
THE FLOW OF MONEY FROM CHINA TO BRITISH COLUMBIA
- AN INDEPENDENT REVIEW OF ISSUES RELATING TO
THE BC MONEY LAUNDERING INQUIRY

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Introduction

The Inquiry into Money Laundering in British Columbia has provided an excellent platform for public discussions about money laundering in our province. The inquiry and continuing discussions will help Canadians understand the problem of money laundering, explore its root causes, and develop policy and legal options. Canada is a democracy under the rule of law. All Canadians should work together to uphold the rule of law, safeguard national security and public safety, and combat domestic and international crime.

The purpose of the Cullen Commission of Inquiry into Money Laundering in British Columbia (hereinafter “the Commission”) is to address the problem of money laundering in British Columbia and make recommendations on how to improve our anti-money laundering (AML) systems.¹ This independent research report discusses topics concerning how Chinese Canadians in B.C. perceive money laundering and its predicate crimes, patterns and trends in the flow of money from China, Chinese foreign exchange control measures, methods of transferring funds out of China without violating the rules, grey areas and loopholes, risks of irregularities and money laundering, important geopolitical and national security factors to be taken into consideration for the development of policy and legal options, et al. The discussion of legal and policy options on issues regarding the flow of money laundering from China must take into consideration the broad context of Canada’s increasingly complicated relations with China. Canada’s relationship with China has permanently changed in the past two years. Instead of talking about friendship or confrontation only, Canada must take a more comprehensive and balanced approach with greater caution and determination in dealing with all the important issues in its relationship with China, including cooperation in combating money laundering and other organized crime.

It is worth noting that the discourse in the mainstream media regarding money laundering in recent years has involved a significant component of “Chinese money moving out of China” into Canada. Numerous news reports and commentaries concentrated on “Chinese money laundering” in the Lower Mainland. I believe it is a misperception to treat money laundering in B.C. primarily as a “China” and “Chinese” problem, even though we have seen a significant number of cases involving suspects and criminals of Chinese descent.

Many Chinese Canadians and immigrants in B.C. share the same concerns with other Canadians about the magnitude and harm of money laundering and its ties to organized crime. We felt outrageous to read the news stories of suspicious cash transactions in B.C. casinos, fentanyl overdoses in Vancouver, criminals living in mega-mansions, crooks making a fortune by helping immigrants to cheat, rich youngsters buying Lamborghinis with bundles of cash, and gangsters shipping supercars overseas then claiming false insurance. All of these should have been properly recorded, reported, analyzed, and thoroughly investigated.

Like other Canadians, many Chinese Canadians are puzzled to know that the majority of money laundering cases in Canada have resulted in dropped charges and the accused being set free. A Chinese language media outlet once posted a news story under the title “Shocking! A Richmond

¹ Commission of Inquiry into Money Laundering in British Columbia, “Terms of Reference”, at <https://cullencommission.ca/tor/>

Chinese man laundered \$500m and owns over 600 bank accounts in China. Prosecution of the biggest money laundering case in Canadian history failed because ...”.²

It was indeed very disappointing to hear that, after over 400 police officers completed their investigation, no charge was laid in Canada’s largest-ever money laundering case - the E-Pirate case, involving two suspects of Chinese descent in Richmond.³ The fact that a mistaken exposure of a police informant in this case could force the prosecutor make such a decision really shows some serious weaknesses in our system. The B.C. government succeeded in the civil forfeiture lawsuits after.⁴ However, money laundering is a criminal matter. Getting a civil forfeiture order approved without a criminal conviction in such a case is still a failure of the system.

It appears to be challenging to engage the community of Chinese Canadians in public discussions of money laundering. Only a few Chinese Canadians have voiced their opinions on this topic publicly in recent years, such as those who did so in the Cullen Commission’s public meeting in Richmond on November 7, 2019.⁵ Not many have read the expert reports prepared by Professor Maureen Maloney and Dr. Peter German, et al.⁶ Many new immigrants only read news in the Chinese language WeChat. Because of language and cultural barriers, they have very limited knowledge of the Canadian systems. Some have been wondering if the B.C. Inquiry on money laundering is to serve a “hidden agenda” or to “blame the Chinese when the government fails to crack down on money laundering.”⁷

I hope that more Chinese Canadians and new immigrants will share their perspectives in the public discussions of money laundering and related topics. Engaging new citizens and immigrants requires long-term effort of information dissemination and public education, because many immigrants come from countries with systems that are very different from ours. As an educator, I believe information sharing and good education are the keys to build and connect communities. Defending the rule of law against organized crime serves the common interest of all communities in British Columbia.

² Canadian Production Center of Phoenix Television North America Chinese Channel, Jan. 11, 2019, at <https://freewechat.com/a/MzU4MzAyMTc1OA==/2247495479/1>

³ Bolan, Kim, The Vancouver Sun, Oct. 18, 2019, “E-Pirate money-laundering investigation: Leadership problems, missteps proved fatal”, at <https://vancouversun.com/news/crime/leadership-problems-investigation-missteps-proved-fatal-to-e-pirate>

⁴ Bolan, Kim, The Vancouver Sun, Jan. 29, 2020, “Real Scoop: Another forfeiture case related to E-Pirate probe”, at <https://vancouversun.com/news/staff-blogs/real-scoop-another-forfeiture-case-related-to-e-pirate-probe>.

⁵ Cullen Commission, Nov. 7, 2019, “Richmond Public Meeting Summaries”, at <https://cullencommission.ca/files/PublicMeetingSummaries-Richmond.pdf>

⁶ German, Peter, March 31, 2018, “Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia - Gaming Final Report”; German, Peter, March 31, 2019, “Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing – Dirty Money Report Part 2”; and Maloney, Maureen et al, March 31, 2019, “Combatting Money Laundering in BC Real Estate – Combatting Money Laundering Report”. All three reports are posted at <https://cullencommission.ca/other-reports/>

⁷ Vanfun.com, May 27, 2019, “Is the Canadian government blaming the Chinese for money laundering after failed to crackdown on it? What is hidden behind all this ...,” at: <http://vanfun.com/news-5-0-16982.aspx>

This report has four parts:

Part 1. Opinions on “Chinese money laundering” in B.C. I will address several hot issues, ranging from the “Chinese” racial stigma to distinctions between dirty money and legitimate wealth, the link between money laundering and organized crime of Chinese and other ethnic backgrounds, the false perceptual divide between “Chinese” and “Canadians,” the need to continue cooperation with China in combating crime, misperception of the “Chinese” driving up the housing prices, and the question of identity relating to different categories of Chinese Canadians.

Part 2. The Flow of Money from Companies through FDI and Trade. I will discuss the magnitudes and trends of China’s outflow FDI and international trade. These are two most important channels of money flows from companies in China. This section will analyze the risks of irregularities and criminal activities in relation to investment and trade, although both of them are monitored and regulated by the Chinese government. I will also comment on topics of Chinese investment in Canadian real estate, the Canada-China FIPA, and options to improve FDI screening in Canada.

Part 3. Foreign Exchange Control and Flow of Money from Individuals. I will describe the Chinese foreign exchange control regulatory system and the methods that individuals use to transfer money out of China, with or without violating China’s SAFE regulations. In this discussion, I will identify some of the specific risks of irregularities and possible money laundering activities in the context of immigration, tourism, overseas real estate purchases et al. Once again, I will comment on the need of cooperation in the sharing of financial information to serve Canada’s interest.

Part 4. Geopolitics, Public Opinion, and National Security. To discuss the flow of money from China, we need to take into consideration three major political factors, which will ultimately determine Canada’s emerging new China strategy. I will discuss geopolitics in the world at a time of U.S.-China confrontation, public opinion in Canada regarding China, and some national security issues relating to foreign investment and foreign influence.

Because of the travel restrictions and shutdowns of facilities during the pandemic in the past year, my preparation of this report has relied on open-source information available online. The primary sources of information are:

- Reports and commentaries in the English and Chinese language news media and social media in Canada, mainland China and Hong Kong et al;
- Official reports, statements, and statistics issued by relevant authorities in Canada, China and Hong Kong et al;
- Reports, documents, and statistics published by scholars, researchers, think tanks, research institutes, financial institutions and international organizations et al.

My methodologies for this report are qualitative and legal, with the support of statistics that are published by governments, research institutes and companies.

The size of money laundering is growing ever larger in B.C. and Canada. However, it is impossible to make an accurate estimate of the true value of dirty money laundered anywhere in the world, because detailed statistics that can support such an estimate simply do not exist.

In 2007, Margaret E. Beare and Stephen Schneider published their book *Money Laundering in Canada: Chasing Dirty and Dangerous Dollars*.⁸ The next year, in a debate on statistics, Beare wrote: “The cleaned illicit money remains unknown – by anyone, anywhere in the world.”⁹ The Financial Action Task Force (FATF), which is the world’s leading organization to fight money laundering, has shared this view. It has concluded that “due to the illegal nature of the transactions, precise statistics are not available, and it is impossible to produce a definitive estimate of the amount of money that is globally laundered every year.”¹⁰

Over the years, we have read some rough estimates regarding the sizes of money laundering in Canada and the world. For example, the United Nations Office on Drugs and Crime (UNODC) states on its official website that “the estimated amount of money laundered globally in one year is 2-5% of global GDP, or \$800 billion - \$2 trillion in current US dollars.” However, we all know that “the margin between those figures is huge.”¹¹ This “2-5% GDP” estimate is widely quoted by the media, the governments and scholars to describe the vast dimensions of money laundering. I doubt this can be the right estimation of dirty money that is laundered every year in B.C. and Canada.

Money laundering is secret, highly sophisticated, and difficult to detect. In my view, rather than guessing what percentages of GDP are laundered in B.C., we should try to build better statistics based on reported suspicious transactions, police recorded criminal cases, the number of charges laid, and results of court convictions. Regrettably, this data is not available to the public in British Columbia and Canada. Therefore, I will not try to present a statistical analysis of money laundering in this report. For the Inquiry and follow-up discussions, I recommend that the Commission consider to request the federal and provincial governments to collect, process and disclose these data. Ideally, the disclosed data should be categorized to cover the industries in question, including real estate (both constructions and sales), gaming (casinos, online gaming, horse racing, etc.), car sales, financial institutions, investment, trade, tourism, precious metal and jewelry retail business et al.

⁸ Margaret E. Beare and Stephen Schneider, 2007, *Money Laundering in Canada: Chasing Dirty and Dangerous Dollars*. Toronto: University of Toronto Press.

⁹ Margaret E. Beare and David C. Hicks, 2008, “Response to David Hicks”, *The Canadian Journal of Sociology*, Vo. 33, No. 4 (2008), pp. 1065-1068.

¹⁰ FATF, “How much money is laundered per year?” at <https://www.fatf-gafi.org/fag/moneylaundering/>

¹¹ UNODC, “Money-Laundering and Globalization”, at <https://www.unodc.org/unodc/en/money-laundering/globalization.html>

Recommendations

Recommendation 1. The discussion of money laundering in BC needs to engage more new immigrants, in particular those from countries with systems that are very different from what we have in Canada, to share their perspectives and opinions. More Chinese Canadians should participate in these discussions.

Recommendation 2. The relevant federal and provincial authorities should collect and disclose statistics on reported suspicious transactions, police recorded money laundering cases, number, and nationalities of suspects involved in those cases, the number of charges laid and results of court convictions, concerning every one of the industries in question, including real estate (both constructions and sales), gaming (casinos, online gaming, horse racing, etc.), car sales, financial institutions, investment, trade, tourism, precious metal and jewelry retail business et al.

Part 1. Opinions on “Chinese Money Laundering” in B.C.

1.1. The Essence of Money Laundering

(1) Criminal offense or racial stigma

“Chinese money laundering” has been *the* theme of numerous news stories and commentaries on money laundering in Canada in recent years.¹²

Money laundering is an issue of crime, not a problem of race.

Money laundering in B.C. and Canada is a criminal matter involving organized crime of various racial and ethnic backgrounds at home and abroad, not a racial problem of “the Chinese”.

In 2004, Dr. Stephen Schneider published a research report on “Money Laundering in Canada: An Analysis of RCMP Cases.”¹³ In this report, he discussed money laundering in 12 sectors of the economy and businesses in Canada, including banking institutions, real estate, currency exchange companies, criminal enterprises, insurance services, securities, motor vehicle sales, lotteries and race tracks, jewelry, precious metals, art, livestock, business services provided by lawyers and other professionals. Few of the names in the cases mentioned in this empirical study appears to be Chinese.

Chinese Canadians in British Columbia are Canadians. Like other Canadians, as demonstrated in the Commission’s public meeting in Richmond on November 7, 2019, Chinese Canadians share the basic Canadian values and condemn money laundering and organized crime, regardless of whether or not they are the first or second generation of immigrants to Canada.

However, many Chinese Canadians now find themselves running the risk of being placed in an increasingly negative light by the mainstream media and social media. The “model minority” image of hard-working, well-disciplined, and law-abiding Chinese is gone. The new stereotypes of “Chinese” are somehow money launderers, fentanyl traffickers, human smugglers, real estate property speculators, carriers of coronavirus, and more recently, agents of the Chinese Communist Party (CCP).

The rise of Sinophobia by stigmatizing the entire Chinese community in social media and increased incidents of hate crime in the streets are both alarming.¹⁴ We must remain vigilant

¹² Cockfield, Arthur, The Globe and Mail, Feb. 8, 2019, “The high price of Chinese money laundering: The outflow of capital began as a trickle in Canada, but now it has the potential of instigating major crises”, at

<https://www.theglobeandmail.com/opinion/article-the-high-price-of-chinese-money-laundering-in-canada/>

¹³ Schneider, Stephen, 2004, “Money Laundering in Canada: An Analysis of RCMP Cases”, Toronto: Nathanson Centre for the Study of Organized Crime and Corruption.

¹⁴ Ball, David, AFP, May 26, 2020, “Chinese in Canada a target of increased hate during pandemic”, at

<https://www.yahoo.com/news/chinese-canada-target-increased-hate-during-pandemic-015810594.html?guccounter=1>

against the rising anti-Chinese and anti-Asian sentiment and violent racism in B.C., bearing in mind the dark pages in the history of anti-Chinese riots and the Chinese Exclusion Act.¹⁵

In the meantime, we should also stay alert about the reversed hatred against the “White” or other ethnic groups in social media and the promotion of vigilantism.

All Canadians are experiencing difficult times of the COVID-19 pandemic. While public opinions in Canada are very critical to China, some people have turned against Chinese Canadians. The Anti-Chinese sentiment is no doubt on the rise not only in the streets but also in high-level Canadian politics. In 2020, a Conservative leadership candidate, MP Derek Sloan, decided to openly question Dr. Theresa Tam, Canada’s Chief Public Health Officer, if she works for Canada or China.¹⁶ In January 2021, he was expelled from party caucus after it was found he had allegedly taken a donation from a white nationalist. It was encouraging to hear Mr. O’Toole’s declaration that there is no room in the party for far-right extremism and racism.¹⁷

It was also encouraging to read Premier John Horgan’s statement on racism in B.C. during the COVID-19 pandemic.¹⁸ He stated:

“Racism is also a virus. Through challenging times, British Columbians must stay united. We are always stronger and more resilient as a province when we treat each other with kindness, generosity, and respect. To do so, we must all stand together to call out racism and discrimination when we see it.”

Money laundering in B.C. is tied to Chinese organized crime in many cases, and we must deal with this problem. However, it will defeat the purpose if the public discourse on money laundering becomes a witch hunt and hate campaign against the “Chinese” in our province. Criminals of any race do not represent the law-abiding citizens of any race and ethnicity. We should engage the Chinese Canadian community, including new immigrants from mainland China, in a joint effort to fight money laundering and organized crime.

(2) Dirty money or legitimate wealth

In my view, it is misleading to assume that money from China, in general, is for money laundering and tied to organized crime, and that “rich Chinese” buying real estate properties are suspicious of being money launderers and drug traffickers.

¹⁵ CBC, May 13, 2020, “B.C. leaders from every level of government condemn rise in anti-Asian racism”, at <https://www.cbc.ca/news/canada/british-columbia/b-c-government-condemn-racism-1.5568228>; Jan, Tracy, The Washington Post, May 19, 2020, “Asian American doctors and nurses are fighting racism and the coronavirus”, at <https://www.washingtonpost.com/business/2020/05/19/asian-american-discrimination/>

¹⁶ Harris, Kathleen, CBC News, April 23, 2020, “Conservatives blast MP who asked whether top pandemic doctor ‘works for China’ as Scheer steers clear”, at <https://www.cbc.ca/news/politics/sloan-tam-china-coronavirus-pandemic-1.5542497>

¹⁷ The Toronto Sun, Jan. 20, 2021, “Conservative MP Derek Sloan ejected from party caucus”, at <https://torontosun.com/news/national/conservative-mp-derek-sloan-ejected-from-party-caucus>

¹⁸ Office of the Premier, BC Gov News, May 17, 2020, “Premier’s statement on racism in B.C. during COVID-19”, at <https://news.gov.bc.ca/releases/2020PREM0057-000902>

I was surprised to see that even a Canadian law professor would write about “Chinese money laundering” based on such misperception. In an article published in *The Globe and Mail* recently, Prof. Arthur Cockfield of Queen’s University Law School wrote:

“What do we know about Chinese money laundering? First, this money laundering occurs on a massive scale. According to *The New York Times*, US\$1 trillion recently left China in an 18-month time period around 2015-16. Most of this money comes from wealthy Chinese individuals who secretly store away their legally earned money overseas.”¹⁹

I found it troublesome to read his assumption that the US\$1 trillion from China were somehow all for or related to money laundering, even if they were “legally earned.” What evidence do we have to suggest that the US\$1 trillion were laundered? Could it be money laundering if the money was legally earned in the first place?

Money laundering by the broadest definition refers to the concealment of the origins of illegally obtained money. Under Canadian law, it is the laundering of proceeds of crime, not the relocation of lawfully accumulated wealth. If the money coming from China was legally earned, and the purpose of moving the money into Canada is to find a safer place for it, under what law can we label it “money laundering”?

Chinese laws do not apply in Canada. If the money flow from China does not violate Canadian law, we will have no legal authority to go after the owners for sending the money here. The Chinese rules of foreign currency control are not enforceable in other countries. We have a free market economy in Canada. If we welcome other foreigners to bring their legitimate wealth and use it in a way to support the economy in B.C., why should we try to stop “the Chinese” from doing the same?

The term “capital flight” refers to the large-scale outflow of capital from one nation to another, not necessarily for illegitimate purposes. It can be triggered by economic or political instability, destabilized currency value, lower or higher returns of investment, immigration of investors to overseas, new investment opportunities overseas, shifts in government taxation and investment policies. Capital flight from China has involved both Chinese and nationals of other countries. Many foreign companies withdrew their investment from China because of fierce competition, rising cost, and, most recently, the US-China trade war. Both the Japanese and U.S. governments have offered attractive incentives to encourage their companies to leave China immediately. Would we label this kind of capital flight “money laundering” as well?

Canada welcomes and protects legitimate foreign investment. The Canadian trade missions in China and Hong Kong hold promotion events to attract Chinese investment every year. For the benefits of the B.C. economy, I recommend that we continue to welcome all law-abiding Canadian citizens and foreign nationals to bring their legitimate money from overseas to Canada. At the same time, we should make an effort to improve our systems to defend national security, protect public safety, and fight money laundering and organized crime.

¹⁹ See supra note 4.

(3) Corrupted officials or ordinary investors

Rampant corruption is a serious problem in China, and corrupted officials will try to hide their money overseas. However, the investigation of corruption-related money laundering in B.C. should be based on evidence rather than a presumption of guilt.

“Chinese money laundering is suspected of going all the way to the top of the power echelons of the Chinese Communist Party,” Prof. Cockfield wrote. He then linked corruption to the 2014 ICIJ data leaks of some 22,000 secret offshore accounts held by “Chinese citizens” in tax havens.

In Canada and the U.S., we have had cases of money laundering involving corrupted CCP officials and executives of state-owned companies. In June 2016, for example, the B.C. Supreme Court issued an order to freeze Shibiao Yan’s \$3.5 million home in Surrey. According to the press, Yan was the boss of a state-owned company. He and his wife bought three properties worth \$8 million in Surrey and Vancouver in 2014. They were wanted by China for allegedly defrauding a bank of RMB 50 million.²⁰

The financial intelligence agency of Canada, FINTRAC, should have the mandate to develop a comprehensive database of the “politically exposed persons” (PEPs) in foreign jurisdictions, update the database regularly, and require Canadian financial institutions and DNFBPs to review and find out, as a part of their enhanced customer due diligence process, customers who are foreign PEPs and their family members.

Yet, we need to treat the 2014 ICIJ data leaks with great caution. At the time, ICIJ found in the leaked confidential files nearly 22,000 offshore clients with addresses in mainland China and Hong Kong, and among them were “some of China’s most powerful men and women - including at least 15 of China’s richest.”²¹ To date, there has been no follow-up investigation or further disclosure about those 22,000 secret accounts, not even concerning the so-called “China’s most powerful men and women,” including the alleged “15 of China’s richest”.

We should remain alert, but it will require far more information to tell if those 22,000 accounts were used by corrupted Chinese officials for money laundering.

Since 2013, over one million Chinese officials have been sacked, charged, and convicted of various offenses of corruption. Among them were at least 195 provincial/minister-and-above-level officials, including seven former members of the CCP Political Bureau and the Central Committee Secretariat. Under the Chinese Criminal Law, bribery and embezzlement are predicate offenses of money laundering.²² I have read through many Chinese news reports of these cases and many court judgments. It appears that none of the 195 CCP officials was convicted of holding accounts in the BVI and laundering money through those accounts.

²⁰ Jason Proctor, CBC News, June 27, 2016, “Chinese bank claims fugitive bought luxury B.C. real estate”, at <https://www.cbc.ca/news/canada/british-columbia/china-real-estate-vancouver-fugitive-1.3655136>

²¹ Guevara, Marina Walker et al., ICIJ, Jan. 21, 2014, “Leaked Records Reveal Offshore Holdings of China’s Elite”, at <https://www.icij.org/investigations/offshore/leaked-records-reveal-offshore-holdings-of-chinas-elite/>

²² Article 191, Criminal Law of PRC.

Setting up offshore accounts can serve the purpose of money laundering. It can also help legitimate businesses of international financing and investment. In the past two decades, the Chinese government has been encouraging state and private-owned companies to invest offshore to raise funds, access markets, and build Chinese multinational corporations. With government approval, investors could move their money overseas and even get loans from banks. In many incidents, we have seen irregularities but no evidence indicating that the use of offshore accounts by Chinese investors is in general for corruption or money laundering purposes.

The British Virgin Islands, where the ICIJ found the 22,000 “secret accounts” under Chinese names in 2014, like Canada and China, is a signatory to the Multilateral Competent Authority Agreement (MCAA), which requires all signatories follow the Common Reporting Standard (CRS) and commit to automatic exchanges of financial account information amongst themselves. The aim of signing the MCAA is to put an end to the account secrecy practice in tax havens.

According to the action plan, Canada and the BVI should have already exchanged information. Through this exchange, the Canada Revenue Agency (CRA) should be able to find out those citizens and residents of Canada holding financial accounts there and cross-check the information with the overseas asset reports in the CRS files. On a reciprocal basis, CRA should also exchange information with China, Cayman Islands, Bahamas, Hong Kong, the Netherlands, Singapore, Switzerland, and other jurisdictions that are known as safe havens for people to hide their wealth and tax avoidance. The government of Canada should advise the public if the CRA is doing it.

I recommend that the government of B.C. seeks advice from CRA to access the relevant financial account information and determine if any money transferred from overseas belongs to a foreign PEP or his family. This should not become an operation of selective enforcement targeting Chinese investors, immigrants, and visitors only. We must fight money laundering of all kinds, not just “Chinese money laundering.”

