Unexplained Wealth Orders (UWOs) and Anti-Money Laundering Initiatives: An Effective Tool or a Constitutional Quagmire?

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ABSTRACT

This paper provides a thorough and timely examination of British Columbia's groundbreaking use of unexplained wealth orders (UWOs) to combat the pervasive issue of money laundering in Canada. UWOs empower authorities to freeze the assets of individuals suspected of acquiring disproportionate wealth from illegitimate sources, thereby denying criminals their ill-gotten gains.

Importantly, the analysis examines UWOs not only as a novel civil forfeiture tool but also as a catalyst for a possible constitutional quagmire. This paper explores the constitutional implications of UWOs, critically assessing potential conflicts with *Charter* rights, including the presumption of innocence and protections against self-incrimination. While some analysts foresee constitutional challenges, it is argued that UWOs serve a pressing public interest by curbing financial crime, particularly in British Columbia, where money laundering is intricately linked to crime and other socio-economic misfortunes.

Therefore, it is argued that if UWOs are found to be in violation of the *Charter*, they will likely be saved by section 1. Ultimately, while UWOs

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represent a significant advancement in anti-money laundering efforts, they currently operate in a potential constitutional grey zone prone to *Charter* challenges. Moreover, UWOs are not a one-size-fits-all tool in the fight against money laundering. Broader anti-money laundering reforms and further interjurisdictional cooperation remain essential to addressing the systemic challenges posed by money laundering in Canada.

Keywords: *Money laundering; Financial Crime; Charter Rights; Unexplained Wealth Orders (UWOs); Compliance; Enforcement.*

I. INTRODUCTION

Despite its prevalence, the issue of money laundering in Canada is not well known. As Farrill, Leuprecht, and Simser observe, "financial crime in Canada is a mystery: although endemic, we know little about it."[1] Because of the inherently obscure and confusing nature of financial crime, public and academic discourse on money laundering often fails to capture the reality of the issue.[2] This is owed much to the complex financial nature of money laundering itself, along with a general unawareness of its intricate machinations. Although money laundering is just one form of financial crime in Canada, alongside terrorist financing, tax avoidance, and corruption, it is arguably one of the most problematic.[3]

Surprisingly, it is estimated that around $113 billion is laundered through Canada annually.[4] To counter these disturbing trends, provinces such as British Columbia are beginning to take more forceful action to remedy this situation. Recently, British Columbia amended its *Civil Forfeiture Act* in the spring of 2023 to include unexplained wealth orders

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1 Christian Leuprecht et al, "Introduction" in Christian Leuprecht & Jamie Ferrill, eds, *Dirty Money: Financial Crime in Canada* (Montreal & Kingston: McGill-Queen's University Press, 2023) 3 at 10.

2 *Ibid.*

3 *Ibid* at 6.

4 BNN Bloomberg, "An estimated $113 billion gets laundered in and through Canada annually: Christian Leuprecht on BNN Bloomberg" (23 May 2024), online (video): <www.youtube.com/watch?v=fER5Chx2SpQ> [perma.cc/D7BW-VD4U].

(UWOs).[5] Put simply, UWOs require individuals to "explain the origin of their wealth and property when it appears disproportionate to their known income or if there is suspicion of criminal activity."[6] Consequently, if an individual is unable to provide a satisfactory explanation, their assets may be seized.[7] At the time of writing, British Columbia is the only province in Canada that has utilized UWOs to target individuals suspected of acquiring wealth through laundered money.[8] As such, the scope of this analysis will primarily focus on the British Columbia context as it pertains to money laundering-related activities. While Manitoba has also introduced similar legislation in the form of the *Unexplained Wealth Act*, Manitoba has not yet utilized UWOs.[9] Significantly, British Columbia's use of UWOs constitutes the first utilization of such orders in Canadian legal history.[10] As such, the future legality of these orders remains uncertain. Some analysts have asserted that the use of UWOs infringes upon section 7 (life, liberty and security of the person), section 11(d) (presumption of innocence protection), and section 13 (self-incrimination protection) *Charter* rights of

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5 Frederic Plamondon et al, "Forfeiture of suspected illegal sums without criminal prosecution: Are Canadian citizens' fundamental rights in jeopardy?" (5 February 2025), online: <www.nortonrosefulbright.com/en/knowledge/publications/8b25e85e/forfeiture-of-suspected-illegal-sums-without-criminal-prosecution > [perma.cc/569H-CH4G]; See also *Civil Forfeiture Act*, RSBC 2024, c 1.

6 *Ibid*.

7 *Ibid*.

8 Gordon Hoekstra, "B.C. uses new law to demand house owners explain where they got the money to buy it" *Vancouver Sun* (last modified 1 December 2023), online: *Vancouver Sun* <vancouversun.com/business/bc-seeks-first-ever-order-to-explain-wealth> [perma.cc/AZD7-D38P].

9 *The Unexplained Wealth Act (Criminal Property Forfeiture Act and Corporations Act Amended)*, SM 2024, c 19. It should be noted that at the time of this paper's publication, the Provincial Justice Department of Manitoba has filed a notice of application in the Court of King's Bench seeking a UWO against a Sikh religious leader accused of stealing funds from a Sikh Temple. See Erik Pindera, "Case provides show time for unexplained wealth order" *Winnipeg Free Press* (23 June 2025), online: <www.winnipegfreepress.com/breakingnews/2025/06/23/case-provides-show-time-for-unexplained-wealth-order> [perma.cc/GX9V-GHCQ].

10 Hoekstra, *supra* note 8.

Canadians.[11] Therefore, it is very plausible that these UWOs will eventually reach the Supreme Court of Canada (SCC) as part of a *Charter* challenge over their constitutionality.[12]

This analysis will explore the extent to which UWOs are constitutional and the role they play in anti-money laundering initiatives in Canada. Specifically, this paper will argue that while it is possible that UWOs may be found to violate certain *Charter* rights, they should still be saved under section 1 of the *Charter*. This is because existing anti-money laundering provisions are arguably failing to prevent money laundering, and harsher remedies are therefore needed. While UWOs are a critical tool in the fight against money laundering, this paper also recognizes the need for further reform of Canada's existing financial crime regulatory framework. Although UWOs are an effective remedy, they are not, to put it simply, a 'one-size-fits-all' solution.[13]

This assessment will thus unfold as follows. To better situate the context of this paper, the first section will briefly examine the issue of money laundering in Canada, the ineffectiveness of existing anti-money laundering provisions, and the legal nature of UWOs. Other factors, such as the socio-economic implications of money laundering, will also be considered. In the second section, the constitutionality of UWOs will be explored. This section will examine the extent to which UWOs violate each of the aforementioned *Charter* rights (sections 7, 11, and 13) and then conclude with a section 1 reasonable limitations analysis.[14] Following this, the paper will analyze how UWOs fit into the broader anti-money laundering framework in Canada and whether this novel policy tool can serve as an effective means to counter money laundering going forward. Afterwards, the paper will conclude with some final considerations.

