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Toronto, Ontario
May 11, 2018

The Honourable Wayne Easter
Chair
Standing Committee on Finance
House of Commons
Ottawa, ON K1A 0A6
Sent by email to: wayne.easter@parl.gc.ca
Sent by email to: FINA@parl.gc.ca

Re: Transparency International Canada's input into consultation regarding the Review of Canada's Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) Regime

Dear Honourable Mr. Wayne Easter:

Transparency International Canada (TI Canada) was a witness at the Standing Committee on Finance's review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) on March 27, 2018. On behalf of TI Canada, we thank you and the Committee members for the opportunity you provided for us to make recommendations to improve the Act.

At that meeting we expressed several concerns with the present regime and made some recommendations. Due to the limited time available, we advised the Committee that we would submit to you and the Committee members a more complete assessment of what we believe needs to be done to improve Canada's AML/ATF regime.

We attach, in annex, our submission containing our recommendations. TI Canada recognizes the important work of all the regime partners, including the critical work of reporting entities, in combating money laundering and terrorist financing. We stress however that Canada needs to do much more not only to keep up with international standards that were set in 2012 by the Financial Action Task Force (FATF) and meet the G20 commitments on beneficial ownership, but also to implement the forward-looking best practices of like-minded jurisdictions, such as the United Kingdom and the European Union.

We believe that Canada's reputation as a "snow washing" jurisdiction and as the location of the "Vancouver Model" for laundering money is symptomatic of our governments' (federal, provincial and territorial) lack of resolve and leadership to fundamentally address the problem of money laundering and terrorist financing (ML/TF), corruption, tax evasion and other financial crimes. Canada's track record since being a founding member of the FATF has shown it to be reactive and prodded into action only in times of crises or international criticism, resulting in the perception of being a laggard in addressing ML/TF.

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It is our hope that the recommendations that we put forward will be accepted and implemented before the next legislatively mandated review of the PCMLTFA.

We would be happy to meet in person to discuss our recommendations or provide you with additional information to assist in improving the AML/ATF regime in Canada.

Kind regards,

Denis Meunier
Senior Advisor – Anti-Money Laundering /Beneficial Ownership
Transparency International Canada

Alesia Nahirny
Executive Director
Transparency International Canada

c.c. David Gagnon
Clerk of the Committee

Attach (1)

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Transparency International Canada's recommendations into the review Of Canada's Anti-Money Laundering and Anti-Financing Terrorism (AML/ATF) Regime

Canada's AML/ATF regime must be more comprehensive, coordinated and transparent

Canada's approach to combating money laundering and terrorist financing is not as comprehensive, coordinated and transparent as it should be. The consultation paper describes three pillars of the AML/ATF regime as i) policy and coordination, ii) prevention and detection and iii) disruption. TI Canada sees opportunities to enhance the three pillars through improved comprehensiveness, coordination and transparency of the regime.

Canada's AML/ATF regime should:

- As a minimum, urgently address the commitments it made on Beneficial Ownership Principles at the November 2014 G20 Summit [1];

- Not be complacent to only meet the 2012 Financial Action Task Force (FATF) standards and G20 commitments but strategically look ahead to the progressive approach taken by like-minded jurisdictions such as the United Kingdom and the European Union in addressing Money Laundering and Terrorist Financing (ML/TF). It must do so by expanding the reach of the regime to include a meaningful reform of corporate registries across federal, provincial and territorial jurisdictions to implement a centralised publicly accessible beneficial ownership information registry;

- Extend its reach by working collaboratively with the provinces and territories and within the federal government to:
    - Make amendments to all provincial/territorial business corporation acts to eliminate bearer instruments[2]; and implement a centralised publicly accessible registry of beneficial ownership;
    - Require corporate registrars to report suspicious activities to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) within the current 30-day timeframe;
    - Create a national registry of trusts and provide public access to it (for business trusts);

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[1] https://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Documents/G20High-LevelPrinciplesOnBeneficialOwnershipTransparency.pdf

[2] An "Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act" was assented to on May 1, 2018. That Act now prohibits the issuance of bearer shares and warrants for federally registered corporations.

