to "obtain, enforce, and monitor" UWO cases, in addition to the high legal costs that result from an unsuccessful case (Shalchi, 2022, pg. 5). This is a vast difference from the twenty UWOs per year that the government initially projected (pg. 18). Additionally, the UK government estimates that the prevalence of money laundering has increased in the country in the years since UWOs were introduced (Shalchi, 2022, pg. 5). Thus, there appear to be considerable challenges associated with effectively implementing UWOs; as such, closer examination may be required prior to any potential implementation.

However, UWO cases that were successful had an estimated aggregate value of £143 million (UK Government, 2022). According to the UK government (2022), "the average value of assets per UWO investigation is estimated in the range of £5 million to £20 million, on average leading to the recovery of £10 million." Although UWOs in the UK are used less frequently than anticipated, a single issuance has potential for immense return of criminal assets. With added provisions such as limited liability for law enforcement and increased time on asset freezes, as proposed in Option 1, there may be increased uptake; however, this hypothesis has yet to be backed by data.

Additionally, any increase that does occur would have to be extremely significant to achieve the desired impact.

Alignment with Best Practices (Rating: Highly Aligned)

UWOS are aligned with the FATF's recommended risk-based approach to AML policy in the real estate sector. Namely, they pertain to the best practice of "continuously [assessing] whether new investigative tools should be adopted to enhance the overall ability to identify, assess, and mitigate money laundering… risk" (FATF, 2022C, pg. 57). In a 2022 report, the FATF specifically cited the UK's UWO regime as an innovative tool for the civil recovery of criminal assets which would otherwise be largely unpursuable (pg. 58). Additionally, when applied, they bolster the best practice of beneficial ownership transparency by compelling an individual to explain their interest in an asset.

Administrative Complexity (Rating: High Complexity)

UWOs are administratively complex to execute, which is why they are so rarely used in the UK. As noted by the UK government, "seeking a UWO is very resource intensive and costly due to the likely lengthy litigations they attract" (HMT, 2020, pg. 112). When used, they require significant time, attention, resources, and manpower on the part of law enforcement and, potentially, the civil forfeiture system. In the UK, only one law enforcement agency—the National Crime Agency—has used UWOs thus far, due to the associated complexities (pg. 112).

Additionally,UWOs would be administratively complex to implement. Firstly, the Ontario government would need to engage in consultations with legal experts, civil liberties groups, and other stakeholders, particularly given the foreseen pushback from these groups.[5] A legislative amendment to the *Civil Remedies Act* would be required to establish a legal framework, and this amendment would need to move though the drafting process and pass in the Legislative Assembly. The government would then need create an enforcement body to investigate and prosecute cases of unexplained wealth, and would need to train law enforcement and legal professionals hired within this agency. Finally, the government would need to implement an evaluation system to

[5] Such pushback will be discussed in further detail under the proceeding "Stakeholder Acceptance" criterion.

monitor the effectiveness of the new regime; namely, the number of UWOs issued and the subsequent results.

Stakeholder Acceptance (Rating: Low Acceptance)

UWOs may face pushback from civil liberties groups, legal experts, and media. As such, Ontario's government may be hesitant to advocate for them. In BC, the discussion surrounding UWOs has garnered media attention, not all of which is positive. The BCCLA has spoken out against the policy's potential implications towards *Charter* rights, and has threatened to challenge UWOs in court as a violation of the presumption of innocence (Trichur, 2023; Shen, 2022; Lindsay, 2019). As former RCMP Commissioner and AML expert Peter German has stated, "We don't like the reverse onus in Canada. It's… not the Canadian way" (Trichur, 2023). Since attaining the Premiership in 2017, BC's NDP government has demonstrated a strong desire to fortify the province against the threat of money laundering; its willingness to implement UWOs can likely withstand some public pushback. The same cannot be said for Ontario's Conservative government, which has been less active or vocal on the issue of money laundering. As such, the Ontario government's political will towards implementing UWOs is more likely to decrease in accordance with public perception.

