The National Initiative to Combat Money Laundering: Year Three Evaluation



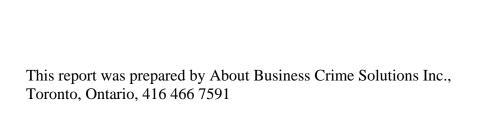


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Executive Summary

Canada's *National Initiative to Combat Money Laundering* (MLI) was established in Spring 1999 in response to the growing threat posed by criminal organizations. The MLI responds to both the National Agenda on Organized Crime, which identified money laundering as a national priority, but also to address the legislative and regulatory shortcomings identified by the Financial Action Task Force (FATF) in its Mutual Evaluation Report on Canada in September 1997.

The MLI brings together personnel and resources from a variety of federal departments and agencies, including: the Department of Finance, Solicitor General Canada, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), the Royal Canadian Mounted Police (RCMP), the Canada Customs and Revenue Agency – Tax and Customs, Citizen and Immigration Canada, and the Department of Justice. At the onset of the Initiative, Treasury Board scheduled three and five-year evaluation processes into its terms of reference. An Evaluation Framework was subsequently developed to set out the structure and context for undertaking both reviews. This report discusses the results from the three-year evaluation of the Initiative's implementation.

The purpose of this evaluation was to examine five aspects of the Initiative's development and implementation process up to and including November 30, 2002, specifically: (a) each partner's role; (b) the extent to which that role has been implemented and its subsequent performance; (c) the working relationships with respect to liaison and cooperation among the MLI partners; (d) the relevant issues concerning the operationalizing of Canada's national and international commitments; and (e) the extent to which FINTRAC has been able to promote and monitor compliance, analyze data, and disclose designated information.

Utilizing such research methods as interviews, focus groups, document review, e-mail correspondence, in addition to media and literature reviews, evaluators gathered information from seven distinct sources, including: representatives from the seven Initiative partners; money laundering experts; stakeholders; reporting entities; the popular media and government press releases; selected literature; and relevant public documents. It is important to note that the MLI was affected by the 2001 terrorist attacks in the United States, which led to legislative and operational enhancements of the Initiative to address terrorist financing; however, it was decided by the Initiative partners to not include these terrorist financing enhancements as part of the year-three evaluation since any impacts were considered premature.

The evaluation process identified a number of issues that affected the progress of implementation. The events of 9/11, an extensive consultation process, and the realities of developing and implementing an electronic transaction reporting mechanism, among other factors, contributed to a number of delays in the implementation process, particularly with regards to the publication of the anti-money laundering Regulations.

Despite these delays, a solid foundation for Initiative success has been laid to date, and significant strides have been taken towards achieving the Initiative's legislative, regulatory, investigative, and enforcement goals. At this time, the final pieces of the legislative and regulatory regimes are in place, providing FINTRAC and enforcement agencies with the tools and procedures to facilitate investigation and compliance by reporting entities.

Each partner's intended role appears to have evolved as planned, and working relationships across the partnership were found to be supportive and focused on achieving common goals. Furthermore, the MLI partners indicated that the annual funding allotments had been received and were subsequently directed to Initiative-related activities.

FINTRAC, Canada's new financial intelligence agency, is operational and is making disclosures to the appropriate law enforcement agencies. Challenges, however, were cited with respect to: (a) opportunities to share information and expertise between FINTRAC and the other Initiative partners due to Canada's privacy and Charter requirements; and (b) the enhancement of communications some reporting entities.

Improvements in cooperation and liaison with both domestic and international partners have facilitated the creation and expansion of integrated national and international intelligence networks, improving the flow of information and contributing to the development of enhanced intelligence databases. Furthermore, these networks and the subsequent flow of information will contribute to an enhanced knowledge base among Initiative partners to increase public awareness of the nature and impact of money laundering and contribute to their understanding of and appreciation for the National Initiative.

In terms of Canada's international commitments, the MLI has addressed most of the shortcomings identified in the 1997 FATF Mutual Evaluation, while at the same time respecting Canada's privacy and Charter requirements. The Initiative has made major contributions towards achieving full compliance with the FATF's *Forty Recommendations on Money Laundering* and is now fully compliant with 27 of the 28 key Recommendations. In addition, Canada continues to be actively involved in international anti-money laundering efforts, often assuming a leadership role at international meetings and within international fora.

The ultimate impacts of the Initiative hinge on the establishment and implementation of a comprehensive anti-money laundering regime that is based on strong cooperation with domestic and international partner agencies as well as Canadian citizens. *Implementation is proceeding with a strong indication that the overall Initiative design will support the achievement of its objectives*.

Recommendations

- 1. The benefit of future consultations with reporting entities could be maximized by considering which levels of consultation national, provincial, or regional would best serve the intended outcomes (page 14).
- 2. There is value in reconsidering the approach to communication with the general public. More traditional venues for sharing information, e.g., posters, pamphlets, and advertisements, could have a greater immediate impact (page 17).
- 3. There may be value in establishing some forum through which Initiative-wide and operational issues can be dealt with. This committee could also serve in a coordination role with the chair rotating across the partnership on a scheduled basis (page 17).
- 4. It is recommended that the RCMP implement an efficient, coordinated, and compatible tracking system for inputting, maintaining, and retrieving FINTRAC disclosure data. This should be undertaken in a timely manner to ensure that disclosure data is available for the five-year evaluation (page 20).
- 5. It is recommended that CIC further develop its existing action plan for the implementation of its Initiative responsibilities for the remaining two years (page 23).
- 6. It is recommended that each partner undertakes in a timely fashion a review of their present data-collection capabilities to ensure mechanisms are in place to efficiently capture the necessary information required for the year-five evaluation as identified in the Initiative Logic Model. These mechanisms will need to be designed to allow efficient data retrieval for subsequent analysis and reporting purposes (page 25).
- 7. Within the confines of the legislation, viable and effective mechanisms for FINTRAC to access the information and expertise available from partner agencies should be identified and implemented, where legally possible (page 29).

1.0 Evaluation Rationale

Government practice with respect to funded initiatives requires a degree of evaluation be undertaken to ensure both efficiency and effectiveness across the delivery of services. The *National Initiative to Combat Money Laundering* (MLI) is no exception and Treasury Board scheduled three and five-year evaluation processes into its terms of reference. An Evaluation Framework was subsequently developed to set out the structure and context for undertaking both reviews. This report discusses the results from the three-year implementation review of the Initiative.

1.1 The Evaluation Objectives

The Evaluation Framework's overall strategy to evaluate the MLI comprised both formal evaluation and ongoing monitoring and performance measurement. Consequently, the Year-Three Evaluation has, through a formative - process¹ approach, focused on the implementation of the overall Initiative design to support the achievement of its objectives. The results are intended to serve as a foundation for the more comprehensive year five evaluation scheduled for 2004-2005.

This evaluation was intended to examine five aspects of the Initiative's development and implementation process up to and including November 30, 2002, specifically: (a) each partner's role; (b) the extent to which that role has been implemented and its subsequent performance; (c) the working relationships with respect to liaison and cooperation among the seven partners; (d) the relevant issues concerning the operationalizing of Canada's national and international commitments; and (e) the extent to which FINTRAC has been able to promote and monitor compliance, analyze data, and disclose designated information.

It is important to note that due to the relatively early stage of the Initiative with respect to the programs of some of the partners, a detailed examination of the appropriateness of Initiative partner funding was considered premature at this point.

1.2 Key Issues Examined

Based on these aforementioned objectives, a number of key issues were developed to guide the data collection, analysis, and discussion of the findings in this report, specifically:

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¹ <u>Formative model</u>: Is a type of <u>process evaluation</u> that looks at how well the Initiative is performing, with a view of making recommendations aimed at correcting any limitations as well as *enhancing* any achievements to date (mainly outputs). This approach puts the emphasis on measuring the degree to which the Initiative realizes or achieves its goals and objectives under the given set of conditions it must work within in order to implement its various activities. It is thus a *means-oriented approach*.

> To what extent have Initiative resource levels been received and allocated as intended?