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11 See generally Rudy Mezzetta, "B.C. files four unexplained wealth orders so far" *Investment Executive* (15 October 2024), online: <www.investmentexecutive.com/newspaper_/comment-insight/b-c-files-four-unexplained-wealth-orders-so-far/> [perma.cc/WPE8-Q6MT] [Mezzetta, "B.C. files"]; See also *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24) [*Charter*].

12 Jessica Davies, "Unexplained Wealth Orders Come to Canada" (21 December 2023), online: <newsletter.insightthreatintel.com/p/unexplained-wealth-orders-come-to> [perma.cc/V8ZX-9L5V].

13 *Ibid.*

14 *Charter*, *supra* note 11.

II. The Nature and State of Money Laundering in Canada: Socio-Economic Implications, Lagging Preventions, and UWOs

Aptly put, German observes that "what makes Canada a desirable place to live, also makes it desirable for organized crime."[15] Canada possesses world-class living standards, strong banking and communications institutions, large seaports, airports and infrastructure to facilitate large-scale transportation, as well as diverse immigrant diasporas with various familial and national connections to foreign nations.[16]

As a First World nation, Canada features strong commercial institutions, extensive global trade, and an infrastructure system that facilitates the efficient transfer of goods, services, and people. Along with Canada's close proximity to the United States, it also contains a relatively "liberal criminal justice system, an aversion to long prison sentences, and a slow and cumbersome investigative and prosecutorial process."[17]

Consequently, in general terms, these environmental, economic, and social factors coalesce to make Canada not only a preferable place to live, but also an expedient place for organized crime.[18]

A. *The Anatomy of Money Laundering*

Section 462.31(1) of the *Criminal Code* describes money laundering as the transfer, possession, or delivery of any property or proceeds of any property that were obtained either directly or indirectly as a result of a designated offence.[19] A designated offence is any "offence that may be prosecuted as an indictable offence."[20] Money laundering requires "moving value acquired as the result of a crime" (a predicate offence such as drug

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15 Peter M German, "Washing Money in the Canadian Laundromat" in Christian Leuprecht & Jamie Ferrill, eds, *Dirty Money: Financial Crime in Canada* (Montreal & Kingston: McGill-Queen's University Press, 2023) 27 at 37.

16 *Ibid.*

17 *Ibid.*

18 *Ibid.*

19 Peter Dostal, "Money Laundering (Offence)" (last modified August 2021), online: <criminalnotebook.ca/index.php/Money_Laundering_(Offence)> [perma.cc/KP26-DJ6G].

20 *Criminal Code*, RSC 1985, c C-46, s 462.3(1)(a).

trafficking, for instance) "to a setting in which the criminals can use it freely; in other words, money laundering tries to break the connection between the crime and the use of the value it produced" (the assets).[21] Other common predicate offences associated with money laundering include tax evasion, investment, credit, and marketing fraud, corruption, drug trafficking, and tobacco smuggling. Essentially, money laundering usually entails the obfuscation of proceeds of crime. It is also important to note that certain devices or tools, such as counterfeit currency or underground financial services that facilitate illicit transactions, may be considered instruments of crime in connection with money laundering activities.[22]

Fundamentally, the crime of money laundering aims to disguise illegally obtained proceeds so that the perpetrator can 'clean' their dirty money.[23] Typically, criminals deposit their illicitly-gained assets into commercial and financial systems and conceal their origins by layering and integrating them with clean money and assets.[24] The key to successful money laundering is to obfuscate the financial trail of illicitly obtained assets so they can be used in a seemingly legitimate way without scrutiny from investigative authorities.

Money laundering, although involving complex processes, generally adheres to a three-stage model: (1) Placement — the act of depositing illicit assets into legitimate financial or commercial systems, such as placing funds in a bank or other institutions;;[25] (2) Layering — the obscuring of the origin of these assets through a series of transactions and financial instruments, which may include securities investments, offshore wire transfers to anonymous accounts, or rapid buying and selling of assets;[26] and (3) Integration — the process of returning these assets to the mainstream economy, allowing them to be utilized without fear of detection, effectively "repatriating or reintegrating" the illicit funds into seemingly legitimate channels.[27]

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21 Leuprecht et al, *supra* note 1 at 6.

22 See e.g. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [*Proceeds of Crime* Act].

23 German, *supra* note 15 at 31.

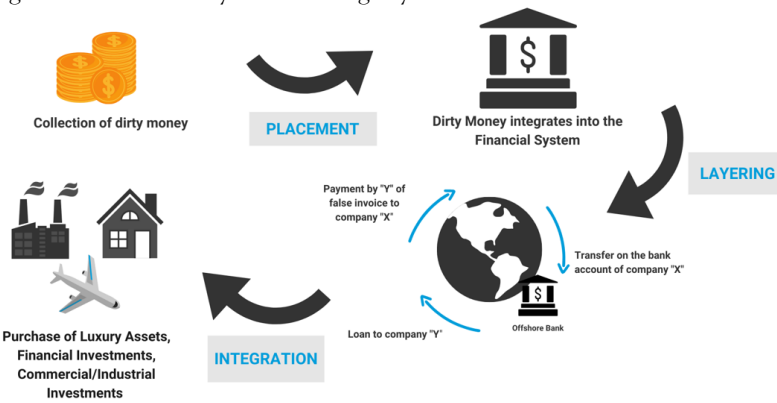
24 Leuprecht et al, *supra* note 1 at 7.

25 See generally *R v Trac*, 2013 ONCA 246 at para 84.

26 German, *supra* note 15 at 31-32.

27 *Ibid* at 34.

Figure 1: The Money Laundering Cycle[28]



It's important to note that UWOs aim to target money laundering at this aforementioned third stage. For example, once illicit assets are successfully laundered and used to purchase items such as houses or luxury vehicles (seemingly without detection), UWOs compel the purportedly legitimate owners of those assets to explain their origins.

In British Columbia, money laundering often follows a process dubbed the 'Vancouver Model.' Put simply, the Vancouver Model typically involves the illicit filtering of funds from overseas or domestic sources through informal value transfer systems into casinos and real estate.[29] The British Columbia Government's Cullen Commission Inquiry into Money Laundering in British Columbia describes informal value transfer systems as such:

> Informal value transfer systems allow people to move value from one location to another without transferring funds through the regulated financial system. When a client needs to transfer funds, the money is paid into a 'cash pool' in the first location and paid out of the cash pool in the second jurisdiction where the recipient needs the money…while informal value transfer systems have many legitimate uses, they also pose significant money laundering risks. They are 'off the books,' often lacking official records, and not formally part of the financial system. Some operators may be unwittingly involved in money laundering schemes; others are complicit. Criminal groups – particularly professional money launderers –

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28 United Nations Office on Drugs and Crime, "Money Laundering" (last accessed 23 October 2025), online: <www.unodc.org/unodc/en/money-laundering/overview.html> [perma.cc/K4LJ-M3PG].

