



**Resolutions adopted
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CANADIAN ASSOCIATION OF CHIEFS OF POLICE

*Safety and security for all Canadians through
innovative police leadership*

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EXAMINATION OF PRECURSOR CONTROL REGULATIONS

Submitted by the Drug Advisory Committee

- WHEREAS** methamphetamine has emerged as one of the most significant illicit drug threats in Canada with entrenched organized crime involvement in importation, production, and distribution, and;
- WHEREAS** organized crime groups circumnavigate existing precursor control regulations to facilitate illicit domestic methamphetamine production, and;
- WHEREAS** the existing *Controlled Drugs and Substances Act (CDSA)* and *Precursor Control Regulations* does not provide effective measures (e.g., scheduling and monitoring provisions) to comprehensively regulate and prohibit the importation, exportation, possession, and use of precursor chemicals for illicit purposes.
- THEREFORE BE IT RESOLVED** that the Canadian Association of Chiefs of Police urges the Government of Canada, specifically Public Safety Canada and Health Canada, in concert with CACP, to conduct a review of existing CDSA and associated regulations to identify gaps and potential amendments that will reduce methamphetamine manufacturing and thereby increase public safety .

EXAMINATION OF PRECURSOR CONTROL REGULATIONS

Background

Proposal recommending a review of existing precursor chemical regulations:

The main precursors used in clandestine laboratory operations to produce methamphetamine (e.g., ephedrine, pseudoephedrine, 1-phenyl-2-propanone) are controlled as Class A precursors under Schedule VI of the Controlled Drugs and Substances Act (CDSA), and also under the Precursor Control Regulations of the CDSA (PCR). As such, all importations and exportations are regulated and controlled by permits and licenses. Also, the Natural Health Product Regulations allow ephedrine to be available to anyone in Canada in the form of an 8-milligram tablet.

The PCR has not succeeded in staying ahead with the ever-changing trends in relation to the illicit synthetic drug production. Changes to the PCR are required in order to provide the necessary tools to law enforcement in their efforts to address illicit synthetic drug production in Canada, which plague several, if not at all provinces and territories.

There are two apparent challenges with existing regulations. First, these regulations do not include provisions to monitor who is using these chemicals and for what purpose. Once these chemicals arrive in Canada, there is no monitoring or reporting mechanism to detect and prevent diversion for illicit purposes. Second, the regulations do not allow for the prohibition of suspicious precursor chemicals entering the country. For instance, certain chemicals listed within regulations (e.g., NPP and propionyl chloride) have no industrial uses in Canada and should, and could, be prohibited.

Law Enforcement Considerations:

These loopholes have allowed Canadian organized crime (OC) groups to gain a solid foothold on methamphetamine production in Canada. Clandestine methamphetamine laboratory operations utilize different precursor chemicals (e.g., ephedrine or pseudoephedrine) that are not monitored once they arrive in Canada.

The PCR as we know it today, does little to prevent the diversion or limit importations of chemicals to Canada. With the ongoing domestic production of illicit drugs, the PCR needs to support the supply reduction pillar of the Controlled Drugs and Substances Strategy (CDSS).

The following are of importance:

- Ephedrine is loosely controlled by the PCR and requires tighter control in order to limit its importation and movement throughout the country which at present time fuels in excess of 80% of the illicit production of methamphetamine domestically.
- Iodine is not currently controlled; it is required for methamphetamine production and is imported in large volumes to Canada. The usage of iodine crystals in Canada, for legal purposes, is very limited and in much smaller quantities, mainly at the kilograms level, and those using it should be further regulated.
- The PCR regulates substances that have no industrial use in Canada such as NPP, 4-ANPP, APAAN and propionyl chloride (a precursor for fentanyl), yet their importation is allowed. These chemicals are commonly seized in illicit drug production facilities in Canada. These substances should be prohibited completely not allowing any access to Canada.

Proposal recommending a review of existing precursor chemical regulations:

- In order to better control and regulate the listed chemicals entering as well as their movement within Canada an “end-user statement” should be required as part of the PCR.
- Information is collected on the licensees and listed chemicals entering the country not just surrounding ephedrine, but all of the chemicals listed in schedule VI of the CDSA. The information needs to be collected and compiled in a robust and accessible data base which would be available to law enforcement to support investigations.
- Another issue of the licensing and permit system currently in place is that no security checks are conducted on the companies asking for a license, as such, once a license is obtained, a permit is then requested for an importation. Inspection of the licensees should be conducted when the company is asking for a license to determine legitimate business activities versus illicit.