Privacy (Rating: Moderate Privacy)

Although there are some theoretical privacy concerns associated with UWOs, they are tempered by how the policy would be applied in practice. By reversing the burden of proof, UWOs would, from a legal standpoint, open the door to increased law enforcement interference in what would otherwise have remained private affairs. However, as previously noted, UWOs have considerable barriers to use by law enforcement. Because they are rarely implemented, only a miniscule portion of Ontario property-owners would ever be personally impacted by UWOs. To obtain an order from the court, law enforcement would have to successfully argue that the suspect individual had insufficient known income to obtain the property, or that the property was obtained through crime. As such, in practice, UWOs would only be used in situations where law enforcement has already used significant resources investigating suspicious activity and building a compelling case. However, such use would entail increased sharing of personal financial information between government authorities.

6.2. Option 2: Expert Panel on Money Laundering in Real Estate

Effectiveness (Rating: Little to No Reduction in Laundering)

This is an information-seeking policy, and is thus not intended nor foreseen to directly reduce money laundering in Ontario real estate. However, a Panel would shed light on existing knowledge and regulatory gaps, expand public officials' knowledge surrounding AML policy, and offer policymakers a path forward. As such, down the line, the Panel's work may indirectly reduce laundering should the government implement its policy recommendations. However, upon receipt of the Panel's final report, the Ontario government would not be bound to adhere to their recommendations; rather, the government could determine which, if any, of the recommendations to pursue.

Alignment with Best Practices (Rating: Highly Aligned)

An Expert Panel would be strongly aligned with the FATF's first *Recommendation,* which states that jurisdictions should "identify, assess and understand" their money laundering risks, "including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively" (FATF, 2012, pg. 10). To this end, the Expert Panel would be tasked with providing a risk assessment and offering guidance regarding policy and resource allocation.

Administrative Complexity (Rating: Low Complexity)

This policy would be administratively straightforward to implement. A budget would need to be set aside to hire the Panel and fund their research, and a broad mandate would need to be prepared. The Panel will also need to be in touch with relevant branches of government for reasons such as consultation and data access. Once the Panel has issued their report, there will be some complexity involved in determining which, if any, of their recommendations it will pursue; however, this process can occur on the government's own terms and timeline.

Stakeholder Acceptance (Rating: High Acceptance)

Stakeholders would have little reason to strongly oppose this policy. Based on BC's example, the public would be interested in the Panel's findings, but not to such an

extent that would garner excessive media attention. Additionally, a Panel would allow the Ontario to government act publicly upon the increasingly spotlighted issue of money laundering, while also seeking more information before tying itself to any one policy solution. Professionals working in relevant sectors may resent any potential implication of negligence towards their AML obligations, or they may appreciate the opportunity to be consulted and potentially inform policy.

Privacy (Rating: High Privacy)

The Panel's work would not involve the use or publication of private personally identifiable information, and would thus not have any impact on Ontarians' privacy.

6.3. Option 3: Register of Beneficial Ownership of Property

Effectiveness (Rating: Significant Reduction in Laundering)

This policy is tailored to reduce the occurrence of money laundering in Ontario real estate, and has significant potential to do so. By making beneficial ownership information available to public authorities, criminals will find it more difficult to hide their ownership of Ontario real estate behind complex legal entities. Law enforcement will thus be better equipped to detect, track, and prove instances of money laundering, and criminals will be deterred from carrying out such activities in Ontario when they could instead migrate to more accessible jurisdictions. According to the BC Expert Panel on Money Laundering in Real Estate, beneficial ownership disclosure is "the single most important measure that can be taken to combat money laundering" (Maloney et al., 2019, pg. 2).

The Register would have strong internal mechanisms to ensure compliance from all reporting bodies, thus reinforcing projected effectiveness. Such mechanisms include significant fines for failure to disclose or for disclosing fraudulent information, and identity verification conducted by the filing solicitor. Additionally, ongoing verification work would be conducted by ServiceOntario.

The Register's effectiveness may be somewhat constrained by its lack of public accessibility. Because the Register would only be accessible to government authorities, it will not assist private sector actors in carrying out due diligenge on potential business partners. This lack of access neglects an opportunity to expand the private sector's role

in Ontario's AML system. Additionally, it will prevent journalists and NGOs from conducting important investigations into hidden ownership and suspicious activity in Ontario. Nonetheless, although this factor will somewhat limit the Register's potential to reduce money laundering in real estate, it does not negate the inherent efficacy of increased transparency.