29 Leuprecht et al, *supra* note 1 at 10.

> frequently control and make use of informal value transfer systems for money laundering.[30]

Informal value systems are similar to alternative remittance systems and underground banking transactions and have been commonly used throughout the Indian subcontinent and Asia for centuries.[31] Informal value systems are commonly referred to by their users (depending on the ethnic group) as 'hawala' (Middle East, Afghanistan, Pakistan), 'hundi' (India), 'fei ch'ien' (China), 'phoe kuan' (Thailand), and 'Black Market Peso Exchange' (South America).[32]

Figure 2: A Traditional Informal Value System Operation[33]

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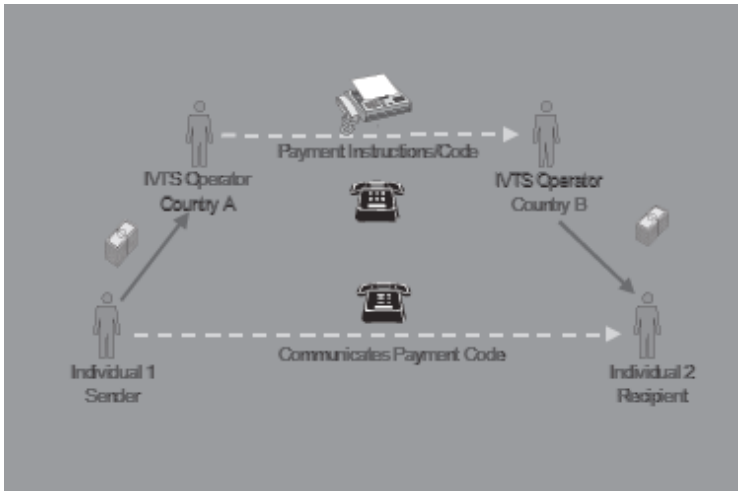
30 British Columbia, *Commission of Inquiry into Money Laundering in British Columbia – Final Report: Executive Summary* (Victoria: Library and Archives Canada, 2022) at 28, online (pdf): <cullencommission.ca/files/reports/CullenCommission-FinalReport-ExecutiveSummary.pdf> [perma.cc/A7YF-HML4] [*Executive Summary*].

31 United States Department of the Treasury: Financial Crimes Enforcement Network, *FinCEN Advisory* (United States of America Government: March 2003) online: <www.fincen.gov/resources/advisories/fincen-advisory-issue-33> [perma.cc/4HAE-P4E2].

32 *Ibid*. See generally *Executive Summary, supra* note 30 at 28-29.

33 *Ibid*.



In British Columbia, funds moved through informal value transfer systems are commonly funneled through casinos or into real estate via mortgages, loans, or trust accounts set up by lawyers. The British Columbia Government estimates that in 2018 alone, over $7 billion in dirty money was laundered in the province, much of it through real estate and luxury cars.[34] Around $5 billion is estimated to have been laundered into the real estate market, contributing to a rise in housing prices.[35] Interestingly, in 2016, $36.8 billion of "residential real estate changed hands in Vancouver's lower mainland," while in 2019, "11% of condos in Metro Vancouver were owned by non-resident investors."[36] These factors may suggest that dirty money is being effectively 'washed' clean.

UWOs ultimately target illicit assets at the later stages of the money laundering cycle. They directly target those suspected of possessing assets (real estate, luxury vehicles) acquired through illicit means, without the need to conduct criminal investigations. UWOs go directly to the 'end-result' of

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34 See "Billions in money laundering increased B.C. housing prices, expert panel finds" *BC Gov News* (9 May 2019), online: <news.gov.bc.ca/releases/2019FIN0051-000914> [perma.cc/6HHA-UNGS].

35 *Ibid.* To be clear however, one should not consider money laundering to be the primary cause of housing unaffordability in British Columbia. See *Executive Summary*, *supra* note 30 at 18.

36 Leuprecht et al, *supra* note 1 at 10.

the money laundering process by targeting "high-value assets in the hands of those involved in serious criminality." Put bluntly, the effectiveness of UWOs lies in their ability to make the fruits of money laundering unprofitable and tenuous. The legal operation of UWOs and their nuances are explored in greater detail below.

B. *The Socio-Economic Implications of Money Laundering in Canada*

In a broad sense, financial crime is often associated with authoritarianism, human rights violations, kleptocracy, and corrupt politicians and institutions.[37] As former Minister of Finance Bill Morneau noted, "these things [money laundering and terrorist financing] are a threat to the safety and security of Canadians."[38] Financial crime inflicts many social harms on a nation. It erodes trust in public and private institutions, thereby weakening the social fabric by undermining collective ethical standards, the rule of law, and democratic values.[39]

The proliferation of financial crime and corruption across a nation's economic sector undermines credibility and transparency, diminishes foreign direct investment, and promotes the creation of an underground economy. This underground economy "undermines taxation and customs control…diminishes the tax revenue collected by the government, widens the tax gap and undermines the government's capacity to provide welfare to its citizens."[40] The incidental connection between money laundering and real estate prices in British Columbia has already been mentioned. Moreover, the recent case of Toronto-Dominion Bank (TD Bank) being fined $3.09 billion in U.S. penalties for conspiracy to violate the *Bank Secrecy Act* and commit money laundering further exemplifies these dynamics.[41] TD Bank became the "largest bank in U.S. history" to plead guilty to conspiracy to commit money laundering by allowing "three money-

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37 *Ibid* at 7.

38 *Ibid*.

39 *Ibid* at 9.

40 *Ibid*.

41 Alexandra Jones, "TD Bank fined $3B US after pleading guilty in historic U.S. money-laundering case" *CBC News* (10 October 2024), online: <www.cbc.ca/news/business/td-bank-penalties-1.7348819> [perma.cc/BD8S-NRVZ].

laundering networks to transfer more than $670 million USD through TD Bank accounts over a six-year period."[42] Although pleading guilty in an American court, TD Bank serves thousands of Canadians. When large institutions that were previously trusted either engage in financial crime or fail to prevent it, public trust in these major institutions inevitably declines.

At a more micro level, thousands of Canadians die each year from illegal drug overdoses in many of Canada's largest cities. Then-Attorney General of British Columbia David Eby "drew a connection between overdose deaths and the illegal profits of drug enterprises" by highlighting how money laundering directly contributes to the proliferation of illicit street drugs.[43] The surge of dangerous street drugs has also heightened international political tensions with the United States, which perceives Canada as a weak partner in the fight against illicit drug trafficking. One should not forget that the United States Department of State designated Canada as a "major money laundering country" in 2019.[44] More recently, Canada has had to confront the rampant trafficking of fentanyl to avoid stringent American tariffs.[45]

Money laundering allows corruption to proliferate. Corruption can infect politicians, the public bureaucracy, and the judiciary. Corruption, left unchecked, leads to moral bankruptcy and the degeneration of effective governance. These practices can then spill over into other areas of life and affect services such as law enforcement, banking, and other critical public delivery services. Put succinctly, "if the bosses are stealing, the employees feel that they can steal with impunity."[46] Corruption emerges from unfettered organized crime,[47] which often utilizes money laundering to promote its ends. Thus, by stymieing money laundering, one may be able to

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42 *Ibid.*

43 German, *supra* note 15 at 38-39.

44 "U.S. deems Canada 'major money laundering country' as gangs exploit weak law enforcement" (2 April 2019), online: <globalnews.ca/news/5102137/us-canada-major-money-laundering-country/> [perma.cc/L6J7-9KZ8].