- Ensure all provincial and territorial business corporation acts and land registry acts create publicly accessible beneficial ownership registries, such as the B.C. government has announced in its 2018 Budget;
- Require Statistics Canada to collect and report on beneficial ownership information for corporations, trusts and land ownership; and through the Canadian Centre for Justice statistics collect, analyse and report on ML/TF investigations, convictions and outcomes;
- Require provincial and federal Crown corporations (e.g. Export Development Canada, Canadian Commercial Corporation)[3], and federal crown corporation operatives who engage in loans or issuance of financial guarantees and receive repayments from customers to conduct due diligence on all customers and transactions before loans or guarantees are issued, including the identification and verification of the identity of beneficial owners;
- Require all federal, provincial and territorial laws that regulate public procurement to make mandatory a due diligence identification and verification of the identity of the ultimate beneficial owners of contractors and suppliers before the issuance of public contracts. This would ensure that taxpayer money is not being allocated to criminal enterprises or individuals associated with organized criminal activity;
- Require federal, provincial and territorial prosecution services to create a database that is publicly accessible on the number of ML/TF cases referred to them, the charges laid, the number of prosecutions, the rationale for proceeding or not with prosecutions, and outcomes of ML/TF cases brought before the courts. This will assist the public in understanding why there are so few prosecutions of ML/TF and will also help prosecutors in developing sentencing guidelines; and
- Enact or tighten provincial and territorial regulations and enforcement on Money Services Businesses (MSB), Automated Teller Machines (ATM) and cheque cashing activities (e.g., see Québec's example)[4];
- Extend the AML/ATF obligations to non-federally registered mortgage lenders, and other actors that may be considered a risk to the AML/ATF regime, such as high value goods dealers (e.g. vehicles, art); and
- Provide regulations and guidance on preventing ML/TF using cryptocurrency.

Reduce legislative and regulatory gaps

TI Canada strongly supports the reduction of legislative and regulatory gaps as described in the consultation paper. Our recommendations on the following sub-topics follow.

Corporate Transparency

TI Canada recommends:

[3] https://www.theglobeandmail.com/news/world/canada-export-agency-knew-of-allegations-against-gupta-family-when-it-approved-loan-lawyer-says/article38264071/
[4] https://lautorite.qc.ca/en/other-amf-mandates/msb-money-services-businesses/

- One-stop shop, no cost publicly accessible beneficial ownership registry in an open data format. The Government of Canada should work with the provinces and territories to establish a central registry of all companies and trusts in Canada, and their beneficial owners. The registry should be available at no cost to the public with maximum searchability functions and in compliance with open data standards. All beneficial owners of a corporation or trust should be assigned a unique identifier that is displayed publicly. Corporate directors and trustees should be responsible for submitting beneficial ownership information and keeping it accurate and up to date. Any corporation (domestic or foreign) doing business in Canada should be registered with full disclosure of its beneficial ownership. Criminal sanctions should be attached to false declarations of beneficial ownership of corporations, sole proprietors, partnerships and trusts. These actions would improve the protection of the financial system and Canadian markets, and the facilitation of investigations and prosecution of money launderers.

To that end the corporate registration system in Canada should be designed taking into consideration the following characteristics:

- Consistent definition. There should be a consistent definition of beneficial ownership across Canadian jurisdictions compatible with international standards to ensure maximum international exchange and commonality;

- Official government-approved identification of beneficial ownership information. Corporations should be required to submit a contact form and official photo identification (government issued as specified in the regulations to the Act) for each director, officer and beneficial owner upon incorporation and at the time of any change of control/ownership. This personal data should be kept securely by the applicable corporate registry and shared with the authorities when required;

- Prompt updates. To ensure up-to-date information in the registry, all businesses, including partnerships, corporations and other entities, should be required to collect, maintain and promptly update beneficial ownership information at their place of business, and provide this information to registry authorities within 15 days pursuant to rules elaborated for a beneficial ownership registry, and upon request. Failure to do so would be subject to an administrative penalty or criminal sanction;

- Complex structures must be explained. Where ownership interests in corporations meet a percentage threshold, detailed information on all related entities and arrangements, should be required to be included in the filings of each and when changes occur. Businesses should be required to file an organizational chart to make clear how complex interrelationships exist between all related entities;