Alignment with Best Practices (Rating: Moderately Aligned)

This policy is entirely aligned with the FATF's *Recommendations 24 and 25*, which pertain to the disclosure of beneficial ownership of companies and trusts. Specifically, they state that jurisdictions should ensure "that there is adequate, accurate, and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities," such as through a registry (FATF, 2012, pg. 22). Although this option is entirely aligned with the FATF's standard, it is less aligned with emerging best practice at the Canadian level. The BC Expert Panel hailed beneficial ownership transparency registers as a best practice, but stated that meeting the standard entails that register be "easily accessible" (Maloney et al., 2019, pg. 29-30). Because the proposed option would only be accessible to designated public authorities, it does not entirely meet the Panel's standards.

Administrative Complexity (Rating: High Complexity)

Although Ontario could model its implementation plan on measures that have already been undertaken in BC, establishing the register would entail significant administrative complexity. An entirely new database would need to be created in a way that is secure, user-friendly, and easily accessible to relevant authorities. New legislation would need to be passed to create the register. ServiceOntario's capacity would need to be expanded to meet the Register's administrative needs, and analysts at the Ministry of Finance would be required to develop policy. Additionally, lawyers would need to be consulted and educated as to their new requirements under the register. Reporting bodies with pre-existing interest in Ontario land would need significant notice prior to their reporting deadline; for example, BC gave such reporting bodies two years from the launch of LOTR to file Transparency Reports (Government of BC, 2022). After the final reporting deadline, significant resources would be needed to ensure all data is accurate and well-maintained, and that cases of noncompliance are identified and addressed.

Although the register would be partially self-funded via filing fees, there would also be consistent budgetary costs, particularly in the initial years of policy rollout.

Stakeholder Acceptance (Rating: Moderate Acceptance)

Most of the public would not be affected by this policy as, unlike BC's LOTR, not all Ontario landowners would be required to file with the register. Rather, reporting bodies would consist only of landowning partnerships, trusts, and private companies formed outside of Ontario. Reporting bodies may be somewhat unfavorable towards the new requirements, as they constitute an administrative hurdle and come with legal and filing fees, which must be upkept if an entity's beneficial ownership changes. Additionally, some law-abiding reporting bodies may be concerned by their inability to hold property anonymously. This qualm could be mitigated by stressing the role of transparency registers as an emerging best practice, noting that it is consistent with the transparency recordkeeping rules imposed on private Ontario companies, and that the information is not publicly accessible. Nonetheless, some entities may be deterred from buying Ontario property. Additionally, legal professionals may feel burdened by the policy shift, particularly those with a high number of reporting body clients.

Privacy (Rating: Moderate Privacy)

Under the register, legal entities that could once hold Ontario property without disclosing their personally identifiable information to the government would lose their ability to do so. This has inherent implications for privacy. However, the proposed register design includes several deviations from emerging best practice in order to ensure any concessions in privacy are strictly necessary for AML purposes. For example, unlike in BC or the UK, the information contained in the proposed register would not be publicly accessible, as it does not need to be publicly accessible for authorities to benefit from it. Additionally, unlike BC's LOTR, individuals and Ontario companies who own or purchase land would not need to file, as individual property holders are already searchable via legal title and Ontario companies are already required to maintain up-to-date beneficial ownership information.

6.4. Summary of Analysis

Table 4 - Heat Map

Criteria	Option 1 UWOs	Option 2 Expert Panel	Option 3 Register
Reduce Laundering (Primary Criteria)	Little to No Reduction	Little to No Reduction	Significant Reduction
Alignment with Best Practices	Highly Aligned	Highly Aligned	Moderately Aligned
Administrative Complexity	High Complexity	Low Complexity	High Complexity
Stakeholder Acceptance	Low Acceptance	High Acceptance	Moderate Acceptance
Privacy	Moderate Privacy	High Privacy	Moderate Privacy

Chapter 7. Recommendation: Options 2 & 3

In the short term, Ontario should assemble an Expert Panel on Money Laundering in Real Estate. This will aid in addressing knowledge gaps and clarifying the government's path forward on AML policy. Although this policy will not in itself reduce money laundering, it will be an effective complement to a longer-term solution that is tailored to this outcome. Additionally, this policy is highly aligned with best practices and is politically and administratively feasible to implement.