45 Holly Cabrera, "Ambassador says U.S. recognizes Canada's 'progress' in protecting border, tackling fentanyl" (19 February 2025), online: <www.cbc.ca/news/politics/ambassador-us-canada-tariff-border-progress-1.7463449> [perma.cc/AHG5-6QZP].

46 German, *supra* note 15 at 40.

47 *Ibid.*

'snuff out' the fuel that feeds devastating corruption. Concomitantly, this may also lead to a reduction in the violence that is perpetrated by organized crime groups, which often occurs in relation to drug trafficking and money laundering.[48]

Overall, it is evident that when money laundering is effectively tackled, public confidence in major private and public institutions strengthens, violent crime declines, and economic prosperity improves. Consequently, it becomes evident how severe the social, economic, and political impacts are when money laundering is left unopposed.

C. *Lagging Preventions*

To better grasp the potency and effectiveness of UWOs, it is best to first explain how they can fill gaps in the existing anti-money laundering regulatory regime. Due to Canada's federal political system, coordinated government action against money laundering is complicated by different layers of government (federal, provincial, and municipal intergovernmental asymmetries).[49] Critically, many scholars have posited that:

> Numerous investigations that ultimately went nowhere have revealed weak legislation and an under-resourced enforcement regime that is manifestly not fit for purpose. Chances of getting caught are almost nil, civil and criminal asset forfeiture is weak, and penalties are negligible. That is the gist from a panoply of recent public revelations, studies, commissions, and inquiries about financial crime in Canada.[50]

This sentiment is reflected in some pertinent statistics. From 2011 to 2015, thirty-five money laundering cases were launched, of which only twelve resulted in convictions. Law enforcement agencies and prosecutorial authorities are "seemingly unable to turn copious intelligence produced by the Financial Transactions and Reports analysis Centre of Canada (FINTRAC) into criminal intelligence that meets the requisite evidentiary threshold."[51] According to the Financial Action Task Force (FATF), a global body that develops and recommends best practices to prevent money

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48 Paul Northcott, "Just the Facts – Organized Crime" (26 April 2021), online: <rcmp.ca/en/gazette/just-facts-organized-crime> [perma.cc/L6UM-UBW4].

49 Leuprecht et al, *supra* note 1 at 9.

50 *Ibid.*

51 *Ibid* at 11.

laundering,[52] Canada has a low rate of money laundering convictions that requires stringent improvement.[53]

FATF further recommended that Canada review law enforcement agencies' anti-money laundering priorities to improve interagency cooperation.[54] Previously, from 1990 to 2012, the RCMP staffed Integrated Proceeds of Crime units across Canada that had a special mandate to investigate and target proceeds of crime cases and money laundering activities.[55] Unfortunately, these units were disbanded in 2012 due to federal budget cuts, leaving no law enforcement bodies with a special responsibility to target these types of financial crimes.[56] Not surprisingly, this caused many money laundering investigations to be neglected or ignored. The Cullen Commission recounts how, as a result of this, "important investigations in British Columbia, including the investigation into money laundering at B.C. casinos, were terminated."[57] Consequently, the "volume of suspicious cash entering B.C. casinos rose to unprecedented levels."[58]

The Financial Transactions and Reports Analysis Centre (FINTRAC), which is Canada's leading anti-money laundering financial intelligence unit, is also not without its issues. FATF has reported that FINTRAC lacks "rigorous information sharing practices,"[59] which prevents differing law enforcement agencies from obtaining pertinent information related to financial crime investigations. It should also be noted that FINTRAC has significant difficulty tracking and identifying informal value transfer systems, as these operators simply do not comply with regulatory regimes.[60] Moreover, FINTRAC is an administrative agency, not an enforcement

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52 Christian Leuprecht & Jamie Ferrill, "Taken to the Cleaners: How Canada Can Start to Fix Its Money-Laundering Problem," in Christian Leuprecht & Jamie Ferrill, eds, *Dirty Money: Financial Crime in Canada* (Montreal & Kingston: McGill-Queen's University Press, 2023) 65 at 67.

53 *Ibid* at 73.

54 *Ibid* at 72.

55 *Executive Summary*, *supra* note 30 at 5.

56 *Ibid* at 5-6.

57 *Ibid* at 6.

58 *Ibid*.

59 Leuprecht & Ferrill, *supra* note 52 at 73.

60 *Cullen Commission*, *supra* note 30 at 28-29.

agency; thus, it is up to law enforcement to dismantle these underground financial systems.

The prevention of money laundering also requires clear regulatory oversight and reporting obligations for those classes of people whose professions may place them in proximity to such practices. Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA)[61] requires professions and institutions such as banks, credit unions, money services businesses, and chartered professional accountants to report suspicious activities related to money laundering.[62] The PCMLTFA sets out specific measures to detect and deter money laundering and other terrorist financing activities, and to assist in the prosecution and investigation of such offences.[63] Those subject to the PCMLTFA are obligated to comply with its anti-money laundering measures and report suspicious transactions that may assist authorities in their investigations. However, gaps still remain.

Lawyers, due to constitutional protections for solicitor-client privilege, are not subject to the PCMLTFA's reporting requirements.[64] Moreover, many accountants are not regulated (only chartered professional accountants, who represent about one-third of the accounting profession, are regulated), while realtors and mortgage lenders may not always comply with FINTRAC or PCMLTFA reporting requirements.[65] Bank and credit union regulatory compliance also requires effort, money, and training to ensure that employees can recognize suspicious transactions. As such, these obligations are not always met.[66]

Furthermore, the true beneficial ownership (the person who ultimately owns or controls an entity) of real estate can also be obscure, as offenders often use "complex multilayered ownership and control structures to shield their identity."[67] Consequently, despite FINTRAC and the PCMLTFA

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61 See *Proceeds of Crime Act*, *supra* note 22.

62 *Executive Summary, supra* note 30 at 16-26.

63 See *Proceeds of Crime Act*, *supra* note 22.

64 *Executive Summary, supra* note 30 at 23. See also *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7.

65 *Executive Summary, supra* note 30 at 17-18.

66 *Ibid* at 18-19.

67 *Ibid* at 20.

imposing anti-money laundering requirements on professional entities and persons, money laundering still often slips through the cracks.

This brief, albeit broad, sketch of Canada's anti-money laundering regime has sought to identify some of the key problems that are currently impeding efforts to combat money laundering. How UWOs may be used to address some of these gaps will be examined in the following section.