Recommendations:

It is recommended to review the existing CDSA and associated regulations to identify potential policy gaps. The benefit of this policy review would be to further amend the CDSA and associated regulations in cooperation with Health Canada and Public Safety Canada to comprehensively regulate and prohibit the importation, exportation, possession and use of precursor chemicals for illicit purposes.

COSTS ASSOCIATED WITH CLANDESTINE LABORATORY REMOVAL

Submitted by the Drug Advisory Committee

- WHEREAS** law enforcement is obligated to collect and preserve evidence from clandestine drug laboratories, and;
- WHEREAS** significant resources can be required to safely dismantle clandestine drug laboratories to ensure public safety, and;
- WHEREAS** the burden of the initial dismantlement and disposal expenses are currently the responsibility of law enforcement, and;
- WHEREAS** the dismantlement and disposal expenses can be significant and are dependent on various factors (e.g., size of site, duration of operation, and geography).
- THEREFORE BE IT RESOLVED** that the Canadian Association of Chiefs of Police urges that the federal government provide the necessary funding to provinces, territories, and municipalities for tools and resource capacity to safely dismantle and dispose clandestine drug laboratories and those drugs produced consistent with its public safety and environmental mandate are readily available, and costs associated to the dismantling of clandestine labs are recovered.

COSTS ASSOCIATED WITH CLANDESTINE LABORATORY REMOVAL

Background

The Costs Associated with Remediation

Significant and coordinated police and emergency personnel resources are required to carry out the complex, meticulous and hazardous job of investigating and safely dismantling clandestine laboratories. On average, a small synthetic clandestine drug laboratory that yields less than one ounce per production cycle can require one full day to safely dismantle and requires in excess of 20 emergency services personnel.

An economic based laboratory (profit-driven) can produce upwards of five kilograms of illegal drugs per production cycle and requires on average three full days to dismantle. Due to the size of these toxic sites, emergency services personnel required for the duration of the cleanup can exceed 45 police/fire and ambulance staff.

Police ensure the scene is safe from immediate dangers when turned over to municipality, but in doing so incur costs associated to initial removal (waste haulage). The burden of the initial dismantle and cleanup/removal expenses are left for the investigating police service to bare. These costs can have a great impact on a smaller police services budget and can directly impact the ability for these police services to conduct vital public safety initiatives.

The cleanup/removal costs for the dismantling of a methamphetamine production laboratory or cleaning up a drug laboratory chemical waste dump site can vary depending on the size, the length of time that the illicit site has been in operation and geographical factors.

For a small synthetic clandestine laboratory the expenses that police services currently have to incur can range from \$2,000.00 to \$5,000.00.

For an economic based laboratory, the expenses that police services currently have to incur can range from \$20,000.00 to \$100,000.00.

The cost of cleaning up a drug laboratory chemical waste dump site can range from \$10,000.00 to \$25,000.00.

The production of one pound of methamphetamine produces about six pounds of toxic waste. This waste is usually disposed of through careless dumping resulting in environmental contamination and health hazards for the public. With the current process of ephedrine extraction involving 8mg tablets there is 11.5 kg of waste created to obtain 1 kg of ephedrine.

There have been several incidents of chemical waste and precursor chemicals found abandoned along roadside ditches. At some locations the area was littered with empty containers of iodine, acetone, isopropyl alcohol, caustic soda and ephedrine. There are significant public safety issues related to these dump sites due to the nature of the debris that is left exposed to humans and wildlife. Police services engage their local Ministry of Environment (MOE) in investigations when it appears there is evidence of chemical/toxic waste contaminating the environment.

There is a risk of toxic exposure, environmental damage, and chemical explosions associated to the public and first responders, including firefighters, police and other emergency services personnel who must respond to these scenes.

Due to the cost associated to the cleanup of a methamphetamine production laboratory or chemical waste site, some police services will be unable to afford the proper dismantle and cleanup of waste and contaminants. This will put police services in a position where they will be forced to conduct their investigations collecting only evidence and leaving the financial burden of the cleanup in the hands of the property owner. This option will pose public safety risks as police will no longer be able to supervise the cleanup of contaminants and ensure that proper disposal methods are utilized. If the responsibility is left with the municipality alone, they would not have the knowledge, skills, abilities or the equipment to deal with/manage a contaminated scene.