1.2. The link between money laundering and organized crime

(1) The B.C.B. as one of the criminal groups in B.C.

Money laundering is tied to organized crime, not just to Chinese gangs. It is tied to all kinds of organized crime.

According to *The Canadian Encyclopedia*, organized crime in Canada includes the Mafia, Hells Angels and other motorcycle gangs, Asian criminal groups, and many other single ethnic and multi-ethnic gangs. These criminal groups are all active in the business of drug production and trafficking, which include the smuggling of cocaine, heroin, methamphetamine, and fentanyl, et al.²³ According to Criminal Intelligence Service Canada, approximately 80% of crime groups identified in Canada are involved in the illicit drug market.²⁴

²³ Dubro, James R., et al., *The Canadian Encyclopedia*, “Organized Crime in Canada”, at <https://www.thecanadianencyclopedia.ca/en/article/organized-crime>

²⁴ Public Safety Canada, 2006, *Working Together to Combat Organized Crime*, at <https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/cmbtng-rgnzd-crm/index-en.aspx#a51>

Chinese organized crime groups have always been active in drug trafficking in B.C., Canada, and the United States. As Alex Chung described in his book, *Chinese Criminal Entrepreneurs in Canada*, the loosely defined Big Circle Boys (B.C.B) have been trafficking all kinds of narcotic drugs since they immigrated to Canada during the 1980s-1990s.²⁵ Yet, they are not the only ones running the fentanyl business here. Police investigation in recent years has proven that many non-Chinese crime groups are also actively involved. Although law enforcement agencies in both Canada and the U.S. believe fentanyl are mostly from China, its importation and distribution are not the business of Chinese organized crime only.

(2) Fentanyl trafficking by criminals of many ethnicities

In B.C., fentanyl trafficking involves criminals of many ethnicities.

According to the Organized Crime Agency of B.C., there are about “188 criminal groups vying for a share of the illicit markets”. The Agency states: “British Columbia has a unique and changing gang landscape. Gangs, based on ethnicity, are no longer the norm.”²⁶ This is evident in some of the largest drug raids in the Lower Mainland, including the largest fentanyl seizures in B.C. and the biggest-ever fentanyl case in Canada in recent years.

On March 3, 2015, the Vancouver Police Department announced charges laid in “Project Tainted,” which was a massive joint forces operation involving five police departments with a focus on “individuals and groups producing and distributing drugs laced with fentanyl.” Search warrants were executed “throughout Vancouver, Burnaby and North Vancouver.” The police seized \$1.5m worth of fentanyl and other drugs. Among the ten individuals arrested and charged in this case, only one had a Chinese name.²⁷

On October 14, 2019, the Alberta Law Enforcement Response Teams (ALERT) announced that the Canada-U.S. joint Project Coyote succeeded in carrying out “Canada’s largest fentanyl seizures of 250,000 pills,” together with 98 kilograms of cocaine, 5 kilograms of methamphetamine, and thousands of methamphetamine pills, firearms, as well as \$4.5 million in cash and assets. Seven suspects were arrested and charged with 77 counts of criminal offenses, but none of them was Chinese. The principal suspect was Warren Lowe, who allegedly “oversaw an extensive drug distribution network that spanned from British Columbia to Ontario.”²⁸

On January 8, 2020, the Combined Forces Special Enforcement Unit seized 38 kilograms of heroin and 10 kilograms of imitation Percocet, which are both believed to contain fentanyl, 1.5 kilograms of methamphetamine, and cash and weapons. The police believed the seized drugs “are associated in Mexico.”²⁹

²⁵ Chung, Alex, 2019, *Chinese Criminal Entrepreneurs in Canada*, Vol. I, London, UK: Palgrave Macmillan.

²⁶ CFSEU, “Gangs and Organized Crime in British Columbia”, at <https://www.cfseu.B.C.ca/gangs-in-b-c/>

²⁷ The Vancouver Police Department, March 3, 2015, “Update: Charges Laid in Project Tainted”, at <https://mediareleases.vpd.ca/2015/03/03/update-charges-laid-in-project-tainted/>

²⁸ ALERT, November 14, 2019, “Record Drug Seizures Realized by ALERT in Project Coyote”, at <https://alert-ab.ca/record-drug-seizures-realized-by-alert-in-project-coyote/>

²⁹ Thibault, Alissa, CTV News, “this Lower Mainland drug raid was one of B.C.’s largest”, at <https://bc.ctvnews.ca/this-lower-mainland-drug-raid-was-one-of-b-c-s-largest-1.4776195>

Fentanyl trafficking in B.C. is a problem involving various criminal groups. I believe that law enforcement agencies in B.C. are not only keeping the B.C.B on their radar but also monitoring all other drug traffickers, regardless of their ethnic background.

(3) Need of strategy and cooperation

To deal with the problem of fentanyl, we should continue to take a practical and comprehensive approach based on result-based action plans. According to the 2012 evaluation report published by the Department of Justice, the implementation of the 2007-2011 “National Anti-Drug Strategy” was quite successful in all three aspects, including prevention, treatment, and enforcement.³⁰ I recommend that B.C. develops a comprehensive provincial anti-drug strategy with support from the federal government.

Although Canada-China relation is in crisis, for the interest of Canada, we still need to work with China to cut the supply of fentanyl. In 2017, the RCMP found that most of the vendors of fentanyl in Canada were based in China. At that time, both Canada and the U.S. requested China to ban the manufacture of the drug.³¹

Even the U.S. is still working with China on drugs. In April 2019, China declared a ban on the production of all variants of fentanyl.³² In November 2019, it was announced that, after a “landmark” joint investigation by the U.S. and China,³³ a Chinese court convicted nine individuals for smuggling fentanyl into the US, sentenced one of them to death and eight to jail.³⁴

In the meantime, China’s State Anti-Narcotic Drugs Commission announced that all fentanyl materials had been placed on the list of controlled substances on May 1, 2019, and a “special operation” was launched in 13 provinces to crack down on fentanyl production and smuggling. The Chinese police were to inspect all registered chemical and pharmaceutical factories, detect underground production, and wipe out online fentanyl shopping. The State Post Bureau decided to equip the postal offices in those provinces with 15,000 new security machines for the detection of the drug in mails. And, the General Customs Administration instructed the local customs offices to enhance their drug inspection on export goods.³⁵ When the special operation was launched, it

³⁰ Department of Justice Canada, 2018, “National Anti-Drug Strategy Evaluation”, at <https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/12/nas-sna/p1.html>

³¹ Bains, Camilie, The Globe and Mail, Sept. 18, 2017, “RCMP says charges to be laid in Canada involving fentanyl shipments from China”, at <https://www.theglobeandmail.com/news/british-columbia/charges-to-be-laid-involving-fentanyl-shipments-from-china-rcmp/article36295721/>

³² Myers, Steven Lee, The New York Times, April 1, 2019, “China Bans All Types of Fentanyl, Cutting Supply of Deadly Drug to U.S. and Fulfilling Pledge to Trump”, at <https://www.nytimes.com/2019/04/01/world/asia/china-bans-fentanyl-trump.html>

³³ BBC, Nov. 7, 2019, “Fentanyl smugglers: Nine jailed in landmark US-China operation”, at <https://www.bbc.com/news/world-asia-50327998>

³⁴ Myers, Steven Lee, The New York Times, Dec. 1, 2019, “China Cracks Down on Fentanyl. But Is It Enough to End the U.S. Epidemic?” at <https://www.nytimes.com/2019/12/01/world/asia/china-fentanyl-crackdown.html>

³⁵ CCTV, Sept. 3, 2019, “State Anti-Narcotic Drugs Commission: China is not the main source of fentanyl in the US”, at <http://m.news.cctv.com/2019/09/03/ARTIYM38Mkk4oIEFm4PfbeGJ190903.shtml>

was reported in the international media that the U.S. had already noticed the production of fentanyl being shifted to Mexico.³⁶

I recommend that the RCMP continues to seek more cooperation from the Chinese police. Such an arrangement can be initiated through the RCMP liaison office in the Canadian Embassy in Beijing. Despite difficulties in bilateral relationships, we should continue to work with China in ways that will serve mutual interest. I recommend that, when the timing is appropriate, Canada continues to make use of the MLAT and seek cooperation from China for the sharing of criminal intelligence on drug trafficking and other organized crime activities because cooperation in fighting drug trafficking serves the interest of both countries.

We should not mix geopolitics with standard legal affairs. Undoubtedly Canada and China are having greater difficulties to continue the cooperation in combating crime now. To address these difficulties, I recommend that the government of Canada considers the Taiwan experience of working with mainland China in this area.

It is worth noting that, in spite of the political and military confrontations, Taiwan has maintained its cooperation with mainland China in dealing with cross Taiwan Strait criminal matters for more than a decade. In 2009, Taiwan and the mainland signed the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement. The priorities of cooperation are to jointly combat four categories of crimes including:

- (i) serious crimes such as homicide, robbery, kidnapping, smuggling, firearms, narcotics, human trafficking, organized human smuggling, and cross-border organized crime;
- (ii) economic crimes such as embezzlement, breach of faith, fraud, money-laundering, and forgery or alteration of currency and negotiable securities;
- (iii) crimes of corruption, bribery and malfeasance; and
- (iv) hijacking of aircraft and ships and crimes involving terrorist activity.

This agreement promises mutual assistance in investigation of criminal cases, document delivery, and collection of evidence. More significantly, the agreement also promises both parties will facilitate, on a reciprocal basis, the repatriation of criminals and criminal suspects, returning of criminal proceeds, and recognition and enforcement of civil judgements and arbitration awards. Since the signing of this agreement, the two parties have made tens of thousands of requests of assistance. Most of the requests were met in a reasonable way.

1.3. Questions about the Chinese diaspora

(1) Are “Chinese” home buyers in general suspicious?

Money laundering in real estate by foreign organized crime is a hot topic in British Columbia. Investigation of this problem should not be misled by negative stereotyping of “the Chinese.”

³⁶ AFP, France 24, Nov. 7, 2019, “US-China fentanyl case just ‘the tip of the iceberg’”, at <https://www.france24.com/en/20191107-us-china-fentanyl-case-just-the-tip-of-the-iceberg>

According to expert reports, an estimated \$5 billion “may have been laundered” in 2018 in B.C. real estate, equivalent to nearly 5% of all transactions by value in that year.³⁷ I agree that money laundering is a serious problem in B.C. real estate, and the authorities should vigorously review and investigate suspicious transactions in this market.

Chinese drug traffickers and other criminals have undoubtedly been buying some of the expensive properties in the Lower Mainland. This problem goes back to the early 1990s. In 1993, in a joint investigation conducted by Canada, Hong Kong, and mainland China, the police seized \$6.6 million in cash and assets that belonged to Lee Chau Ping, who was known as the “Ice Queen” in the Asian drug trade.³⁸ One of the assets was an expensive house on the campus of the University of British Columbia.

In more recent years, we have read more cases whereby requests were made for the seizure of real estate assets in B.C. Interestingly, at least one of these cases was initiated by a large state-owned bank of China. In September 2016, the China Citic Bank won an injunction from the B.C. Supreme Court on four homes in Vancouver. The \$7.2 million worth of properties belong to an alleged fugitive couple from China.³⁹

However, the real issue here is not about some Chinese drug traffickers and fugitives tried to hide their dirty money in B.C. real estate, which is a known fact to all of us. Instead, it is about the generalized suspicion of Chinese buyers who have bought properties here in the past one or two decades. As scholar Kerry Sun of University of Alberta noticed in her 2015 report, “Foreign Investment in Real Estate in Canada – Key Issues,” many people of East Asian heritage in B.C. have perceived “racism in the debate on foreign real estate ownership.”⁴⁰

In a story published in *The Maclean’s*, Jason Kirby wrote:

“It’s no secret that much of the money flowing into B.C.’s real estate market is coming from China. In one now-famous study, Andy Yan, director of the City Program at Simon Fraser University, examined 174 property transactions over six months in Vancouver’s affluent west side and found that two-thirds of all sales were to buyers with non-anglicized Chinese names, an indicator they were recent immigrants from mainland China.”⁴¹

Are all B.C. home buyers with non-anglicized Chinese names “recent immigrants from mainland China” and somehow suspicious of laundering money in real estate?

³⁷ Pearson, Natalie Obiko, *Financial Post*, May 10, 2019, “How Vancouver became the world’s ‘laundromat for foreign organized crime’”, at <https://business.financialpost.com/real-estate/billions-in-dirty-cash-helped-fuel-vancouvers-housing-boom>

³⁸ *The Seattle Times*, Dec. 22, 1993, “Canada-Hong Kong Drug Bust”, at <https://archive.seattletimes.com/archive/?date=19931222&slug=1738333> <https://vancouversun.com/news/local-news/more-and-more-chinese-cases-target-property-in-b-c-say-lawyers/>

³⁹ Cooper, Sam, *The Vancouver Sun*, Sept. 9, 2016, “More Chinese cases target property in B.C., say lawyers”, at <https://vancouversun.com/news/local-news/more-and-more-chinese-cases-target-property-in-b-c-say-lawyers>

⁴⁰ Sun, Kerry, 2015, “Foreign Investment in Real Estate in Canada – Key Issues.” *China Institute, University of Alberta. Occasional Paper Series Vol.2, Issue No. 3/August 2015.*

⁴¹ Kirby, Jason, *Maclean’s*, June 12, 2019, “Dirty money: it’s a Canadian thing”, at <https://www.macleans.ca/economy/realestateeconomy/b-c-s-money-laundering-crisis-goes-national/>

Many immigrants to Canada have non-anglicized names. Like many Chinese Canadians, immigrants from Europe, Latin America, Africa, the Middle East, India, and other places in the world often do not anglicize their names, not even after they become citizens of Canada. To investigate money laundering, are we going to target all the expensive homeowners with non-anglicized names?

I would not assume that buyers with non-anglicized Chinese names must be immigrants from mainland China either. For example, the most influential tycoon in Hong Kong, Li Ka-shing, whose family has invested an enormous amount of money in B.C. real estate and owns many very expensive properties in Vancouver's west side, has a non-anglicized Chinese name. Several other famous real estate developers in Hong Kong, e.g., Lee Shau Kee and the late Cheng Yu-tung, have non-anglicized Chinese names too.

It is also a problem to raise a generalized suspicion about home buyers who are "recent immigrants from mainland China" by referring to the Chinese rule which, as the Maclean's article quoted from a financial crime lawyer, "allows its citizens to exchange and withdraw only US\$50,000 a year". I believe this lawyer and many others with such suspicion are not aware of the rules that allow Chinese immigrants to exchange their RMB to foreign currency and transfer the wealth to the country of their new residence. The housing prices of high-end apartments in Beijing and Shanghai are higher than many detached homes in Vancouver. A "recent Chinese immigrant" can simply sell his properties in Beijing, exchange the proceeds to Canadian dollars at a Chinese bank, transfer the whole amount to a Canadian bank, and pay the full price of a \$4 million house in Vancouver's west side. I will discuss other methods and scenarios later in this report.

(2) Are Chinese Canadians "Chinese" or "Canadians"?

In Canada, like in many other western democracies, racial profiling for law enforcement is a sensitive and controversial topic. Public release of race-crime statistics is banned. For the discussion of "Chinese money laundering" in B.C., it would make more sense to use the terminology of nationality rather than race.

The perceptual divide of "Chinese" versus "Canadians" will mislead us to make false assumptions. We should not single out homebuyers who are Canadian citizens of Chinese descent as the "Chinese" and place them in opposition to the "Canadians." Clearly, the same perceptual divide is often seen in the public discussion of money laundering in recent years, which has disproportionately focused on "Chinese" buyers and "Chinese" criminals.

According to the 2016 census in Canada, there are about 1.8 million ethnic Chinese people in Canada. Among them, 464,800 live in British Columbia. The population of Chinese descent in B.C. consists of many groups of people with different nationalities, values, family and cultural backgrounds. Many of them were immigrants from countries and regions other than mainland China. For example, Vancouver journalist Ng Weng Hoong was an immigrant from Malaysia. He

is one of the few Chinese Canadians who have openly raised some serious questions about the discussion of money laundering in B.C.⁴²

The “Chinese” in B.C. have different legal statuses. Many of the “Chinese” homeowners in the Vancouver are citizens of Canada. Similarly, many “Chinese” buyers who bought homes in other residential areas in B.C. are Canadian citizens too.

Legally speaking, Canadian citizens of Chinese descent are Canadians, not “Chinese” or “Chinese and Canadians.”

There are contradictory provisions in Canadian laws regarding the identity of permanent residents who are foreign citizens. Canada’s Immigration and Refugee Protection Act defines “foreign national” as “a person who is not a Canadian citizen or a permanent resident.”⁴³ Under other Canadian laws, permanent residents are not necessarily Canadians. The Investment Canada Act defines a permanent resident “who has been ordinarily resident in Canada for not more than one year after the time at which he or she first became eligible to apply for Canadian citizenship” as a Canadian.⁴⁴ Therefore, a permanent resident of Canada who does not apply for Canadian citizenship after he resides in Canada for more than a year following the day when he becomes eligible to do so is not a Canadian under this Act. There appears to be a contradiction in Canadian law. If this person is neither a foreigner under the IRPA nor a Canadian under the ICA, what exactly is his/her legal status in Canada?

Under Chinese law, a Chinese citizen with Canadian residency is still a Chinese citizen. China does not recognize dual citizenship of its citizens. Under the Nationality Law of the PRC, a Chinese citizen residing in a foreign country will “automatically renounce” his Chinese citizenship once he acquires the citizenship of that country. The renouncement does not require an application or declaration.⁴⁵

Some immigrants from mainland China may, after acquiring Canadian citizenship, have managed to keep the Chinese passport and use it to enter or live in China. This has caused some confusion on both sides. Under ordinary circumstances, anyone who uses both Chinese and Canadian passports to travel between Canada and China can get into serious trouble with the Chinese authorities, because a Canadian citizen must use the Canadian passport with a Chinese visa to enter China.

To determine the percentage of foreigners who have purchased and owned real estate properties in B.C., the Canadian government will need to work with foreign governments and clarify the question of their nationalities.

⁴² Ng, Weng Hoong, The Georgia Straight, July 5, 2018, “An open letter to Attorney General David Eby and investigator Peter German on B.C.’s Dirty Money report”, at <https://www.straight.com/news/1099146/open-letter-attorney-general-david-eby-and-investigator-peter-german-bcs-dirty-money>; May 25, 2019, “On David Eby’s trail of embedded bombshells about money laundering”, at <https://www.straight.com/news/1245571/david-ebys-trail-embedded-bombshells-about-money-laundering>

⁴³ Section 2 (1), Immigration and Refugee Protection Act.

⁴⁴ Section 3, Investment Canada Act.

⁴⁵ Articles 9 and 13, The Nationality Law of the PRC.

When a Canadian citizen commits a crime of drug trafficking or money laundering, it is a crime committed by a “Canadian” rather than a “Chinese.” Instead of talking about race and ethnicity, I recommend that the relevant government authorities of Canada disclose the nationalities of all foreigners who are charged and convicted of these crimes, particularly concerning real estate, casinos, luxurious car sales, etc. This will help to clarify whether or not criminals who own expensive properties or launder money in B.C. real estate are overwhelmingly the “Chinese” or someone else.

(3) Are residents of Hong Kong and Macau different?

The “Chinese diaspora” in B.C. is a mixture of diversified groups or communities. Various “Chinese” groups often have different views because of different backgrounds, values and interest. There are thousands of Chinese Canadians associations. Most of these groups are not political or against the others, but recent years have seen incidents of clashes in Greater Vancouver between politically opposing groups. During the times of massive demonstrations in Hong Kong, the “pro-China” groups and “pro-Hong Kong protest” groups confronted each other here in Vancouver.⁴⁶

The legal identities of the people in Hong Kong and Macau are quite unique because many of them have the citizenships or passports of other countries. China’s Nationality Law applies in both Special Administrative Regions. Around the time of the handovers in 1997 and 1999, China gave special “explanations” regarding the application of this law in these SARs. Hong Kong residents of Chinese descent and born in Hong Kong are defined by China as its citizens, but nearly half of the Hong Kong population, some 2.9 million people, have the BNO (British National (Overseas)) passports. Until recently, they were allowed to use both the BNO passports and the Chinese Hong Kong SAR passports to travel overseas, and use the Chinese “Home Return Certificates” to enter and live in the mainland without a Chinese visa.⁴⁷ Privileges of the same nature are granted to residents of Chinese descent in Macau with Portuguese passports too. They can use Portuguese passports and the Chinese Macau SAR passports to travel and use the “Home Return Certificate” to enter and stay in the mainland.

However, China does not recognize these residents as dual citizens. It only considers the British and Portuguese passports “travel documents” rather than proofs of citizenships.

Legally speaking, residents of both SARs with Canadian citizenship are Canadians rather than Chinese, even if they have the Chinese SAR passports and the “Home Return Certificates.” There are about 300,000 Canadians who are residents in Hong Kong and 10,000 Canadians with permanent resident status in Macau.

⁴⁶ Owen, Brenna, *The Canadian Press*, August 23, 2019, “Split emerges in Vancouver’s Chinese-Canadian community amid Hong Kong protests”, at <https://bc.ctvnews.ca/split-emerges-in-vancouver-s-chinese-canadian-community-amid-hong-kong-protests-1.4568419>. Lee-Young, Joanne, *Vancouver Sun*, Oct. 3, 2019, “Pro-China folks clash with Hong Kong supporters in Richmond”, at <https://vancouversun.com/news/local-news/pro-china-folks-clash-with-hong-kong-supporters-in-richmond>.

⁴⁷ Standing Committee of NPC China, “Explanations of Some Questions by the Standing Committee of the National People’s Congress Concerning the Implementation of the Nationality Law of the People’s Republic of China in the Hong Kong Administrative Region,” adopted on 15 May 1996.

The government of Canada has joined its allies to openly condemn China's introduction of a National Security Law in Hong Kong.⁴⁸ Canada also announced to welcome Canadians to come home from Hong Kong.⁴⁹ Canada has started receiving refugees from Hong Kong. When the Covid-19 pandemic is over, if political tension continues to rise in Hong Kong, there may be a new wave of people coming from Hong Kong to Greater Vancouver and buying homes here, like what happened around the 1997 handover.

On January 29, 2020, as a response to U.K.'s decision to allow all the BNO passport holders and their family members in Hong Kong, 5.4 million in total, to move and work in Britain and later apply for permanent residency there, China announced that starting from January 31 it would no longer recognize the BNO passport as a travel document.⁵⁰ Among these 5.4 million people, some may decide to choose Canada as an alternative destination. Some people in Macau may decide to come here too for a different reason, that is, if the gaming industry cannot recover soon.

This trend will have positive impact on B.C.'s economy, but it may also push up the housing prices in the Lower Mainland. The median household income in Hong Kong and Macau is still five times higher than that in mainland China. Housing prices in these two SARs are still the highest in the world. If people decide to sell their properties there, they can purchase homes here without much difficulty. The government of B.C. should welcome Canadians and their families return to B.C. from the SARs and consider how to manage the impact on the housing market.

We need to pay more attention to the laws and systems in Hong Kong and Macau. Hong Kong and Macau have their own laws, police forces, and anti-money laundering systems. The RCMP has a liaison officer based in the Canadian consulate in Hong Kong. Canada often needs to seek cooperation from these SARs on criminal matters, although the federal government has decided to temporarily suspend the extradition treaty with Hong Kong as a response to the introduction of China's new National Security Law of Hong Kong.⁵¹ We should keep the channels open for communication on mutual legal assistance matters in criminal matters. I recommend that Canadian law enforcement agencies and other relevant authorities maintain and enhance their working relationship with their counterparts in both territories. We need to keep an appropriate separation of geopolitics and legal affairs.