- One-stop shop. Ideally, a centralised business registry that pools all information collected by the federal, provincial and territorial corporate registry databases would create a one-stop resource for financial institutions, designated non-financial businesses and professions (DNFBP), contractors, potential creditors as well as the public to easily find beneficial ownership information about any business in Canada. It would reduce delays in law enforcement investigations as well as the compliance burden on the private sector particularly reporting

entities covered under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its associated regulations;

- Independent, appropriately resourced and active roles for registrars. The functions and powers of federal, provincial and territorial corporate registrars should ensure that they can play an effective role in the AML/ATF regime. They should have powers to independently compel and verify the information filed by legal entities, including the identities of directors and shareholders, enquire into the business, enter premises, and impose dissuasive penalties and other sanctions to non-compliant persons and entities. Registrars should also have a requirement to report suspicious activities to FINTRAC.

- Status of nominees must be identified. Nominee directors, agents and shareholders should be identified as such in corporate filings. They should be required to name the natural person on whose behalf they are acting, disclose and meet all required beneficial ownership information requirements (including timelines for changes and updates of beneficial ownership information), at the risk of criminal sanctions for false declarations.

- Information to be disclosed publicly. Companies and business trusts should be required to disclose the full name, nationality(ies), country of principal residence (determined as the country of tax residency), correspondence/service address of each beneficial owner, year and date of birth and a unique national identifier number issued by the registry.

- Dissuasive and proportionate sanctions. The federal, provincial and territorial governments should establish and apply dissuasive and proportionate sanctions for non-compliance with beneficial ownership disclosure obligations. Those sanctions should include both criminal and civil penalties and should be applied to ensure that beneficial ownership information is truthful, accurate and filed in a timely manner. Reporting obligations, and sanctions for noncompliance, should focus on those in control of legal entities and arrangements (i.e. directors and trustees) as well as beneficial owners themselves.

- Eliminating bearer instruments. While the Government of Canada has eliminated bearer instruments on May 1, 2018 in the Canada Business Corporations Act, bearer instruments are still allowed in some territories and provinces. In all jurisdictions, existing bearer shares and warrants should be converted to registered instruments.

- Create a registry of trusts. The Government of Canada should set up, in collaboration with the territories and provinces, a central registry of business trusts that identifies beneficiaries, settlors and trustees. This information should be made available to the public, after appropriate measures are taken to protect personal data. At a minimum, a publicly accessible registry of trusts should identify the full names, month and year of birth, citizenship(s), country of principal residence (as determined for tax purposes) and contact details such as addresses (correspondence/service) of settlors, trustees and beneficial owners.

- DNFBPs to collect beneficial ownership information. The PCMLTFA should be amended to require all reporting entities, including DNFBPs, such as real estate brokers, sales representatives and developers, who are now exempt from the obligation of identifying beneficial ownership to 1)

determine and verify the identity of the beneficial owner; 2) determine if their customers are politically exposed persons, heads of international organizations, or their family members or close associates of such persons; and 3) not open accounts or complete financial transactions until the beneficial owner has been identified and their identity verified with government-approved identification. The compliance burden to meet this requirement will be relieved with the implementation of a publicly accessible beneficial ownership registry. Until such a public beneficial ownership registry is made available to DNFBPs, the current PCMLTF Regulations on beneficial ownership, PEP and HIO identification be applied to DNFBPs.

- Transparency of beneficial ownership information for land registries. In the interest of increasing transparency, land title registries should be enhanced to include beneficial ownership information, not just registered owners, and should be freely open to the public without a paywall. In cases where a property is held through a nominee, this should be explicitly stated, and the identity of the beneficiary should be disclosed. No property deal should be allowed to proceed without that disclosure. All purchasers of real estate should be required to file a report with a designated body or repository that includes an affidavit certifying beneficial ownership and source of wealth/source of funds; and all sellers of real estate should be required to file a report with a designated body or repository that includes an affidavit certifying all changes in beneficial ownership since they first obtained title.

- Requirements for real estate transactions. The Government of Canada should amend the PCMLTFA and associated regulations to make it mandatory for real estate brokers, representatives, developers and lenders to identify beneficial ownership before conducting transactions. A publicly accessible beneficial ownership registry will reduce the compliance burden on this sector and all other DNFBPs.