- To what extent is the Initiative organized appropriately to meet its objectives?
- > To what extent has the Initiative contributed to increased understanding of and improved response to money laundering through strategic analysis?
- ➤ To what extent has the Initiative contributed to improved national and international liaison and cooperation with respect to money laundering?
- ➤ To what extent has the Initiative fulfilled Canada's national and international antimoney laundering commitments?
- > To what extent has the Initiative increased public awareness of money laundering and support for efforts to combating it?
- ➤ To what extent have efforts to promote and monitor compliance with the PCMLTFA contributed to enhanced compliance and improved data for analysis?

1.3 Evaluation Design and Methodology

The Evaluation Framework included a *Program Logic Model*² that provides an overall view of the Initiative and its intended activities, outputs, and various outcomes. This evaluation examined, up to November 30, 2002, those **activities** in respect to *what was done and why*, as well as *the resources devoted to them*; reviewed the various **outputs** to determine, where possible, the efficiencies of the Initiative as defined in terms of *what has been accomplished; and assessed*, where possible, various **outcome** measures to determine *how well the activities were done*.

The evaluation methodology³ focused on seven distinct sources of information: representatives from the seven Initiative partners; money laundering experts⁴; stakeholders⁵; reporting entities⁶; the popular media; government press releases; selected literature; and, relevant public documents. The data/information gathered from these sources used a <u>variety of methods</u>, including: (a) document, media and literature reviews; (b) in-person and telephone interviews; (c) e-mail correspondence; and (d) focus groups.

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² Shown in the *separate* Appendices document, Section 2.0

³ Further details on the evaluation design, data sources and methodology can be found in the *separate* Appendices document, Section Appendices 1.1 and 1.2.

⁴ Experts: individuals with expertise in money laundering, organized crime or financial sector issues.

⁵ <u>Stakeholders</u>: individuals external to the Partner representatives whose views would be relevant to understanding the implementation and impacts of the Initiative on various sectors.

⁶ **Reporting Entities**: A sampling of sectors (e.g., real estate, investment, banking, foreign exchange, and accounting) to ascertain their perceptions about the Initiative, its process of implementation, compliance, and any anticipated impacts they envision over both the short and long term.

2.0 The Initiative: Its Objectives and Expected Outcomes

2.1 Background

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Led at the federal level by the Solicitor General and the Minister of Justice, Canada's *National Strategy to Combat Organized Crime* provides an overarching framework within which threats and impacts from transnational organized crime groups can be addressed proactively and pragmatically. Money laundering is a key tool used by these organized crime groups to not only hide the illegal source of their proceeds of crime but to distance those proceeds from their criminal owner in such a manner that draws little if any suspicion. Eventually, those funds are reunited with the owner in such a fashion that they now appear legitimate and can be used openly and with impunity.

Currency and financial transaction reporting is designed to expose this money laundering process at its most vulnerable 'choke' points, that is: when cash enters the financial system, when it is transferred between financial intermediaries, or when it is transported across national borders. By imposing an obligation to report transactions, as well as provide financial information that may be related to profit-oriented criminal activity, a transaction-reporting regime serves a number of important policing and regulatory functions. It not only provides government agencies with a greater capacity to uncover evidence of wrongdoing by creating a central repository of financial information that can identify proceeds of crime and their sources, but it also ensures proper records are in place to facilitate a subsequent criminal investigation.

Combating organized crime through controlling money laundering requires both international and domestic cooperation. Domestically, Canada's Federal, Provincial, and Territorial Ministers adopted in 2000 a National Agenda on Organized Crime in which money laundering appeared as a priority item. Although developed separately, the National Initiative to Combat Money Laundering has become a key component of action under this National Agenda.

Internationally, the key anti-money laundering organization is the **Financial Action Task Force on Money Laundering** (FATF). Canada has been a member of the FATF since it was established by the G-7 in 1989. The Forty Recommendations – anti-money laundering measures that all FATF members have agreed to adopt – were established by the FATF in 1990 and revised in 1996. These Recommendations have become the international standard against which both domestic and international efforts to combat money laundering are measured.

As a member of the FATF, Canada undergoes peer evaluations to assess the effectiveness of its anti-money laundering measures. In its second mutual evaluation report on Canada in September 1997, the FATF noted that, while Canada's regime was in substantial compliance with most of the Forty Recommendations, its reliance on a voluntary

suspicious transaction reporting system had not proved effective. The FATF recommended that Canada implement a mandatory suspicious transaction and cross-border currency movement reporting regime and establish a central financial intelligence unit (FIU) to manage the information gathered from the various aspects of this regime.

The MLI was put in place to address these shortcomings through the combined efforts of several federal departments and agencies --- Solicitor General Canada, the R.C.M.P., Justice Canada, the Canada Customs and Revenue Agency⁷, Citizenship and Immigration Canada and the Department of Finance. Shortly after the events of 9/11, the Initiative was expanded to include money laundering associated and terrorist financing and the necessary legislative and operational components added.

All of this has affected the pace of implementation and subsequently the timelines with which intended outcomes would start to occur consistent with original expectations. Consequently, it was decided by the Initiative partners that the year-three evaluation should examine the implementation process to date, with the focus on the original targets. This implementation review would then provide a sound benchmark from which progress during the final two years of the Initiative could be measured and analyzed.

2.2 Initiative Objectives

The MLI was designed to achieve three distinct objectives:

- 1. To implement specific measures to detect and deter money laundering and facilitate the investigation and prosecution of money laundering offences.
- To respond to the threat posed by organized crime by providing law enforcement officials with the
 information they need to deprive criminals of the proceeds of their criminal activities, while
 ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to
 personal information about themselves.
- 3. To assist in fulfilling Canada's international commitments to participate in the fight against transnational crime, particularly money laundering.

These objectives are to be addressed primarily through a legislative regime that includes four pillars: record keeping, client identification, reporting, and an internal compliance regime. In addition, a financial intelligence unit, FINTRAC, was established to collect, analyze, and assess all reports and information provided to it; disclose information to law enforcement and other agencies where money laundering is suspected; ensure that all reporting entities are compliant as designated under the legislative regime; and ensure protection of information in its possession.

⁷ Both Taxation and Customs

2.3 Expected Outcomes

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The Initiative Program Logic Model identified a range of outcomes, or intended impacts, anticipated as a result of the various activities and outputs. Specifically, three levels of outcomes have been identified – immediate, intermediate, and ultimate. It is recognized that the immediate outcomes are most closely linked to the Initiative activities and outputs, while the intermediate and particularly the ultimate outcomes may well be influenced by a number of factors in addition to the Initiative.

> Immediate Outcomes

The immediate outcomes flow directly from the seven activity themes identified in the Program Logic Model. **First**, is an enhanced compliance with the FATF Recommendations, thereby addressing the shortcomings identified in the 1997 mutual evaluation. The result being a strengthened capacity to combat money laundering, at the same time respecting Canada's Privacy and Charter requirements.

Second, is the improvement in cooperation and liaison with both domestic and international partners to facilitate the creation and expansion of integrated national and international intelligence networks, which create the optimal environment for improved flow of information and contribute to the development of enhanced intelligence databases. Furthermore, these networks and the subsequent flow of information will contribute to an enhanced knowledge base among Initiative partners to increase public awareness of the nature and impact of money laundering and contribute to their understanding of and appreciation for the National Initiative.

Third, the tools and procedures that facilitate compliance and increase the effectiveness and efficiency of non-compliance monitoring will enhance compliance by reporting entities and importers/exporters. This improved compliance is expected to contribute over time, to the improved quality of reports provided to FINTRAC, which will facilitate more comprehensive analyses by FINTRAC.

Fourth, the development and implementation of valuable and sophisticated analytical tools and processes will contribute to quality analytical products and a better understanding of money laundering in Canada and in the international community --- resulting in a more comprehensive and effective response to money laundering and profit-motivated crimes.

Fifth, the improved access to and increased capacity to make use of vital intelligence information is expected to contribute to improved identification of targets in relation to criminal activity, immigration, taxation/duties, and national security concerns and/or issues. Through their disclosures, FINTRAC will provide designated information about suspicious financial transactions that will assist law enforcement and intelligence officials in carrying out their investigations and prosecutions.

Sixth, it is anticipated that the provision of enhanced investigative tools and enforcement procedures that stem, in part, from access to better information and more comprehensive

networks will result in better evidence gathered and then made available to support the adjudication process --- leading to increased seizures of proceeds of crime.