Police services and municipalities should not have to accept the costs for removal of waste from synthetic drug operations or chemical waste dump sites.

Recommending the development of a mechanism or regulation for cost recovery through provincial or federal legislation that would ensure consistent billing and responsibility of costs associated to mediation that would release the burden on police services and municipalities.

NATIONAL TRAUMA-INFORMED INTERVIEWS

Submitted by the Victims of Crime Committee

- WHEREAS** sexual assaults and other violent incidents are often experiences of trauma, which can have neurobiological impacts that affect the brain and nervous systems of victims, thereby increasing their vulnerability and difficulty in disclosing such incidents to those working in the criminal justice system, and;
- WHEREAS** research, including a Justice Canada report titled *The Impact of Trauma on Adult Sexual Assault Victims*¹, continues to show standard interview practices can be counter productive when dealing with traumatized victims, and;
- WHEREAS** police interviews have a significant impact on the outcome of investigations, trauma-informed interview practices, as described in the Justice Canada report, are foundational components of effective trauma-informed investigations which may increase reporting, improve evidence gathering and better serve all participants in any potential trial, and;
- WHEREAS** there is a need to have trauma-informed interview training across jurisdictions and throughout police services in order to ensure consistent and effective responses to victims of sexual assault and other traumatic incidents.
- THEREFORE BE IT RESOLVED** that the Canadian Association of Chiefs of Police encourage Federal-Provincial-Territorial (FPT) partners to collaborate with Public Safety Canada to fund, develop and implement a national trauma-informed interview training program for all police agencies and their training facilities.

¹ https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf

NATIONAL TRAUMA-INFORMED INTERVIEWS

Background

The way police interact with victims of traumatic incidents, like sexual assaults, from the initial response to the conclusion of investigations, can often present a number of challenges. With the best of intentions, police investigators have used processes and techniques that we now know can be counter-productive. The awareness of the impact trauma may have on a victim and utilizing trauma-informed practices that are based on scientific evidence, can aid victims' through the investigative process and improve investigation outcomes. The implementation of trauma-informed processes is a fundamental shift in the way police respond to victims of violent crime.

In 2017 and 2018, attention was brought to the low percentage of sexual assaults reported to the police and the high percentage of those reported incidents being recorded as unfounded. The *2014 General Social Survey*² identified that only 5% of sexual assaults were reported to police. Of those, the Canadian Centre for Justice Statistics reported a disproportionate number of investigations were concluded as unfounded. In an article published by the Globe and Mail in early 2017³, a survey of police agencies about unfounded sexual assaults and trauma-informed practices showed that trauma-informed investigative practices were not consistently used across the country.

The Canadian Association of Chiefs of Police (CACP) participated in exploring this and, after analysis, identified coding and investigative processes as influencing factors. A three-pillared approach was developed: the Police Information and Statistics Committee (POLIS) implemented coding changes; the Crime Prevention, Community Safety and Well-Being Committee (CPCSWB) developed a sexual assault response model for reviewing incidents recorded as unfounded; the Victims of Crime Committee (VOCC) explored best practices in the investigation of sexual assaults and other traumatic incidents. These pillars frame the CACP's strategic focus on improving responses to victims and survivors of sexual assaults and other traumatic incidents.

In its exploration of best practices, the VOCC canvassed police services across the country. A number of agencies indicated they were utilizing trauma-informed processes, while others had not yet adopted this practice. Simultaneously, a report commissioned by Justice Canada was released. *The Impact of Trauma on Adult Sexual Assault Victims*, authored by Dr. Lori Haskell and Dr. Melanie Randall, defines a traumatic event as "one in which a person experiences something that is frightening, and overwhelming, and that entails a loss of control" (p. 12). The researchers' meta-analysis identifies the neurobiological impact of trauma on the brain, its effect on memory and recall, and its influence on behaviours. Familiarity with, and training in, these trauma-informed responses and interviews is necessary for all officers involved to ensure not only the best outcomes for victims and survivors, but also to ensure the best available evidence is gathered.