- Include real estate re-developers and promoters of existing real estate into the AML/ATF regime. Expensive commercial re-development of existing real estate property is as subject to money laundering potential as are the subjects of the current legislation. The current legislation does not address purchases of existing commercial or residential buildings, without a realtor being involved, as a trigger to be covered under the PCMLTFA. While real estate lawyers or Quebec notaries could be involved in the transaction, they are not covered under the legislation as per the 2015 Supreme court decision. However, redevelopers of existing buildings, should be covered to further minimize the risk of real estate being used for ML/TF purposes.

Bring the legal profession into the AML/ATF regime

TI Canada recommends:

- That the Federation of Law Societies of Canada, in collaboration with the federal Government, bring legal professionals into the AML/ATF regime in a constitutionally compliant way. The Solicitors Regulation Authority (SRA)[5] that regulates solicitors in England and Wales is a model that the Federation of Law Societies of Canada and the Government should explore. The SRA is an

[5] https://www.legislation.gov.uk/ukpga/2007/29/contents

independent body formed in January 2007 by the Legal Services Act 2007 to regulate solicitors. While formally an arm of the Law Society (of England and Wales), the SRA is a statutory creation and operationally independent of the Law Society.

- Periodic independent expert assessment of the legal profession's AML/ATF regime. Legal professionals are inherently highly vulnerable to money laundering. The FATF evaluation of Canada also highlighted the gap created by the absence of lawyers from the AML/ATF regime, and the lack of scope in their own regime. Without an independent expert assessment, the Government of Canada, provinces, territories and all Canadians have little information to be assured that the legal profession's rules and practices meet the current Canadian standards set by the Act (and associated regulations) or even the FATF standards in protecting against money laundering and terrorist financing. There are obvious current gaps between the various law societies' rules and the necessary policies and procedures to deal with today's challenges presented by ML/TF (e.g.no rules on implementation of a compliance regime, identification of politically exposed persons (PEP) or Heads of international Organizations (HIO)).Without an independent public accountability of the effectiveness of the implementation of the law societies' rules, and remedial action by law societies, Canada remains highly vulnerable to this sector's weaknesses for ML/TF.

- Declare financial transactions by lawyers as high-risk. Until legal professionals are brought under the Act in a constitutionally compliant way, or the law societies adopt PCMLTFA-equivalent obligations, consideration should be given to designate as high-risk all financial transactions by legal professionals when using trust accounts, until the reporting entity determines that the legal professional's use of the trust account is low risk for ML/TF purposes. When the legal professional is determined to be high risk, consideration should be given to require reporting entities to take enhanced due diligence measures on those transactions, including determining the beneficial owner, the source of funds and wealth. To minimize the compliance burden on reporting entities and legal professionals, legal professionals should consider requiring their clients to provide beneficial ownership information obtained through sworn affidavits, or an unsworn Declaration Under Penalty of Perjury, when transactions exceed a certain threshold (e.g. $100,000) with financial institutions (trust accounts). The burden should be on the legal professionals' clients to complete and submit a Declaration of Beneficial Ownership (DBO) to their legal professional, who in turn would provide that DBO to the reporting entity, upon request, to assist the reporting entity in assessing the risk of abuse of the trust account for ML/TF purposes. Guidance should be provided by FINTRAC to reporting entities on suspicious indicators and how to monitor the misuse of trust accounts. This would include indicators such as multiple transactions for the same client that collectively exceed the threshold within a short-period (structuring the transactions). Suspicious transactions should be reported to FINTRAC.

Expanding the scope of the PCMLTFA to High Risk Areas

TI Canada recommends:

- Strengthening the regime for DNFBPs by expanding the number of sectors covered under the Act. As per the Department of Finance's consultation paper, TI Canada supports exploring the inclusion of the other sectors in the regime including non-federally regulated mortgage lenders, other significant participants in digital currency, real estate transactions, white label Automated Teller Machine

(ATM) operators, company service providers, armoured cars, high-value goods dealers (e.g. fine art, luxury vehicles) and jewellery auction houses. However, the priority should be strengthening the current regime before expanding to other sectors.