D. *The Introduction of UWOs*

British Columbia's UWOs are a "type of court order that requires a person to explain how they acquired or currently maintain their assets."[68] UWOs can target the wealth of organized crime members either directly or indirectly, depending on whether their family members or friends are holding onto the assets in their own names.[69]

When there are reasonable grounds to suspect that an individual is involved in illegal activities such as money laundering, the Director of Civil Forfeiture will apply to a court for a UWO order.[70] To be granted a UWO, the Director of Civil Forfeiture must establish that an individual's assets are linked to criminality.[71] This requirement can be satisfied if the state can establish that the respondent: (1) is involved in unlawful activity; (2) holds property above $75,000 in value; (3) lacks sufficient legitimate income to acquire or maintain the specified property; (4) used money from their

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68 British Columbia, "Money laundering and civil forfeiture" (last modified 23 May 2025), online: <www2.gov.bc.ca/gov/content/justice/anti-money-laundering/quick-glance-government-actions/civil-forfeiture> [perma.cc/7WSZ-3K93] [BC, "Civil forfeiture"]. The UWO process in British Columbia is very similar to that of Manitoba's, although some minor discrepancies do exist.

69 *Ibid.*

70 The initial court application for a UWO will outline the 'factual basis' of the 'reasonable grounds' "on which the Director suspects that the respondent is directly or indirectly engaged in unlawful activities." See Jaspreet Sangha, *Civil Forfeiture, Unexplained Wealth Orders, and the Role of a Forensic Accountant* (University of Toronto: 7 June 2024) at 54-58. The author is also not currently aware of existing jurisprudence which has dealt with an in-depth description of the 'reasonable grounds to suspect' standard in the context of a UWO. This could be due to the emerging novelty of UWOs. However, it appears that the 'reasonable grounds to suspect' standard generally means a "reasonable possibility, rather than probability, of crime." See *R v Chehil*, 2013 SCC 49 at para 27; *R v Kang-Brown*, 2008 SCC 18 at para 75; and Mezzetta, "B.C. files", *supra* note 11.

71 Mezzetta, "B.C. files", *supra* note 11.

unlawful activity to acquire or maintain the specified property; or (5) used the property for unlawful purposes.[72] If the UWO is granted by a court, the impugned assets are frozen, and the respondent must "provide detailed evidence about their acquisition and maintenance of the property."[73] In other words, the respondent must, on a balance of probabilities, establish that they acquired the impugned assets legally and lawfully.[74] If they fail to do so, the impugned assets will be acquired by the state (through civil forfeiture proceedings).[75] Other Anglo-common law jurisdictions, such as the United Kingdom, Australia, and Ireland, have also adopted similar UWO policies.[76] Interestingly, the European Union has also directed its member states to pass their own UWO-related legislation.[77]

In relation to traditional civil and criminal asset forfeiture regimes in British Columbia, which are present throughout the rest of Canada, UWOs offer a much quicker and more effective way to tackle money laundering. The Cullin Commission concisely encapsulates this dynamic:

> Unfortunately, the number and value of unlawfully obtained assets seized through the asset forfeiture system in British Columbia is shockingly low. The BC Civil Forfeiture Office recovered approximately $13.4 million in 2019 and $10.7 million in 2018. The criminal asset forfeiture amounts were similarly unimpressive. These recoveries are not commensurate with the huge volume of illicit funds being laundered through the province each year.[78]

Consequently, these statistics convey that a new method of asset forfeiture, which directly targets money laundering without the hindrances of traditional civil or criminal investigations, is needed. This further substantiates the criticalness of UWOs.

Moreover, it is important to recall that UWOs are an amendment to British Columbia's *Civil Forfeiture Act*, which operates in the realm of civil

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72 See BC, "Civil forfeiture", *supra* note 68.

73 *Ibid.*

74 Mezzetta, "B.C. files", *supra* note 11.

75 Rudy Mezzetta, "Manitoba and B.C. target 'unexplained' wealth" (13 November 2023), online: <www.investmentexecutive.com/newspaper_/comment-insight/manitoba-and-b-c-target-unexplained-wealth/> [perma.cc/CWQ2-57RV] [Mezzetta, "Unexplained wealth"].

76 *Ibid.*

77 Mezzetta, "B.C. files", *supra* note 11.

78 *Executive Summary, supra* note 30 at 8.

law. Thus, UWOs cannot be used to impose any criminal penalties on an individual.[79] UWOs can only be "used in civil proceedings for the forfeiture of property."[80] To be clear, UWOs do not require a criminal conviction for the state to seize the impugned assets.[81] However, any information provided to the state by a person responding to a UWO cannot also be used in a criminal proceeding.[82] It is unlikely that any criminally relevant information that is given to the state would be sufficient to substantiate financial crime charges.[83] As well, a UWO can theoretically still be used if an acquittal is entered in relation to criminal charges or if a conviction of some sort is achieved under traditional civil and criminal law proceedings.

Figure 3: UWOs Compared to Similar Mechanisms[84]



Prima facie, the above text regarding the lack of criminal sanctions for UWOs may appear to be a negative factor. However, it is important to remember that the imposition of criminal penalties requires a criminal conviction and charges to be laid, all of which necessitate high evidentiary thresholds and extensive evidence gathering to form the basis of a criminal prosecution. Alternatively, UWOs operate under a much less restrictive evidentiary threshold and provide a much speedier avenue of enforcement

79 *Ibid* at 9-10.

80 *Ibid*.

81 See generally Davies, *supra* note 12.

82 See Mezzetta, "Unexplained wealth", *supra* note 75.

83 See generally Davies, *supra* note 12.

84 See US, Department of Justice, *Comparative Evaluation of Unexplained Wealth Orders* (Washington, DC: National Institute of Justice, 2011) at 10.

through the granting of a court order on the basis of reasonable grounds to suspect.[85]

To summarize the benefits of UWOs in relation to existing anti-money laundering endeavours, the following should be considered. UWOs effectively mitigate problems with interagency information sharing with FINTRAC or other external law enforcement agencies, as they provide a quick response to a problem without requiring stringent information sharing in most cases. Similarly, UWOs circumvent problems with information sharing amongst professional bodies and entities subject to PCMLTFA reporting requirements. They achieve this by using a much lower evidentiary threshold that negates the need to document and collect complex financial reports from various agencies and professional bodies.

Furthermore, asset forfeiture is "widely regarded as one of the most effective ways of stifling and disrupting organized crime groups and others involved in serious criminal activity."[86] UWOs make money laundering unprofitable by targeting its end results rather than the act of money laundering itself, which is much more difficult to do. The profit motive is then effectively removed from the crime, while any seized assets can no longer be "reinvested in the criminal enterprise" for drugs, weapons, or other items used to support organized crime.[87] As the Cullen Commission hypothesizes, "the seizure of unlawfully obtained assets will have a greater impact on organized crime groups than the arrest and prosecution of low-level members." A UWO allows the state to better determine if certain assets are indeed illicit proceeds of crime. By specifically targeting those assets, UWOs discourage criminals from laundering their money through British Columbia.[88]

Many of the criminal actors involved in sophisticated methods of money laundering are rational actors who are risk-averse. These actors are aware of the relevant regulatory regimes in whichever jurisdiction they choose to launder their money. In this way, UWOs can act as a forceful preventive deterrent: "faced with the prospect of having to prove the

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85 To reiterate, the reasonable grounds to suspect standard equates to a possibility rather than a probability of suspicion, of which is an evidentiary burden that is not difficult to meet if the suspect is indeed likely a money launderer. See note 70, *above*.