Finally, the MLI's enhanced legislative framework, knowledge, networks, and investigative tools and techniques that respond to money laundering are intended to contribute to increased efficiency and effectiveness of the adjudication process. This will result in increased forfeitures of proceeds of crime, as well as the increased compliance with the related laws and regulatory requirements.

> Intermediate Outcomes

Arising from the successes achieved through the immediate outcomes, the Initiative fully expects to see a series of intermediate impacts surfacing, specifically: (a) the implementation of various international commitments including those to the FATF and other organizations; (b) a legislative regime that gets the job done while controlling for privacy and charter concerns; (c) a clear indication of public acceptance of the initiative; (d) the creation of an environment where money laundering and organized crime are not a significant threat; (e) an overall reduction in the profitability of crime; and finally, (f) without profit, the motive to commit crime disappears and hopefully the offender and their need for money laundering along with it.

Ultimate Outcomes

The ultimate impacts of the Initiative hinge on the establishment and implementation of a comprehensive anti-money laundering regime that is based on strong cooperation with domestic and international partner agencies and financial institutions and intermediaries. If achieved, this will not only contribute to minimizing the operation of organized crime in Canada but also enhance the overall safety of Canadian society.

3.0 Design and Delivery

3.1 Partners and Resources

From the beginning, the Initiative has been multi-departmental in nature; currently under the lead of the Department of Finance working with six other federal government partners --- Solicitor General Canada (Sol. Gen.), the Royal Canadian Mounted Police (RCMP), the Canada Customs and Revenue Agency - Tax (the CCRA-T), the Canada Customs and Revenue Agency - Customs (the CCRA-C), Citizen and Immigration Canada (CIC), and the Department of Justice (DOJ).

Originally, the Department of the Solicitor General had the lead role and was key in the development of the proposal to establish the Initiative. However, concerns arose regarding the Solicitor General's proposed dual oversight role for the RCMP as an investigative body and FINTRAC as an analytical agency. As a result, the decision was made to transfer the lead role to Finance given its extensive responsibilities for regulating and dealing with the financial sector. The transfer of responsibility was officially completed in April/May 1999.

Following this transfer, an interdepartmental group (Mandatory Suspicious Transaction Reporting (MSTR) Working Group) was established, involving all of the departments with Finance's lead to develop the legislative and regulatory framework for the Initiative. As well, a Transition Team was established to help set up the planned Financial Intelligence Unit. Subsequently, on July 5, 2000, the team officially became the **Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)** and officials from this new agency took up their places at the Initiative table to contribute to its ongoing roles and activities.

> Resources

As shown in **Table 1**, the government allocated funds to each of the partner departments/agencies for a total of \$143.708 M over a five-year period.

Table 1: Initiative Resources by Department/Agency (\$)

Department/Agency In millions \$	1999- 2000	2000- 2001	2001- 2002	2002- 2003	2003- 2004	Total
Initiative Total	\$1.583	\$29.825	\$38.5	\$39.4	\$34.4	\$143.708
Finance	0.3	0.3	0.3	0.3	0.3	1.5
FINTRAC	0.983	19.5	25.4	26.3	21.3	93.483
RCMP	0	2.6	4.9	4.9	4.9	17.3
The CCRA	0	6.3	6.0	6.0	6.0	24.3
CIC	0	0.4	0.7	0.7	0.7	2.5
Justice ⁸	0.3	0.725	1.2	1.2	1.2	4.625

⁸ <u>Justice</u>: These figures do not include resources identified for the provision of direct legal services to FINTRAC, which will be requested by, and allocated directly to the Centre itself.

It is important to note that although resources were not assigned to Solicitor General Canada, it has continued its participation on an adjunct basis arising from both its leadership role within the *National Strategy to Combat Organized Crime* and its ongoing oversight responsibilities for the RCMP and CSIS.

The above allocations included funding for FTEs distributed across the partners as shown in **Table 2** below.

Table 2: Costing Implications

Department/ Agency	FTEs Allotted
Finance	2
Sol. Gen. Canada	0
FINTRAC	150
RCMP	34
The CCRA	
Customs	50
Taxation	24
CIC	5
Justice	9

3.2 Roles and Responsibilities

The Initiative designated various roles and responsibilities for each partner, building on the existing interests and practices each brought to the table. The Department of Finance has responsibility for all policy matters related to the PCMLTFA, and the development of the new FIU - FINTRAC. Each Initiative partner had direct input into legislative development through membership in the Mandatory Suspicious Transaction Reporting (MSTR) Working Group, the primary working body with cross-Initiative membership. The individual roles for each partner are summarized here.

Department of Finance

The Department of Finance is responsible under the Initiative for leading and coordinating the development of anti-money laundering policy, including the <u>Proceeds of Crime (Money Laundering) Act</u> and Regulations. The department coordinates and participates in key domestic and international activities in support of the government's commitments to combat money laundering. It heads the Canadian delegation to the Financial Action Task Force and to other international money laundering assemblies. The Department of Finance supports the Minister in his responsibility for FINTRAC and is responsible for the evaluation of the Initiative.

> Solicitor General of Canada

The Solicitor General's national role with regards to organized crime and the priority of money laundering for the National Agenda necessitates an ongoing departmental role in the Initiative, even though lead responsibility for the MLI has been passed to the

Department of Finance. From a departmental monitoring perspective, the Solicitor General has identified its interest in maintaining involvement for three distinct reasons: (a) to monitor how the RCMP responds to future FINTRAC disclosures relating to money laundering and terrorist financing; (b) to reflect its ongoing interest in policy development and coherence with initiatives under the Organized Crime Strategy; and (c) to monitor how CSIS responds to future FINTRAC disclosures on national security.

> FINTRAC

The financial intelligence unit as set out in the Initiative collects, analyses, assesses and discloses information to assist in the detection, prevention and deterrence of money laundering, while protecting the privacy of personal information. FINTRAC operates as an independent agency, at arm's length from law enforcement agencies and other entities to which it is authorized to disclose information. It reports to the Minister of Finance.

FINTRAC receives financial and other information, which it is under an obligation to protect from unauthorized disclosure. It analyzes this information to detect money laundering, terrorist financing activities, and threats to the security of Canada. On the basis of its analysis, the Centre generates financial intelligence that it will, when appropriate, disclose to law enforcement and intelligence agencies in order to assist in the investigation and/or prosecution of money laundering and terrorist financing offences as well as threats to the security of Canada. Furthermore, the Centre is responsible for promoting and monitoring compliance with the record keeping, client identification, reporting and compliance regime requirements of the Act and Regulations, and is charged with enhancing public awareness and understanding of matters related to money laundering.

To assist reporting persons and entities with their compliance requirements, FINTRAC has issued and periodically updates Guidelines, including those with respect to the form and manner of reporting, detecting suspicious transactions, and implementing a compliance regime.

The Royal Canadian Mounted Police

The RCMP Integrated Proceeds of Crime (IPOC) units are the major recipients of disclosures prepared by FINTRAC. The primary objective of the IPOC units is to intensify and make more efficient and effective the investigation and subsequent prosecution of major organized criminals and crime groups operating in Canada, and to remove the financial incentive for engaging in criminal activities. Disclosures of information by FINTRAC to the IPOC units will provide leads on new investigations or signal the existence of additional information on existing investigations. Furthermore, an Attorney General or designate may apply to a court to gain access to further information held by FINTRAC. Where a judge determines that access by a police officer to additional information held by FINTRAC in respect of an individual or entity would benefit an investigation, the judge may issue a Production Order granting that access.

The Canada Customs and Revenue Agency

□ Cross-Border Currency Reporting (the CCRA – Customs)

The legislation requires that all reports of large amounts of currency and monetary instruments (e.g. importation/exportation), including those transported by mail be reported to a Canada Customs officer, who will once completed forward these reports to FINTRAC.

In addition, Customs officers also now have the responsibility to enforce the physical cross-border reporting initiative, which includes the authority to examine baggage and conveyances, question and search individuals for unreported or falsely reported currency and monetary instruments and may seize as forfeit. In particular, when a Customs officer suspects on reasonable grounds that the currency and monetary instruments may be proceeds of crime or terrorist financing they may seize the currency or monetary instruments and alert the police.