Enhancing the Exchange of Information and Transparency

TI Canada recommends that:

- More transparency and feedback be provided publicly. Information recently obtained through a journalist's Access to Information request to FINTRAC, provided a more in-depth perspective of the 2016-17 compliance deficiencies of banks, casinos, money services businesses and the real estate brokers representatives and developers than previously made publicly available in FINTRAC's Annual Report. Such information should be made public routinely and transparently. As a result, FINTRAC should provide annual comprehensive feedback to the public on the results of reporting entities' efforts at prevention, detection and compliance, including the results of compliance examinations;

- Performance information be provided publicly on regime's results. The Government of Canada should remedy the lack of performance measurement about the regime's results and make it public annually. Examples follow:
  - Provide annual public accounts. There is no annual comprehensive public account of the regime's collective outputs, outcomes and resource/results from each of the regime's partners. Without that measurement information, a strategic direction and operational plan to address money laundering is absent for the partners, reporting entities, Parliamentarians and the public. Repeatedly, Parliamentarians have sought information on value for money of the regime or basic information on the number of money laundering investigations, referrals to provincial and federal prosecutors, convictions, forfeitures and sentences in Canada without clear answers.

    The Royal Canadian Mounted Police (RCMP) Ontario Provincial Police (OPP), the Sûreté du Québec (SQ) and large municipal police forces such as the Service de Police de la Ville de Montréal (SPVM), the Toronto Police Service (TPS), Vancouver Police Department (VPD), the Canada Revenue Agency (CRA), the Canada Border Services Agency (CBSA) among others, are all recipients of financial intelligence disclosures from the FINTRAC.

    Through a consolidated annual report, Parliamentarians, the private sector, and the public should have access to information such as:

    - What have these recipients done with the intelligence provided;
    - If the intelligence timely and useful;
    - The number of ML/TF investigations conducted;
    - If investigations or other enforcement actions have benefited from the intelligence disclosed;
    - The number of ML/TF investigations that have been abandoned and why;
    - The proportion of ML/TF investigations vs predicate crime investigations;

- The number of ML/TF investigations that have been referred to federal and provincial prosecutors;
- The number of ML investigations that have been thwarted because of lack of investigative resources or legal hurdles such as lack of beneficial ownership transparency;
- The number of referrals of ML/TF cases to prosecutors that have been declined by the prosecution services and why;
- The number of convictions for ML/TF;
- The sentences and court fines for ML/TF convictions;
- The number and value of court fines collected compared the court judgment;
- Were the fines collected;
- The assets seized and forfeited as a result of an ML conviction;
- Other benefits to the regime; and
- The effectiveness of civil forfeiture procedures compared to convictions and forfeitures under the *Criminal Code*.

There appears little information published that addresses these fundamental points. A national AML/ATF plan and performance report should be published annually, considering restrictions on confidentiality of operations and privacy of individuals.

Strengthening Intelligence Capacity and Enforcement

TI Canada recommends that:

- Enforcement efforts be broader, more inclusive and transparent by engaging the public in tackling the problem of money laundering. Law enforcement recognizes the value of public participation in the prevention and deterrence of crime. However, many questions should be answered such as: What is the public's level of awareness of ML/TF? What should it be? How can the public be effectively engaged in the fight against ML? What efforts have been made by the regime to make the public aware of the impacts of ML/TF, their role and the roles and responsibilities of reporting entities in the fight against ML/TF? Have those efforts been successful? [6] What efforts have been made to engage the public in recognizing signs of potential money laundering and reporting suspicions? Have these efforts been successful?

- Strengthening the detection of trade-based ML by designating the CBSA's system for recording imports and exports a database maintained for purposes related to law enforcement[7] and implementing an agreement between the CBSA and FINTRAC to access that specific CBSA database. The purpose would be to enhance FINTRAC's ability to collect and produce financial intelligence on potential trade-based ML/TF linked to importations and exportations.