With respect to money laundering, the sharing of information and best practices with these SARS could be helpful to Canada. People may be surprised to know that Hong Kong and Macau have impressive AML/CFT systems. For example, in May, 2019, B.C.'s Land Owner Transparency Act

⁴⁸ Zimonjic, Peter, CBC News, "Canada condemns arrest of pro-democracy lawmakers in Hong Kong", at <https://www.cbc.ca/news/politics/canada-condemns-hong-kong-arrests-1.5863573>

⁴⁹ Fife, Robert et al., The Globe and Mail, "Trudeau says Canada won't be deterred by China's veiled Hong Kong threat", at <https://www.theglobeandmail.com/world/article-chinese-ambassadors-perceived-threat-raises-concerns-for-canadians-in/>. Gilmore, Rachel, CTV News, June 3, 2020, "Freeland says Canadians in Hong Kong are 'very, very welcome' to come home", at <https://www.ctvnews.ca/politics/freeland-says-canadians-in-hong-kong-are-very-very-welcome-to-come-home-1.4967633>

⁵⁰ The Associated Press, CBC, Jan. 29, 2021, "China to stop recognition of British passport that would allow Hong Kongers to come to U.K.", at <https://www.cbc.ca/news/world/china-britain-national-overseas-passport-1.5892943>

⁵¹ CBC, July 3, 2020, "Canada suspends extradition treaty with Hong Kong over new security law", at <https://www.cbc.ca/news/politics/canada-suspending-extradition-treaty-hong-kong-over-security-law-1.5636479>

(LOTA) became the first law in Canada requiring the disclosure of individuals who hold beneficial interests in real estate and land in B.C. Four months earlier, on January 17, the Macau government issued a full set of administrative regulations requiring the disclosure, verification and registration of beneficiaries of all real estate properties, effective immediately.⁵² We should not assume that it is easier to launder dirty money in these SARs than in B.C.

Recommendations

Recommendation 3. To support the economy, British Columbia should continue to welcome all law-abiding Canadian citizens and foreigners bringing in their legitimate money from overseas, while improving our systems to defend national security, protect public safety and fight money laundering.

Recommendation 4. To address the problem of corrupted foreign officials laundering money, British Columbia should seek advice from CRA to access the relevant financial account information and determine if any money transferred from overseas belongs to a foreign PEP or his/her family.

Recommendation 5. To deal with the problem of fentanyl, British Columbia should develop a comprehensive anti-drug strategy with support from the federal government, consisting of result-based action plans concerning prevention, treatment, and enforcement.

Recommendation 6. To address the difficulties in cooperation with China in criminal matters, the government of Canada may consider the Taiwan experience of working with mainland China in this area, especially the successful implementation of the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement of 2009.

Recommendation 7. Despite difficulties in bilateral relationships, when the timing is appropriate, we should continue to work with China in a way that serves Canada's interest. The Canadian government should continue to seek cooperation from China for the sharing of criminal intelligence on fentanyl, drug trafficking, and other organized crime activities.

Recommendation 8. Official data on the nationalities of all foreigners who are charged and convicted of money laundering offenses should be made available to the public, particularly concerning real estate, casinos, luxurious car sales, as well as drug tracking and other offenses of organized crime.

Recommendation 9. The government of B.C. should be prepared to welcome Canadians return to B.C. from Hong Kong and Macau and consider how to cope with the impact of a new migration wave on the housing market here.

Recommendation 10. We should pay more attention to the laws and systems in Hong Kong and Macau. Both Special Administrative Regions have developed comprehensive anti-money laundering systems.

⁵² Housing Bureau of Macau SAR, Notice No.3/2019, "Guidelines of Measures for the Prevention of AML/CFT".

Recommendation 11. Canadian law enforcement agencies and other relevant authorities should maintain and enhance their working relationship with their counterparts in Hong Kong and Macau. There should be an appropriate separation of geopolitics and legal affairs.

Part 2. The Flows of Money from Companies through FDI and Trade

2.1. Global magnitudes of China's FDI and International Trade

(1) Trillions of dollars worth of assets overseas

To understand how much Chinese money is already out of China, we need to look at two most important aspects of the overall picture – the value of China's outflow of foreign direct investment (FDI), i.e., Overseas Direct Investment (ODI), and its international trade value.

At present, China is the second-largest economy in terms of its GDP, the largest economy in terms of its PPP, the top trader, and the second-largest investor in the world. According to statistics published by the United Nations Conference on Trade and Development (UNCTAD), China's outflow FDI value in 2018 was US\$130 billion, which ranked the second largest in the world. However, if China's FDI is combined with Hong Kong's (US\$85b), the total will become US\$215b, which is much larger than the world's No. 1 investor, Japan (US\$143b).⁵³

Over the past two decades, China's FDI has expanded at a rapid pace. In 2001-2002, the Chinese government started to implement the "Go Out Strategy", which was to encourage more Chinese companies to do business globally and invest overseas. In 2013, to support the Belt and Road Initiative (BRI), the CCP Central Committee adopted a resolution to clearly recognize the "investor's status" of Chinese companies and private citizens and to encourage them to invest more overseas.

Statistics published by the Ministry of Commerce of China show that government approved or recorded ODI jumped from US\$2.6b in 2002 to US\$26.5b in 2007, which was an expansion of 10 times in only five years. The ODI continued to grow and reached its peak (US\$196.2b) in 2016, and then dropped to US\$143b in 2018, which is more than the quantity of US\$130b in the UNCTAD report.⁵⁴

In the past three years, starting in 2017, the growth of China's ODI has slowed down significantly. Official Chinese statistics show global new ODI from China dropped 19.3% in 2017 (US\$158.3) from 2016 (US\$196.2b) and further dropped nearly 10% in 2018 (US\$143b) from 2017. In particular, the Chinese new ODI to North America dropped dramatically.⁵⁵ In 2019, the decline of new Chinese ODI to the world continued. It dropped 10% to US\$117b from US\$143b in 2018.⁵⁶

⁵³ UNCTAD, *2019 e-Handbook of Statistics*, Foreign direct investment, Table 4. "Foreign direct investment outflows, top 20 home economies, 2018", at <https://stats.unctad.org/handbook/EconomicTrends/Fdi.html>, Table 4.

⁵⁴ Ministry of Commerce of the People's Republic of China, State Bureau of Statistics and State Administration of Foreign Currency, "2018 Statistical Bulletin of China's Outward Foreign Direct Investment".

⁵⁵ Ministry of Commerce of People's Republic of China, "Report on Development of China's Outward Investment 2018."

⁵⁶ Ernst & Young Global Limited, 2020, "Overview of China's Overseas Investment in Year 2019", at [https://www.ey.com/Publication/vwLUAssets/ey-overview-of-china-outbound-investment-in-2019-en/\\$FILE/ey-overview-of-china-outbound-investment-in-2019-en.pdf](https://www.ey.com/Publication/vwLUAssets/ey-overview-of-china-outbound-investment-in-2019-en/$FILE/ey-overview-of-china-outbound-investment-in-2019-en.pdf)

According to China's Ministry of Commerce, the drop of ODI in the past three years was mainly because of increased security scrutiny on Chinese investment in the U.S. and many other host countries, the U.S. – China trade war, rising protectionism, decreased returns from ODI projects, and the slowing down economy. The Ministry also indicated that the decline was at least partially because of the introduction of more restrictive Central Government policies to reduce the value of investment in overseas real estate, hotels and entertainment industries. New Chinese investment in overseas real estate decreased by 55% in 2017 from 2016.⁵⁷ New Chinese ODI real estate projects were less likely to get government approval during 2017-2019.

The accumulated stock of China's ODI is enormous. In the world's ranking of outward FDI stocks, China jumped from the sixth in 2016 to the second in 2017. China's ODI stock was already US\$1.8 trillion, second only to the United States' stock of US\$7.8 trillion in the world. From 2002 to 2018, official Chinese data show, the average growth of Chinese ODI was 28.2% per year, and by the end of 2018, Chinese ODI had totaled 1.98 trillion US dollars.⁵⁸

The UNCTAD recognizes in its World Investment Report 2019 that, in terms of the size of the total stock of FDI, China is the No. 2 top investor in the world.⁵⁹ The American Enterprise Institute reports in its China Global Investment Tracker that from 2005 to 2019 the value of China's overseas investment and construction combined exceeded US\$2 trillion.⁶⁰

By late 2017, the accumulated value of all assets owned by China "central-owned" companies was already over US\$6 trillion.⁶¹

Furthermore, China trades trillions of US dollars worth of goods internationally per year. From 2010 to 2018, the total value of China's international trade grew from nearly US\$3 trillion to over US\$4.6 trillion. Its export value went up from US\$1.578t in 2010 to almost US\$2.5t in 2019.⁶²

China also exports goods through Hong Kong because of its special status as a separate customs area for exports, which gives Hong Kong based exporters significant advantages. In 2019, even under the negative impact of the US-China trade war and the fights over the Hong Kong-China extradition law, Hong Kong still managed to ship US\$535 billion worth of goods overseas. Hong Kong's special status will change soon since the U.S. has announced to end it.

(2) Tens of thousands of companies abroad

⁵⁷ See supra note 46.

⁵⁸ Ibid.

⁵⁹ United Nations Conference on Trade and Development, "World Investment Report 2019", at https://unctad.org/en/PublicationsLibrary/wir2019_overview_en.pdf

⁶⁰ The American Enterprise Institute, "China Global Investment Tracker", at <https://www.aei.org/china-global-investment-tracker/?ncid=txtlnkusaolp00000618>

⁶¹ Xinhua New, Oct. 26, 2017, "Central-owned enterprises speeding up global strategy, overseas assets exceed 6 trillion", at http://www.xinhuanet.com//fortune/2017-10/26/c_1121857095.htm

⁶² Ministry of Commerce of the PRC, Comprehensive Department and International Trade and Economic Cooperation Research Institute, Nov. 22, 2019, "China International Trade Report (autumn 2019)," at <http://zhs.mofcom.gov.cn/article/cbw/201911/20191102915957.shtml>. And Statista, 2020, "China: export of goods from 2009 to 2019," at <https://www.statista.com/statistics/263661/export-of-goods-from-china/>

By the end of 2018, 27,000 investors in mainland China had set up a total of 43,000 companies in 188 countries and regions, which include Hong Kong and Macau et al. The total value of their assets was US\$6.6 trillion. The facts that US\$2 trillion have been invested overseas and US\$6.6 trillion of assets are located outside of mainland China explain the enormous magnitudes of Chinese money in the world.

Most of the Chinese ODI and overseas assets are located in countries and regions of free economies. They can be converted to US dollars. Money flows easily outside of the mainland no matter what kind of system the Chinese government has put in place to monitor and regulate it. Money in one country can move to another, for legitimate or illegitimate purposes.

It is also a great challenge to monitor and control the export proceeds paid overseas. Obviously, the realization of proceeds from export can be complicated. The repatriation of export proceeds can take time. And some proportion of the proceeds will stay overseas.

Significantly, state-owned enterprises exported only 10% of the value, whereas the remained 90% were exports from foreign/overseas invested enterprises (including Hong Kong, Macau, Taiwan invested ones) and private-owned Chinese enterprises.⁶³

The foreign/overseas owned manufactories can lawfully transfer the proceeds of their exports out of China, or simply receive the payments of their exports overseas. Similarly, if a private-owned exporter in China has an overseas subsidiary, it can arrange without too much difficulty for the subsidiary to receive a substantial proportion of the payment from the importer and use the money overseas. When this happens, some of the money may also travel from one country to another, for legitimate or illegitimate reasons.

(3) Changing ODI policies and regulations

In the Chinese government, the main controlling agency for the ODI business is the Ministry of Commerce.

In 2004, the Ministry of Commerce issued two landmark regulatory documents entitled “Regulations on the Approval of Overseas Investment and Start-up Enterprises” and “Detailed Rules on the Work to Approve Overseas Investment and Start-up Enterprises”. The Regulations granted the approval power to local bureaus of commerce and announced that in principle “the investor shall be the decision-maker who is also both the recipient of investment return and the bearer of responsibilities”. And, the Regulations promise that the government will render a decision of approval or disapproval on an ODI application within 15 working days after receiving it. Under these rules, the government should act more like an advisor of investment policies and service provider for the investors in dealing with the business of ODI.

The Rules set forth the key factors that the local bureaus of commerce should consider in giving approvals to ODI project applications. A wide range of ODI projects can get approvals because they are “consistent with China’s policies on ODI directions,” if the investment goes to the

⁶³ Ibid.

industries that are listed in the ODI Catalogue of the Chinese government, helps to expand the exportation of goods and labor, facilitates the learning of advanced technology and so on.

The Rules promise that the government will give “policy support” to such ODI projects in foreign policy, taxation, foreign exchange and customs services.

The Rules also provide a negative list of ODI projects, mainly those projects that might endanger national security, projects that are defined as illegal or criminal under the law of China or the host country, or prohibited under international treaties. Applying this negative list, the local government bureaus only have limited power to reject foreign exchange applications relating to ODI projects.

The rules on ODI were further specified and amended through newer regulations introduced by ministries of the central government and provincial level governments during 2004-2019.⁶⁴

To implement the government ODI initiatives, the State Administration of Foreign Exchange (SAFE) has issued a series of policies to give companies “more flexibilities” of foreign exchange for ODI.⁶⁵ According to these SAFE regulations, companies in mainland China, including commercial banks, state-owned companies, private-owned companies and foreign/overseas owned companies, can make ODI with their own foreign exchange funds, foreign exchange loans obtained in China, foreign exchange funds purchased with their RMB funds, tangible assets and intangible assets currency savings and other foreign exchange assets approved by SAFE.

Companies may apply to SAFE for the exchange of their RMB funds to foreign currencies and transfer up to 15% of the investment capital abroad to initiate the project. And, Chinese companies may retain the profits made from their ODI projects for further ODI expansion or new ODI projects overseas.⁶⁶

In 2017, the General Office of the State Council issued a new set of guidelines to direct and regulate overseas investment, which divide ORI projects into three categories: (1) encouraged

⁶⁴ Ministry of Commerce, 2009, “Measures for Overseas Investment Management”; Ministry of Commerce, 2017, “Measures for the Administration of Overseas Investment of Enterprises”; State Development and Reform Commission, 2014, “Administrative Measures for Approval and Record-filing on Overseas Investment Projects”; Beijing Municipal Government, 2018, “Measures for Overseas Investment Management by Enterprises in the Beijing Municipality”.

⁶⁵ SAFE, June 9, 2009, “Notice of the State Administration of Foreign Exchange on the Relevant Issues concerning the Foreign Exchange Administration of Overseas Loans Granted by Domestic Enterprises”. SAFE, July 13, 2009, “Notice of the State Administration of Foreign Exchange on Issuing the Provisions on the Foreign Exchange Administration of the Overseas Direct Investment of Domestic Institutions”. SAFE, November 19, 2012, “Notice of the State Administration of Foreign Exchange on Further Improving and Adjusting Director Investment Foreign Exchange Administration Policies”. SAFE, January 10, 2014, “Notice of the State Administration of Foreign Exchange on Further improving and Adjusting Capital Account Foreign Exchange Administration Policies.” SAFE, Feb. 28, 2015, “Notice of the State Administration of Foreign Exchange on Further Simplifying and Improving Director Investment Foreign Exchange Administration Policies”.

⁶⁶ SAFE, July 13, 2009, “Notice of the State Administration of Foreign Exchange on Issuing the Provisions on the Foreign Exchange Administration of the Overseas Direct Investment of Domestic Institutions.”

projects, such as those to support the BRI infrastructure development, to strengthen cooperation in high-tech and advanced manufacturing industries; (2) restrictive projects, including real estate, hotels, movie cinemas, entertainment businesses, etc.; and (3) prohibited projects, such as those that are against China's national security and interest, gambling and sex industries, etc.⁶⁷

In policy and in practice, private-owned companies are also encouraged to invest overseas. The Chinese government has promised that “the state shall support qualified private-owned enterprises to ‘go out’ and equally treat private-owned enterprises ‘going out’ and state-owned enterprises ‘going out’”.⁶⁸ In recent years, for example, many projects have been launched in the 71 countries participating in the BRI. By September 2019, the Chinese government announced that Chinese companies had invested over US\$100b in BRI countries and regions.⁶⁹ Over 25% of the companies invested in BRI countries are private-owned enterprises.⁷⁰

(4) Chinese offshore SPVs

The rapid development of Chinese offshore Special Purpose Vehicles (SPVs) in the past 15 years has attracted great attention in China and in the international community.

Starting from 2005, SAFE has been making many regulations for monitoring and controlling offshore companies that are formed, acquired or controlled by Chinese companies and individuals.⁷¹ These offshore companies are registered in popular tax havens such as Hong Kong, the Cayman Islands, the British Virgin Islands, Singapore, and so on.

From the government perspective, these Chinese controlled offshore companies were primarily to serve the purpose of “return investment” or “round-trip” financing, i.e., Chinese investment in these offshore companies would help to raise funds and bring more investment back to China. In particular, the red-chip large Chinese companies listed in the Hong Kong stock market have been able to attract enormous investment. Also, prior to 2008, by applying the “round-trip” strategy, Chinese offshore companies investing back in China would be able to enjoy the favorable tax regime for “foreign-invested companies” in China.

⁶⁷ General Office of the State Council, August 4, 2017, “Notice of the General Office of the State Council on Forwarding the Guiding Opinions of the National Development and Reform Commission, the Ministry of Commerce, the People’s Bank of China and the Ministry of Foreign Affairs on Further Directing and Regulating the Direction of Overseas Investment.”

⁶⁸ State Development and Reform Commission et al, 2017, “Notice of the State Development and Reform Commission, the Ministry of Commerce, the People’s Bank of China, the Ministry of Foreign Affairs, and the All-China Industry and Commerce Federation on Issuing the Code of Conduct for the Operation of Overseas Investments by Private Enterprises”.

⁶⁹ Xinhua News, September 29, 2019, “Chinese enterprises have invested over US\$100 billion in countries along the Belt and Road,” at http://www.xinhuanet.com/fortune/2019-09/29/c_1125057885.htm

⁷⁰ All-China Federation of Industry and Commerce, Ministry of Commerce Research Institute on International Trade and Economic Cooperation and UNDP Representative Office in China, 2019, “2019 Chinese Private-owned Enterprises BRI Sustainable Development Report”.

⁷¹ SAFE, October 21, 2005, “Notice of the State Administration of Foreign Exchange on Relevant Issues concerning Foreign Exchange Administration for Domestic Residents to Engage in Financing and in Return Investment via Overseas Special Purpose Companies.”

To facilitate the development of offshore SPVs, during 2014-2016, the Chinese government was quite flexible and relaxed in administering its control over them. The government allowed outbound fund flows to these SPVs from companies and individuals in China, including Chinese citizens and overseas Chinese or foreigners with resident status in China. The SAFE even started to allow residents of China to purchase foreign currencies to invest in overseas SPVs, although they have to go through an application and approval process and SAFE is expected to make a decision within five working days.⁷²

While SPVs have indeed helped to raise funds overseas to support the growth of the Chinese economy, they have also opened a new door to suspicious activities. An example is found in the Offshore Leaks Database built by the International Consortium of Investigative Journalists, which was mainly based on the Panama Papers. This database has a list of over 4,654 offshore companies and 38,625 names of “officers” who are somehow “linked to China”.⁷³ The ICIJ believes that some of them belong to “the most powerful families,” the “princelings” and elites in China. Again, as discussed earlier in this report, there has been not much follow-up investigation by any authority regarding the suspicion of corruption, tax evasion, and money laundering in these entities.⁷⁴

(5) Risks of irregularities and violations

There are significant risks of irregularities. Companies in China are required to report to the government on their ODI projects and exports. Those who fail to report are running the risk of violating the rules and could be punished.

Over the years, the various government departments have been trying to check the authenticity and accuracy of the numerous applications and reports they receive from the companies, detect false reporting and other irregularities, find and fix the systemic loopholes, and punish those who provide false information or engage in fraud and other wrongdoings.

In 2017, the official Xinhua News Agency reported that the CCP Central Commission for Discipline Inspection had conducted its “first round” inspection of over 100 “central-owned” (central government owned) enterprises. The value of overseas assets under the control of these enterprises at the time totaled over RMB 6 trillion (roughly equivalent to US\$850b).⁷⁵

There are incidents of suspicious ORI projects, including some major overseas M&A (Merger and Acquisition) projects. In June 2009, General Motors announced an initial agreement to sell the brand of Hummer to the Sichuan Tengzhong Heavy Industrial Machinery Company Ltd of China. The deal caused hot debate in the Chinese media. Many openly questioned if this deal was an attempt of capital flight in the name of overseas investment. It is very suspicious, they argued, that

⁷² SAFE, July 4, 2014, “Notice of the State Administration of Foreign Exchange on Relevant Issues concerning Foreign Exchange Administration for Domestic Residents to Engage in Financing and in Return Investment via Overseas Special Purpose Companies”.

⁷³ ICIJ, Offshore Leaks Database, at

<https://offshoreleaks.icij.org/search?c=CHN&cat=0&e=&j=&q=&utf8=%E2%9C%93>

⁷⁴ ICIJ, China Leaks, January 20, 2014, “Secret documents disclosed overseas assets belong to Chinese elites”, at <https://www.icij.org/investigations/zhong-guo-chi-jin-rong-jie-mi/ji-mi-wen-jian-pi-lu-zhong-guo-jing-ying-de-hai-wai-zi-chan/>

⁷⁵ See supra note 53.

Tengzhong would spend billions of yuan (US\$500m) to purchase the GM Hummer chapter which was having serious financial difficulties.⁷⁶ On February 24, 2010, the Ministry of Commerce rejected Tengzhong's application to purchase Hummer, and that deal collapsed.

In general, Chinese government control on state-owned enterprises is more effective than its control over foreign-invested and private-owned companies. Yet, corruption poses great risks to state-owned companies with large investments and assets overseas.

The case of corruption in the top management of the China National Petroleum Corporation (CNPC) shows how serious the problem is. In 2013, five senior executives of CNPC were sacked and later charged with various offences of corruption. Among them was Jiang Jiemin, Chairman of China's State-owned Assets Supervision and Administration Commission (SASAC) of the State Council, the ministry which oversees all "central-owned" large companies in China. Jiang was former Chairman and President of CNPC Group. Jiang was convicted of multiple counts of accepting bribes, a large quantity of assets of unknown origin, and abuse of powers, and was sentenced to 16 years of imprisonment.⁷⁷ Another man charged was Li Hualin, Deputy General Manager of CNPC. Li was General Manager of CNPC International in Canada and Kazakhstan and was also in charge of CNPC's businesses in the U.S. and Hong Kong.⁷⁸ The Oriental Daily pointed out that China's overseas assets managed by the "centrally owned" companies worth trillions of US dollars, but scandals of corruption in these companies were "frequent," and the CNPC case was only "a tip of the iceberg".⁷⁹

(6) The myth of "capital flight" from China

A hot topic in the discussion of money flows from China is the so-called "capital flight", which observers believe has been ongoing for many years. The Chinese authorities are very concerned about the risks relating to capital flight, and they have been trying to address them in recent years.