□ The Evasion of Duties and Tax (the CCRA – Taxation)

One of the CCRA - Taxation's responsibilities is to ensure that each person pays taxes and duties associated with all income and activities. Subsequently, if FINTRAC discloses information suspected of being relevant to the investigation or prosecution of a money laundering offence to law enforcement and also determines that the information is relevant to an offence of evading or attempting to evade paying taxes or duties, the same information will also be disclosed to the Taxation investigators. The information received from FINTRAC is anticipated to serve as a lead to possibly initiate a new investigation or as additional information in support of an ongoing investigation.

Citizenship and Immigration Canada

Citizenship and Immigration Canada (CIC) plays a key role in denying admission to Canadian territory to non-citizens who pose security threats to Canada. Accordingly, where FINTRAC discloses information to law enforcement and also determines that the information is relevant to certain provisions of the *Immigration and Refugee Protection Act*, it will also disclose information to CIC. CIC will support the objectives of the Initiative by preventing the entry into or effecting the removal from Canada of those non-citizens who engage in money laundering activities. The increasing creativity and sophistication of criminal organizations and concealment of questionable sources of funding makes it challenging to assess the admissibility of applicants for immigrant, refugee, and visitor status. Information from FINTRAC will assist in assessing for admission into Canada under the *Immigration and Refugee Protection Act*.

Department of Justice --- Attorney General of Canada

The Attorney General is responsible for undertaking prosecutions. It is anticipated that information provided to law enforcement by FINTRAC may result in an increased workload for both IPOC Unit counsel and prosecutors associated with money laundering

investigations and prosecutions, as well as work specifically linked to the amended PCMLTFA legislation. Additional responsibilities associated with the legislation include: applications for Production Orders and prosecutions related to new offences created within the Act, such as failure to report suspicious transactions. Resources will also be used to provide training to prosecutors and law enforcement personnel and for the development and coordination of criminal law policy as it relates to money laundering. Finally, funding will be employed to attend various international meetings (for example, FATF and CFATF) on money laundering.

4.0 The Findings

4.1 Implementation

 $oldsymbol{D}$ espite some delays, what was envisioned three years ago is pretty much what exists now. Implementation is proceeding with a strong indication that the overall Initiative design will support the achievement of its objectives. The allocated resources were received and subsequently directed to Initiative-related activities. Each initiative partner interviewed has articulated an understanding of their respective roles and indicated a willingness to work together towards a common goal. Extensive consultations with government departments and reporting entities were conducted. The required legislation is in place, and yet much broader than initially expected. Specifically, the Anti-Terrorism Act provided for a significant number of amendments to the new PCMLA --- not only changing the name of the Act to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, but also expanding the role of FINTRAC to gather information on terrorist financing. Regulations outlining the new reporting, record-keeping, client identification and internal compliance requirements are in place. The last of the reporting requirements come into force on March 31, 2003. A regime for the declaration of currency and monetary instruments at Canada's border points exists under the control of CCRA-Customs. FINTRAC, is operational, has issued its first comprehensive 'Annual Report', and is making disclosures to the appropriate law enforcement agencies for investigations.

Some issues did however, slow down the pace with which the MLI was implemented consequently impacting on the initial expectations for progress. **First**, it became clear early on that the number of entities impacted by the new law was far greater than originally anticipated. As well, some of the impacted sectors were quite vociferous in their opposition to proposed segments of the law and/or its supporting regulations. This meant that each contentious issue had to be reviewed and compromises proposed or stronger arguments developed to maintain the status quo.

This constitutional environment contributed to the emergence of a **second** issue, the challenge by the Federation of Law Societies of Canada as to the requirement for lawyers to comply with the legislation. As of the drafting of this report, the legal challenge continues.

Third, were the unpredicted terrorist attacks of September 11, 2001. The events of that day significantly changed the environment and focus for money laundering control and counter-terrorist financing measures across the world. In Canada, the MLI was expanded and adjusted to include terrorist financing practices. The statutory regime was modified and the roles of FINTRAC and each Initiative partner were adjusted accordingly. Once again, the need to get things right was clearly evident and the implementation slowed to meet the new requirements.

A **fourth** issue, security, affected directly on the time needed to develop the data management systems of FINTRAC; as these systems had to have sufficient security measures in place to protect information from the threats of hackers and others anxious to get at the various databases. This became even more paramount with the addition of terrorist financing responsibilities following 9/11.

A **final** issue related to staffing within FINTRAC. The privacy and security requirements of FINTRAC placed an added strain on completing the security checks on new employees in a timely manner.

4.1.1 Overall Use of Resources

As reported earlier, the government allocated funds totaling \$143.708 M over the first five years of the Initiative. Based on reports from each MLI partner, officials indicated that designated annual allotments had been received and were subsequently directed to Initiative-related activities. Please refer to the findings on each individual Initiative partner for further detail on their use of resources.

It should be pointed out that due to the delay in implementation, some partners used their FTEs to work on department/agency activities directly related to combating money laundering, including: ongoing investigations, policy development, staff training, procedure preparation, public education, and training for domestic and international groups involved with money laundering enforcement.

4.1.2 Legislative Development

The MLI operates on a foundation of legislative and regulatory authority developed under the lead of Finance.

Over the first three years, the development of the designated legislative regime has not been without challenges, some anticipated and others not. Right from the onset, it was clearly understood that the legislation needed to account for Charter issues and privacy concerns. These issues had to be factored into the various elements of the legislation, such as reporting, record and identity requirements, record storage, and information collection, analysis, and disclosure.

The legislation requires that FINTRAC act at 'arm's length' from the agencies to which it is authorized to disclose. This was essential when it came to possible secondments,

access to FINTRAC databases, and the sharing of information through disclosures. The risks of compromise, unplanned information disclosures, and unauthorized access to private information were deemed too great and threatened the capacity for FINTRAC to do what it was tasked to do. These issues had to be dealt with and in some cases an appropriate compromise agreed upon, while in others none was possible.

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Extensive feedback from reporting entities during the consultation process slowed that process somewhat. Dealing with this feedback required, at times, a learning curve to first understand the business practices of the reporting entities in order to put their responses into perspective. Comments from a number of the reporting entity representatives interviewed attested to the value of this process and complimented Finance on its willingness to have an open and honest dialogue.

The events of 9/11 had an immediate impact through legislative amendments that expanded the focus of the Act and its Regulations.

Finally, the reality of an electronic reporting system required reporting entities to reexamine their information databases to ascertain efficient ways to identify, collect, and forward the information required by FINTRAC. This resulted in Finance extending the time required to commence reporting, allowing entities to put in place the necessary system changes and/or enhancements.

The impacts of these factors were primarily felt in the development and publication of the Regulations. A decision was made to introduce them in three groupings: (a) Suspicious Transaction Reporting Regulations; (b) the PCMLTFA Regulations; and (c) the Cross-Border Currency and Monetary Instrument Reporting Regulations. The various reporting requirements covered by all three have been staggered in their implementation dates from November 8, 2001 to March 31, 2003.

4.1.3 Consultation Process

The MLI is also concerned with external consultations and partnerships, particularly with other levels of government across Canada as well as a myriad of reporting entities tasked with meeting the compliance requirements under the legislation. With respect to the former, ongoing bilateral consultations by Finance have taken place throughout the legislation development period. During the last year, FINTRAC has participated in over 75 consultations with law enforcement agencies and other potential recipients of its disclosures to inform them about the agency and seek their ongoing cooperation in providing voluntary information. According to FINTRAC regional office representatives, this activity is going well and they are encouraged by the response. All MLI partners have reported ongoing consultations with stakeholders and counterparts across the country. FINTRAC also consulted widely with reporting entity representatives during the preparation of its Guidelines. As well, it consulted with both national and provincial reporting entity associations with regard to the best methods for getting information to their members.

The situation with reporting entities has resulted in some contrasting perceptions. Overall, perceptions are that the Finance legislation consultation process and similar ones undertaken by the CCRA-Customs with respect to Part Two of the Act have been positive and productive. The extent to which this has occurred was demonstrated by over 140 industry consultations with every effort made to meet with the most relevant industry bodies. Given that the legislation is Federal, approaching national organizations made the most sense given the need to get a response representative of the entire country. In many cases, this seems to have achieved the desired outcome.