Next steps towards implementation should include formally establishing why an Expert Panel is needed and what the scope of its research should include; this would inform the selection of Panel members and creation of its Terms of Reference. The Terms of Reference should outline the specifc roles, responsibilities, and objectives of the Expert Panel, and specify the duration of the Panel and any reporting requirements. Due to the controversy associated with the BC Expert Panel's quantitative estimates of money laundering, Ontario may opt to not require such estimates under its Terms of Reference. Should Ontario's Panel nonetheless decide to provide quantitative estimates, they should strive to rely on credible data models and sources. Additionally, Ontario's government will need to allocate resources to ensure the Panel can conduct its work effectively. Such resources include but are not necessarily limited to funding, administrative support, and access to information. Finally, the government should establish a process for monitoring and evaluating the Panel's progress, which may involve establishing reporting requirements, reviewing the Panel's work plan, and assessing the impact of the Panel's potential recommendations.

Of the three options examined in this report, introducing a Register of Beneficial Ownership of Property seems to be most likely to to reduce the occurrence of money laundering in Ontario real estate. Notably, although a publicly accessible Register would improve the private sector's capacity to detect and report suspicious actitivy, such accessibility may reduce stakeholder acceptance due to perceived privacy threats. Thus, a reasonable compromise may be to make the Register accessible only to relevant government authorities. Once authorities have access to comprehensive beneficial ownership information, it will become harder for criminals to obfuscate their laundering activities or conceal illicit ownership of Ontario property.

Although this policy offers the greatest potential to strengthen Ontario's AML regime, it will be highly administratively complex to implement and thus constitutes a longer-term solution. Based on BC's experience, it will be 2-3 years from legislative approval before the Register is fully operational and contains data comprehensive enough to analyze. Steps towards implementation include defining the Register's scope and identifying the legal structures that will impact it, such as property and data protection laws. The Ministry of Finance would then need to develop a legal framework to support implemetion and create a technical infrastructure to support the register, including identifying data sources and establishing a database. The Ministry should also develop a robust communication strategy prior to implementation. Stakeholders, particularly property owners and the legal sector, should be educated as to their obligations under the register and given a period of at least one year to file reports. Once implemented, regular audits and investigations should be conducted to identify and address instances of noncompliance, and a system of program evaluation should be established. Further specificities of policy design and implementation may be informed by the Expert Panel's final report. Despite its associated complexities, beneficial ownership transparency remains "the single most important measure that can be taken to combat money laundering" (Maloney, 2019, pg. 2).

Chapter 8. Conclusion

As BC strengthens its AML policy framework, Ontario is poised to become Canada's new centre for money laundering in real estate. Left unchecked, an uptick in real estate laundering could tarnish the province's legal and economic reputations and compromise the integrity of its property markets. The aim of this study was to identify and explore policies that could help safeguard Ontario's at-risk real estate markets—most notably those within the GTA—against existing and potential money laundering threats. In doing so, it prioritized identifying polices that would not only effectively reduce real estate laundering, but that would also be politically and administratively feasible within Ontario's political climate. Three policy options were identified via a scan of comparable jurisdictions that have made recent and significant policy innovations within their AML frameworks; namely, the UK and BC. These options were then evaluated via multi-criteria analysis. Based on the preceding assessments, this study recommends that Ontario introduce a Register of Beneficial Ownership of Property and commission an Expert Panel on Money Laundering in Ontario Real Estate.

To conclude, it is important to stress that although this study focused on safeguarding against money laundering in Ontario real estate, the problem is by no means confined within provincial borders. Money laundering risks exist in real estate sectors throughout and beyond Canada, particularly in high-demand jurisdictions with costly markets. Should Ontario crack down, criminal activity may be displaced but it will not be eliminated. Ultimately, safeguarding against money laundering in any meaningful sense will require cross-jurisdictional problem recognition, action, and cooperation.

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