86 *Executive Summary*, *supra* note 30 at 8.

87 *Ibid*.

88 *Ibid* at 10.

provenance of a particular asset to avoid a civil forfeiture order, these offenders may choose to launder their proceeds and place their wealth in another jurisdiction."[89]

Ultimately, despite their utility and effectiveness, many scholars and analysts expect that a UWO will eventually be challenged on the basis of its constitutionality. Such a challenge may very well reach the SCC one day. This analysis will now turn its attention to such matters in further detail.[90]

III. THE *CHARTER* ANALYSIS

In British Columbia, UWOs were introduced as an amendment to the *Civil Forfeiture Act*.[91] Because this Act is a statute enacted by the government, UWOs can therefore be characterized as state action prescribed by law, thus making the *Charter* applicable.[92]

A. *Potential Rights Infringements*

Applicants seeking to challenge the constitutionality of UWOs will likely do so on the basis that their right to be presumed innocent and their right against self-incrimination have been violated.[93] These potential violations engage sections 7, 11, and 13 of the *Charter*. The presumption of innocence is protected by section 11(d) of the *Charter*, which states that any person charged with an offence has the right to be "presumed innocent until proven guilty according to law."[94] The right to be presumed innocent in the context of UWOs is alleged to be violated because of the reverse onus of proof they impose.[95] This is in reference to the fact that the respondent

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89 *Ibid.*

90 See Mezzetta, "B.C. files", *supra* note 11.

91 See Plamondon et al, *supra* note 5.

92 *Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component*, 2009 SCC 31.

93 Andrew Dornbierer & Jeffrey Simser, "Targeting unexplained wealth in British Columbia" (2022) Basel Institute on Governance Working Paper 41.

94 Department of Justice, "Section 11 – General: legal rights apply to those 'charged with an offence' (13 July 2024), online: <www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art11.html > .

95 Dornbierer & Simser, *supra* note 93 at 30.

must, on a balance of probabilities, establish that they acquired the impugned assets legally and lawfully.

The privilege against self-incrimination is alleged to be undermined by UWOs in that they "compel an individual to provide evidence that could be used against them."[96] This is in reference to information that the respondent must provide in an attempt to unfreeze their impugned assets (information provided by the respondent that may, on a balance of probabilities, establish that they obtained the impugned assets legally and lawfully). Section 13 of the *Charter* explicitly protects against self-incrimination in that a "witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence."[97] Section 11(c) of the *Charter* provides for similar protections by ensuring that anyone charged with an offence has the right "not to be compelled to be a witness in proceedings against that person in respect of the offence."[98]

Section 7 of the *Charter* provides "protective measures for every individual's right to "life liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice."[99] Section 7 also protects many substantive and procedural rights related to both criminal and civil law.[100] Thus, the SCC has held that the "principles of fundamental justice' include a residual protection against self-incrimination."[101]

Before examining whether a presumed violation of these *Charter* rights could be saved by the reasonable limitations clause in section 1, the strength

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96 *Ibid* at 36.

97 Department of Justice, "Section 13 – Protection against self-incrimination" (13 July 2024), online: <www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art13.html> [perma.cc/FAT6-ZCWX].

98 Department of Justice, "Section 11(c) – Protection against testimonial compulsion" (13 July 2024), online: <www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art11c.html> [perma.cc/EC5X-HLTP].

99 Jonathan Pyzer, "Section 7 of The Canadian Charter of Rights and Freedoms" (last modified 21 April 2025), online (blog): <www.torontodefencelawyers.com/section-7-canadian-charter-rights-freedoms/> [perma.cc/XB8D-NTC9].

100 *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1.

101 Dornbierer & Simser, *supra* note 93 at 36.

of these alleged *Charter* violations should first be examined. Regarding the alleged section 11(d) presumption of innocence violation, "it is important to understand that the *Civil Forfeiture Act* does not impose any criminal penalties, and that any information provided in response to such an order cannot be used in a criminal prosecution."[102] It is also arguable that section 11 primarily applies to those charged with an offence, or those who are subject to proceedings that are "criminal in nature" (proceedings that may result in penal consequences).[103] UWO proceedings are arguably administrative or regulatory in nature.[104]

However, despite having clear criminal law connotations, the term 'charged with an offence' in the context of section 11 can still apply to non-criminal proceedings.[105] This will be the case if the proceedings against an individual are predominantly criminal in nature (they contain the common features of a criminal prosecution) or if the proceedings result in the "imposition of true penal consequences."[106] *R v Wigglesworth* provides the basis to determine whether a true penal consequence has arisen from a proceeding.[107] While the true penal consequences test is most easily satisfied by the "possibility of imprisonment being imposed,"[108] *Martineau v Canada (Minister of National Revenue)* asserts that this test can also be met through the imposition of fines or monetary penalties intended to correct a "wrong done to society at large."[109]

Prima facie, section 11 of the *Charter* is not likely to be applicable to UWO proceedings.[110] However, there could conceivably be an argument made by a respondent that the ultimate forfeiture of their assets under a successful UWO constitutes a form of monetary penalty (through the loss

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102 *Ibid* at 31-32.

103 *Ibid* at 32.

104 *Ibid*.

105 *R v Wigglesworth*, [1987] 2 SCR 541 at 553, 1987 CanLII 41 [*Wigglesworth*].

106 British Columbia, *Commission of Inquiry into Money Laundering in British Columbia: Final Report* (Victoria: Library and Archives Canada, 2022) at 1774, online (pdf): <cullencommission.ca/files/reports/CullenCommission-FinalReport-Full.pdf> [perma.cc/7WDZ-88E5] [*Final Report*]; See also *Wigglesworth*, *supra* note 105 at 560-561.

107 See generally *Wigglesworth*, *supra* note 105.

108 *Ibid* at 541; See also *R v KRJ*, 2016 SCC 31 at para 38.

109 *Martineau v MNR,* 2004 SCC 81 at para 60.