Representatives from five key reporting entity sectors were interviewed in late November/early December 2002. Those interviewed were from the *Investment Dealers Association*, the *Canadian Bankers Association*, the *Canadian Institute of Chartered Accountants*, the *Canadian Real Estate Association*, and a CEO from one of Canada's largest commercial *Foreign Exchange* companies. Some of those interviewed suggested that the Finance consultations would have been more meaningful and informative had they taken place at the provincial as well as at the national level. In some sectors, accounting and real estate for example, provincial bodies have greater regulatory authority over their members and subsequently are more closely aware of the work-related issues may be in a better position to communicate the regulatory requirements to their members.

RECOMMENDATION

The benefit of future consultations with reporting entities could be maximized by considering which levels of consultation, national, provincial, or regional, would best serve the intended outcomes.

With respect to the efforts of FINTRAC's liaison officers to reach out to the professionals and businesses within various reporting sectors, the results have been very positive. Hundreds of businesses are being contacted either in person or by telephone. On numerous occasions, these contacts have directly contributed to increased activity with the compliance implementation process on the part of those contacted.

Banking sector representatives expressed some concerns over how the Initiative, its requirements, and its timing would impact on their industry. They indicated that Finance had been very consultative throughout the process. However, the relationship with FINTRAC has been problematic, at times. Sector representatives believed that industry information, suggestions, and issues had not always received the attention they deserved. Finance and FINTRAC representatives also noted some difficulties with the relationship with banking sector representatives and that this was being addressed. Needless to say, this relationship is very important and continuing efforts should be made to ensure it operates effectively.

4.1.4 Communication

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From the onset, there were two primary *external* 'Communication' goals for the Initiative:

- □ To demonstrate national leadership and commitment to combat money laundering and other organized crimes; and
- □ To explain new requirements to report suspicious financial transactions, certain prescribed transactions, the enhanced client identification and record-keeping and internal compliance requirements as well as the cross border movements of currency and monetary instruments.

In general, these goals describe Initiative communication activities as primarily falling into the following categories, *public awareness*, *information sharing* and *education*.

In addition, an informal, *internal* communication goal is clearly evident when you consider that the MLI is a partnership, which necessitates interaction among and across the partners. The evaluation examined this interaction and the impacts that have ensued.

> Public Awareness

The evaluation looked at the informative aspect by examining what was being done to let the Canadian public know about the MLI. Specifically, the evaluation framework addressed the importance of information sharing by suggesting that a measure of the Initiative's success would be the extent to which the public believes the law and its application has impacted on money laundering in Canada. FINTRAC has undertaken two such polls, August 2001 and March 2002. The findings showed that 9 out of 10 Canadians polled were familiar with the concept of Money Laundering; just over 50% have somewhat of an understanding of what money laundering is; 50% indicated it was a problem; over 80% believed it had an impact on Canada's economy; over 50% associated money laundering with drug crimes and 1% associated it with terrorism; and 17% polled were aware of an agency set up by the government to combat money laundering, with less than 1% being able to call it by name, FINTRAC.

> Information Sharing and Education

A media review was completed by the evaluators to determine the extent to which information was available to/in the popular media that was informative about money laundering in general and the Initiative in particular. Between January 2000 and November 2002, Initiative partners sent out 47 press releases.

A search of the popular print media over the same time period found a total of 25 separate articles that covered money laundering in Canada from a general perspective; and 34 articles that dealt with Canada's money laundering laws or the Initiative specifically.

The education aspect of the communication objectives has, to date, been directed primarily towards the reporting entities and various stakeholders across the country. All

partners reported undertaking speaking engagements and addressing national, regional and provincial associations, seminars, and conferences to get the word out about the Initiative.

FINTRAC, in particular, has a legislated mandate to inform the reporting entities and the public. The PCMLTFA identifies one of FINTRAC's functions as operating "to enhance public awareness and understanding of matters related to money laundering". The Act specifically enables FINTRAC to "undertake measures to inform" the public, reporting entities, and other stakeholders about, among other things, their obligations under the Act, and the nature and extent of money laundering in Canada.

FINTRAC has pursued this mandate through a variety of means. First and foremost has been via its external website, through which it has provided extensive Guidelines for reporting entities, advisories, technical documentation, links to other documentation - including its Annual Report, links to the legislation, and links to other sources of relevant information. In addition, the website provides access to its electronic and paper reporting forms.

FINTRAC's website, as well as fulfilling part of its commitment to the effective use of technology, is the most efficient way to make a large amount of up-to-date information readily available to the well over 100,000 reporting entities across Canada. The website also provides the general public with information on money laundering as well as information about FINTRAC, its mandate, and mission. By the end of November 2002, well over 218,000 visits had been made to the website.

FINTRAC has also implemented a toll-free telephone number and call centre, as well as an e-mail address for enquiries. In addition to giving numerous presentations to international, national, regional, and local conferences and workshops, it has an information booth, which it exhibits at various conferences. It has also prepared and circulated pamphlets, and posters, and although the events and decisions on and after September 11, 2001 made these obsolete. New ones are in the publication stage.

Finally, FINTRAC has placed articles in trade magazines, and provided assistance to national and provincial associations of reporting entities regarding the latter's attempts to inform their members about the requirements of the PCMLTFA.

Despite these efforts, there was still a belief from certain sectors interviewed that not enough had been done to get the word out to the public about the Initiative and in particular how it would impact on their daily activities. They agreed that FINTRAC's website was a sound venue for helping with compliance development and maintenance. However, many suggested that more traditional ways could have a greater impact when it came to informing the public, specifically: advertisements in the various media, posters, pamphlets, and billboard advertisements.

These approaches could include reference to FINTRAC's website as the ongoing source for Initiative information. It is acknowledged that, prior to pursuing such strategies, thorough market and cost analyses would need to be conducted, and effective arrangements agreed for sharing responsibilities between Initiative partners and the reporting entities.

RECOMMENDATION

There is value in reconsidering the approach to communication with the general public. More traditional venues for sharing information, posters, pamphlets, and advertisements, could have a greater immediate impact.

Communicating Across the Partners

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It was evident that the overall partnership does manage to operate quite effectively despite the lack of a formalized mechanism for coordination and leadership. Rather, it has evolved in more of a cooperative fashion, with each partner operating independently of the others and coming together only when required. The development of the legislation, under the lead of the Department of Finance, has provided the most structured partnership forum to date. The Mandatory Suspicious Transaction Reporting (MSTR) Working Group has served in this role and continues to operate on an "as needed" basis.

Currently, the preferred approach across the partnership is to deal with issues through bilateral consultations, regularly scheduled or on an as-needed basis. Although reported as an efficient means for dealing with concerns, a more formal mechanism could decrease the risk of decisions being made in isolation of other partners not at the table. As such, there would be value in having the partners consider some formal mechanism through which common issues and concerns can be raised and discussed with everyone's input.

RECOMMENDATION

There may be value in establishing some forum through which Initiative-wide and operational issues can be dealt with. This committee could also serve in a coordination role with the chair rotating across the partnership on a scheduled basis.

4.1.5 Implementation in each Department

Department of Finance

The Department was allotted a total of \$1.5 million in resources over the first five years of the initiative. Two FTEs were included in those funds and the money was used to support activities on several fronts: (a) the development of the new <u>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</u> (PCMLTFA) and its three sets of supporting Regulations; (b) participation in international fora focused on money laundering, specifically the FATF and the C-FATF; (c) commitments to domestic

organizations and forums focused on organized crime, money laundering and related issues; and (d) ongoing Ministerial oversight of FINTRAC.

During this implementation period the <u>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</u> has been brought into force and the three supporting sets of Regulations have been largely implemented. The last of the reporting requirements will be brought into force on March 31, 2003.

The majority of international participation has focused on the FATF and one of its regional-style bodies, the Caribbean FATF. In both organizations, Finance actively promotes Canada's role and its efforts to meet and, where possible, surpass the standards set to combat money laundering. This leadership has most recently paid off with a member of the Department appointed to chair the FATF working group tasked with revising *The Forty Recommendations on Money Laundering*. Finance has also undertaken over 60 separate trips to international meetings and events dealing with money laundering and related issues, and coordinates the completion of evaluation and information questionnaires sent by various international committees/groups that focus on combating money laundering.

The Department has maintained its commitments to domestic organizations and forums that address organized crime, money laundering, and related issues by participating in upwards of fifteen separate forums over the past three years, as well as a significant number of bilateral consultations.