It is widely believed that China has experienced massive hidden capital outflows in the past two decades, although we have only seen rough estimates published as research findings by news outlets and think tanks. According to a review published by the Chinese Academy of Sciences in 2006, the situation of capital flight from China was quite "serious" back in the 1990s. For example, the review discloses, as much as US\$87b left China without leaving proper records in 1998 alone, and the value of hidden capital outflows during 1997-2002 surpassed the total of FDI in China and loans China borrowed from overseas in the same years.⁸⁰

⁷⁶ Mei, Xinyu, China Enterprises Newspaper, Sina Finance, June 11, 2009, "Is the acquisition of Hummer an attempt of capital flight?", at <http://finance.sina.com.cn/roll/20090611/09252888661.shtml>

⁷⁷ BBC, Chinese News, Oct. 12, 2015, "Jiang Jiemin sentenced to 16 years imprisonment for receiving bribes", at https://www.bbc.com/zhongwen/simp/china/2015/10/151012_jiangjiemin_sentence

⁷⁸ Sina Finance, CE, August 27, 2013, "Deputy General Managers Wang Yongchun and Li Hualin et al in CNPC are under investigation", at <http://finance.sina.com.cn/chanjing/gsnews/20130827/170816579419.shtml>

⁷⁹ The Oriental Daily, April 17, 2015, "Huge Black Holes of China's Overseas Corruption Exposed," at: <http://news.creaders.net/china/2015/04/17/1518065.html>

⁸⁰ Wang, Zhen-Quan, and Shou-Yang Wang, 2006, "Re-estimate of China's Capital Flight: 1982-2004", Journal of Chinese Academy of Sciences, pp.202-206. At http://www.cas.cn/zt/jzt/wxcbzt/zgkxyyk2006ndsg/zlyjcyj/200608/t20060825_2667968.shtml

More recently, especially during 2014-2016, there appeared to be another wave of capital flight from China. In 2016, the Financial Times published a news report entitled “capital flight from China worse than thought,” with an estimate of US\$59b left China in 2015.⁸¹

According to a report published by Japan’s Nikkei Asian Review in mid-2019, a total of US\$1.2 trillion “disappeared” from China’s foreign currency reserve because of “quite capital flight” during the previous ten years.⁸²

From June 2014 to January 2017, China’s foreign exchange reserve dropped from US\$4 trillion to US\$3 trillion.⁸³ Some observers assumed that the decline of US\$1 trillion was all because of capital flight.⁸⁴ Other observers pointed out that aside from capital flight, there were other important factors. For example, some analysts found that, based on official Chinese statistics, from June 2014 to September 2015, China’s foreign exchange reserve lost nearly US\$500b because of a 20% depreciation of the Euro and Japanese Yen to US dollars, and lost another US\$258b due to increased imports and decreased exports of goods.⁸⁵

In late 2019, Bloomberg News published a news story regarding an Institute of International Finance report, which claims that capital flight “rose to a recorded high of \$131 billion in the first six months” of 2019 and “that was larger than the average \$80 billion recorded during the same period in 2015 and 2016.” Bloomberg also estimated that capital flows from China were about \$226 billion in the first seven months of 2019, which was about 19% more than in the same period in 2018.⁸⁶

In my view, these are speculations that are difficult to verify. It is impossible to predict the trends in the hidden capital flight from China either. On the one hand, China will continue to tighten up the control and block the loopholes. On the other hand, some private-owned companies and rich individuals will try to accelerate the relocation of their wealth overseas.

Canada appears to be an attractive destination for capital flight, although foreign investors are apparently no longer keen about investing in real estate in the Lower Mainland of B.C. in near future. The United States was believed to be the most favorable destination for Chinese capital flight, but it is becoming less attractive because of the conflicts between the U.S. and China.

⁸¹ Donnan, Shawn, Jan. 20, 2016, Financial Times, “Capital flight from China worse than thought”, at <https://www.ft.com/content/ae4dee44-bf34-11e5-9fdb-87b8d15baec2>

⁸² Harada, Issaku, and Kazuya Manabe, Nikkei, “Quiet capital flight dents China’s sway as \$1.2tn ‘disappears’”, at <https://asia.nikkei.com/Spotlight/Datawatch/Quiet-capital-flight-dents-China-s-sway-as-1.2tn-disappears>

⁸³ CEIC, “China Foreign Exchange Reserves 1989-2020”, source: The People’s Bank of China, at <https://www.ceicdata.com/zh-hans/indicator/china/foreign-exchange-reserves>. Trading Economics, “China Foreign Exchange Reserves 1980-2020 Data”, at <https://tradingeconomics.com/china/foreign-exchange-reserves>

⁸⁴ Russell, Karl, and Keith Bradsher, The New York Times, April 7, 2016, “China’s Exodus of Capital”, <https://www.nytimes.com/interactive/2016/02/13/business/dealbook/china-exodus-flows-currency.html?mtrref=www.google.com>

⁸⁵ Guan Zhixiong, Dec. 28, 2015, “Why did China’s Foreign Exchange Reserves dropped rapidly? – mainly because of depreciation of values and capital flight”, at <https://www.rieti.go.jp/users/kan-si-yu/cn/c151228-1.html>

⁸⁶ Bloomberg News, “China’s Hidden Capital Flight Surges to Record High”, at <https://www.bloomberg.com/news/articles/2019-10-11/china-hidden-capital-flight-at-a-record-in-2019-iif-says>

2.2. Chinese investment and exports to Canada

(1) Dimensions of China's FDI and Canada-China trade

Money comes to Canada from China mainly through FDI/ODI and trade. This kind of money is mostly the proceeds of legitimate businesses, not proceeds of crime.

China's FDI in Canada increased steadily from 2002 to 2017. But the size of China's ODI in Canada is quite modest. As reported by the Canadian government, China's FDI stock in Canada was only C\$16.2b in 2017 and close to C\$17b in 2018.⁸⁷ The Chinese government statistics on Chinese ODI in Canada are even less impressive. As stated by the Ministry of Commerce, China's ODI to Canada was US\$980m in 2018. By the end of 2017, its ODI stock in Canada was US\$10.94b, which is less than China's ODI stocks in Australia (US\$36.175b), U.K. (US\$20.3b), the Netherlands (US\$18.5b), Germany (US\$12.16b).⁸⁸

According to statistics released by the Canadian government, China's share in Canada's inflow FDI is also very small. In 2017, its share by UIC (ultimate investor country) was only 3.3%, and by IIC (immediate investing country) 1.9%. In the same year, the U.S. shares by UIC was 51.2% and by IIC 46.3%. In UIC ranking, UK (6.3%), Japan (4.7%), Switzerland (3.5%), and Brazil are higher. In IIC, China was ranked the ninth only, even below Hong Kong.⁸⁹

The Asia Pacific Foundation of Canada (APF Canada) has however painted a quite different picture in its "Investment Monitor 2019" report. It shows that China has invested a total of C\$60b in Canada. During 2003-2018, the APF Canada states, 73% of FDI from the Asia Pacific region to Canada was from mainland China, Japan, and Hong Kong, and China ranked No. 1 among all the countries in this region.⁹⁰

The China Institute at the University of Alberta also reported larger quantities of Chinese FDI to Canada. Its report shows China invested C\$8.35b in Canada in 2017 and C\$4.43 in 2018.⁹¹

Yet, statistics released by the governments and the think tanks agree that new investment from China to Canada dropped dramatically in the past two or three years. The China Institute at the University of Alberta believes that new Chinese FDI into Canada declined by 47% during 2017-2018.

⁸⁷ Global Affairs Canada, 2019, "Canada's State of Trade", at https://www.international.gc.ca/gac-amc/assets/pdfs/publications/State-of-Trade-2019_eng.pdf.p.78.

⁸⁸ See supra note 46.

⁸⁹ See supra note 79, p.82.

⁹⁰ Asia Pacific Foundation of Canada, "Investment Monitor 2019: Report on City-Level Foreign Direct Investment Between Canada and the Asia Pacific", at <https://investmentmonitor.ca/insights-reports/investment-monitor-2019-report-city-level-foreign-direct-investment-between-canada>

⁹¹ Powell, Naomi, Financial Post, Jan. 28, 2019, "Chinese investment in Canada cut by nearly half as diplomatic spats, currency controls take a toll", at <https://business.financialpost.com/news/economy/chinese-investment-in-canada-off-47-per-cent-as-diplomatic-spats-currency-controls-take-toll>

Interestingly, British Columbia appeared to be exceptionally attractive to Chinese investment. In 2018, the Institute reported, while Chinese investment into Canada dropped some 20%, 82% of the investment came to B.C.⁹²

According to the Chinese Consulate in Vancouver, by the end of 2018, Chinese investors had set up 150 companies in B.C. This province has remained the “most active” among all Canadian provinces and territories in the trade with China. In 2018, B.C. exported C\$7b worth of goods to China and imported C\$12.67b worth of goods from China.⁹³

In 2019, foreign investment in Canada hit its highest in four years, but China’s FDI decreased at an even more dramatic scale. The APF reported a 90% drop in the year: “According to the *APF Canada Investment Monitor*, mainland China’s investment into Canada has dropped: from C\$3.6 billion in new investments in the first three quarters of 2018 to C\$351 million in the first three quarters of 2019.”⁹⁴

There are risks of irregularities in investment and trade. From a legal point of view, however, the host country of inflow FDI and the importers of foreign goods are not necessarily under an obligation to assist the home country and the exporters to enforce their administrative regulations and rules, unless the violation is defined as a criminal offence under the law of the host country or a treaty. I recommend that we should be aware of the risks of irregularities.

(2) Corruption as a particular threat to Canada

Corruption in China can be a real risk to Canada, because Canada is perceived as a safe haven of corrupted Chinese officials and fugitives.

Corruption is a problem in state-owned Chinese companies with large investments and assets overseas. Similarly, state-owned trade companies have this problem too. Corrupted executives of these companies may decide to enrich themselves at the cost of their companies in overseas businesses. In Chinese, this is often called a practice of *sun-gong-fei-si* (sacrifice the public to enrich the private).

The arrangement can be made in collaboration with overseas partners. For example, a corrupted executive of a state-owned company may decide to let the company purchase an overseas asset at a deliberately inflated price. And, such an executive can manipulate the import/export prices, that is, to let a state-owned trading company export the goods at a deliberately reduced price and import the goods at an inflated price. In return, he will receive a kickback from the overseas seller of the asset or the importer/exporter, who will place the money in an overseas bank account for him, buy a luxurious home for his wife or mistress if she is already living overseas, pay the tuition and buy

⁹² China Institute at University of Alberta, China-Canada Investment Tracker, “Year End Review 2018: Chinese Investment in Canada”, at <https://www.ualberta.ca/china-institute/media-library/media-gallery/research/tracker/2-year-end-review-2018.pdf>

⁹³ Consulate General of the PRC in Vancouver, May 27, 2019, “Briefing on Economic and Trade Cooperation between China and B.C.”, at <http://vancouver.mofcom.gov.cn/article/zxhz/hzjj/201905/20190502867648.shtml>

⁹⁴ Asia Pacific Foundation of Canada, Nov. 29, 2019, “Investments Drop One Year into the Canada-China Dispute – But There’s a Catch”, at <https://www.asiapacific.ca/publication/investments-drop-one-year-canada-china-dispute-theres-catch>

a condo for his child if the child is attending school overseas, or give the money to his wife or child's company if they have a business overseas. These are no doubt activities of corruption, fraud, and money laundering.

The overseas operation of Chinese state-owned companies becomes risky when they run their investment business through offshore accounts that are set up in the name of their executives or trusted individuals. For many years, as a Chinese professor wrote in 2011, "due to historical reasons and differences in foreign laws", some "central-owned" Chinese companies had been investing overseas using the names of individuals.⁹⁵ This is the so-called practice of "individuals holding the assets on behalf of the companies." In other words, these state-owned overseas assets are registered as private-owned assets of those trusted individuals.

Obviously, when such an individual becomes corrupted and decides to breach the trust, he may be tempted to quietly transfer the company asset to a shell company of himself or his family, or sell the asset and disappear with the money.

Since 2010, to block this kind of "black holes", the Chinese government has launched special inspection actions to audit the overseas assets and businesses of the "central-owned" companies in order to detect and deter irregularities and corruptive practices. According to Chinese news reports, the government is aware of the "frequent" scandals of corruption in the handling of the trillions of dollars worth of China's overseas assets that are managed by these large state-owned companies.⁹⁶

Considering Canada is widely perceived as a safe haven for corrupted Chinese fugitives, we need to be aware of such risks and be prepared to deal with them. I recommend that the relevant government authorities of Canada and China share criminal intelligence with respect to incidents of possible corruption, fraud and money laundering involving state-owned Chinese companies in Canada or individuals holding assets for such companies, and identify the beneficiaries, regardless of whose names are used to register the assets.

I also recommend that Canadian law enforcement agencies should vigorously investigate incidents of corruption and fraud involving foreign officials and their accomplices in Canada. Corrupted foreign officials and criminals should be efficiently removed from Canada. The present system which allows these foreign criminals to drag on for many years and waste millions of tax dollars must change.

(3) Chinese investment in Canadian real estate

In Canada, particularly in B.C. Lower Mainland, Chinese investment in real estate is a hot topic in the discussion of money laundering, and vice versa.

⁹⁵ Li, Guifang, China Business Network Daily, Oct. 24, 2011, "Report on FDI of central-owned enterprises", at <https://www.chinabond.com.cn/Info/11866337>

⁹⁶ Xingjingbao, Xinhua News Net, March 24, 2015, "Frequent occurrence of overseas investment corruption in central-owned enterprises, SASAC to inspect 4.4 trillion worth of overseas assets", at http://www.xinhuanet.com/politics/2015-03/24/c_127612429.htm

Although we have heard a lot of stories in the Canadian press about “China is buying Canada”,⁹⁷ it appears that no one really knows how much money has come from China into the real estate market in B.C. or Canada. This is still a myth to be clarified by more detailed statistics gathering and analysis.

According to the APF Canada “Investment Monitor 2019” report, during 2003-2018, the “Asia Pacific,” which includes 11 countries and regions, invested a total of C\$2.461b into Canadian “real estate investment and services.” During those years, Canada invested nearly C\$20b into the same sector in the Asia Pacific. Interesting, the APF Canada report shows that out of the total of C\$2.461b from the “Asia Pacific”, C\$1.765b went in the “real estate investment and service” sector in B.C., and all C\$1.765b came to Vancouver.⁹⁸ This appears to be another indication of the lack of solid data for our discussion.

Statistics released by Statistics Canada together with Canada Mortgage and Housing Corporate (CMHC) in the Canadian Housing Statistics Program show that, in 2017, non-residents of Canada only owned 3.4% of all residential properties in Toronto, 4.8% of residential properties in Vancouver, and less than 1% of the condo stock in 17 metropolitan areas across the country.⁹⁹

In 2019, Canadian Housing Statistics Program reported: “Properties that have at least one non-resident owner amount to 6.2% in British Columbia (Vancouver 7.6%, 3.3% in Ontario (Toronto 3.8%) and 6.2% in Nova Scotia (Halifax 4.3%).”¹⁰⁰ Considering these numbers include properties jointly owned by a resident and a non-resident, it really cannot tell what exactly is the percentage of totally non-resident owned properties in these provinces. Further, the data cannot tell us how many properties are owned by foreigners, because “non-residents” include overseas Canadians and foreigners.

As a real estate information expert told Global News, these numbers suggest that the non-resident homeowners only had a limited role in pushing up the housing prices in Vancouver, and “domestic speculation was probably a bigger factor than non-resident purchases”.¹⁰¹

To help Canadians understand to what extent high housing price in B.C. is a “foreign” or “Chinese” problem, and how much impact money laundering has had in the B.C. real estate market, I recommend that the federal and provincial authorities collect and provide more detailed statistics on all foreign investment and purchases of real estate properties in B.C. and Canada, including the

⁹⁷ Gillis, Charlie, et al, Maclean’s, May 9, 2016, “China is buying Canada: Inside the new real estate frenzy”, at <https://www.macleans.ca/economy/economicanalysis/chinese-real-estate-investors-are-reshaping-the-market/>

⁹⁸ See supra note 81, Fig. 23 on p.36, and Fig. 38 on p.59. at <https://investmentmonitor.ca/sites/default/files/2019-04/Investment%20Monitor%20Report-Final%202019.pdf>

⁹⁹ Statistics Canada and CMHC, Dec. 19, 2017, “Canadian Housing Statistics Program,” at <https://www150.statcan.gc.ca/n1/daily-quotidien/171219/dq171219b-eng.htm>

¹⁰⁰ Statistics Canada and CMHC, March 12, 2019, “New Insights on Non-resident Ownership and Participation in BC, ON and NS Housing Markets,” at <https://www.cmhc-schl.gc.ca/en/media-newsroom/news-releases/2019/new-insights-non-resident-ownership-and-participation-bc-on-ns-housing-markets>

¹⁰¹ Alini, Erica, Global News, Dec. 19, 2017, “Foreign homeownership less than %5 in Vancouver, Toronto: StatsCan”, at <https://globalnews.ca/news/3924481/foreign-homebuyers-5-vancouver-toronto-statcan/>

nationalities of foreign buyers or owners, as well as the numbers of property owners who have been charged and convicted of money laundering and organized crime.

Chinese buyers have bought more properties in many other countries. The American Enterprise Institute reported in its “China Global Investment Tracker” that, during 2005-2019, only 3% (US\$1.66b) of China’s investment in Canada went into the real estate sector. In those years, 8.5% (US\$9.87b) of China’s investment to Australia, 16.5% (US\$30.82b) of its investment to the U.S. and 18.29% (US\$15.94b) of its investment to the U.K went into real estate.¹⁰²

The international real estate market exists in nearly all free market economies in the world. Many Canadians own residential properties abroad too. Many “snowbirds” have vacation homes in the U.S. According to the Bank of Montreal, in 2015, “more than 500,000 Canadians own property in Florida alone”.¹⁰³ What if the U.S. decides to impose an empty home tax on these Canadians and collect it retroactively?

Foreign investment can contribute a lot to government revenue and the economy. In B.C., property tax and property transaction tax are important revenues of the local governments. Since 2018, the provincial and municipal speculation and empty home taxes have had a significant impact on cooling down the housing prices in the Lower Mainland.

After all, why would Canada’s best magazine, the Maclean’s, sell a story using a sensational title “China is buying Canada,” if only 6% of all the properties are owned by households with “at least a non-resident,” which include properties bought by all foreigners and non-resident Canadians? In 2021, housing prices in Vancouver, Toronto, Montreal, Ottawa and Victoria all rose significantly.¹⁰⁴ Apparently, placing restrictions on foreign buyers may be necessary, but housing in Vancouver and other Canadian metropolitans will become affordable only if the supply of low-price new homes improves and becomes sufficient.

It is encouraging to see that in the 2021 federal election the main political parties in Canada all promised a massive increase in the number of new homes and new commitment to new affordable housing programs. This is the way to assure affordable housing. Instead of assuming that the dirty-or-clean money from China can determine the housing price in the Lower Mainland, I recommend that the government of B.C. takes a look at the model of public housing in Singapore. Over 80% of Singaporeans live in government-built apartments, and 90% of them own their own homes.¹⁰⁵ The success of this model not only guarantees the supply of affordable housing to the people but also supports the stability and growth of the economy.

We should reconsider the laws and policies that penalize Canadian homeowners. Canadians should not be penalized for having a vocational home. And a family of overseas Canadian citizens should

¹⁰² American Enterprise Institute, China global Investment Tracker, at <https://www.aei.org/china-global-investment-tracker/>

¹⁰³ Bank of Montreal, Sept. 24, 2015, “Looking for a spot in the Sunshine State?”, at <https://yourfinanciallife.bmo.com/articles/buying-us-vacation-home-550204/#.XsykQGhKiUk>

¹⁰⁴ WOVA, July 21, 2021, “Canadian Housing Market News”, at <https://wowa.ca/reports/canada-housing-market>

¹⁰⁵ The Economist, July 6, 2017, “Why 80% of Singaporeans live in government-built flats”, at <https://www.economist.com/asia/2017/07/06/why-80-of-singaporeans-live-in-government-built-flats>

not be penalized for keeping a condo in Canada, especially if they are planning to move back to Canada soon. In particular, no one should assume Canadian homeowners are “foreigners” or even “money launderers” just because of their racial or ethnic background.

(4) The Canada-China FIPA and FDI screening

Chinese FDI in Canada is protected by the Canadian law and the 2014 Foreign Investment Promotion and Protection Agreement (FIPA) between Canada and China.¹⁰⁶ There is no indication that Canada will walk away from this Agreement.

In this difficult time of unprecedented crisis, for our discussion of policy options regarding Chinese investment in B.C., I recommend that we take into consideration of the three principles that are stipulated in the FIPA:

- 1) The principle of the minimum standard of treatment, which requires Canada to provide fair and equitable treatment and full protection and security to Chinese investors, in accordance with international law. Canada will apply the law transparently and impartially and refrain from discriminatory or protectionist conduct.
- 2) The principle of most-favored-nation treatment, which requires Canada to accord to Chinese investors treatment no less favorable than that it accords, in like circumstances, to investors of any other country, e.g., the United States.
- 3) The principle of “national treatment,” that is, to give Chinese investors treatment no less favorable than that it accords, in like circumstances, to Canadian investors, although the Canadian government has the right to block any foreign investment under the Investment Canada Act.

Under this treaty, even if bilateral relation deteriorates further, Canada will continue to protect Chinese investment including enterprises, shares and other forms of equity participation in any enterprise, and “any other tangible or intangible, moveable or immovable, property and related property rights acquired or used for business purposes”.¹⁰⁷ Therefore, Chinese investment in B.C. real estate and other industries will still be protected.

The Canada-China FIPA does not guarantee new Chinese FDI projects in Canada will be approved. On the contrary, it appears that the public and government in Canada are becoming more concerned about potential security risks of Chinese FDI, especially if they are from state-owned companies.

“Is Chinese FDI in Canada a threat or opportunity?” This kind of questions have been discussed in the Canadian press for some years.¹⁰⁸ In recent years, the Canadian government has decided to

¹⁰⁶ See the full text of the treaty, “Agreement Between the Government of Canada and the Government of the People’s Republic of China for the Promotion and Reciprocal Protection of investment,” at <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/china-chine/fipa-apie/index.aspx?lang=eng>

¹⁰⁷ Article 1, Definitions, section 1, Canada-China FIPA.

¹⁰⁸ Morgan, Theodore H., Sept. 1, 2012, “Chinese FDI in Canada: Threat or opportunity?”, at <https://policyoptions.irpp.org/magazines/canada-in-the-pacific-century/chinese-fdi-in-canada-threat-or-opportunity/>

block several Chinese FDI projects on security concerns.¹⁰⁹ In fact, more FDI from China are rejected on this ground than those from any other country during the same years. Similar actions were taken in Australia, France, Italy, et al., on some Chinese DFI projects.

Most recently, in April 2020, the Canadian government took an action to address what it considered the “amplified” security risks of FDI that “may be motivated by non-commercial imperatives that could harm Canada’s economic or national security interests”. The government decided to “subject certain foreign investments into Canada to enhanced scrutiny”, especially FDI “in Canadian businesses that are related to public health or involved in the supply of critical goods and services to Canadians or to the Government”, and FDI by state-owned enterprises and “private investors assessed as being closely tied to or subject to direction from foreign governments”.¹¹⁰ Clearly, Chinese FDI will face more scrutiny and obstacles in Canada.

It is worth noting that FDI security screening goes beyond state-owned companies. Under the Investment Canada Act, the government of Canada has the power to block foreign investment “that could be injurious to national security.”¹¹¹ The 2016 Guidelines on National Security Review of Investments require an assessment of nine categories of “potential” security risks.¹¹² Canada will think more than twice about new Chinese FDI in these nine areas. For example, the government of Canada will almost certainly follow the examples of the U.S., U.K., Australia and France to exclude Huawei from getting involved in Canada’s 5G infrastructure projects, although Huawei is registered as a privately owned company.

Considering that the FIPA is still effective, it may be problematic if Canada routinely rejects FDI mainly from China. I recommend that the Canadian government considers a more transparent approach to make the results of FDI screening more predictable to both Chinese investors and their Canadian corporate partners. This can be achieved by publishing a “negative list” of FDI projects. Such a list will help foreign investors to understand what business sectors are either closed or more restrictive to foreign acquisition and investment.