110 Dornbierer & Simser, *supra* note 93 at 36.

of their assets) imposed to redress a wrong done to society (such as partaking in money laundering).[111] The likelihood that such a hypothetical argument would succeed is unclear. However, T.A. Cromwell, a legal analyst on the *Final Report of the Commission of Inquiry into Money Laundering in British Columbia*, contests that:

> A person who is the subject of civil forfeiture proceedings is not a 'person charged with an offence' within the meaning of s.11 of the *Charter* and therefore does not benefit from any of the protections set out in that section. There is no 'charge,' the proceedings are not 'criminal in nature' and civil forfeiture is not a 'true penal consequence.'[112]

Regarding the alleged violations of sections 7, 11(c), and 13 protections against self-incrimination, it is once again arguable that UWOs do not violate these rights. This is because UWOs are civil and regulatory in nature, as they likely lack the requisite elements that would give them a criminal disposition. Any information obtained by them cannot be used in a future criminal proceeding. In the British case of *Zamira Hajiyeva v National Crime Agency*, the accused, who was subject to a UWO proceeding, alleged that their privilege against self-incrimination was violated. However, this argument was dismissed by the Court of Appeal (England and Wales), as the British UWO contained a similar provision preventing the use of evidence obtained under a UWO in a subsequent criminal proceeding.[113] Consequently, although a person who is not 'charged with an offence' under section 11 will not benefit from traditional section 11(c) protections, the broader sections 13 and 7 *Charter* protections against self-incrimination will likely not be violated, as the use of evidence and statements obtained during a UWO investigation cannot be used in future criminal proceedings.[114]

Consequently, although critics of British Columbia's UWOs may argue that UWOs violate sections 7, 11, and 13 of the *Charter*, these allegations

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111 *Final Report*, *supra* note 106 at 1774

112 *Ibid* at 33.

113 *Zamira Hajiyeva v National Crime Agency*, 2020 EWCA 108; See also *Executive Summary*, *supra* note 30 at 10.

114 *Final Report*, *supra* note 106 at 1779. See generally *British Columbia Securities Commission v Branch*, 1995 CanLII 142 (SCC). It should be noted that it is currently unclear if these protections will extend to subsequent civil forfeiture proceedings. See *Final Report*, *supra* note 106 at 1781.

would likely face numerous difficulties in order to succeed. For the purposes of this analysis, we will assume for a moment that these rights have been found to be violated. Admittedly, this can be difficult to do in the absence of relevant case law. Nonetheless, conducting such an analysis serves to provide some theoretical clarity for policymakers moving forward. As such, I will briefly conduct a section 1 reasonable limitations examination to further assess the constitutionality of UWOs.

B. *Justifications*

A typical section 1 analysis will apply the *Oakes* framework. First, it must be determined whether UWOs serve a pressing and substantial objective.[115] Evidently, countering money laundering and depriving suspected criminals of their illicitly obtained assets is a pressing and substantial objective. It serves a public good by discouraging others from participating in such activities, and it negates any benefits derived from money laundering. As has been noted earlier in this paper, money laundering itself is linked to many social ills such as corruption, drug trafficking, and organized crime. Curbing it clearly serves a pressing and substantial objective that warrants overriding the applicable *Charter* rights.[116]

Second, the way in which UWOs are carried out procedurally must be rationally connected to their policy objectives.[117] By freezing assets suspected to be the proceeds of crime and requiring their owners to demonstrate how they obtained them, UWOs effectively curb any benefits that may be derived from money laundering, thus serving as an effective deterrent. It is clear, then, that UWOs are rationally connected to their purpose, which is to counter money laundering.

UWOs must also minimally impair the pertinent *Charter* rights that they are alleged to have violated. Arguably, if one were to accept that UWOs violate the presumption of innocence and the right against self-incrimination, they would do so only to the extent necessary in order to function properly. The reverse onus requirement and the innate necessity to provide information related to impugned assets (that is, if one wishes to get them back), are traditional features of similar UWO regimes in

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115 *Charter*, *supra* note 11.

116 See generally *R v Big M Drug Mart Ltd*, 1985 CanLII 69 (SCC).

117 *Charter*, *supra* note 11.

Australia, Ireland, and the United Kingdom.[118] Reverse onus provisions that utilize a balance of probabilities as their requisite standard are not uncommon in civil proceedings. Reverse onus burdens also "make it far more likely that unexplained wealth can be secured and confiscated."[119] Moreover, as has been described before, UWOs arguably lack criminal law features as there are no penal consequences, and any information that is gathered as part of a UWO proceeding cannot be utilized in derivative criminal law proceedings.

Lastly, a final proportionality balancing test between the deleterious effects and the objectives of UWOs must be assessed.[120] Overall, the benefits of UWOs, particularly their effectiveness in seizing illicit proceeds of crime without the need for lengthy criminal or civil proceedings and extensive police investigations, are undoubtedly a collective good for Canadian society. Money laundering is a rampant issue (especially in British Columbia) and is prone to further expansion across the rest of Canada. The possible *Charter* violations that UWOs may pose are typical of UWO regimes in other common law nations. Arguably, UWOs minimally impair *Charter* rights only to the extent that is necessary to achieve their policy objectives.[121]

Overall, it is unlikely that UWOs will be found to violate sections 7, 11, and 13 of the *Charter*. To be clear, that is not to say that such a violation will never occur going forward. As such, if a UWO is found to violate a *Charter* right, it will arguably be deemed a justified and reasonable limitation under section 1 of the *Charter*. Ultimately, in the context of a UWO, those "people who legitimately own valuable assets are well placed to show the provenance of those assets."[122]

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118 Dornbierer & Simser, *supra* note 93 at 31-36.

119 *Ibid* at 31.

120 *Charter*, *supra* note 11.

121 Dornbierer & Simser, *supra* note 93 at 31.

122 *Executive Summary*, *supra* note 30 at 10.

IV. UWOs and the Future of Canada's Anti-Money Laundering Regime

UWOs can effectively "fill a gap in the asset recovery toolbox" of states.[123] This relieves the applicable authorities of the burden of building and establishing a lengthy criminal or civil case against the suspected individual. This is particularly important because there may be a lack of relevant information about a suspected individual, making it difficult to build a formal case against them.[124] While the case has been made in this paper advocating for the benefits of UWOs as a novel anti-money laundering tool, it should be remembered that the success of UWOs will be based on other critical factors (apart from their debated constitutionality) if they are adopted in provincial jurisdictions outside of British Columbia and Manitoba.

The agency responsible for administering and applying UWOs must be adequately resourced and staffed with individuals familiar with money laundering. UWOs, like any other law, are only as effective as the agency responsible for applying them.[125] A further relevant issue relates to the federal nature of Canadian governance. Each province may eventually adopt its own version of UWO legislation or other anti-money laundering legislation. While this is a positive development, it does, however, require each jurisdiction to cooperate with one another in terms of information sharing. Clearly, money laundering knows no borders. Offenders are prone to move between different provinces, which makes money laundering difficult to identify and counter. As such, inter-jurisdictional cooperation is key here. This will, of course, require better cooperation between federal and provincial authorities as well. It is prudent to consider the following dilemma:

> Within Canada, money laundering is currently governed by fifteen different laws and regulatory instruments, with responsibility for their implementation and enforcement assigned to various organs and institutions of the state. At the federal level, Canada currently has twelve agencies tasked with anti-money laundering enforcement and prosecution while there are approximately fourteen within each

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123 Jean-Pierre Brun et al, *Unexplained Wealth Orders: Toward a New Frontier in Asset Recovery* (Washington, DC: World Bank Publications, 2023) at 12.