The researchers emphasize the importance of all officers receiving this training from the initial police first responder through an in-depth investigation to conclusion. Their evidence-based recommendations

² <https://www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14241-eng.htm#a10>

³ <https://www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/>

include the incorporation of interview practices that provide the best possible evidence without causing harm to the victim. A brief initial interview by the first responding officers to obtain only the minimal amount of required information, conducting subsequent interviews by skilled interviewers, ensuring the victim's safety, and connecting victims with appropriate support services highlight only a few of their recommendations.

In addition to the researchers' recommendations, the incorporation of trauma-informed processes into police investigations has been recommended many times. Principle 4 of the *National Framework for Collaborative Police Action on Intimate Partner Violence (IPV)*⁴ clearly articulates:

“Responses to IPV should acknowledge and mitigate the trauma impacts of IPV on victims, offenders, families, responders and communities.” (Resolution 01-2015)

The Canadian Association of Chiefs of Police strategic pillars⁵ include:

“We counsel and work with government agencies to advance legislation, regulations and policies that...facilitate effective investigations...and support a victim-centered and trauma-informed approach.

Trauma-informed investigation processes augment the CACP Crime Prevention, Community Safety and Well-Being Committee's *Sexual Violence Response Model* (Resolution 05-2018).

The Federal-Provincial-Territorial (FPT) Ministers unanimously approved the recommendations of the *Report of the Coordinating Committee of Senior Officials Working Group on Access to Justice for Adult Victims of Sexual Assault*⁶ on November 16, 2018, including recommendations 5 and 7 that:

“...consideration be given to making training on the neurobiology of trauma in the context of sexual assault available to criminal justice professionals, including...police...”, and

“...consideration be given to promoting the adoption of trauma-informed practice among criminal justice system professionals”.

The adoption of trauma-informed police practices is widely endorsed. A national model ensures consistency of treatment to meet expectations not only in the provision of services, but also in the evidentiary elements of court proceedings. This is consistent with the CACP's endorsement of national standards as a means of promoting common principles. Heidi Illingworth, the Federal Ombudsman for Victims of Crime supports this resolution:

As the Federal Ombudsman for Victims of Crime, I applaud the Canadian Association of Chiefs of Police for their leadership in drafting this resolution, which endorses the development and use of trauma-informed training and interview practices in sexual assault investigations. General Social Survey data shows that only 5% of sexual assaults are reported to the police while the Canadian Centre for Justice Statistics reports a disproportionately high number of investigations are concluded as unfounded in Canada. The Calls for Justice of the final report of the National Inquiry into Missing and

⁴ https://cacp.ca/index.html?asst_id=1200

⁵ <https://www.cacp.ca/mission.html>

⁶ <http://scics.ca/en/product-produit/reporting-investigating-and-prosecuting-sexual-assaults-committed-against-adults-challenges-and-promising-practices-in-enhancing-access-to-justice-for-victims/>

Murdered Indigenous Women and Girls also highlight the need for police training and education of all staff and officers so that they understand and implement culturally appropriate and trauma-informed practices. A national approach that incorporates the neurobiology of trauma in the investigation of sexual assaults and other traumatic incidents is welcomed and may help to lessen experiences of secondary victimization for survivors and help them to feel empowered to come forward and report sexual violence to police.

This resolution provides the framework for the FPT partners to operationalize these commitments and ensure funding is available for the development and implementation of consistent training across the country. The Canadian Police Knowledge Network development of an initial on-line training module is a first step in the incorporation of trauma-informed processes into initial police responses. The collaborative development and implementation of a , comprehensive training module, including trauma-informed interview training, engages the fundamental shift toward full implementation and incorporation of trauma-informed investigative practices in the nation's police services. Investigative outcomes, victims' wellbeing, and community safety are all served well.