This is indeed the model that China has adopted for many years. The Chinese Foreign Investment Law promises “national treatment” to foreign investments, but allows the government of China to make negative lists to block or limit the access to certain industries. Under the 2020 version negative list entitled “Special Administrative Measures (Negative List) for the Access of Foreign Investment”, foreign investments face restrictions in 12 sectors and 33 sub-sectors of industries and businesses. FDI are either explicitly prohibited to enter these sectors or required to work with a Chinese controlling shareholder, unless with special permissions from the Chinese

¹⁰⁹ Stevenson, Alexandra, May 23, 2018, The New York Times, “Canada Blocks Chinese Takeover on Security Concerns”, at <https://www.nytimes.com/2018/05/23/business/canada-china-aecon-block.html>; Bloomberg, South China Morning Post, Dec. 23, 2020, “Canada’s Justin Trudeau shuts out China again by rejecting Arctic gold mine deal”, at <https://www.scmp.com/news/world/article/3115033/canadas-justin-trudeau-shuts-out-china-again-rejecting-arctic-gold-mine>

¹¹⁰ Government of Canada, April 18, 2020, “Policy Statement on Foreign Investment Review and COVID-19”, at <https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81224.html>

¹¹¹ Investment Act Canada, s.2.

¹¹² Government of Canada, “Guidelines on the National Security Review of Investment”, at <https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81190.html>

government.¹¹³ In addition, local governments can make their own negative lists. In 2014, the Shanghai Municipal Government made a negative list on access of foreign investment to the Shanghai pilot free trade zone.

Recommendations

Recommendation 12. The relevant government authorities of Canada and China should share criminal intelligence concerning incidents of possible corruption, fraud, and money laundering involving state-owned Chinese companies in Canada or individuals holding assets for such companies, and identify the beneficiaries, regardless of whose names are used to register the assets.

Recommendation 13. Canadian law enforcement agencies should vigorously investigate incidents of corruption and fraud involving foreign officials and their accomplices in Canada. Corrupted foreign officials and criminals should be efficiently removed from Canada. The present system which allows these foreign criminals to drag on for many years needs a change.

Recommendation 14. The federal and provincial authorities should collect and provide more detailed statistics on all foreign investment and purchases of real estate properties in B.C. and Canada, including the nationalities of foreign buyers or owners, as well as the numbers of property owners who have been charged and convicted of money laundering and organized crime.

Recommendation 15. As promised by the main political parties in the 2021 federal election, massively increase in the supply of low-price new homes is the right strategy to guarantee affordable housing. Instead of assuming that “Chinese” money can determine the housing price here, we should take a look at other models of affordable housing in the world, such as the model of public housing in Singapore.

Recommendation 16. We should reconsider the laws and policies that penalize Canadian homeowners. Canadians should not be penalized for having a vocational home. And a family of overseas Canadian citizens should not be penalized for keeping a condo in Canada, especially if they are planning to move back to Canada soon.

Recommendation 17. In our discussion of policy options regarding Chinese investment in B.C., we should take into consideration of the three principles that are stipulated in the Canada-China FIPA – the minimum standard of treatment, most-favored-nation treatment and national treatment, which promise that Canada will apply the law transparently, impartially and refrain from discriminatory or protectionist conduct. To further assure transparency, fairness and national security, the Canadian government may consider to publish a negative list, that will prohibit or limit the access of foreign acquisition and investment to certain business sectors, unless special permissions are granted by the Canadian government.

¹¹³ State Commission of Development and Reform and Ministry of Commerce, June 23, 2020, Special Administrative Measures (Negative List) for the Access of Foreign Investment (2020), at http://www.gov.cn/gongbao/content/2020/content_5532623.htm

3. Foreign Exchange Control and Flow of Money from Individuals

3.1. The RMB: a major reserve currency with limited convertibility

The Chinese currency, the renminbi or RMB, is still a currency with limited convertibility.

Since the founding of the People's Republic in 1949, China has always had a foreign currency control system. It goes beyond the control of foreign exchange rates. Prior to 1980, not many people in mainland China were allowed to have foreign currencies. The RMB was used within the mainland only. Its exchange rate was pegged to the US dollar.

From 1980 to 1995, China had two kinds of currencies. Aside from the ordinary RMB, there were the *waihuiquan*, or the "foreign exchange bills." Overseas visitors and mainland residents could convert *waihuiquan* to foreign currencies in Chinese banks. The *waihuiquan* had official exchange rates and black-market rates. The black-market rates were much better. In those years, an overseas visitor to China would convert US dollars to *waihuiquan* in a bank upon arrival, use the *waihuiquan* but not the RMB during his stay in China, and convert the remaining *waihuiquan* back to US dollars in a bank before departure.

After China acceded to the WTO in 2001, the trend has been to gradually loosen restrictions on foreign exchange. Starting from 2005, the RMB exchange rate has been allowed to float within a narrow margin determined by the government based on a trade-weighted foreign currency basket rather than the value of the US dollar only.

It has taken the RMB many years to gradually enter the international market. In the early 2000s, some retailers in Hong Kong and Macau started to accept RMB from their customers. This was the beginning of RMB's use outside of the mainland. Subsequently, the flow of RMB to Hong Kong and Macau accelerated. Now the RMB is very welcome and convertible in Hong Kong and Macau.

The international status of the RMB has improved rapidly during the last decade. In the early 2010s, the RMB began to directly trade against the major foreign currencies including the Japanese yen. In 2013, it was already one of the ten most traded currencies in the world.

On October 1, 2016, the IMF's approval to let the RMB join the Special Drawing Rights (SDR) reserve currency basket became effective. At present, the RMB is the third most widely traded currency and the fifth top reserve currency in the world.

In March 2015, Toronto became the first RMB trading hub in North America.¹¹⁴ This development was a significant step to encourage and facilitate investment and trade between Canada and China. It allows direct conversion of the RMB to the Canadian dollar and vice versa. At present, the RMB is used as a vehicle for international trade settlement in many countries.

¹¹⁴ Evans, Pete, CBC News, March 23, 2015, "Toronto becomes first renminbi trading hub in North America", at <https://www.cbc.ca/news/business/toronto-becomes-first-renminbi-trading-hub-in-north-america-1.3005726>

Achieving full convertibility for the RMB has been the goal of China's currency reform. However, some observers believe that the pace of RMB internationalization is slowing down now.¹¹⁵ And as an international observer noticed, China appears to be more interested in the internationalization of the RMB but less interested in its liberalization.¹¹⁶

After all these years of reform, the RMB is still not a fully convertible currency. And it is still under the foreign exchange control of the Chinese government. To travelers and immigrants, it is less attractive than the US dollars, the Euros, the Canadian dollar, the Hong Kong dollar, and even the Macau *pataca*.

Foreign exchange in mainland China is basically one-way traffic: one can convert US dollar and many other foreign currencies to RMB, but cannot freely convert RMB to a foreign currency. One can only exchange RMB to a foreign currency under the conditions and within the limits set forth by the government.

In general, all cross-border payments in foreign currency to and from China are under the surveillance and control of the government of China. The government will decide to tighten or loosen its control from time to time.

The RMB will remain a currency with conditional convertibility in near future. Therefore, to those who want to move their wealth overseas, it is desirable to exchange the RMB to the US dollar and other convertible currencies. This desire will rise now because the RMB value is dropping, the Chinese economic growth is slowing down, and a new cold war is about to start.

3.2. SAFE: the designated state controller on foreign currencies

China's foreign currency control system is a centralized network involving many government agencies at national and local levels. In the center of this network is the State Administration of Foreign Exchange (SAFE), which is a semi-ministerial-level central authority under China's central bank, the People's Bank of China (PBOC), designated to enforce total government control on all foreign exchange businesses.

Aside from its many other functions, the major functions of SAFE are to prepare draft laws and make policies on foreign currency controls, regulate cross-border foreign currency flows, monitor foreign exchange markets, manage foreign exchange reserves and assets, and, through its local sub-bureaus through the country, approve exchanges and transfers of foreign currencies in commercial banks by companies and individuals.

To perform these functions, SAFE acts as a controller through its departments:

¹¹⁵ Yu, Enoch, South China Morning Post, Jan. 11, 2018, "Trump's policies make a fully convertible yuan by 2020 impossible, say financial experts", at <https://www.scmp.com/business/banking-finance/article/2127771/trumps-policies-make-fully-convertible-yuan-2020-impossible>

¹¹⁶ Lubin, David, Feb. 15, 2019, "Waiting, and Waiting, for the Global Renminbi", at <https://www.chathamhouse.org/expert/comment/waiting-and-waiting-global-renminbi>

- 1) The General Affairs Department is in charge of the overall development and operation of foreign currency control policies and regulations.
- 2) The Balance of Payments Department receives reports from all Chinese banks to monitor the inward and outward flows of currencies through the banking system, including the overall situation of banking transactions of foreign currencies by individuals (residents and non-residents) and companies.
- 3) The Current Account Management Department monitors and controls the flows of money involving foreign currencies primarily in international trade, shipping and transportation, insurance, import and export of labor and services, international tourism, overseas investment, international loans, foreign aid, cross-border wire transfers and so on.
- 4) The Capital Account Management Department monitors and controls the flows of capital involving foreign currencies, such as international investment in assets, stocks, bonds and cross-border banking deposits by companies and individuals, etc.
- 5) The Supervision and Inspection Department conducts nationwide inspections to assure compliance and enforces SAFE policies and regulations. This is an enforcement agency with combined functions of inspection, auditing, and decision making of sanctions. It sends inspection teams to check the books in financial institutions and companies. It tries to detect capital flight and other suspicious activities. It joins the police to crack down on underground banking and foreign currency black market. It has the power to impose fines, suspend business licences, or even shut down businesses.
- 6) The Reserves Management Department manages China's foreign currency reserves. It allocates and manages assets overseas, such as investment in bonds, money market et al in Hong Kong and foreign countries. It also allocates foreign currency reserves for the importation of strategic resources and high-tech equipment, development of key industries, intervention in the foreign exchange market, and promotion of cooperation with key international organizations and other countries.

Other SAFE departments are the Human Resources Department and Science, the Technology Department, and four institutes, including the Central Foreign Exchange Business Center, Information Center, General Services Center, and Editorial Office of the Foreign Exchange of China Journal.

SAFE works with many other ministries and ministry-level agencies of the Chinese government, including the People's Bank of China (PBOC), which is the central bank, the China Banking and Insurance Regulatory Commission (CBIRC), the China Securities Regulatory Commission, (CSRC), the General Administration of Customs, the Ministry of Commerce, the State Administration for Market Regulation, the Ministry of Foreign Affairs, the Ministry of Public Security, the Ministry of Justice, the Ministry of Supervision, the Supreme People's Court, other ministries and agencies.

SAFE has local branches in all the provinces and provincial or semi-provincial-level cities. These local branches administer the daily control of foreign exchange businesses and cross-border flows

of money in their jurisdictions. Most companies and individuals have to get their approvals in order to move their money out of China.

SAFE has set up six directly affiliated corporations, including four overseas companies in Hong Kong, Singapore, London, and New York. *Wutongshu Ziben* (Liri Shunfa Financing Guarantee) is an investment financing and management firm founded by SAFE to invest in the A-shares market and facilitate the internationalization of the A-shares market. From June 2019 to March 2020, a total of 1,097 China's A-shares have been listed in the FTSE Global Equity Index Series.¹¹⁷ This has opened a door for the Chinese A-shares money to enter the international stock market. In 2019, China's A-shares market total market value was RMB 63.3 trillion, equivalent to US\$9 trillion, indicating that the A-shares market has become the world's second-largest stock market in terms of market value.¹¹⁸

When the timing is appropriate, I recommend that the relevant government authorities in Canada make an arrangement with SAFE for the sharing of detailed information on the problem of irregularities in relation to China's foreign exchange and the flow of money from China. SAFE no doubt has the right information to help us find the answers to some important questions.

3.3. Framework of currency control regulations

China has built a comprehensive and complicated framework consisting of many administrative regulations. The goal is to control foreign exchange and foreign currencies while serving the needs of economic development and stability.

These regulations govern all aspects of foreign exchange businesses involving Chinese commercial banks, non-bank financial institutions, trading companies, corporate investors and private citizens, state-owned and private-owned companies, foreign companies and visitors in China, Chinese businesses and travelers overseas.

At present, there are over 200 documents of regulations.¹¹⁹ They are divided into eight categories as the following:

(1) "***Comprehensive regulations.***" They include five types of regulations.

- 1) "Basic regulations" regarding foreign currency control, such as the control of cross-border transfers of money, control of "individual foreign exchange" or foreign currencies owned by individuals.

¹¹⁷ Xinhua Finance, May 25, 2019, "FTSE announced first batch of A-stocks listed in the Index, over 1,000 A-stocks selected", at <http://stock.xinhua08.com/a/20190525/1834577.shtml>

¹¹⁸ Wang, Youruo, Xinhua News, Sept. 10, 2019, "29 Years, A-shares market value has jumped to world's No.2", at http://www.xinhuanet.com/fortune/2019-09/10/c_1210274259.htm

¹¹⁹ SAFE, 2019, Catalogue of Currently Effective Major Laws and Regulations on the Foreign Exchange Administration.

- 2) Regulations concerning the management of foreign exchange accounts, which apply to all foreign currency accounts in China held by Chinese and foreign entities and individuals and overseas accounts belong to Chinese entities.
 - 3) Regulations in respect of responsibilities and procedures to issue administrative approvals regarding matters of foreign exchange, including procedures to resolve disputes on the use and transfer of foreign currencies.
 - 4) Regulations about foreign currency cash, which apply to matters such as travelers carrying foreign currency cash across the border and companies shipping foreign currency cash across the border, etc.
 - 5) Regulations in regards to other “general” matters, such as matters of foreign currency relating to the Asia Infrastructural Investment Bank, business licences, etc.
- (2) **Regulations on foreign exchange current accounts.** They are further divided into five groups.
- 1) General regulations concerning matters such as Chinese institutions to keep their foreign currencies in bank accounts in China, management of foreign currencies in special customs supervision areas, foreign currencies for duty-free shops, individual travelers with foreign currency traveller’s checks, etc.
 - 2) Regulations in respect of foreign currency accounts relating to international import and export of goods, such as requirements of documents for various types of import and export companies, inspection and verification of exported goods for tax refund purposes, etc.
 - 3) Regulations with respect to trade in border areas with China’s neighboring countries, such as Russia and Vietnam.
 - 4) Regulations on matters of foreign currencies in service trade.
 - 5) Regulations about monitoring and control of foreign currency accounts of individual holders. For example, the SAFE Notice concerning Questions of Further Improving Administration of Individual Foreign Currencies (2015) No. 49, dated January 1, 2016, not only orders all SAFE local branches to start using a new on-line system to monitor activities in individual foreign currency bank accounts but also requests them to build a watch list of those individual account holders involved in suspicious activities to “evade supervision”.¹²⁰
- (3) **Regulations on foreign currency capital accounts.** They include seven groups of some 80 regulatory documents.
- 1) Regulations regarding “general” matters of capital account control, such as responsibilities to grant approvals for foreign currency capital account activities, activities to convert foreign currency to RMB in capital accounts, policies to facilitate and encourage investment by Chinese private-owned companies, cross-border concentration and foreign currency cash by multi-national corporations, etc.
 - 2) Regulations relating to foreign currency FDI by foreign investors in China, including FDI in various industries, stocks, business and enterprise acquisitions, foreign currency investment in real estate in China by overseas investors, purchase and sale of residential real estate property by overseas individuals, etc.

¹²⁰ See the Notice at <http://m.safe.gov.cn/safe/2015/1231/6834.html>

- 3) Regulations in regard to foreign currency investment overseas, such as matters of Chinese enterprises investing money overseas, residents of China setting up private-owned companies overseas, residents of China using overseas their companies to invest back in China as overseas investors, Chinese companies transferring capital in RMB to business overseas, etc.
 - 4) Regulations concerning overseas financing and marketable securities, such as Chinese governmental, banks or companies issuing bond overseas, state-owned companies to go listed overseas, in-China investors to invest in stock markets overseas
 - 5) Regulations on foreign currency investment in stock markets in China, such as overseas investors to invest in the A-shares market in China, cross-border investment in funds and stocks between mainland China and Hong Kong, etc.
 - 6) Regulations in relation to matters of foreign currency relating to foreign and overseas debt, guarantee, trade credit, foreign loans, etc.
 - 7) Regulations with respect to matters of foreign currency in relation to individual capital account, such as transfers of personal properties from China to overseas, residents of China investing in stock markets overseas, residents of China investing in B-shares market in China, etc.
- (4) ***Regulations on foreign exchange businesses of financial institutions.*** They are divided into eight groups.
- 1) “Basic” regulations governing foreign exchange business of banks and other financial institutions including trust and investment companies, financial leasing companies, finance companies, securities companies, and insurance companies.
 - 2) Regulations about banks’ foreign exchange settlement and sale business, which apply to Chinese banks and foreign-owned banks in China.
 - 3) Regulations regarding off-shore foreign exchange business by Chinese banks, including overseas branches of Chinese commercial banks.
 - 4) Regulations on matters of transactions of foreign currencies by using bank cards, such as using UnionPay cards, debit cards and credit cards to withdraw foreign currency cash overseas.
 - 5) Regulations in regard to other banking businesses, such mainland banks dealing with RMB business with banks in Hong Kong and Macau.
 - 6) Regulations respecting foreign currency business of insurance companies.
 - 7) Regulations regarding foreign currency business of trust companies, foreign-shared fund management companies, financial asset management companies, and other non-bank financial institutions.
 - 8) Regulations concerning foreign currency exchange agencies, franchise individual foreign exchange businesses, self-serving money exchange machines.
- (5) ***Regulations on RMB exchange rates and foreign exchange markets.*** These are rules regarding the Chinese People’s Bank announcements on RMB exchange rate regime, floating-rate for RMB and US\$ exchanges, operation of the China Foreign Exchange Trade System (Center), etc.
- (6) ***Regulations on reporting of the balance of international payments et al.*** These rules apply to financial institutions and companies.

- (7) **Regulations on inspections and application of relevant laws.** They govern procedures of SAFE inspection, administrative sanctions for violations of SAFE regulations, legal liabilities, and criminal punishment for unlawful foreign exchange activities such as crimes of “foreign currency speculation” and illegal online trading of foreign currencies.
- (8) **Regulations on technical management of foreign exchange.** They govern matters such as the application of unified social credit codes in foreign exchange businesses.

In general, foreign exchange/currency control regulations are enforced. The Government of China has the power to enforce the rules throughout China, with its vast establishment of organizations and the support of big data technologies. In February 2020, for example, the People’s Bank of China issued 27 notices of non-compliance. The Central Bank imposed fines totaling RMB52m on two Chinese banks and a securities company as well as their senior executives for failure to follow the AML procedures.¹²¹ In 2019, at least ten large securities companies in mainland China paid huge fines for non-compliance mistakes.

Since 1993, China has successfully implemented its “Three-Gold Projects,” which are “state economic information highways” for digitalized instant information sharing nationwide. Among them is the “Gold Bridge System,” which allows the ministries in the Central Government to share data and have access to information obtained by all local governments. There is also the “Gold Gate System” to monitor everything and everyone going through customs at all border checkpoints. And, the government can use the “Gold Card System” to access data about all bank card related activities.

The regulations are to serve China’s needs for economic development and stability. Therefore, under certain conditions, companies and individuals in China can lawfully exchange their RMB to foreign currencies and transfer the money out of China. The rules have flexibilities, which tolerate certain types of practices in grey areas.

It is mission impossible to achieve full compliance no matter how powerful the Chinese government is. Like all other systems of government control in China, the foreign exchange/currency control system faces constant challenges, such as regulatory loopholes, practical difficulties, attempted circumvention of the control, irregularities of significant quantity, black market activities, fraudulent behaviors, incompetence and corruption in the government, banks and companies.

3.4. Transfer of money by individuals to overseas

As discussed in Part 2 of this report, companies and investors in China can legally transfer funds out of China mainly through international investment and trade. As a result, many executives and

¹²¹ Dai, Manman, Yangcheng Evening Daily, Feb. 17, 2020, “Fined 5190 yuan! Huatai Securities et al received notices of fines of tens of millions from the Central Government”, at https://www.sohu.com/a/373683164_120046696

representatives of companies responsible for overseas business can move and live overseas for work, with their families.

In Canada, many Chinese company executives can legally transfer money from China to Canada and use it to buy luxurious homes for themselves and their families. It is known that some of them have purchased such properties in the most expensive residential areas in Greater Vancouver.

Aside from company executives, traders and investors, under certain circumstances, other individuals can also transfer money from China without breaking the SAFE regulations. Further, some people will try to walk a fine line, play the game in grey areas, or break the rules but avoid detection. There are risks of irregularities and loopholes. As always, the system faces serious challenges and difficulties in enforcement and compliance.

(1) Immigrants from China buying luxury homes in Canada

Under Chinese regulations, individuals who are immigrants to other countries, foreign citizens, and residents of Hong Kong and Macau can legally convert their RMB assets to foreign currencies and transfer the funds overseas.¹²²

If such a person owns a home in mainland China, he can sell the home, have the money deposited in his bank account, convert the proceeds from RMB to foreign currencies in a bank, and transfer the money overseas from the bank. For this purpose, he will submit an application together with the necessary documents to the bank, and the bank will forward the information electronically to the local SAFE for approval. Usually, the application will be approved right away, and the transfer will be completed expeditiously.

This rule applies to residential and commercial properties registered under his name, cash in bank accounts, stocks and other movable properties, as well as properties inherited in mainland China.

According to data published by the People's Bank of China in late 2019, the average household asset value in urban areas of China is RMB3,179,000 (equivalent to C\$635,800). The average household asset value is RMB8,928,000 (equivalent to C\$1,453,912) in Beijing and RMB8,067,000 (C\$1,613,400) in Shanghai. The average asset value of top 10% rich families in China is RMB12,048,000 (C\$2,409,600). The homeownership rate in China is much higher than that in the United States - 96% of Chinese families own their own homes. Among them, 58.4% own one residential property, 31% own two, and 10.5% own three. In addition, 16% of families own commercial or industrial properties.¹²³

This explains why "rich" Chinese immigrants from the mainland can lawfully move millions of dollars from China to Canada.

¹²² The People's Bank of China, Nov. 8, 2004, "Interim Measures for the Administration of Purchase and Payment of Foreign Exchanges Due to Transfer of Individual Properties to the Outside of China.

¹²³ The People's Bank of China Department of Statistics Team of urban household asset and liability research project, April 24, 2020, "Study on Urban Household Asset and liability in China in 2019", at <https://finance.sina.com.cn/money/lczx/2020-04-24/doc-iirczymi8099086.shtml>

As discussed in Part 1 of the report, in my view, it is wrong to assume that new immigrants from China are suspicious of money laundering just because they have the cash to buy luxurious homes in the “classy” districts of Vancouver West. Many of them are simply not qualified to get mortgages from Canadian banks because they do not have good jobs and have no credit in the banks here. And, in old fashion Chinese culture, it is wise to pay the full price without borrowing.

Many new immigrants from China are middle-aged people, with limited English proficiency, no Canadian education, and no Canadian working experience. They are not familiar with the local business environment and opportunities. Their professional qualifications in China are probably not recognized here. So, they cannot easily find jobs or launch the business in Canada. Naturally, when they pay the full price to purchase the luxurious new homes, some local residents will suspect why these “jobless” people can afford it, bearing in mind that immigrants from China twenty years ago were very different from these newcomers.

In the discussion of “rich Chinese” bringing money to Canada, we should also be aware of the fully integrated relationship between mainland China and its two SARs.

Since the handover of Hong Kong in 1997, China has pushed forward comprehensive integration between the mainland and the SAR in every industry and all fields of life. More than 1 million mainlanders have immigrated to Hong Kong and become permanent residents. Over 50% of the companies listed in the Hong Kong Stock Exchange are from the mainland. Hong Kong hosts more Chinese offshore companies than anywhere else. Many new “rich” Hong Kong people are indeed immigrants from the mainland. And a significant number of them have permanent resident status in Canada, the U.S., Australia, and Europe.