Ministerial responsibility has focused on developing the legislative regime that will guide FINTRAC's activities and ensure it functions within the guiding principles of 'operating at arm's length' from law enforcement and other agencies to which FINTRAC can disclose; while at the same time ensuring both the tenets of Canada's Charter of Rights and Freedoms and the *Privacy Act* are maintained.

Solicitor General Canada

Given its leadership role with the National Strategy to Combat Organized Crime and the Minister's responsibility for the RCMP, the Solicitor General Canada is an important ancillary partner to the Initiative. Department representatives actively participate in both the MSTR Working Group and the committee established to coordinate the evaluation process. On a bilateral basis, the Secretariat consults directly with Initiative partners as necessary.

Furthermore, Solicitor General Canada, in its leadership role on combating organized crime generally, has contracted research on: (a) the knowledge about money laundering and (b) the development of indicators for assessing the impact and scope of money laundering.

> FINTRAC

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Since its creation on *July 5*, 2000, FINTRAC has focused its energies on establishing the processes and infrastructure needed to fulfill its mandate. This has been both a challenge and opportunity as it was necessary to build an organization from the ground up. This meant that FINTRAC had to attend to: (a) the recruitment and hiring of staff; (b) creating a management structure; (c) defining corporate functions; (d) establishing offices and purchasing equipment; (e) implementing physical security arrangements due to the highly sensitive nature of their operations; and, (f) building a technical capacity and security network to enable reporting entities to submit their reports electronically; allow for the receipt of voluntary information from other sources, including law enforcement; and to block potential intruders from accessing information stored within its various databases.

Since July 2000, agency officials have developed the organization to the point that it: (a) established a comprehensive framework of operational policies and guidelines dealing with policy, planning, public affairs, corporate management, security, human resources, finance, and administration; (b) recruited and trained over 130 staff (as of November 30, 2002); (c) acquired and developed leading edge technology; (d) put in place exacting security measures to ensure the protection of the information entrusted to the Centre; (e) assumed additional responsibility for combating terrorist financing with the passage of the *Anti-terrorism Act* in December 2001; and (f) developed an information retrieval, analysis, and storage system that has enabled the Centre to begin making disclosures in early 2002.

FINTRAC will receive a total of \$93.483 million in resources over the first five years of the Initiative. As of December 6, 2002, FINTRAC showed a total projected workforce in respect of their anti-ML mandate of 150 FTEs, of which 131 are currently filled. FINTRAC phased in its hiring processes, with respect to its analysis and compliance positions, and those FTEs allocated to the regional offices, primarily to coincide with legislative (e.g., compliance powers), data availability, and regional office construction timeframes.

□ FINTRAC's Business Process

FINTRAC delivers its services through a clearly articulated business process. A schematic of that process is included in a *separate* Appendices document, Section 4.0. This schematic sets out the four key activity categories that contribute to FINTRAC's delivery of services, specifically:

- **Action** --- Those various financial transactions and cross-border currency movements that trigger the need to report.
- **Reporting** --- Those reporting entities and the various reports they must complete and forward to FINTRAC.
- **Analysis** --- The processes by which FINTRAC stores and analyzes the information received via the reporting process.
- **Disclosure** --- The actual release of designated information through disclosures to relevant law enforcement agencies.

Some of the key reported outputs arising from this process up to November 30, 2002 included:

- 15,363 suspicious transaction reports;
- 946,794 international EFT reports through the SWIFT communications network from Canada's banks; and

• 50 disclosures to law enforcement agencies. Some disclosures have been made to more than one agency.

Furthermore, the beginning of mutually cooperative relationships with foreign Financial Intelligence Units has occurred with five MOUs either signed or in the approval process.

> RCMP

The RCMP will receive a total of \$17.3 million in resources over the duration of the Initiative. Those resources include a total of 34 new FTEs --- 30 regular member positions distributed across the Proceeds of Crime program and 4 civilian analyst positions allocated to the Proceeds of Crime Branch at RCMP headquarters.

The RCMP's primary responsibility under the Initiative is to receive and assess disclosures from FINTRAC and investigate where warranted. Up to and including November 30, 2002, a total of **41 disclosures** had been received.

To date, the reviews by the RCMP concerning the quality of the disclosures have been mixed; however, it is too early in the Initiative to effectively evaluate the usefulness, timeliness, and comprehensiveness of FINTRAC's disclosures. Each IPOC unit's response is tied to various factors, such as the number of FINTRAC disclosures it has received, its investigator's experience, each unit's current volume of work and its relationships with its partners and clients (banks, casinos etc), and its ability to have the required resources to do an effective initial assessment of the disclosure.

Managing/tracking data with respect to each disclosure has created a new pressure on the RCMP. There is a clear need for data to be kept in a common database that can be efficiently accessed and tracked in a timely and accurate manner. The RCMP Proceeds of Crime Branch is aware of this need and is presently addressing this concern.

RECOMMENDATION

It is recommended that the RCMP implement an efficient, coordinated, and compatible tracking system for inputting, maintaining, and retrieving FINTRAC disclosure data. This should be undertaken in a timely manner to ensure that disclosure data is available for the five-year evaluation.

Those IPOC units receiving MLI resources that had yet to receive disclosures indicated that their designated FTEs undertook a variety of initiative-related activities throughout the implementation process, including:

The development of operational examples of money laundering involving currency exchange agents, domestic electronic funds transfers, electronic funds transfers and identification, mortgage and deposit brokers, real estate source of funds, suspicious transactions, white label ATMs, lawyers, credits cards, and others.
Delivery of over 75 information/training presentations about the Initiative to public and private sector groups.
Investigating voluntary leads about money laundering from various reporting entities including: casinos, credit unions, and banks.

Given that FINTRAC disclosures have just begun, any outcomes from related investigations by the RCMP are premature. However, throughout the Initiative, the IPOC units have continued in their ongoing money laundering investigation role.

The CCRA – Customs

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In support of Part Two of the PCMLTFA, CCRA-Customs have been tasked with the responsibility to implement a border control regime to facilitate the reporting of large physical cross-border movements of currency and monetary instruments to Customs officers, and to ensure those Customs officers are trained and equipped to detect unreported amounts, ultimately to assist in the detection and deterrence of money laundering. So far, the designated Initiative resources out of the \$15.2 million allotted have been received and utilized for activities associated with the implementation of the MLI and most recently in response to the beginning series of disclosures. These resources include a total of 50 FTEs. Officials reported that 21 of these positions had been filled as of November 30, 2002 and the remaining resources were directed to Initiative training, educational, and operational activities.

An extensive training plan was developed. Trainers were identified. Course materials were developed and "train the trainer" sessions carried out with a total of 110 trainers and Subject Matter Experts (SME). The trainers then rolled out the training to 2,743 Customs officers across the country, while the remaining SMEs were distributed across the regions to provide assistance. A comprehensive reference manual has been developed in support of the training and the Customs intranet site is being was used to develop and host a training/information package available 24/7 and updated regularly.

Equipment has been ordered and, in most cases, delivered. A total of five currency dogs are to be trained with two already on duty and participating in an eighteen-month pilot study.

New currency and monetary instrument information pamphlets have been designed; existing brochures and forms amended; and indoor signage produced. These are intended to inform the public about the new border declaration requirements.

A total of three outbound currency detection teams are being staffed and located at each of Canada's three largest airports. A cross-border currency reporting system has been set

up and enforcement action will be captured in the Integrated Customs Enforcement Systems (ICES) computer system. At the same time, all declarations and other relevant traveler, courier, and currency information are collected by Customs and forwarded to FINTRAC.

> The CCRA - Taxation

Under the Treasury Board approval, a total of \$9.1 million in funds were allocated to the CCRA-Tax over the first five years of the Initiative. A total of 24 investigators have been hired, trained, and disbursed to various regional offices where they work under the *Special Enforcement Program* located within the Investigations Directorate. In preparation for the first disclosures, the decision was made to have designated investigators participate in the various ongoing cases and audits currently underway in the division. This was seen as a way to sharpen investigation skills and enhance the readiness of the group.