**BENEFICIAL OWNERSHIP INFORMATION AVAILABLE TO POLICE SERVICES,
COMPETENT AUTHORITIES AND THE PUBLIC**

Submitted by the Organized Crime Committee

- WHEREAS** federal/provincial/territorial corporate registries do not require private corporations to disclose verified beneficial ownership information at the time of incorporation, and;
- WHEREAS** beneficial ownership information for corporations and trusts is required to be collected and verified by financial institutions and certain other entities to which the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and Regulations apply, and;
- WHEREAS** law enforcement must identify financial institutions that provide services to a corporation and follow judicial processes to obtain beneficial ownership information, and;
- WHEREAS** to advance money laundering and terrorist financing investigations law enforcement and competent authorities require timely access to accurate, verified beneficial ownership information to identify the misuse of corporations and trusts.
- THEREFORE BE IT RESOLVED** that the Canadian Association of Chiefs of Police urges the Government of Canada and provincial and territorial governments to take steps to create a centralized pan-Canadian beneficial ownership registry to provide law enforcement and competent authorities with readily accessible, accurate, and verified beneficial ownership information to prevent, detect, and deter financial crime and advance money laundering and/or terrorist financing investigations.

**BENEFICIAL OWNERSHIP INFORMATION AVAILABLE TO POLICE SERVICES,
COMPETENT AUTHORITIES AND THE PUBLIC**

Background

In every jurisdiction in Canada, corporations can be established with minimal requirements to disclose the identity of the individuals that control or profit from the corporation, i.e. the beneficial owners. Further, relevant authorities lack the tools and capacity to verify the beneficial ownership of a corporation. Accordingly, corporate structures are frequently used by individuals and organized crime groups to hide ownership of illicit proceeds, or assets intended to finance criminal or terrorist activities.

According to data from FINTRAC, over 70% of money laundering cases and more than 50% of terrorist financing cases involve legally established entities such as private corporations or trusts, where the establishment of the corporate structure enables Canadian incorporated legal entities (including shell corporations) to launder the proceeds of crime through a number of ways (e.g., layering proceeds of crime with legitimate money to mask the illicit source of funds).

Through recent amendments to the *Canada Business Corporations Act* (CBCA), the Government of Canada has taken steps to ensure that federally incorporated entities are required to maintain a register of beneficial ownership information. Further, it has proposed additional amendments to the CBCA to make corporate registers available to law enforcement and other authorities upon request. However, provincial and territorial governments have not yet formalised similar legislative amendments to increase transparency around beneficial ownership information.

For law enforcement and other competent authorities, timely access to accurate and up-to-date beneficial ownership information is vital for investigating crimes including, money laundering, market fraud, terrorist financing, tax evasion, and corruption, and effectively disrupting and dismantling organized crime networks. However, in Canada the existing tools available to law enforcement to access beneficial ownership information are neither timely nor effective. As a result, legal entities such as corporations and trusts continue to be at a high risk of being abused for money laundering purposes.

The United Kingdom and other members of the European Union have established beneficial ownership registries that are accessible to the public. These registries contain up-to-date and centralized access to this information for all corporations created in a jurisdiction, creating an effective tool for law enforcement investigations in those countries. Based on international best practices, amending federal and provincial legislation to create a centralized, pan-Canadian registry of beneficial ownership information for corporate structures was recommended in the Standing Committee on Finance's 2018 review of the PCMLTFA.

Access to beneficial ownership information is crucial to support money laundering, terrorist financing, and other financial crime investigations. Streamlined access to verified beneficial ownership information is key for law enforcement to dismantle organized crime networks and disrupt organized criminal activity.

RESOLUTION FOR COMBATTING ILLEGAL ONLINE DRUG SALES

Submitted by the Law Amendments Committee

- WHEREAS** illicit online sales of drugs have continued to persist even though there are legal avenues to purchase the drug, and;
- WHEREAS** illicit drugs do not undergo Health Canada approved cultivation and testing and may contain contaminants and dangerous substances exposing Canadians to public health risk, and;
- WHEREAS** illicit online drug sales may be made to minors as there is no age-check requirement for this activity, and;
- WHEREAS** illicit online drug sales contribute to the continued growth of organized crime and runs contrary to the government’s goals of reducing organized crime in the sale of drugs and to reduce access to drugs from youth.
- THEREFORE BE IT RESOLVED** that the Canadian Association of Chiefs of Police urge Public Safety Canada and Health Canada to protect Canadians by actively curtailing illicit online drug sales, through federal funding and proactive enforcement of illegal online sale of drugs

RESOLUTION FOR COMBATTING ILLEGAL ONLINE DRUG SALES

Background

There is a proliferation of companies who are advertising drugs for sale online, which not only include Cannabis, but also the sale of any number of illicit substances such as Cocaine, MDMA, and Psilocybin (Magic Mushrooms), to name but a few.