The government of Hong Kong has performed reasonably well in fighting cross-border money laundering. The framework of AML laws and regulations is all-inclusive. Enforcement and compliance are effective. Compared with Canada, Hong Kong even has better ratings for implementing the FATF AML/CFT standards.¹²⁴ I recommend that the governments in Canada continue to welcome the flow of legitimate money and talented immigrants from Hong Kong and Macau while staying alert to suspicious money flow and penetration of organized crime.

Another hot topic in B.C. is about “rich” Chinese immigrants not paying taxes. Indeed, some of them have a luxurious lifestyle but no Canadian income. This also makes them suspicious because they do not pay much income tax here. There may be some people cheating on their income and even the child benefit, which is shameful, but this does not make them money launderers. I recommend that we do not mix the issue of income tax with organized crime. There may be a problem of tax evasion. And we must address this problem. However, it is wrong to assume those who live in luxurious homes and pay little tax are somehow laundering money.

A real problem in this area is the immigration of criminals with dirty money and stole assets. It is widely believed that some corrupted Chinese officials, their spouses and children have managed

¹²⁴ FATF, “Consolidated assessment ratings”, at <https://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf>

to immigrate overseas with dirty money and stolen assets. They also buy luxurious homes with cash. We have seen some high-profile cases of this kind in Canada.

For example, in the case of Michael Ching (Cheng Mu Yang), an immigrant from China and a real estate developer in B.C., the Chinese government made a request to Canada for his return to stand trial. China alleged that he was involved in a major case of corruption and fled to Canada with the dirty money. Ching was on the Interpol wanted person list in 2013 but claimed innocent. The story became exciting after the Canadian media reported that Ching made donations to the federal Liberal Party and his teenage daughter invested US\$1m into a Nasdaq-listed American company to recover lost items from the Titanic salvage.¹²⁵ As usual, the legal process to deport him has taken many years without any result.

I recommend that the government of Canada reviews and improves the relevant laws and procedures to assure that foreign fugitives laundering the proceeds of corruption in Canada will be either deported from Canada or prosecuted in Canada. This is an obligation stipulated in Article 43 of the United Nations Convention against Corruption, which applies to both Canada and China. It is damaging to the decency and integrity of our legal system if foreign fugitives are allowed to stay for free in Canada. Although the Chinese system has many problems, we should not let Canada become a safe haven for foreign fugitives.

(2) The “split-and-consolidate” game

Every mainland Chinese citizen has a personal foreign exchange quota of US\$50,000 a year. Prior to late 2009, many people were able to remit far more than US\$50,000 out of China with the help of their relatives or friends. For example, a person could ask 20 relatives or friends to get US\$50,000 each and transfer a total of US\$1m of cash to his account overseas. He will pay them back the money in RMB or US dollars from his bank accounts in China. If a person has US\$1m in his bank account in China, he can simply split the money among the 20 relatives and ask them to transfer the money overseas.

Taking advantage of the loophole in this way was not a violation of SAFE regulations. Therefore, we should not punish those who managed to transfer their money from overseas to Canada in this way before 2010, unless the money was dirty in the first place. As a standard practice, I believe that Canadian banks have been requesting an explanation from their customers when they transfer money to Canada. Therefore, the money flow is traceable in the banks, if the governments and banks in different countries can actively work together.

¹²⁵ Cooper, Sam, Vancouver Sun, Dec. 30, 2016, “Trudeau’s Liberals say no donation rules broken in China corruption case”, at <https://vancouversun.com/news/local-news/trudeaus-liberals-say-no-donation-rules-broken-in-china-graft-suspect-case>; Postmedia News, National Post, Sept. 3, 2015, “Teenage daughter of Vancouver developer pumps \$1 million US into Titanic salvage venture,” at <https://nationalpost.com/news/canada/teenage-daughter-of-vancouver-developer-pumps-1-million-us-into-titanic-salvage-venture>

SAFE introduced new regulations in November 2009, which state: “No individual may circumvent the annual quota management of domestic individual foreign exchange settlement and purchase in a way such as splitting.”¹²⁶

However, one may find grey areas again. The 2009 rules prohibit that “five or more different individuals in China separately purchase foreign exchange on the same day, every other day or in two or more consecutive days and then remit the foreign exchange to the same overseas individual or institution”. To avoid detection, one would let his friends purchase foreign currency on non-consecutive days, or add an extra step to the process, i.e., let them remit the money to their overseas friends first and from there transfer the money to his overseas accounts.

Similarly, the rules prohibit “splitting” when someone transfers foreign exchange from his account to five or more linear relatives who then separately settle foreign exchange within the annual quota, and then transfer the foreign exchange to his account. In this case, it would probably not be a violation if one uses the spouses of his linear relatives.

In practice, though, it is no longer easy to play the “split-and-consolidate” game now. If a violation is detected, the person will lose his foreign exchange quota in the next two years.

Prior to 2017, using the US\$50,000 quota to purchase overseas real estate property was tolerated. On December 31, 2016, SAFE abruptly put an end to this practice. The new rule explicitly prohibits the use of the quota for overseas real estate purchases, stock investment, and life insurance for themselves or family members. SAFE added a reminder of the new rule to the “individual foreign exchange application form.”¹²⁷ At present, one can only use the quota to purchase foreign currencies for his own use and for overseas tourism, studies, business visits, family visits, medical treatment, shopping et al.

I recommend that Canada continues to welcome people to bring in their legitimate US\$50,000 from China.

(3) Carrying cash across the border

Under Chinese rules, anyone can only carry up to US\$5,000 or up to RMB20,000 in cash across the mainland China border without declaring it at the customs service.¹²⁸ When friends and relatives go abroad as a group of tourists, they can each carry US\$5,000 in cash.

¹²⁶ Notice of the State Administration of Foreign Exchange on Further Improving the Administration of the Business of Individual Foreign Exchange Settlement and Sale (No.56 (2009) of the State Administration of Foreign Exchange)”.

¹²⁷ Xinhua Net, January 3, 2017, “SAFE: Foreign exchange may no longer be used for overseas real estate purchases and investment”, at http://www.xinhuanet.com/2017-01/03/c_129429648.htm

¹²⁸ Notice of the State Administration of Foreign Exchange and the General Administration of Customs on Issuing the Interim Measures for the Administration of Carrying Foreign Currency Cash for Persons Entering or Exiting the Territory (August 28, 2003).

Anyone who exits China the second time within 15 days after his previous trip abroad with cash is only allowed to carry up to US\$1,000 without declaring it.

It is a real challenge to enforce these rules when the authorities have to face tens of thousands or hundreds of thousands of travelers at the mainland borders with Hong Kong and Macau every day. Some of them cross the border multiple times per day. In 2019 alone, over 155 million Chinese citizens went abroad for tourism purposes.¹²⁹ Among them, some 43.77 million mainland tourists visited Hong Kong,¹³⁰ and 27 million mainland tourists visited Macau.¹³¹

Interestingly enough, the legal requirements of cash declaration are very different on the other side of the mainland borders with Hong Kong and Macau. The two special administrative regions have much more relaxed rules about how much money one can bring in without declaring it.

A traveler carrying more than RMB20,000 is required to declare the money to the mainland customs service. But he does not need to declare to the customs service of Hong Kong or Macau unless he carries HK\$120,000 or MOP120,000 (equivalent to RMB108,000) or more with him.¹³² There is no different requirement for people making more than one trip a day or during consecutive days either. Prior to November 1, 2017, Macau had no legal requirement of declaration no matter how much cash a traveler had with him when he entered Macau.

(4) Oversea banks and underground banks

Until recent years, mainland visitors with resident status or work permit in Hong Kong and Macau could open bank accounts in these SARs. At present, this is no longer permitted. The new restriction is not just to discourage the practice of carrying cash across the border. It targets corruption as well.

Although the government has tightened the control, corrupted officials and other criminals would still try to use the overseas bank accounts of their relatives and friends as well as underground banks to launder a large amount of dirty money.

Under China's Criminal Law, a "state functionary" commits a criminal offence if he or she fails to disclose his/her bank deposit of cash overseas,¹³³ if there is over RMB300,000 *yuan* (equivalent to C\$60,000) in the account(s). And, he will be held accountable even if his money is placed in an

¹²⁹ Ministry of Culture and Tourism of the PRC, March 10, 2020, "Basic Facts of Tourism Market in 2019", at https://www.mct.gov.cn/whzx/whyw/202003/t20200310_851786.htm

¹³⁰ China News, Jan. 31, 2020, "Number of Travelers to Hong Kong in December 2019 dropped 51.5% comparing with that of previous year", at <https://m.chinanews.com/wap/detail/zw/ga/2020/01-31/9074529.shtml>

¹³¹ Xinhua News, Jan. 15, 2020, "Over 39.4 million travelers came to Macau in 2019", at http://www.xinhuanet.com/2020-01/15/c_1125466585.htm

¹³² Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Ordinance, Chapter 629, Laws of Hong Kong. Macau Law No. 6/2017 "Control of Cross-Border Transportation of Cash and Bearer Negotiable Instruments".

¹³³ Article 395.

account that is under the name of his wife or child. The definition of “state functionaries” is very broad. It refers to civil servants of the government, CCP officials, army officials, the judiciary, officials of state-owned enterprises, public institutions, public schools, associations as well as anyone legally required to work on public affairs.

We have seen some Chinese officials charged with and convicted of this offence in recent years. On December 2, 2019, Yang Yandong, President of Bohai University was charged with the offences of taking bribes totaling RMB37m and hiding overseas cash deposits of an equivalent of RMB5m in a bank in Australia.¹³⁴

On September 6, 2019, the Guangdong High Court rendered its decision to dismiss an appeal filed by Ji Zhongdang, former Chief Prosecutor of Panyu District of Guangzhou. A lower court found him guilty of both taking bribes and hiding overseas bank deposits and sentenced him to 11.5 years of imprisonment plus confiscation of RMB2m cash and a BMW car. Yi let his wife place HK\$1.15m in a bank account in Macau and use the money to purchase two apartments there. His wife then immigrated to Australia to join their daughter who was a student there.¹³⁵

On July 9, 2018, a court in Baotou City found Xu Yaling, former Vice Mayor of Tongliao City of Inner Mongolia, guilty of receiving bribes, embezzlement, misuse of public funds, abuse of power, holding a huge amount of wealth with unknown origin, and hiding overseas bank deposit. Xu was sentenced to life imprisonment plus confiscation of all personal properties.¹³⁶ According to the judgment, Yu asked Zhang, a friend of him who was a permanent resident in the U.S., to exchange RMB16m to US dollars and transferred the money to the U.S. from China.

I recommend that the relevant authorities in Canada invest more resources in the monitoring and investigation of suspicious bank accounts and suspicious transactions in all financial institutions. I agree with Dr. German that the RCMP should re-establish a designated unit for this job. Furthermore, if it is not already done, the financial institutions in B.C. and elsewhere in Canada should have their designated compliance officers. These are the basic requirements under the standards of FATF’s AML Recommendations.

No doubt, as Dr. German indicated in his “Dirty Money” report, foreign criminals including corrupted Chinese officials have been using overseas casinos to launder money.

Like the casinos in Vancouver, the casinos in Macau welcome gamblers, regardless if they use cash or bank cards to purchase the chips. It is worth noting that casinos in Macau generate more

¹³⁴ The Paper.cn, Dec. 12, 2019, “Former President of Bohai University accused of accepting bribes worth over 30m yuan and hiding overseas bank deposit”, at https://www.sohu.com/a/357851430_260616

¹³⁵ Dong, Liu, Sohu, Sept. 6, 2019, “Accepting bribes, hiding overseas bank deposits, and a son born overseas – former chief prosecutor of Panyu sentenced to 11.5 years imprisonment”, at https://www.sohu.com/a/339259702_120046696

¹³⁶ The Procuratorate Daily, August 21, 2018, “The case of former Vice Mayor Xu Yalin of Tongliao: move huge assets and change confession”, at <http://fanfu.people.com.cn/n1/2018/0821/c64371-30240310.html>

revenue from the VIP room operation rather than the ordinary table games. And, the Macau casinos are known for the so-called junket operation, that is, junkets will not only bring customers into the VIP rooms but also lend them cash to gamble if they do not have their own cash on the spot. It is widely believed that the junket operation relies on cross-border underground banking to transfer and exchange the cash between the mainland and Macau, which indeed shows high risks of irregularities and money laundering. The Macau casino junket operation is on the radar of government authorities in the mainland and Macau.¹³⁷

I recommend that the relevant authorities in B.C. take a close look into the problem of underground banking and its international networks. Again, as Dr. German reported, this problem is no doubt related to all kinds of organized crimes and money laundering.

Also, I recommend that the Canadian authorities invest more in the monitoring and investigation of suspicious transactions in the casinos. They should be aware of the patterns and risks of junket operation in Macau and examine if it has already extended to B.C. to serve the needs of gamblers from China or other countries.

However, I would also recommend that the monitoring and investigation of suspicious transactions in financial institutions and casinos, as well as underground banking activities, should be based on clear evidence and rules in the law, not a general assumption or racial profiling and speculation. Chinese organized crime and corrupted officials are not the only ones laundering money through the banks and underground banking as well as the casinos.

(5) Exchanges between individuals/companies

Another convenient method is to exchange money directly between individuals or companies in mainland China and overseas.

If Party A in mainland China needs foreign currencies overseas, and Party B overseas needs RMB in China, they can directly transfer the equivalent amounts of money to each other's accounts without using the foreign exchange service in a bank.

To guarantee a safe and smooth exchange, if the trust level is low, both Parties or their representatives can be physically present in the banks at both ends at the same time when the transactions take place.

This has been a preferred way of exchange among relatives and trusted friends, because they do not have to pay the commission to anyone and the exchange rate is better than the ones in the banks.

¹³⁷ Conneller, Philip, Casino.org, July 23, 2019, "Macau Regulator Tightens Screws on Junkets After Chinese State Media Attack on Suncity", at <https://www.casino.org/news/macau-clamps-down-on-junkets-after-china-state-media-attacks-suncity/>

In particular, again, it seems to be a popular practice among people living on both sides of the mainland borders with Hong Kong and Macau. It does not violate the laws in Hong Kong and Macau, although it is a problem under SAFE regulations.

The authorities in Canada have no legal authority to punish the people for doing it. This kind of irregularity violates SAFE administrative regulations, but it is not money laundering unless the money is dirty in the first place.

(6) Use Chinese bank cards and social media tools overseas

At present, people can use China Union Pay in 170 other countries, Alipay in 200 countries, and WeChat to pay in 50 countries. In Canada, one can use all three of them.

It was a popular practice among mainland China travelers to use mainland UnionPay cards and other bank cards to withdraw cash when they are overseas. This practice was tolerated by the Chinese authorities before 2018.

In 2017, SAFE disclosed a major incident of a violation. The authorities found that, during 2013-2015, four mainlanders used over 100 bank cards to withdraw a large amount of HK dollars from ATMs in Macau for gambling purposes. In total, they took an equivalent of RMB476 million in HK dollars from ATMs in Macau. These bank cards were registered under the names of their relatives and other individuals in the mainland.¹³⁸

To block this loophole, SAFE announced that, starting from January 1, 2018, a mainland citizen traveling overseas would only be allowed to withdraw up to RMB10,000 or an equivalent in foreign currency per day and a total of no more than RMB100,000 or an equivalent of foreign currency per calendar year. And, mainland citizens are no longer allowed to use other people's bank cards to withdraw cash overseas.¹³⁹

However, it is not clear whether or not the authorities have been able to effectively detect and prevent violations. Considering over 150 million mainland Chinese citizens tour overseas, it would be impossible to check and count the bank cards they have with them when they cross the border. The big data technology of China's "Gold Card System" is still a mystery to outsiders. It would be interesting to find if this system is able to monitor the use of bank cards by all the Chinese tourists when they tour overseas.

Hong Kong and Macau have agreements with mainland China to address the problem of cross-border money laundering. The SAR financial intelligence centers (FICs) gather intelligence on activities of suspicious transactions by bank cards from the banks. In Canada, the relevant authorities should also be aware of this practice. Although the money may be perfectly legal, it is

¹³⁸ Sing Tao Daily, Dec. 31, 2017, "China imposes strict limits on cash withdrawal overseas, no more than 100,000 yuan per person per year," at <https://www.singtao.ca/1476388/2017-12-31/post-%e4%b8%ad%e5%9c%8b%e5%9a%b4%e9%99%90%e5%a2%83%e5%a4%96%e6%8f%90%e7%8f%be-%e6%af%8f%e4%ba%ba%e4%b8%80%e5%b9%b4%e6%9c%80%e5%a4%9a10%e8%90%ac/>

¹³⁹ SAFT, December 29, 2017, "Notice of the State Administration of Foreign Exchange on Regulating Bank Card Transactions Involving Overseas Cash Withdrawals in Large Amounts".

obviously a violation of standard banking regulations to use the bank cards of other people like this.

Another low-risk way to get cash out of China is to purchase expensive luxurious goods, such as Rolex watches and diamond jewelry, using mainland credit cards or UnionPay cards abroad, then return the goods and get a refund in foreign currency cash from the shops.

The transaction is a quick paperwork only. The tourist pays the price by credit card or UnionPay cards without even touching the goods. Then he gets a refund in cash from the shop and pays a handling fee to the shop.

This was a popular practice among some rich Chinese tourists in Hong Kong and Macau. A tourist would be able to get a significant amount of cash in foreign currency if he borrows credit cards or UnionPay cards from many friends and uses them for this purpose.

This kind of irregularity became a serious problem and caught the attention of the authorities in recent years. In 2017, SAFE issued a notice ordering all its local branches, all commercial banks, and China UnionPay to start collecting data on overseas transactions over the value of RMB1,000 each and reporting them electronically every day.¹⁴⁰

I recommend that the relevant authorities in Canada should be aware of this practice and examine if it also takes place here. Although the money may be perfectly legal, the purchase of goods is a fake business transaction.

Recommendations

Recommendation 18. When the timing is appropriate, the relevant government authorities in Canada should consider making an arrangement with SAFE for the sharing of information on the problem of irregularities concerning China's foreign exchange and the flow of money from China.

Recommendation 19. Canada should continue to welcome the flow of legitimate money and talented immigrants from Hong Kong and Macau, while staying alert to suspicious money flow and penetration of organized crime.

Recommendation 20. In the discussion of money laundering, it is not appropriate to mix the issue of tax evasion with the problem of organized crime or to assume those who live in luxurious homes but pay little income tax must be money launderers.

Recommendation 21. The government of Canada should review and improve the relevant laws and procedures, in order to assure that, as required under Article 43 of the United Nations Convention against Corruption, foreign criminals laundering the proceeds of corruption in Canada will be either deported or prosecuted in Canada. It is damaging to the decency and integrity of our legal system if foreign fugitives are allowed to stay for free in Canada.

¹⁴⁰ SAFE, May 26, 2017, "Notice of the State Administration of Foreign Exchange on the Submission of the Information on Overseas Transactions of Bank Cards by Financial Institutions."

Recommendation 22. We should be aware of the fact that many people have managed to transfer their money from mainland China to overseas by playing the game of “split-and-consolidate” before 2010. However, Canadian authorities have no legal authority to stop them from bringing the money here, unless their money was dirty in the first place.

Recommendation 23. Canadian authorities have no legal authority to punish those who manage to bring in their legitimate US\$50,000 from mainland China, even if the method is considered an irregularity under foreign exchange rules back in China.

Recommendation 24. Canadian authorities should invest more resources in building the capacity of effective monitoring and investigation of suspicious transactions through financial institutions. As recommended by Dr. German, the RCMP should re-establish a designated unit for the investigation of money laundering. Furthermore, if it is not already done, the financial institutions in B.C. and Canada should also fully implement the FATF AML/CFT Recommendations and have their designated compliance officers.

Recommendation 25. The relevant authorities in B.C. should take a close look at the problem of underground banking and its international networks, and as Dr. German reported, examine possible connection with organized crimes and money laundering.

Recommendation 26. Canadian authorities should invest more in the monitoring and investigation of suspicious transactions in the casinos. And, they should be aware of the patterns and risks of junket operation in Macau, and examine if it has already extended to B.C. to serve the needs of gamblers from China or other countries.

Recommendation 27. The monitoring and investigation of suspicious transactions in financial institutions and casinos, as well as underground banking activities, should be based on clear evidence and rules in the law, rather than general assumption, racial profiling, and speculation.

Recommendation 28. The authorities in Canada should be aware of the practice of the exchange of currencies between individuals/companies. However, they have no legal authority to punish those who did it in China. This kind of irregularities violate SAFE regulations, but they are not money laundering, unless the money is dirty in the first place.

Recommendation 29. The relevant authorities in Canada should be aware of the practice of using a large number of bank cards borrowed from other people to withdraw cash. Such a transaction is suspicious. Although the money may be perfectly legal, the practice is a violation of standard banking regulations.

Recommendation 30. The relevant authorities in Canada should be aware of the practice of using a foreign credit card to purchase luxurious goods and immediately getting refund cash. Such a transaction is suspicious. Although the money may be perfectly legal, the practice is a fake business transaction.

Part 4. Geopolitics, Public Opinion, and National Security

In our discussion of the flow of money from China, we need to bear in mind three major political factors, that will ultimately determine Canada's emerging new China strategy: geopolitics, public opinion, and national security.

4.1. Geopolitics in the world

We are witnessing two trends in geopolitics. First, the U.S. and China are confronting each other on all fronts in every region of the world. Second, both superpowers are trying to form and consolidate their global alliances respectively. Facing this situation, Canada will have to make some tough decisions.

The Trump administration changed the U.S. relations with China permanently. It considered China not only a competitor but also the No.1 threat to U.S. global leadership, values and world order. Former Secretary of State Mike Pompeo openly declared that the Chinese Communist Party is “the most existential threat to the United States and its prosperity and security”.¹⁴¹ During 2016-2020, the U.S.-China new Cold War already started, although no one made an official announcement.

The Biden administration has continued the confrontation only with different strategies. Biden promised to end Trump's “America First” policy in order to strengthen ties with Canada and other allies.¹⁴² Still, his foreign policy is to “take on directly the challenges posed to our prosperity, security and democratic values by our most serious competitor: China.”¹⁴³ “We'll confront China's economic abuses, counter its aggressive, coercive actions, and push back on China's attack on human rights, intellectual property and global governance,” said Biden. The U.S. is returning to the WHO, and those who believe in China's fault in the COVID-19 pandemic will continue to demand “make China pay”.¹⁴⁴

Canada stands with its allies on issues of Hong Kong, Xinjiang, and the South China Sea. The Biden administration has announced that the U.S. will work with China “when it's in America's interest to do so”, which was also a policy of the Trump administration. Canada should do the same, that is, to work with China when it serves Canada's interest.

Reducing economic dependence on China is probably going to be a trend in both the U.S. and Canada. However, “decoupling” from China will be difficult. The U.S. and Japan have only

¹⁴¹ ANI, Dec. 17, 2020, “Pompeo labels CCP as most existential threat to US national security,” at <https://www.aninews.in/news/world/us/pompeo-labels-ccp-as-most-existential-threat-to-us-national-security20201217153730/>

¹⁴² Collins, Michael, USA Today, Feb. 4, 2021, “‘Diplomacy is back’: Biden promises to restore ties with allies in dramatic foreign policy shift”, at <https://www.usatoday.com/story/news/politics/2021/02/04/president-joe-biden-signals-dramatic-shift-u-s-foreign-policy/4332339001/>

¹⁴³ Churchill, Owen, South China Morning Post, Feb. 5, 2021, “Joe Biden calls China the ‘most serious competitor’ to the US, in first foreign policy speech as president”, at <https://www.scmp.com/news/china/diplomacy/article/3120618/first-foreign-policy-address-president-biden-calls-china-most>

¹⁴⁴ Yoo, John, and Ivana Stradner, National Review, April 6, 2020, “How to Make China Pay”, at <https://www.nationalreview.com/2020/04/how-to-make-china-pay/>

managed to move a few production lines out of China in recent years.¹⁴⁵ In 2020, a poll found that most Americans (72%) would agree with “decoupling”. They want the “essential manufacturing” U.S. companies to move out of China.¹⁴⁶ Some of the companies will move out, but more will decide to stay. In the meantime, Chinese investment and businesses are facing more political pressure and restrictive scrutiny in the U.S. and Canada. Most likely, there will be less money coming to Canada from mainland China in near future.