By November 30, 2002, a total of **three** disclosures have been directed to the CCRA-Tax investigators. One came directly from FINTRAC, and the remaining two were secondary referrals from the RCMP. The CCRA investigators indicated that the quality of these disclosures was very good and the information was of sufficient caliber that they could be acted upon. Tax officials did verify that they intend to use their Audit Information Management System (AIMS) to track all inputs and results in relation to compliance actions under the Initiative.

From a training perspective, staff members have made 10 external and numerous internal presentations on the legislation and the role of the CCRA -Tax. It was reported that staff had attended 3 international meetings and undertaken a minimum of 5 consultations with stakeholders. In addition, officials have prepared a formal working paper on money laundering and typologies, plus a series of papers dealing with offshore banking, trusts, and incorporation in which money laundering has been discussed.

> Citizenship and Immigration Canada

The Department was allotted a total of \$2.5 million in resources over the term of the Initiative. These resources included funding for five FTEs. Department officials reported that the annual resources have been received and used to bolster the analytical expertise of its Organized Crime analysts. One leading analyst, currently occupying a full FTE, acts as project coordinator in the Organized Crime Division in the Intelligence Branch at CIC. That individual serves as a policy specialist in providing advice on money laundering to the field, the case analysts, and on the evaluation framework process.

The Department has used part of the remaining FTEs to increase its capacity for analysis and to identify cases dealing with money laundering. For example, CIC has recruited a research officer, who surveys open source articles in the international press to enhance the Division's money laundering expertise. As well, the remaining eight analysts in the Organized Crime division now spend a portion of their time on cases involving money

laundering. In total, CIC is currently spending approximately four FTEs of the five FTEs granted for the money laundering Initiative.

RECOMMENDATION

It is recommended that CIC further develop its existing action plan for the implementation of its Initiative responsibilities for the remaining two years.

Section 37(1)(b) of Canada's *Immigration and Refugee Protection Act* prohibits a noncitizen from entering or gaining admission to Canada if there are reasonable grounds to believe the person has engaged in money laundering activities. Neither FINTRAC nor CIC have commenced disclosures to each other; however, CIC's internal procedures for handling voluntary information to disclosures from FINTRAC and requests for guidance from the field are now being finalized. This includes training and dissemination of indicators.

Historically, CIC has already entered into and maintains many formal Memoranda of Understanding with the RCMP, CSIS, and CCRA. There exist numerous other interagency advisory working groups on a myriad of enforcement issues.

CIC currently utilizes two main reporting systems. In the overseas missions, the Computerized Assisted Immigration Program System (CAIPS) is used to document all persons who apply for a visa to come to Canada, whether as an immigrant or visitor. CAIPS has the ability to flag persons who are refused admission to Canada where money laundering activities are suspected. The Field Operation Support System (FOSS) is the domestic system that records and tracks all persons granted a visa at a port of entry or inland. It also has the capacity to flag persons refused admission where money laundering is suspected. Both these systems will be amalgamated into the new Global Case Management System by 2007-2008. It is important to note that an application may be refused under other sections of the IRPA (e.g. Health Impediment or Criminal Record) although suspicions of money laundering exist.

The Organized Crime Division in the Intelligence Branch also utilizes a Secure Tracking System (STS). This intelligence database flags cases where money laundering is suspected. The database gathers intelligence information on applicants, on associates and business partners, and also on money laundering activities. This will be of great assistance to analysts when determining the inadmissibility for reasons of money laundering. CIC is in the early stages of developing formal communication material as well as training material for staff on money laundering. CIC has provided information presentations to FINTRAC and most recently contributed to a money laundering training course that was held at the Canadian Police College. CIC has increased the profile of its updated mandate with regards to the MLI, internally and externally. Analysts from the Organized Crime Division have been attending several international conferences on financial crimes such as money laundering. In addition, there is information sharing on a daily basis with the RCMP and CSIS.

Department of Justice

In 1999-2000 and 2000-2001, Justice received compensation (\$300,000 and \$125,000 respectively) for the provision of legal advice to the FINTRAC Transition Team. This included advice from various groups within the Legal Operations Sector, such as Criminal Law Policy and the Federal Prosecution Service (FPS). In addition in 2000-2001, Justice received a further \$600,000 for development work related to the legislative development process, including input and advice on the drafting of regulations and further assistance to the Transition Team.

Beginning in 2001-2002 and beyond, the Federal Prosecution Service⁹ received \$1.2 million annually to cover nine FTEs. In terms of FPS allocations, the key regions receiving funding included Quebec (Montreal), Ontario (Toronto) and B.C. (Vancouver). As well, the Strategic Prosecution Policy Section at Headquarters (Ottawa) also received funding to provide a coordination function as well as input and advice on the drafting of regulations.

Throughout the first three years of the Initiative, FPS resources have been employed to: (a) support the development and implementation of the amended Act through the provision of training and legal advice; (b) continue to assist the Integrated Proceeds of Crime units in the ongoing border seizure and forfeiture files of suspicious monies; and (c) pursue ongoing proceeds of crime and money laundering prosecution activities. Since the amended Act has only been in force since February 2002 and the cross-border component came into force only on January 6, 2003, no prosecution cases have come to the FPS tied to the amended legislation. Despite that, there has been ongoing money laundering prosecutions associated with other Federal Acts.

Table 3 below shows various statistics related to the prosecution of money laundering files over the first three years of the MLI. These findings will also provide a baseline from which to make future comparisons at year five.

Table 3: In-house Money Laundering Files, Charges and Accused by Year¹⁰

YEAR	00/01	01/02	02/03
Active Files	35	48	56
Closed Files/To Be Closed	16	11	10
Number of Money Laundering Charges	167	196	242
Number of Accused (Charge based)	92	118	144

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⁹ These figures do not include resources identified for the provision of direct legal services provided to FINTRAC.

¹⁰ Information relates to <u>Table 3</u>: (a) As of December 2002; (b) The information does not include money laundering files and charges being processed by Departmental Agents; and (c) not all money laundering related charges and files are captured, particularly old Narcotic Control Act associated prosecutions.

4.1.6 A Challenge in Data Management

The Initiative activity is shown in the 'Partner Activity Development' matrix¹¹. It provides an overview of the activity, outputs, and some outcomes up to and including November 30, 2002. The activity, output, and outcome segments of the Initiative Logic Model¹² served as the template for the development of this matrix. All partners were asked to provide the information pertaining to their involvement in the various activities. Discussion of the information contained in this matrix has been woven throughout this report.

It is important to note at this time that the individual partners' processes for gathering this information are not overly efficient. Information needed to be tracked down and in some cases educated guesses were made. Fortunately, the information was usually available but not always in a structured format that lends itself to easy reporting. This raises a concern that needs to be addressed in anticipation of the data requirements of the five-year evaluation. Specifically, Initiative partners need to have the necessary mechanisms in place to *efficiently* capture the relevant data requirements identified in the Initiative Logic Model.

RECOMMENDATION

It is recommended that each partner undertakes, in a timely fashion, a review of their present data collection capabilities to ensure mechanisms are in place to efficiently capture the necessary information required for the year-five evaluation as identified in the Initiative Logic Model. These mechanisms will need to be designed to allow efficient data retrieval for subsequent analysis and reporting purposes.

4.2 Outcomes

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4.2.1 Key Outcomes

Both the literature review and interviews with experts and stakeholders undertaken as part of this evaluation *confirm that, overall, Canada's MLI is unfolding as it should.* The developed legislation has addressed all of the key elements designated for the currency and financial transaction-reporting regime as planned under the Initiative. Such elements as mandatory suspicious and prescribed transaction identification, reporting, and record keeping are present. Compliance requirements for all designated reporting entities have been put in place. A broad-based program for reporting currency and monetary instruments entering and leaving Canada has also been established. Furthermore, a central financial intelligence unit, FINTRAC, is now operational.

¹² Initiative Logic Model is found in the *separate* Appendices document, Section 2.0.

¹¹ Partner Activity Development is shown in the *separate* Appendices document, Section 3.0.

FINTRAC has developed the capability to receive reports electronically, which goes beyond the current practices for most FIUs. It operates at arm's length from law enforcement because of the Charter and privacy issues. At the same time, it has begun to make disclosures that are intended to enhance both ongoing and new investigations into money laundering.

Much of what was proposed in the original Initiative design is now in place, albeit after a longer implementation period than originally planned. During the review process it became evident that some anticipated immediate outcomes were starting to appear. However, it was still too early to draw any definitive conclusions about these outcomes based on the limited data available. The year-five study will be in a much better position to make those conclusions.