International and domestic drug traffickers and organized crime groups are utilizing web online sites to sell illicit drugs and counterfeit pharmaceuticals. These drugs may include highly addictive and dangerous opioids such as fentanyl, and Carfentanil; however, almost all illicit drugs and pharmaceuticals are advertised and available online.

Under the *Cannabis Act*, the federal government is responsible for establishing and maintaining a comprehensive and consistent national framework for regulating production, setting standards for health and safety, and establishing criminal prohibitions, specifically around legal online cannabis sales. The federal government is responsible for the following:

- Establishing restrictions on adult access to cannabis, including purchasing through an appropriate framework, sourcing from a well-regulated industry, or growing safely in limited amounts at home;
- Establishing serious criminal penalties for those operating outside the legal system, especially those who provide cannabis to youth;
- Creating rules to limit how cannabis or cannabis accessories can be promoted, packaged, labelled and displayed, to protect youth;
- Instituting a federal licensing regime for cannabis production that will set and enforce health and safety requirements and protect against the involvement of organized crime in the legal industry;
- Establishing industry-wide rules on the types of products that will be allowed for sale, standardized serving sizes and potency, the use of certain ingredients and good production practices, as well as the tracking of cannabis from seed to sale to prevent diversion to the illicit market;
- Creating minimum federal conditions that provincial and territorial legislation for distribution and retail sale would be required to meet, to ensure a reasonably consistent national framework to promote safety (e.g., adequate measures would need to be in place to prevent diversion, cannabis could not be sold to youth, and only legally produced cannabis could be sold);

One of the main goals in legalizing cannabis was to limit the involvement of organized crime in the cannabis business. The Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness stated when the Cannabis Act was introduced on April 13, 2017:

“The bills we propose today are aiming at putting drug dealers and organized crime out of the cannabis business. It will allow law enforcement to focus on other serious offences, including the distribution of cannabis to children and youth and driving under the influence of drugs... We will continue to work with our law enforcement, provincial and territorial partners and stakeholders to develop a consistent enforcement approach and to provide support in building capacity across the country.”

A recent search for “online cannabis” showed that the vast majority of sites were illegal. A closer look at the first page of these sites reflected a number of commonalities: they sold products that are not available legally (edibles etc.); all of them were operating openly; searching online for cocaine and other drugs one will find numerous online companies, that not only sell illegal cannabis products, but are openly selling other illegal drugs such as cocaine, MDMA and Psilocybin (Magic Mushroom).

They all advertise payment options using electronic bank transfers, credit cards or bitcoin to facilitate payment; they all used Canada Post, or Courier to deliver the product to the buyer.

There appears to be little rigour to an age verification process, or to ensure a legal supplier, or legal substance is being shipped by the companies that are facilitating payment or delivery of these products. In addition, public safety is compromised as these drugs are inserted into the Canadian Postal and Courier systems and many public mailboxes.

It is very apparent that these businesses are operating outside the law and are currently facilitating money laundering through these illegal online drug sales and the system is not prepared and has not been developed to do the necessary work to curtail or end the illegal on-line operations.

Online drug trafficking poses a significance challenge for law enforcement. Offshore domains, the use of cryptocurrencies and collaboration with foreign agencies are just some of the challenges posed by complex online illegal drug investigations. Resulting in many of these companies operating with impunity, selling and shipping illicit drugs throughout Canada.

With the finite number of enforcement resources, which are often dedicated to traditional drug trafficking and organized crime investigations, it is essential that additional federal funding, and enhanced regulatory frameworks, be available to combat the illegal online sale of drugs.

PREVENTION OF CRIMINAL EXPLOITATION OF CRYPTOCURRENCIES

Submitted by Vancouver Police Department

- WHEREAS** Cryptocurrencies are highly decentralized and can be exploited criminally to facilitate money laundering, terrorism financing, illicit transactions and fraud, which threatens the rule of law and the safety and security of Canadians, and;
- WHEREAS** The FATF is an intergovernmental organization formed by member nations, including Canada, which has developed a series of core recommendations (which are recognized as the international standard for combatting money laundering and terrorism financing) which were updated in June of 2019 as they relate to virtual assets (“VAs”) and virtual asset service providers (“VASPs”) (the “Guidance”⁷), and;
- WHEREAS** The coming into force of Bill C-31 in June 2019 represents the adoption of some, but not all, of the key recommendations of the FATF as they relate to VAs and VASPs.
- THEREFORE BE IT RESOLVED** that the Canadian Association of Chiefs of Police recommends that the Federal Government and FINTRAC fully adopt the recommendations of the FATF to establish regulatory processes and legal frameworks in Canada that are consistent with FATF partner nations in order to prevent the criminal exploitation of cryptocurrency.