124 *Ibid*.

125 *Ibid* at 44.

> province. However, the extent of money laundering in Canada has cast long shadows over the purported efficacy of these laws, regulations, and agencies in impeding or preventing laundering.[126]

This patchwork of federal and provincial anti-money laundering initiatives appears hampered by jurisdictional, information-sharing, and cooperation issues. Thus, more federally-led cooperation and coordination on anti-money laundering initiatives could be prudent going forward. However, as a more immediate response to money laundering, UWOs arguably offer a solution. UWOs require non-stringent grounds for initiation, which may allow them to circumvent jurisdictional issues related to information sharing between agencies. Again, it should be remembered that UWOs do not require a stringent civil or criminal case to be built against the suspected individual before they can be carried out. This, to a degree, avoids many of the issues related to inter-jurisdictional cooperation in Canada. UWOs can then effectively impound and freeze the proceeds of crime, rendering the practice of money laundering largely devoid of its benefits. However, UWOs target the 'end results' of crime; they are not intended to prevent the original act of money laundering or the forces that may induce someone to launder money. While it is hoped that UWOs will serve as a deterrent, more inter-agency cooperation and better anti-money laundering legislation Canada-wide are still needed. Money laundering, of course, is also an international issue. Thus, Canada will have to work with foreign nations to a greater extent in its efforts to prevent money laundering.

Moreover, to improve the efficiency of UWOs, Canadian jurisdictions should consider introducing a corporate beneficial ownership registry. UWOs target suspected assets that were obtained through illicit means. However, it is not always clear who the true owner is of these assets. For purposes of clarity and efficiency, a corporate beneficial ownership registry may provide assistance here. Complex legal ownership arrangements often serve to obscure the true identity of owners. Consequently, law enforcement efforts are "often frustrated when corporate arrangements make it impossible to determine beneficial ownership…this is particularly so where

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[126] Sanaa Ahmed, "Running with the Hare, Hunting with the Hounds: The Canadian State and Money Laundering," in Christian Leuprecht & Jamie Ferrill, eds, *Dirty Money: Financial Crime in Canada* (Montreal & Kingston: McGill-Queen's University Press, 2023) 91 at 92.

offenders use complex, multilayered ownership and control structures to shield their identity."[127] Implementing a publicly accessible beneficial ownership registry would allow authorities to better understand and identify the true owners of assets that may be the illicit proceeds of crime. While UWOs could still likely succeed in freezing these illicit assets, they may not be able to identify the true owners on their own. Therefore, Canadian policy makers should consider creating a Canada-wide corporate registry to better identify the true beneficial owners of suspect assets.[128] Doing so will once again require much federal and provincial cooperation.

Furthermore, since UWOs were added to British Columbia's *Civil Forfeiture Act* in 2023, several UWOs have been issued against suspect assets.[129] One of the first UWOs issued in British Columbia targeted assets linked to a "global securities fraud scheme operated by a Swiss asset management company that generated over $165 million in illegal stock sales."[130] British Columbia also filed a second UWO against three properties with a combined value of $5.6 million in relation to an illegal cannabis growing operation.[131] A third UWO was also filed against the owner of $250,200 in cash, 45 gold bars, and various luxury items in relation to a fraudulent cryptocurrency exchange scheme.[132] Other subsequent UWOs are also still pending in British Columbia's courts.[133] Although it is too early to cast judgment, it does appear that UWOs are operating as intended. The adoption and use of UWO legislation across more Canadian jurisdictions[134] may be the impetus needed to spur the Federal Government to create better anti-money laundering legislation at the national level that prioritizes information and data sharing, as well as inter-governmental and inter-agency cooperation.

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127 *Executive Summary*, *supra* note 30 at 20.

128 *Ibid* at 21.

129 See Plamondon et al, *supra* note 5.

130 *Ibid*.

131 See Mezzetta, "B.C. files", *supra* note 11.

132 *Ibid*.

133 *Ibid*.

134 To be clear, provincial jurisdictions have the constitutional authority to expand their own civil forfeiture regimes to combat money laundering. See generally *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 and *Director of Civil Forfeiture v Hells Angels Motorcycle Corp*, 2014 BCCA 330.

V. CONCLUSIONS

Overall, money laundering is a serious issue in Canada. If Canada does not get a handle on the current situation, money laundering is likely to spread and expand across the country to a much greater extent. Despite an "ostensibly well-regulated financial sector and strict adherence to global anti-money laundering regulations, Canada has been making headlines as a premier onshore destination for laundered monies from across the world."[135] By using the example of British Columbia, this paper has explored how UWOs can be an effective and immediate solution to the epidemic of money laundering in Canada.

This paper has examined how UWOs operate and how they can curb money laundering. UWOs operate in the sphere of civil law and directly target assets that are likely to be proceeds of crime. These assets are then frozen until the respondent can satisfy the authorities that these assets were not obtained through illicit means. UWOs also carry very low evidentiary burdens, thereby avoiding the need for a lengthy, costly investigation that could take years to yield positive results.

This paper then assessed the prospective constitutionality of UWOs by exploring the extent to which they may violate sections 7, 11, and 13 of the *Charter*. It was concluded that while these alleged *Charter* violations are weak, this does not completely preclude the possibility of a future violation from occurring. In the event a *Charter* violation is found, it was theorized that UWOs will likely be saved by section 1 of the *Charter* as a justified and reasonable limitation. Lastly, this paper explored the future of anti-money laundering initiatives in Canada.

Overall, this paper has contended that although UWOs may initially face constitutional challenges, they will likely still be found constitutionally sound. However, one should acknowledge that, until UWOs survive the potential *Charter* challenges outlined in this paper, they may be currently operating in a constitutional gray zone. Thus, UWOs may be prone to *Charter* challenges, which could admittedly impede their effectiveness. Interestingly, as per the ruling in *British Columbia (Director of Civil Forfeiture) v Huang*,[136] it appears that those subject to a UWO order may opt to

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135 See Ahmed, *supra* note 126 at 91.

136 See generally *British Columbia (Director of Civil Forfeiture) v Huang*, 2025 BCSC 1568.

challenge it on the basis that the state has not met its threshold requirements,[137] rather than challenging the UWO on the basis of constitutionality.

Despite this, UWOs are nonetheless a potent anti-money laundering tool for Canadian authorities. However, UWOs cannot be utilized in a vacuum. More inter-agency and interjurisdictional cooperation between different agencies and levels of government is still needed. Put simply, by "following 'the money,' law enforcement can attack organized crime where it is most vulnerable…but to do so, an 'all of government' strategy is required."[138] It is hoped that such a strategy will be implemented at the national level.

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137 See BC, "Civil forfeiture", *supra* note 68.

138 See Ahmed, *supra* note 126 at 41.