Nonetheless, the findings from this implementation review have contributed sufficiently that a number of conclusive statements can be made with respect to intended outcomes described at the beginning of this report.

1. To what extent have Initiative resource levels been received and allocated as intended?

From the data gathered, it is apparent that the designated resources were received and subsequently used for activities directly related to the initiative.

2. To what extent is the Initiative organized appropriately to meet its objectives?

Measures such as an appropriate legislative and regulatory regime to address financial transactions and the movement of currency across Canada's borders; the operationalization of FINTRAC; the fulfillment of international commitments; and appropriate safeguards to protect the privacy of persons have been put in place to help combat money laundering.

There is evidence that suggests the overall Initiative design will support the achievement of its objectives.

- ➤ Working linkages across Initiative partners are in place and initial feedback has shown that specific outputs (i.e., disclosures) for the most part are providing information that has merit and can potentially add to the investigation process.
- ➤ Over time, the information capacity of FINTRAC will increase substantially, thereby expanding its capacity to not only support but also generate money laundering investigations.

3. To what extent has the Initiative contributed to improved international and national liaison and cooperation with respect to money laundering?

- Attendance at international conferences and subject matter forums has contributed to the perception of Canada's commitment to combating money laundering worldwide.
- Recently, a member of the Department of Finance was appointed to chair

There is no doubt that the Initiative has contributed to improved liaison and cooperation to combat money laundering.

the FATF working group charged with revising the organization's *Forty Recommendations on Money Laundering*.

FINTRAC has been accepted as a member of the Egmont Group of Financial Intelligence Units.

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- ➤ The myriad of national consultations by various partners has also contributed to a broader cooperation across reporting entities and stakeholders.
- ➤ There is evidence of a willingness for greater cooperation between FINTRAC and Canada's police services as a result of the liaison efforts by FINTRAC regional office personnel.
- ➤ There is an expressed willingness across the Initiative's partners to continue to work together to achieve the common goals.

4. To what extent has the Initiative fulfilled Canada's international and national anti-money laundering commitments?

- ➤ The 2001-2002 FATF Self-Assessment Exercise reported that Canada was now fully compliant with 27 of the 28 key Recommendations and partly compliant with the remaining one.
- ➤ The establishment and implementation of FINTRAC has fulfilled the Prime Minister's 1998 G-8 meeting commitment to establish a financial intelligence unit.

The Initiative has made positive gains in operationalizing Canada's National and International commitments.

> FINTRAC is operational.

5. To what extent has the Initiative increased public awareness of money laundering and support for its efforts in combating it?

Information sharing with the public needs to be enhanced using traditional means.

- FINTRAC's website is demonstrating value to strategically address the agency's mandate.

- The data indicate that, while there is a fairly high public awareness of money laundering issues, there is not a great deal of awareness of the Initiative and, by extension, the record-keeping and reporting requirements placed on reporting entities. The findings point towards the need for more publicity/public information by initiative partners and reporting entities.
- FINTRAC's website is developing into a valuable resource to inform and educate reporting entities and other stakeholders.

6. To what extent has the Initiative contributed to increased understanding of and improved response to money laundering through strategic analysis?

- ➤ Various Initiative partners continue to contribute to various international typologies exercises.
- ➤ Too few disclosures have been made to allow for an analysis of their contribution in this area.
- ➤ Solicitor General Canada has contracted research on: (a)

It is too early to tell how the Initiative has contributed in these areas. knowledge about money laundering and (b) the development of indicators for assessing the impact and scope of money laundering.

7. To what extent have efforts to promote and monitor compliance with the PCMLTFA contributed to enhanced compliance and improved data for analysis?

Compliance monitoring is not yet fully underway, but initial efforts are enhancing the quality of reports as well as the impetus for reporting entities to be compliant.

- ➤ Since the Regulations are not yet fully in force, the direct monitoring of compliance is in place with the exception of on-site evaluations.
- ➤ The proposed Bill C-17 (*Public Safety Act*), if passed, will enhance FINTRAC's ability to have various regulatory bodies assist with the compliance monitoring process.
- FINTRAC is now starting to emphasize quality in addition to completeness of the reports filed by the reporting entities.
- ➤ Outreach efforts by FINTRAC liaison personnel have served to highlight the importance of compliance to reporting entities and this no doubt contributes to the subsequent quality of the data reported.
- FINTRAC's practice of *following-up* with each reporting entity when compliance issues have been identified will serve as a compliance check in some cases. For example, compliance issues have been identified with over 90 reporting entities and, in most cases, the issues were rectified after one contact.

4.2.2 International Commitments

In April 1990, the FATF issued a report outlining Forty Recommendations that form a framework for combating anti-money laundering at both a domestic and international level. They provide a set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, and international cooperation. Of the Forty Recommendations, 28 are considered key.

Canada's achievement of full compliance with 27 out of the 28 Key FATF Recommendations is a direct outcome of the MLI.

The regular FATF mutual evaluation and self-assessment *processes* focuses on the extent to which individual members have met the FATF ant-money laundering standards. In the FATF's 2001-2002 Annual Report, it was reported that Canada had achieved full compliance with 27 of the 28 Key Recommendations.

The following **Table 4** shows where Canada has progressed since the first series of Mutual Evaluations completed in 1999-2000. A full summary of Canada's progression towards compliance can be found in a separate *Appendices document, Section 5.0*

Table 4: FATF Recommendations Requiring Specific Action

FATF: 28 Recommendations Requiring Specific Action					
Analysis	Full Compliance with Recommendations	Partial Compliance with Recommendations	Non-Compliance with Recommendations		
Analysis of the 1999-2000 Self-Assessment Exercise	14	11	3		
Analysis of the 2000-2001 Self-Assessment Exercise	16	11	1		
Analysis of the 2001-2002 Self-Assessment Exercise	27	1	0		

With respect to other international commitments, the previously mentioned 'Partner Activity Development' matrix sets out what many of the partners have undertaken to enhance those relationships. Such efforts as the development by FINTRAC of MOUs with foreign FIUs; the membership in various international organizations by different partners; attendance across the partnership at international conferences and meetings; the appointment of a Finance official to chair the review of the FATF Forty Recommendations; and the ongoing efforts of the RCMP to support international policing efforts through training, shared intelligence, and joint investigations are all strong indicators that the MLI partnership intends to be heard at the international table and wherever possible lead by example.

4.2.3 Unintended Impacts

The evaluation has identified a number of challenges that have faced the Initiative's implementation process. In most cases, these have been successfully dealt with, however, one in particular deserves comment here.

The need to address privacy and Charter issues has restricted FINTRAC in its capacity to access the information and expertise found within various partners across the Initiative. Findings from the literature review and comments from international stakeholders stressed the value-added that comes from such sharing of information and experience. Not only does it enhance the capabilities of the organization but it also creates a trusted conduit through which organizations can communicate. If anything, this issue should prompt those concerned to look for an acceptable solution.

RECOMMENDATION

Within the confines of the legislation, viable and effective mechanisms for FINTRAC to access the information and expertise available from partner agencies should be identified and implemented.

5.0 Conclusions

Each partner's intended role appears to have evolved as planned. Implementation is proceeding with a strong indication that the overall Initiative design will support the achievement of its objectives. With disclosures just beginning, follow-up investigations, prosecutions, and adjudications have not taken place and will have to await the year-five evaluation results to determine the degree of progress that has ensued.

Working relationships were examined and, for the most part, were found to be supportive and focused on achieving common goals. At the same time, concerns were raised with respect to opportunities to share information and expertise between FINTRAC and the other Initiative agencies. Canada's Charter of Rights and Freedoms along with the *Privacy Act* have created an environment where FINTRAC must operate in an 'arm's length' relationship with its enforcement partners. To what extent this will impact on anticipated outcomes over the longer term is not yet clear and will have to await the results of the year-five assessment.

Despite the delays in implementation, a solid foundation for Initiative success has been laid to date. Some achievements are beginning to emerge, particularly with respect to international commitments and the degree to which FINTRAC has emerged as an organization capable of achieving its mandate. This bodes well for demonstrating success in the achievement of the Initiative's overall objectives in 2004-2005.