⁷ <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets.html>

PREVENTION OF CRIMINAL EXPLOITATION OF CRYPTOCURRENCIES

Background

Governments, businesses and law enforcement agencies throughout the world are striving to balance financial innovation, including the adoption of cryptocurrency, with effective regulation to prevent criminal exploitation of that innovation.

Origins of Cryptocurrency

Created as a response to the 2008 financial crisis by Satoshi Nakamoto, the fundamentals of the original cryptocurrency, Bitcoin, centred on the principles of decentralization and pseudonymity. Nakamoto aimed to create a system where currency is not controlled by a central authority, such as a bank or government. Consequently, he developed the concept of the Blockchain, where technology allows transactions to take place between two parties, without interference from a governing or regulatory system.

Nakamoto's intention, to remove power from a central authority and return it to the individual, has been realized by the way in which Bitcoin and other cryptocurrencies have been adopted by society. However, the framework of the technology has also left avenues for exploitation by those with criminal motivations.

Cryptocurrency and Crime

While transactions recorded on the Blockchain are publicly available on the Internet the pseudonymous nature of cryptocurrencies does not identify the particular person or persons involved in the transactions which is a significant challenge for law enforcement. As there is no central governing authority regulating cryptocurrency transactions, significant value can be transferred without the knowledge or oversight of government authorities. This is in contrast to conventional financial practices where banks and other financial institutions must "know their customer", report transactions over \$10,000 and report suspicious transactions to a competent authority (FINTRAC). The perceived anonymity of cryptocurrency transactions has made it the payment method of choice for the sale of illicit goods and services on the Dark Web and an increasingly common facility for fraudsters to receive value from victims and avoid identification by law enforcement.

The most common serial fraud involving payment in cryptocurrency in Canada is the "CRA Scam". Fraudsters, often based overseas, call prospective victims posing as Canada Revenue Agency (CRA) officers or police. They inform the victim they have an arrest warrant due to unpaid taxes and they can avoid arrest if they immediately settle their outstanding balance. They use high-pressure tactics and direct victims to withdraw large amounts of cash and deposit it in a Bitcoin Automated Teller Machine (ATM) to a predefined Bitcoin address. Unfortunately, a high proportion of victims are from the most vulnerable sectors of society including recent immigrants and the elderly. Fraudsters will then target the same person repeatedly, who often transfers tens of thousands of dollars before they realize they are being scammed.

What is often overlooked in these scams is that despite Bitcoin being an unknown concept to many victims, fraudsters easily walk them through the deposit and transfer of the money. Adding to the victim's potential losses are unregulated fees by the ATM operators who charge commission fees of up to 20%. Therefore, if a victim loses \$50,000 in a scam, the ATM company would charge an additional \$10,000.

While the implementation of cryptocurrency regulations will not completely eliminate this type of fraud or any scam that uses Bitcoin or other cryptocurrencies, it will provide a significant barrier so that checks and verifications will have to be supplied before an account can be created at an ATM. This also provides regulators an opportunity to limit large cryptocurrency transfers so that the amount lost can be minimised.

In its recent Guidance the FATF stated “The rapid deployment, increasing functionality, growing adoption, and global, cross-border nature of VAs [Virtual Assets] therefore makes the urgent action by countries to mitigate the ML/TF [Money Laundering and Terrorist Financing] risks presented by VA activities and VASPs [Virtual Asset Service Providers] a key priority of the FATF.”

Canadian Regulations

The recent enactment of Bill C-31 satisfies some key recommendations of the FATF with respect to VAs and VASPs. These recommendations include requiring VASPs to register with FINTRAC, the implementation of “know your customer” (KYC) protocols, recording transaction details for transactions greater than \$1,000, and mandatory reporting of transactions over \$10,000 to FINTRAC.

This will allow governing authorities to know and scrutinize parties to a transaction as well as the nature of the transaction itself. Further, that information will be available to law enforcement with prior judicial authorization.