China has repeatedly promised that it will continue the “reform-and-opening” policy. It has tried to form two large international trade and investment alliances in recent years. In November 2020, China signed a major trade agreement to form the Regional Comprehensive Economic Partnership with 15 Asia-Pacific countries, including Canada’s close allies Australia, New Zealand, and Japan.¹⁴⁷ One month later, China and the European Union announced their landmark “comprehensive agreement on investment”.¹⁴⁸

The EU is trying to redefine its strategy on China. As a columnist wrote in The Washington Post, the EU-China agreement in December 2020 “just made Joe Biden’s China policy a lot more difficult”, and the outcome of increased interdependence between the EU and China appeared to be this: “The E.U. will be drawn into China’s orbit and slowly decouple from America’s.”¹⁴⁹ However, in May 2021, the EU decided to suspend the ratification of the agreement after China imposed sanctions on members of the European Parliament. In September 2021, the European Parliament adopted a Report on a New Eu-China Strategy, which announced that the ratification of the agreement will not start until China lifts the sanctions.¹⁵⁰

Canada will have to redefine its China strategy now. In the 2021 federal election, the political parties hardly had much debate on foreign policy, but both the Liberal Party and the Conservative Party made virtually the same promise to “stand up to China”.¹⁵¹ It is predictable that the new Canadian government will block Chinese investment in areas of great human rights and national security concerns. A most recent example is Ottawa’s decision to demand China Mobile divest in

¹⁴⁵ Rapoza, Kenneth, Forbes, April 9, 2020, “Japan Ditches China in Multi-billion Dollar Coronavirus Shakeout”, at <https://www.forbes.com/sites/kenrapoza/2020/04/09/japan-ditches-china-in-multi-billion-dollar-coronavirus-shakeout/#598a8e065341>

¹⁴⁶ Rapoza, Kenneth, Forbes, April 27, 2020, “Overwhelming Majority Say Time to ‘Decouple’ From China”, at <https://www.forbes.com/sites/kenrapoza/2020/04/27/overwhelming-majority-say-time-to-decouple-from-china/#6c3921dd77a2>

¹⁴⁷ Macarthy, Julie, NPR, Nov. 17, 2020, “Asia-Pacific Nations Sign Huge Trade Deal with China While U.S. Sits It Out”, at <https://www.npr.org/2020/11/17/935322859/asia-pacific-allies-sign-huge-trade-deal-with-china-while-u-s-sits-it-out>

¹⁴⁸ European Commission, Dec. 30, 2020, “EU and China reach agreement in principle on investment”, at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2541

¹⁴⁹ Olsen, Henry, The Washington Post, Jan. 6, 2021, “Opinion: Europe just made joe Biden’s China policy a lot more difficult”, at <https://www.washingtonpost.com/opinions/2021/01/06/europe-just-made-joe-bidens-china-policy-lot-more-difficult/>

¹⁵⁰ European Parliament, “A new EU-China Strategy”, https://www.europarl.europa.eu/doceo/document/A-9-2021-0252_EN.html

¹⁵¹ CBC News, “How do the main parties compare on these issues?” at <https://newsinteractives.cbc.ca/elections/federal/2021/party-platforms/>

Canadian telecom business.¹⁵² Given that China is the world's 2nd largest economy and the “world factory”, however, it will not be realistic to rapidly downgrade Canada's trade and investment relationship with China in the less controversial and sensitive areas. There will be no free trade agreement with China in near future,¹⁵³ and Canada will work more closely with traditional allies and make better use of CUSMA (Canada-U.S.-Mexico Agreement), the Comprehensive Economic and Trade Agreement with the European Union, and other FTAs. China is also trying to make use of the multinational pacts that may or may not involve Canada. In September, 2021, for example, China applied to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) that was formed by Canada and other 10 countries in 2018.¹⁵⁴ It is a really complicated situation that the new Canadian government has to deal with now.

4.2. Public opinions in Canada

Canada's new China strategy must not only cope with the complicity of geopolitics but also reflect changes in Canadian public opinions.

At present, the percentage of Canadians holding unfavorable views on China in Canada is record high, whereas the ratio of those with favourable views is record low.

In May 2020, an Angus Reid Institute poll found only 14% of Canadians had favorable views of China, down from 58% in 2005, 48% in 2017, 38% in 2018, and 29% in late 2019. The percentage of Canadians holding unfavorable views of China was 81% nationwide, up from 66% in late 2019.¹⁵⁵ A 2020 UBC survey confirmed the same pattern.¹⁵⁶

The shift in public opinion is seen in every province of Canada. In B.C., the ARI 2020 survey found, the percentages were only slightly different: 22% of respondents held favourable views of China and 72% had unfavorable views. Among all the provinces, B.C. has more reasons to sustain a friendly relationship with China because of its large population of Chinese Canadians and close business ties with China. Nevertheless, it appears that British Columbians share the same opinions with their countrymen in other provinces.

Other surveys found similar results. In October 2020, the Pew Research Center reported: 73% of Canadians held unfavorable views of China and 74% had no confidence or not much confidence

¹⁵² Alexandra Posadzki and Steven Chase, *The Globe and Mail*, September 14, 2021, “Ottawa says China Mobile must divest telecom business”, at <https://www.theglobeandmail.com/business/article-ottawa-says-china-mobile-must-divest-telecom-business/>

¹⁵³ Vomiero, Jessica, *Global News*, March 30, 2019, “Is Canada ready for free trade with China? Some experts say it's a ‘non-starter’ right now”, at <https://globalnews.ca/news/5113811/canada-china-free-trade-non-starter/>

¹⁵⁴ Reuters, September 17, 2021, “China applies to join Pacific trade pact to boost economic clout”, at <https://www.reuters.com/world/china/china-officially-applies-join-cptpp-trade-pact-2021-09-16/>

¹⁵⁵ Angus Reid Institute, May 13, 2020, “Canadian opinions of China reach new low”, at <http://angusreid.org/covid19-china/>; Angus Reid Institute, December 11, 2019, “As unfavourable views of China rise, Canadians are split over wisdom of Meng arrest”, at http://angusreid.org/wp-content/uploads/2019/12/2019.12.10_MENG.CHINA-2.pdf

¹⁵⁶ The School of Public Policy, University of British Columbia, Nov. 1, 2019, “National Survey Results and Findings on Canadian Public Attitudes on China and Canada-China Relations”, at <https://sppga.ubc.ca/news/october-2019-national-survey-results-and-findings-on-canadian-public-attitudes-on-china-and-canada-china-relations/>

in the current Chinese government. Both percentages, it found, were almost identical to those of the public opinion in the United States which, under the Trump administration, was in direct conflict with China on all fronts.¹⁵⁷

Unlike other western countries, Canada has experienced a standoff over 1,000 days with China because of the so-called “3M” incidents, namely Canada’s arrest of Meng Wanzhou and China’s detention of Michael Kovrig and Michael Spavor. The 2020 ARI report reads: “Canadian opinion towards China has significantly declined since that government arrested and detained two Canadians in prison, in a tit-for-tat reaction to Canada’s arrest - and subsequent release on bail - of Huawei executive Meng Wanzhou”.

The over 1,000 days detention of the two Michaels has caused profound damages to bilateral relationship, especially after Canadians learned the harsh conditions of their detention. It was reported that they were detained in solitary confinement and denied access to lawyers during these two and half years. This is outrageous to Canadians, especially when they compare it with the way Ms. Meng was treated in Canada. To understand the level of frustration, one should listen to what Ambassador Bob Bae said to his Chinese counterpart at the United Nations General Assembly on October 9, 2020: “We shall not forget it.”¹⁵⁸ Sadly, even though Ms. Meng and the two Michaels were finally released on September 24, 2021, it will still be very difficult to repair the Sino-Canadian relationship. The damage is too big. The trust is gone.

Like all Canadians, I found it delightful to see the safe return of the two Michaels. The situation would get worse had the “3Ms” fiasco not ended. The Canadian judge hearing Ms. Meng’s case would have difficulties finding enough reasons to reject the US request of extradition. Whatever the judge decides, there would be an appeal, and the judicial process would continue. The political risks to the Canadian government would be very high if the Minister of Justice decides to reject the US request after the judicial process is completed.

On January 27, 2019, one month after Ms. Meng’s arrest, in a public seminar I delivered to the Chinese community in Vancouver, I suggested that it would better serve all parties’ interest if she decided to stand trial in the US. She would have a better chance to win her case because the standard of proof for conviction is much higher than that for the approval of extradition. Furthermore, I held, if she wins the criminal case in the US, she will be a hero and be able to travel internationally without running the risk of being arrested again for extradition to the US.¹⁵⁹ I was glad to see that she finally decided to attend the hearing in the US to accept the deal of DPA.

Had Ms. Meng’s extradition case continued for another one or two years, the two Michaels would have been locked up in Chinese prisons for those years, although China repeatedly denied that their cases were linked to Meng’s.

¹⁵⁷ Silver, Laura et al., Pew Research Center, Oct. 6, 2020, “Unfavorable Views of China Reach Historic Highs in Many Countries,” at <https://www.pewresearch.org/global/2020/10/06/unfavorable-views-of-china-reach-historic-highs-in-many-countries/>

¹⁵⁸ See the video recording of Ambassador Bob Rae’s comment posted on his Tweet account on Oct. 9, 2020.

¹⁵⁹ See RiseNews, LAHOO.CA, “A dream team of lawyers retained for Meng’s case, while a legal expert believes Meng has a better chance to win if she goes to the US”, at <https://lahoo.ca/2020/08/31/21452>

The two Michaels had been locked up in China for over 1,000 days. They were arrested (*juliu* in Chinese) on December 10, 2018. Their trials started on March 19 and 22, 2021 respectively. The durations of pre-trial detention in both cases were extraordinarily long. According to the Law of Criminal Procedure of China, without special extensions, the court trials of their cases should have started and completed in 2019-2020. Under the Chinese Law, however, pretrial detention can continue for many years with various “extensions”. For example, if the Supreme People’s Procuratorate considers a case being “extraordinarily important and complicated,” the National People’s Congress Standing Committee may grant permission to postpone the trial beyond the legally defined maximum duration.¹⁶⁰ In August, 2021, a court in Dandong of China convicted Michael Spavor and sentenced him to 11 years in prison.¹⁶¹ A day earlier, the Higher People’s Court of Liaoning Province upheld a death sentence for Canadian Robert Schellenberg in a drug smuggling case.¹⁶² Prior to the day of release, Michael Kovrig was still sitting in jail waiting to see his verdict.

Without the help from the US, Canada alone would not be able to end the “3M” fiasco. On September 17, when The Globe and Mail reported that US and Meng resumed the negotiation of a “plea deal”, Canadians were not sure if the two Michaels were a part of the deal.¹⁶³ In the morning of September 24, 2021, when it was announced in the news that the DPA was signed for Ms. Meng’s return to China, most China experts were still assuming that the two Michaels might have to stay in China for several more months. We were very surprised to know that in the afternoon our two Michaels were suddenly released for their immediate return to Canada.

Aside from the “3M” incidents, there are other serious issues in Sino-Canadian relations, e.g., China’s “economic boycott” on Canadian export of canola products, meat and soybeans to China,¹⁶⁴ alleged “economic espionage” and theft of intellectual property causing the bankruptcy of Nortel,¹⁶⁵ reports on covert operations of the “shadowy United Front” in Canada,¹⁶⁶ calls for probe into China’s coronavirus response,¹⁶⁷ stories about “China’s COVID-19 disinformation

¹⁶⁰ See Article 155 of the Law of Criminal Procedure.

¹⁶¹ Saba Aziz and Aaron D’Andrea, Global News, August 10, 2021, “Canadian Michael Spavor sentenced to 11 years in Chinese prison for espionage”, at <https://globalnews.ca/news/8101764/michael-spavor-china-guilty-verdict/>

¹⁶² Saba Aziz and Aaron D’Andrea, Global News, August 9, 2021, “Chinese court upholds death sentence for Robert Schellenberg in drug smuggling case”, at <https://globalnews.ca/news/8099582/robert-schellenberg-china-death-penalty-verdict/>

¹⁶³ Rober Fife and Steven Chase, The Globe and Mail, September 17, 2021, “U.S. Justice Department, Huawei’s Meng Wanzhou resume talks on plea deal, sources say”, at <https://www.theglobeandmail.com/politics/article-us-justice-department-meng-wanzhou-in-talks-on-plea-deal/>

¹⁶⁴ Chase, Steven, The Globe and Mail, Sept. 4, 2019, “Beijing’s economic boycott should spur Canada to reduce trade reliance on China: report”, at <https://www.theglobeandmail.com/canada/article-chinas-use-of-economic-punishment-should-prompt-canada-to-reduce/>

¹⁶⁵ Blackwell, Tom, National Post, Feb. 20, 2020, “Exclusive: Did Huawei bring down Nortel? Corporate espionage, theft, and the parallel rise and fall of two telecom giants”, at <https://nationalpost.com/news/exclusive-did-huawei-bring-down-nortel-corporate-espionage-theft-and-the-parallel-rise-and-fall-of-two-telecom-giants>

¹⁶⁶ Blackwell, Tom, National Post, Dec. 31, 2019, “How China uses shadowy United Front as ‘magic weapon’ to try to extend its influence in Canada”, at <https://nationalpost.com/news/how-china-uses-shadowy-united-front-as-magic-weapon-to-try-to-extend-its-influence-in-canada>

¹⁶⁷ Jackson, Hannah, Global News, April 20, 2020, “Calls for probe into China’s coronavirus response mount – will Canada take part?”, at <https://globalnews.ca/news/6841216/coronavirus-canada-international-investigation/>

push”,¹⁶⁸ talks about “legal action against China on account of the COVID-19 outbreak”,¹⁶⁹ crackdowns in Hong Kong and so on.

The Liberal Government and the Conservative Party have both talked about redefining Canada’s relationship with China.¹⁷⁰ The government will have to “carefully evaluate” Canada’s economic cooperation with China as a matter of defending national security, justice and human rights.¹⁷¹ The playing field has completely changed. The problem of money laundering is only a small aspect of this large picture.

4.3. Foreign influence and National security

(1) The CCP United Front - A new topic of great concerns

The Chinese Communist Party’s “United Front” has become a new subject of great public attention in Canada. What should Canadians do about the so-called “United Front activities” that somehow involve “Chinese money”?

More Canadians are aware of the CCP United Front and its operations now. In recent years, there has been a significant increase in the number of government reports, media stories, TV shows, and research publications on this subject in Canada and all other 5 Eyes countries, namely Australia, New Zealand, UK, and the United States. Several authors have even published books with details, including Canadian columnist Jonathan Manthorpe’s book *Claws of the Panda: Beijing’s Campaign of Influence and intimidation in Canada*,¹⁷² Canadian journalist Sam Cooper’s book *Wilful Blindness: How a network of narcos, tycoons and CCP agents infiltrated the West*,¹⁷³ American reporter Bill Gertz’ book *Deceiving the Sky: Communist China’s Drive for Global Supremacy*,¹⁷⁴ and Australian scholar Clive Hamilton’s books *Hidden Hand* and *Silent Invasion*.¹⁷⁵ There is no doubt that the CCP United Front has attracted unprecedented attention globally.

¹⁶⁸ Black, Tom, National Post, March 28, 2020, “China’s COVID-19 disinformation push, aided by Canadian group, raises concerns about next pandemic”, at <https://nationalpost.com/news/covid-19-chinese-disinformation-push-aided-by-canadian-group-raises-concerns-about-next-pandemic>

¹⁶⁹ Pablo, Carlito, The Georgia Straight, March 24, 2020, “COVID-19: Canadians blame Chinese government for pandemic, survey by Vancouver pollster shows”, at <https://www.straight.com/covid-19-pandemic/canadians-blame-chinese-government-pandemic-survey-vancouver-pollster-shows>

¹⁷⁰ Turnbull, Sarah, CTV News, April 19, 2020, “Canada must ‘re-think’ relationship with China over pandemic: Scheer”, at <https://www.ctvnews.ca/politics/canada-must-re-think-relationship-with-china-over-pandemic-scheer-1.4901531>

¹⁷¹ Burton, Charles, April 23, 2020, “Beijing’s Coronavirus Bungling Makes Canada’s Choice on Huawei even Easier”, The Globe and Mail, at <https://www.theglobeandmail.com/opinion/article-beijings-coronavirus-bungling-makes-canadas-choice-on-huawei-even/>

¹⁷² Manthorpe, Jonathan, 2019, *Claws of the Panda: Beijing’s Campaign of Influence and intimidation in Canada*. Publisher: Cornorant Books.

¹⁷³ Cooper, Sam, 2021, *Wilful Blindness: How a network of narcos, tycoons and CCP agents infiltrated the West*. Publisher: Optimum Publishing International.

¹⁷⁴ Gertz, Bill, 2019, *Deceiving the Sky: Inside Communist China’s Drive for Global Supremacy*. Publisher: Encounter Books.

¹⁷⁵ Hamilton, Clive and Mareike Ohlberg, 2020, *Hidden Hand*. Publisher: Optimum Publishing International.
Hamilton, Clive, 2018, *Silent Invasion: China’s Influence in Australia*. Publisher: Hardie Grant – Chronicle Books.

For our discussion about the flow of money from China, I offer the following opinions on the involvement or participation of Canadians in the so-called “CCP United Front activities”.

First, it is nearly impossible to avoid getting involved in activities in Canada that may be perceived as “operations of the United Front”, such as activities that promote trade and businesses with China, education and cultural exchanges with Chinese institutions, friendship between Canada and China, or even events to celebrate the PRC National Day and Chinese New Year. These activities are often hosted, sponsored, endorsed or attended by the Chinese consulates, Chinese companies, and/or “pro-China” local groups and individuals. They take place in public all year around and involve massive number of people. And they usually do not break the law of Canada.

Second, we should not be afraid of attending these activities, unless there is a risk to the interest of Canada. For example, when the Chinese consulates host events to celebrate the Chinese New Year, representatives of the federal and local governments of Canada and many other Canadians are invited to attend them. Canadians are also invited to attend such events in China and its two SARs. At these events, there will be speeches to “tell the stories of China well,” exhibitions of China’s progresses, and promotion of friendship. Attending the activities does not make Canadians the agents of the CCP, unless they are part of some illegal and covert operations against the interest and values of Canada.

Third, we should clearly understand what the specific activities are about. The United Front is a strategy to engage allies in a coalition to serve the strategic objectives of the CCP. During the Anti-Japanese War of 1937-1945, it was to form an alliance with its old civil war enemy, the KMT Nationalist Party, to fight the Japanese. In the civil war of 1946-1949, it was to build a coalition to fight the Nationalist Party. In the 1950s, it was to promote “world revolution” against the West. But during the good years of Reform after the Cultural Revolution, China was quite friendly to the West, and the United Front became more constructive than destructive. It was mainly to support China’s Economic Reform and Opening up rather than fighting an enemy. That was also the time when Canada, together with the U.S. et al., took the approach of “constructive engagement” to work with China.

Fourth, we should not miss the opportunities of dialogues and cooperation in order to assist reforms in China, promote Canadian businesses, and share Canadian values and best practices with anyone in China for the promotion of the rule of law, human rights, and good governance. During 1980-2010, Canada did a great job in assisting China’s reforms in many important areas. Canadians have been involved in activities with the Chinese government and partners to promote market reform, improve education, promote human rights in criminal justice, professionalize the judges, strengthen the criminal defense bar, and reduce pollution. In particular, the CIDA funded projects to promote the rule of law in criminal justice were ground breaking and had far-reaching long-lasting impact. From the Chinese perspective, the cooperation could be considered success of the United Front. But Canadians should still be proud of our work in assisting China’s progresses towards the right direction, although the situation has changed in recent years.

Fifth, Canadians should remain diligent when we attend such events. Everyone should independently assess the pros and cons before getting involved. For example, NDP MP Jenny

Kwan is known to be friendly to China and has attended many official ceremonies hosted or endorsed by the Chinese consulate in Vancouver. She attended the 2018 PRC National Day reception hosted by the consulate, but decided not to attend the 2019 one.¹⁷⁶ In 2020, she joined a protest in downtown Vancouver and supported a Parliament resolution against China's National Security Law in Hong Kong.¹⁷⁷ Clearly, it would be wrong to assume that she has become an agent of the United Front just because she attended those ceremonies before.

Sixth, all the governments in the West and international organizations have been involved with the CCP United Front for decades. When they work with China, they all have to deal with the CCP, which is the only political party in power in China. Canada, the U.S., Japan, and even the UN were all considered allies of the United Front Back in the 1970s, the CCP tried to form an "international anti-hegemony United Front" against the USSR. In 1970, Canada recognized the PRC. In 1971, when the UN recognized the PRC, Mao Zedong called upon the CCP to "create a United Front in the UN".¹⁷⁸ In 1972, after Nixon visited China, the U.S. became an ally of this "anti-hegemony United Front". A few years later, Japan accepted China's request to add an "anti-hegemony clause" in the Sino-Japanese Treaty of Peace and Friendship.¹⁷⁹ However, none of these countries was under CCP's leadership because they worked with China. "The enemy of my enemy is my friend." They were using each other in geopolitics.

Canada was China's best friend in the West for many decades. Developing cooperation with Canada was considered by the CCP an implementation of its international United Front strategy to assist China's development and reforms. From the Canadian perspective, maintaining a friendly relationship helps to open the doors to China for Canadian businesses and constructive dialogues on human rights, the rule of law and good governance.

The world has noticed that the current CCP leadership has adopted a new approach in dealing with foreign and international affairs. The CCP has significantly upgraded the United Front and allocated more resources to its activities. The Party even made a set of new United Front Work Regulations in 2015 and updated them in 2020.¹⁸⁰ We will see what the impact of recent changes will be on the United Front's work in relation to Canada and Canadians.

(2) Loyalty and "partnership of cooperation"

¹⁷⁶ Quan, Douglas, National Post, Sept. 17, 2019, "As China's anniversary events loom, Canadian leaders face Dilemma: attend or not", at <https://nationalpost.com/news/as-chinas-anniversary-events-loom-canadian-leaders-face-dilemma-attend-or-not>

¹⁷⁷ Judd, Amy, Global News, July 1, 2020, "Hundreds demonstrate in Vancouver against China's new security law", at <https://globalnews.ca/news/7130341/protest-vancouver-china-new-security-law/>
Dilemma: attend or not", at <https://nationalpost.com/news/as-chinas-anniversary-events-loom-canadian-leaders-face-dilemma-attend-or-not>

¹⁷⁸ Xiong, Lei, Sept. 25, 2016, "It was Chairman Mao who let us stand up", at <http://www.mzfxw.com/e/action/ShowInfo.php?classid=12&id=72466>

¹⁷⁹ Sun, Hui and Lin Xiaoguang, 2013, "The signing of Sino-Japanese Peace Treaty and Sino-Japanese Relations in the 1970s", at <http://www.jsc.fudan.edu.cn/picture/jl080201.pdf>

¹⁸⁰ CCP United Front Work Regulations, promulgated by the CCP Central Committee on December 21, 2020, at http://www.xinhuanet.com/politics/2021-01/05/c_1126949202.htm

We need to address the issue of loyalty and trust. Can we trust Chinese Canadians, especially those who are supportive of a friendly and cooperative Canada-China relationship?