[6] See Sub-section 40 (d) of the PCMLTFA http://laws-lois.justice.gc.ca/eng/acts/P-24.501/page-10.html#h-32
[7] See Sub-paragraph 54(1) (b)(ii) of the PCMLTFA http://laws-lois.justice.gc.ca/eng/acts/P-24.501/page-11.html?txthl=database#s-54

- The ML offence be made easier to prosecute. TI Canada understands from law enforcement agencies that ML charges by prosecutors are abandoned because of the complexity of linking ML to the predicate offence. The government should consider recklessness or gross negligence as a standard of proof. In addition, all client and customer disclosures of beneficial ownership should be made by way of declaration, that criminal sanctions (including forfeiture) be attached to false declarations, and that the declarations be accessible to FINTRAC, law enforcement officials and CRA.

- Better support be provided to law enforcement and prosecution services. Law enforcement, and federal and provincial prosecution services should be better resourced and supported to actively pursue money laundering investigations and prosecutions. This includes financial resources and ensuring organizational structures and staffing are sufficient to significantly enhance the number of ML investigations and prosecutions

Regarding how to address the ML/TF vulnerabilities at the border, and in support of more effective sharing of information and compliance burden reduction, TI Canada recommends that:

- Canada and the USA harmonize the collection of monetary instrument reporting at the border. The Government of Canada should consider a harmonized system of monetary instruments reporting between Canada and the USA at land borders and USA pre-clearance airport locations in Canada. Most Canadians are unaware of their responsibility at ports of exit to declare to the Canada Border Services Agency the exportation of any monetary instruments over $10,000. While the same requirement exists at the entry points into the USA, a common reporting system and exchange of information would facilitate the receipt of those reports without incumbrance to travelers and enhance intelligence gathering for FINTRAC and American authorities.

TI Canada supports:

- The introduction of geographic targeting orders. These orders may provide the flexibility to the federal government to establish, on a temporary basis, obligations targeting persons or entities in certain geographic locations that represent a higher risk for money laundering and terrorist financing.

TI Canada recommends:

- The implementation of unexplained wealth orders. The federal government should consider enacting legislation such as the UK's unexplained wealth orders (UWOs) introduced on January 31, 2018 under the Criminal Finances Act 2017. This investigative power would enable enforcement authorities (such as the RCMP and the CRA) to seize and dispose of any property suspected to be obtained using illicit wealth. UWOs extend the existing civil recovery schemes with no need for criminal proceedings to be initiated. If the Court issues a UWO, the respondent must provide a satisfactory response explaining how the property was lawfully obtained. Failure to comply subjects the property to a seize and dispose order.

- The implementation of interim measures. Pending the implementation of a national registry of beneficial ownership information, the government should consider imposing interim protective

measures by requiring that all realtors (in potentially high-risk geographic areas) obtain a declaration from each buyer and seller of real estate disclosing beneficial ownership, source of wealth/source of funds. The legislation would attach criminal sanctions (including forfeiture) to false declarations and would require that the declarations be held on file by realtors and be made available to FINTRAC upon request. This declaration-based system removes the problem of having to often unsuccessfully identify the beneficial owner of multiple trusts, corporations and foreign jurisdictions to obtain a conviction, and instead allows law enforcement officials to simply prove the person swore a false declaration.

Modernizing the Framework and its Supervision

Regarding administrative monetary penalties, TI Canada recommends:

- Public naming of violations. FINTRAC should publish, without exception, the names and addresses of all reporting entities that are assessed penalties under the PCMLTF Administrative Monetary Penalties Regulations indicating the violations alleged, the amount of the penalty assessed and the stage of appeal if applicable (e.g., FINTRAC administrative appeal process, Federal Court, etc.) and the final resolution.

- Penalties for non-compliance should exceed the cost of doing business. Administrative monetary penalties assessed on PCMLTFA (and associated regulations) violations are meant to encourage compliance. While that principle should be followed, the penalties assessed should always consider that for some entities, the risk of a penalty is calculated as a cost of doing business. Violations of the PCMLTFA and its associated regulations should be proportionate and sufficiently dissuasive to exceed the cost of risk-taking by non-compliers. Penalties must deter a catch-me-if-you-can behaviour by non-compliant reporting entities.

Regarding whistleblowing, TI Canada recommends:

- Multilingual access to whistleblowing information. Given Canada's diverse population, whistleblower programs in federal, provincial and territorial jurisdictions should be accessible in other than the two official languages of Canada, where there is a significant non-English and non-French speaking population. This will encourage a broader and diverse population to be aware of such programs and encourage whistleblowing.