FATF Recommendations Not Addressed by Bill C-31

In its Guidance, the FATF made a number of recommendations that require further action by the Federal Government and/or FINTRAC:

1. Under Recommendation 2 of its core recommendations, the FATF requires national co-operation and co-ordination with respect to AML/CFT policies. The FATF recommends that “Countries should consider putting in place mechanisms, such as interagency working groups or task forces, to enable policymakers, regulators, supervisors, the financial intelligence unit, and **law enforcement authorities** to co-operate with one another and any other relevant competent authorities in order to develop and implement effective policies, regulations, and other measures to address the ML/TF risks associated with covered VA activities and VASPs.” (emphasis added)

2. To prevent criminals and organized crime from infiltrating the cryptocurrency ecosystem the FATF recommends “Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a VASP. Such measures should include requiring VASPs to seek authorities’ prior approval for substantive changes in shareholders, business operations, and structures.”
3. In keeping with its risk based approach the FATF recommends that “Countries also should consider the risk factors associated with the VA product, service, transaction, or delivery channel, including whether the activity involves pseudonymous or “anonymous transactions,” “non-face-to-face business relationships or transactions,” and/or “payment[s] received from unknown or un-associated third parties” (see INR. 10 15(c) as well as the examples of higher and lower risk indicators listed in paragraph 31 of this Guidance). The fact that nearly all VAs include one or more of these features or characteristics may result in countries determining that activities in this space are inherently higher risk, based on the very nature of VA products, services, transactions, or delivery mechanisms.”
 - a. Cryptocurrency Kiosks (sometimes referred to as cryptocurrency ATMs) should be considered to represent a higher risk of ML/TF as they facilitate anonymous, non-face-to-face transactions and can be used for money laundering as a placement/layering facility, a conduit for funneling smaller amounts of criminal proceeds (e.g. from street level drug dealers) for purposes of aggregation into single addresses/accounts and as an anonymous method for individuals to obtain cryptocurrency in order to participate in Dark Web market activity. As noted above they have also become the primary facility for fraudsters to receive payment in cryptocurrency from victims. For these reasons, these kiosks should be required to have mandatory KYC protocols and transaction recording requirements for all transactions including those under \$1,000.
4. To ensure that technology is not utilized to frustrate the objectives of its recommendations the FATF recommends that “In the context of VA and VASP activities, countries should ensure that VASPs licensed by or operating in their jurisdiction consider whether the VASP can manage and mitigate the risks of engaging in activities that involve the use of anonymity-enhancing technologies or mechanisms, including but not limited to Anonymity Enhanced Cryptocurrency (AEC) , mixers, tumblers, and other technologies that obfuscate the identity of the sender, recipient, holder or beneficial holder of a VA. If the VASP cannot manage the risks posed by engaging in such activities, then the VASP should not be permitted to engage in such activities.”

5. As an International body, the FATF mandates international cooperation: “Recognizing that effective regulation, supervision, and enforcement relating to the VASP sector requires a global approach and a level regulatory framework across jurisdictions, paragraph 8 of INR. 15 underscores the importance of the application of Recommendations 37 through 40 for mitigating the risks associated with VAs, covered VA activities, and VASPs. Countries should have in place the tools necessary to co-operate with one another, provide mutual legal assistance (Recommendation 37); help identify, freeze, seize, and confiscate the proceeds and instrumentalities of crime that may take the form of VAs as well as other traditional assets associated with VASP activities (Recommendation 38); and provide effective extradition assistance in the context of VA-related crimes or illicit actors who engage in illicit activities (Recommendation 39), among other international capabilities.”

Conclusion

The continuing rapid adoption and development of cryptocurrency has created a need for regulation to address and mitigate the risk that criminal exploitation poses to the rule of law and the security and safety of Canadians. Given the borderless, transnational nature of cryptocurrency transactions a global framework and response is required. The Financial Action Task Force has created that framework in the context of its existing AML/CFT standards, which allows member countries, such as Canada, to adopt its recommendations as a measured and internationally coordinated response.

It is recommended that the Federal Government and FINTRAC work with other nations and fully adopt the recommendations of the FATF to develop a consolidated regulatory process and establish legal frameworks to prevent the criminal exploitation of cryptocurrencies.