Many Chinese Canadians and their organizations attend public events to promote friendship and cooperation between Canada and China. Some have businesses in both countries. A lot of them agree with China on many issues, especially when China opens the door to friendly Canadians and pursues market reforms, raises people's living standards, improves education and public medical services, agrees to the rule of law, attends dialogues on human rights, and makes effort to reduce poverty and corruption. By doing so, Chinese Canadians are not placing themselves under the control of the CCP or becoming "agents of the United Front".

There are over 60 million overseas Chinese in the world. About 1.58 million are in Canada. Chinese immigrants come to Canada for legitimate reasons. The fact that they decide to transfer their assets from China and invest here reflects their trust and love in Canada. Many took the oath to become Canadian citizens and gave up their Chinese nationality. We should not alienate an important proportion of the Canadian population and go back to the dark age of the Chinese Exclusion Act.

After all, Canada and China had maintained a friendly relationship until the end of 2018. Both governments officially endorsed "strategic partnership" and "partnership of cooperation" for many years. As described in a government submission to the Special Committee on Canada-China Relations in 2020, Canada's approach to China was to promote "comprehensive engagement with China centered around trade links; enhancing people-to-people ties; mitigating security risks; encouraging China to be a responsible stakeholder in the rules-based international order; and engaging on values", including human rights, civil society and the rule of law.¹⁸¹ Naturally, activities to build and sustain this partnership have involved many Chinese Canadians. Is it fair to label them "agents of CCP United Front" now?

Although the United Front's influence is clearly rising in Canada, cooperation between China and Canada has always been a two-way exercise of mutual benefits and influence. In particular, taking the approach of "constructive engagement" is to encourage and hopefully facilitate China's departure from the Russian style planned economy and communist ideology. Canada's cooperation with China serves our agenda and interest too, although most Canadians do not have the ambition of regime change.

I recommend that Canada continues to cooperate with China in all areas of mutual interest, but with greater caution on matters concerning Canada's national security. Especially, Canada needs to develop better strategies and capacities to handle crises and much closer strategic partnerships with like-minded nations.

(3) Strengthen the systems and fix the loopholes

¹⁸¹ Morgan, Marta, Feb. 5, 2020, submission to Special Committee on Canada-China Relations, "Annex 1: Canada's Approach to China", at https://www.ourcommons.ca/content/Committee/431/CACN/WebDoc/WD10653524/431_CACN_reldoc_PDF/DepartmentOfForeignAffairsTradeAndDevelopment-1-e.pdf

We should focus on improving our own laws and systems to enhance national security and.

Canada is an open society with strengths and weaknesses. Canadians have been enjoying a peaceful and relaxing lifestyle for a long time. The level of public awareness of geopolitics and foreign threats is relatively low. Foreigners are welcome to Canada. Dual citizenship is allowed. Permanent residents with foreign citizenship are treated like Canadian citizens, although they cannot vote in an election. Foreigners in Canada are protected by the Charter of Rights and Freedoms. The Canadian legal process to remove rich foreign criminals is long and costly, and the government and enforcement agencies have very limited resources. The justice system is known to be lenient. Because of all these, there is nothing strange that some foreign powers consider Canada an easy target of their influence, interference and penetration.

Canada's system to remove foreign fugitives who are common criminals is not very efficient, if they can afford to retaining good lawyers. I was called by the government of Canada in the deportation cases of Lai Changxing and some other Chinese fugitives. It was outrageous to see Mr. Lai could fight the deportation order for 11 years. More recently, I once again found it shocking to see that the case of an alleged "Chinese gangster" could even drag on for four decades and, in the end, all the government failed.¹⁸²

Apparently, it is more challenging to deal with more sophisticated types of foreign threats such as espionage or foreign influenced activities. Under the Canadian Security Intelligence Service Act, there are four categories of threat:

- (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
- (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

The general definition of national security threat is clear. An activity in question must violate Canadian law and is against Canada or is damaging to the interest of Canada. We need more specific legal definitions and policy guidelines to define and classify what activities are, or could be, damaging to the interest of Canada, including Canada's national security, public order, and basic values.

¹⁸² Hill, Brian and Sam Cooper, Global News, May 29, 2019, "How Canada's legal system helped an alleged Chinese gangster avoid deportation for decades", at <https://globalnews.ca/news/5321035/canada-legal-system-helped-chinese-gangster-avoid-deportation/>

For the B.C. Inquiry and its follow-up discussions, I would comment on three particular issues of money-involved foreign influence, namely foreign donations to Canadian political parties, foreign organizations operating in Canada, and Canadians working with China.

(i) Foreign political donations

Recently, the Canadian press reported stories of alleged “China interference” in the 2021 federal election, targeting Chinese-Canadian candidates including NDP MP Jenny Kwan, former Conservative MP Kenny Chiu and et al.¹⁸³

We need to systematically identify and address the problems of foreign influence from all sources, not just from one country. In September 2019, the CBC reported that at least six foreign countries were trying to influence elections and “to use their links to diaspora communities in Canada to advance their own agendas”.¹⁸⁴ It would not be a surprise to find more than six countries have tried to exert their influence in Canada, and their influence goes way beyond the federal elections.

The 2018 Elections Modernization Act was a major step to prevent foreign influence in Canada’s election system. It bans foreign donations in Canadian elections. But how about donations made by foreign citizens with Canadian permanent residency?

There was an interesting high-profile incident in Australia. In 2018-2019, Australia stripped of Chinese billionaire Huang Xiangmo’s Australian residency, barred him from returning to the country, and froze his assets in Australia for alleged tax evasion of A\$140 million. According to the press, “Huang has been at the center of a series of political interference concerns, having donated millions to Australia’s two main political parties and been photographed with key figures including former prime minister Malcolm Turnbull.”¹⁸⁵ Huang is not allowed to re-enter Australia, but he claimed that the rest of his family “of three generations” are all citizens of Australia and still living there.

¹⁸³ Daphne Bramham, The Vancouver Sun, September 13, 2021, “Is China interfering in the Canadian election”, at <https://vancouversun.com/news/politics/election-2021/daphne-bramham-is-china-interfering-in-the-canadian-election>; Terry Glavin, Ottawa Citizen, September 15, 2021, “China’s interference in Canada’s election doesn’t seem to faze the Liberals”, at <https://ottawacitizen.com/news/politics/election-2021/glavin-chinas-interference-in-canadas-election-doesnt-seem-to-faze-the-liberals>; Jeremy Huttall, The Toronto Star, September 17, 2021, “Canada must safeguard against foreign interference in future elections: expert”, at <https://www.thestar.com/politics/federal-election/2021/09/17/canada-must-safeguard-against-foreign-interference-in-future-elections-expert.html>.

¹⁸⁴ Tunney, Catharine and Ashley Burke, CBC News, Sept. 16, 2019, “Federal parties being warned of efforts by 6 foreign countries to influence election: sources”, at <https://www.cbc.ca/news/politics/china-india-interference-1.5284473>

¹⁸⁵ South China Morning Post, Sept. 17, 2019, “Chinese billionaire Huang Xiangmo has Australian assets frozen over US\$96 million tax bill”, at <https://www.scmp.com/news/asia/australasia/article/3027579/chinese-billionaire-huang-xiangmo-has-australian-assets>. Doherty, Ben, The Guardian, Oct. 24, 2019, “Chinese billionaire Huang Xiangmo ordered to declare worldwide assets by Australian court”, at <https://www.theguardian.com/australia-news/2019/oct/24/chinese-billionaire-huang-xiangmo-ordered-to-declare-worldwide-assets-by-australian-court>

We heard some similar stories in Canada.¹⁸⁶ For example, in 2015, the Canadian press reported that B.C. real estate developer Michael Ching, or Cheng Muyang, who is a Chinese citizen with permanent residency in Canada and is wanted by China, donated thousands of dollars to the Canadian Liberal Party and was seen in photos with Justin Trudeau in a fundraising event.¹⁸⁷

The prohibition of foreign donations under the Canada Election Act, I recommend, should be extended to political donations from all non-Canadian citizens. This will help to reduce the risk of foreign influence and keep both the donors and the political parties out of unnecessary controversies. Permanent residents of Canada who are still foreign citizens have a legal obligation to remain loyal to other countries and follow their laws. When those countries and Canada are in serious conflicts, their political donations may raise a question of foreign influence.

Also, to fix the loopholes about political donations, more effort is required to enforce the laws and regulations effectively. In a 2017 report on “Controlling Foreign Influence in Canadian Elections”, the Standing Senate Committee on Legal and Constitutional Affairs recommended actions to “strengthen the enforcement regime,” “strong prohibitions and sufficient penal consequences to deter and denounce any violation”.¹⁸⁸ My question is: if foreign influence is such a serious problem in Canada, where can we find the cases of investigation and prosecution?

(ii) Foreign organizations

There is a need to raise the level of transparency of foreign entities and their resources. The Government of Canada may look at what the two superpowers have put in place to monitor and regulate foreign organizations and joint school programs.

In recent years, the Trump administration took dramatic and abrupt actions to enforce its Foreign Agents Registration Act (FARA) by targeting some of the Chinese state-owned entities in the U.S. These entities are required to register as agents of a foreign government. Also, the Trump administration also labeled the Confucius schools as agents of the Chinese government. Australia has taken some similar actions. In Canada, some advocates have proposed that the government should take similar legislative and enforcement actions. In my view, a better option would be to enact a law and require all foreign organizations to register accordingly. In April, 2021, Conservative Party MP Mr. Chiu’s Bill C-282, titled “An Act to establish the Foreign Influence Registry”, was introduced in the parliament. In the 2021 election, Mr. Chiu was defeated in Richmond, BC. He believed that he was a victim of an organized “pro-Beijing” misinformation

¹⁸⁶ Blackwell, Tom, The National Post, Jan. 28, 2019, “How China uses shadowy United Front as ‘magic weapon’ to try to extend its influence in Canada”, at <https://nationalpost.com/news/how-china-uses-shadowy-united-front-as-magic-weapon-to-try-to-extend-its-influence-in-canada>

¹⁸⁷ Tam, Patrick, The Globe and Mail, May 5, 2015, “B.C. developer wanted in China donated thousands to politicians”, at <https://www.theglobeandmail.com/news/british-columbia/bc-developer-wanted-in-china-donated-thousands-to-politicians/article24271594/>

¹⁸⁸ Runciman, Rob and George Baker, June 2017, “Controlling Foreign Influence in Canadian Elections”, Report of the Standing Senate Committee on Legal and Constitutional Affairs, at https://sencanada.ca/content/sen/committee/421/LCJC/reports/Election_Report_FINAL_e.pdf

campaign in the Chinese language social media because of this “anti-China and anti-Chinese” bill.¹⁸⁹

Reciprocity is a basic principle in handling international relations. China has an all-inclusive model to monitor and control the activities and influence of all foreign organizations operating in China. Therefore, it is understandable that there is a trend in Canada and some other western countries to tighten up the control of “Chinese” organizations.

In 2016, China enacted a law to require all overseas NGOs to get registration and pre-approval before they can engage in any activity in China.¹⁹⁰ This Law prohibits foreign NGOs to conduct any political and religious activities in mainland China. All foreign NGOs with an intention to operate in China shall apply to a Public Security Bureau of China for approval, complete the registration, and submit their work plans, budget, et al., to government agencies on a regular basis.

China also has built sophisticated systems to assure effective monitoring and control of all international schools and foreign-Chinese education joint programs in China. Under Chinese regulations, aside from following strict requirements of registration and approval, a Chinese-foreign joint educational institution or program must satisfy these conditions: the CEO is a Chinese citizen, funds have certificates of their origins, and the operation must “abide by China’s laws, follow China’s education policies, meet norms of China’s public ethics, and not to damage China’s national sovereignty, security and social public interest.”¹⁹¹ In the past two decades, thousands of joint education entities have been created throughout China. The government has never lost control of them.

Through the enforcement of these regulations, China has had no difficulty to manage the risks of foreign influence in activities involving foreign organizations and educational programs.

The government of Canada may compare the various models in other countries and decide what Canada should do to prevent foreign influence and protect national security. However, it is important to distinguish organizations of Chinese Canadians and those that are indeed foreign.

(iii) Canadians work with China

The same test of national security should apply to Canadians working with China.

Espionage, intellectual property theft, violence and intimidation against Canadians, bribery, fraud and money laundering for foreign powers are serious criminal offences. Political warfare against

¹⁸⁹ Tom Blackwell, Sept. 22, 2021, “Defeated Conservative MP fears attacks by pro-Beijing forces swung votes against him”, at <https://nationalpost.com/news/politics/election-2021/defeated-tory-mp-fears-attacks-by-pro-beijing-forces-swung-votes-against-him>; Bob Mackin, Sept. 22, 2021, “Exclusive: Real estate exec celebrates defeat of Richmond Conservatives”, at <https://thebreaker.news/business/kenny-chiu-defeated/>

¹⁹⁰ Standing Committee of National People’s Congress, Law of the People’s Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China, adopted on April 28, 2016, and effective on Jan. 1, 2017.

¹⁹¹ Articles 25, 14 and 5, Regulations of the People’s Republic of China on Chinese-Foreign Cooperation in Running Schools, promulgated by Decree No. 372 of the State Council on March 1, 2003.

Canada, hostile propaganda and misinformation for foreign powers are against Canadian values and security.

Canadians working with China in general are not necessarily security threats to Canada, unless their work and activities are against the law and interest of Canada. Canadians can attend conferences in China to help reform the laws and policies. Canadians can work for Chinese companies and teach in Chinese schools. Canadian companies can help their Chinese partners to do business in Canada. And Canadian universities can recruit and teach Chinese students.

We must watch the fine lines carefully. Collecting and donating facial masks for China during the coronavirus outbreak in Wuhan in early 2020 neither broke the law of Canada nor damaged the interest of Canada, although it served the interest of China, and the Chinese press praised it as a “patriotic” action of the “United Front”. Such activities may trigger the alarm of security threats in Canada if they become large-scale medical stockpiling for China causing a serious shortage of critical medical supply in Canada.¹⁹² It was encouraging to see that Chinese Canadians made generous donations of facial masks to hospitals both in China and Canada during the pandemic.

A recent controversy in the news is about the work of Former Chief Justice of the Supreme Court of Canada, Mdm. Beverley McLachlin, for Hong Kong. She has been an overseas non-permanent judge in the Court of Final Appeal of the SAR of China since 2018. Presumably, her appointment not only helps to maintain the common law tradition in Hong Kong but also serves the CCP United Front agenda of “one country two systems” and “reunification of the motherland”. Until China started to enforce the National Security Law in Hong Kong in 2020, no one in Canada had voiced concern about her appointment. Now she is facing pressure from Canada to step down.¹⁹³

In my view, Madam Justice McLachlin made a right decision to complete her first three-year term of appointment and have her appointment renewed in 2021 for a second term, because it is perfectly legal under Canadian law and it is not damaging the interest of Canada. Indeed, it is an honor of the legal profession. The CFA currently has 14 overseas non-permanent judges. She is the only Canadian judge there. The rest are mostly British and three are Australians. However, I hope she will not be assigned a National Security Law case. Otherwise, she may find herself caught in the middle of a confrontation between China and Canada. Recently, British barrister David Perry, QC, was caught in such a crossfire between U.K. and China, when he was appointed by the Hong Kong government to prosecute Martin Lee and Jimmy Lai Chee-ying. Perry tried to resist the pressure from Britain but eventually agreed to quit the job after Foreign Secretary Raab openly condemned his decision as “pretty mercenary”.¹⁹⁴

¹⁹² Ruiz, Karen, Daily Mail Australia, April 1, 2020, “The true scale of China’s medical stockpile is revealed: More than TWO Billion masks were imported into Wuhan in just one month as the coronavirus crisis escalated”, at <https://www.dailymail.co.uk/news/article-8178365/China-imported-2billion-masks-peak-coronavirus-crisis.html>

¹⁹³ File, Robert and Steven Chase, The Glove and Mail, July 10, 2020, “Former Supreme Court chief justice urged to step down from Hong Kong court,” at <https://www.theglobeandmail.com/politics/article-former-supreme-court-chief-justice-urged-to-step-down-from-hong-kong/#:~:text=Ms.,to%20be%20non%2Dpermanent%20members>.

¹⁹⁴ AFP et al, Daily Mail, Jan. 20, 2021, “Top British barrister David Perry quits Hong Kong team prosecuting pro-democracy activities following UK criticism after Foreign Secretary Dominic Raab called his actions ‘pretty

Given that Canada's relations with China are becoming very difficult and complicated in such areas, I recommend that the Canadian government updates its policy guidelines for Canadians doing work for the interest of China or participating in potentially controversial activities with China.

Recommendations

Recommendation 31. It is unfair to question the loyalty of Chinese Canadians to Canada just because they are supportive of a friendly and cooperative Canada-China relation. We should not alienate an important proportion of the Canadian population and go back to the dark age of the Chinese Exclusion Act.

Recommendation 32. Canadians were glad to see the end of the "3Ms" fiasco on September 24, 2021. However, the government of Canada has to be better prepared for facing more similar fiascos in the future, since the US may decide to make more requests to extradite Chinese business executives from Canada.

Recommendation 33. We should continue to cooperate with China in all areas of mutual interest, but with greater caution on matters of national security. In particular, Canada needs to develop better strategies and capacities to handle crises and much closer strategic partnerships with like-minded nations.

Recommendation 34. We should focus on improving the laws and systems in Canada to enhance national security and prevent foreign influence. We need to identify and fix the loopholes in our systems in order to effectively address the problems of foreign influence from all sources, not just from one country.

Recommendation 35. To become a national security threat, an activity in question has to be a violation of Canadian law, against Canada or damaging the interest of Canada. We need to define and classify what activities are, or could be, damaging to the interest of Canada, including Canada's national security, public order, and basic values.

Recommendation 36. The prohibition of foreign donations under the Canada Election Act should be extended to political donations from all non-Canadian citizens. This will help to reduce the risk of foreign influence and keep both the donors and the political parties out of unnecessary controversies. Also, more effort is required to enforce the laws and regulations effectively.

Recommendation 37. The U.S. and China have created and enforced their regulatory models to monitor and regulate activities of foreign organizations and educational programs. The Canadian government may look at the various models in other countries and decide what Canada should do to prevent foreign influence and protect national security. It is important to distinguish organizations of Chinese Canadians and those that are indeed foreign.

mercenary', at <https://www.dailymail.co.uk/news/article-9166613/Hong-Kong-says-UK-lawyer-quit-team-prosecuting-dissidents.html>

Recommendation 38. Canadians can work with China, unless the work is against the law and interest of Canada. Espionage, intellectual property theft, and other criminal activities for foreign powers must be punished and prevented. We should be proud of the fact that Mdm. Beverley McLachlin is appointed an overseas non-permanent judge in the Court of Final Appeal of the Hong Kong SAR. She should complete her just renewed appointment, because it is perfectly legal under Canadian law and it is not damaging the interest of Canada.

Recommendation 39. Given that Canada's relations with China are becoming very difficult and complicated in some areas, the Canadian government should update its policy guidelines for Canadians doing the work for the interest of China or participating in potentially controversial activities with China.

Conclusions

Considering the changes in Canada-China relations in recent years, our discussion regarding the flow of money from China will have to address many difficult and controversial legal and policy issues.

In B.C., money laundering is a crime involving criminals of various racial and ethnic backgrounds, not a race problem of “the Chinese.” The investigation of money laundering should be based on evidence rather than racial profiling, false assumptions and speculation.

Most of the money that has come out of mainland China are from companies through government-approved ODI and trade. Tens of thousands of Chinese companies own trillions of dollars worth of legitimate assets overseas. We should continue to welcome all legitimate investment and wealth from the world, while staying alert and taking effective measures to contain the risks of irregularities and detect proceeds of crime.

Although mainland China has a foreign currency control system, under certain conditions, individuals are allowed to exchange and legally transfer their money overseas. In particular, Chinese immigrants are allowed to move all their assets overseas, not subject to the foreign exchange annual quota of US\$50,000. We should be aware of the legitimate options under SAFE regulations, the grey areas, loopholes, and strike a balance between the lawful interest of individuals coming to Canada and the need for crime prevention.

All countries face an increasing threat of money laundering. The United Nations Office on Drugs and Crime held: “Rapid developments in financial information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money laundering more urgent than ever.”¹⁹⁵

Money laundering poses a serious threat to peace, order, good governance and economic stability in all the countries including Canada and our close allies with fundamentally similar principles of law and governance. It is also considered a serious threat by mainland China and by China’s two special administrative regions, Hong Kong and Macau.

Canada, mainland China, and Hong Kong are among the 37 member jurisdictions of FATF, the global watchdog and leading inter-governmental organization in the fight against money laundering, whereas all three of them and Macau are also member jurisdictions of the Asia/Pacific Group on Money Laundering (APG), a regional inter-governmental organization consisting of 41 members. For the B.C. Inquiry and its follow-up discussions, I recommend that we assess Canada’s AML/CTF system and practices and explore our law and policy options in accordance with the international standards that are stipulated by FATF in its Recommendations.¹⁹⁶ There is no easy

¹⁹⁵ UNODC, “Money-Laundering and Globalization”, at <https://www.unodc.org/unodc/en/money-laundering/globalization.html>

¹⁹⁶ FATF, 2019, “International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations”, at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>

way or simple solution. We must take a comprehensive approach to address the problem of money laundering.

It requires many decades of continuous effort to build an effective AML legal and regulatory framework and to improve enforcement and compliance. The United States, which was the true pioneer in developing an AML system after its introduction of the world's first AML laws back in the 1930s, is recognized by FATF as a country with a "well developed and robust" AML/CTF framework. Yet, the most recent FATF mutual evaluation still found "significant gaps" in the US regulatory framework, including the rules regarding real estate agents, investment advisers, lawyers, and several other non-financial businesses and professions.¹⁹⁷

The recent FATF/APG mutual evaluations on Canada, mainland China and China's two SARs found that they all need to make improvements. We should consider the findings of these mutual evaluations and take actions accordingly.

I would once again recommend that we continue the effort to engage China in dialogues to address our common concerns in criminal justice and crime prevention when the timing is appropriate.

In 1998, the Vancouver-based International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) was able to engage a significant number of senior Chinese officials and experts in co-hosting a major international symposium on the control of financial fraud in Beijing. ICCLR is a think tank and member institute of the United Nations Crime Prevention and Criminal Justice Programme Network. This symposium was the beginning of Canada's dialogues with China on money laundering and organized crime. Led by ICCLR's President Daniel Prefontaine, experts from China, Canada, United States, Europe and the United Nations met to discuss various types of financial crimes including banking and investment fraud, securities fraud, bank card fraud, and money laundering.¹⁹⁸

Mainly through ICCLR's ground-breaking work during the 1990s-2000s, Canada was able to open the doors to China for detailed dialogues on a broad range of topics of criminal justice and crime prevention, which helped experts from both sides understand each other's laws, systems, and practices. Dr. Peter German, Deputy Commissioner of RCMP at the time, introduced Canada's Proceeds of Crime (Money Laundering) Act to Chinese officials. Prof. Maureen Maloney and several other experts from B.C. shared their research findings on the topic of corruption with Chinese scholars and experts. Over the years, meetings and seminars were held to discuss cross-border organized crime, mutual legal assistance in criminal matters, drug trafficking, illegal immigration and human trafficking, prevention of corruption, notorious Chinese fugitives with stolen assets claiming refugee in Canada, and so on.

Through these dialogues, we were able to demonstrate to thousands of Chinese officials, scholars, and students that Canada is not a safe haven for Chinese criminal fugitives, but a great democracy under the rule of law and is firmly committed to the fight against international organized crime.

¹⁹⁷ FATF, 2016, "Mutual Evaluation Report the United States – Anti-Money Laundering and Counter-terrorist Financing Measures the United States."

¹⁹⁸ The proceedings of the symposium were published in China in 1999. See Chen, Guangzhong et al., 1999, *Prevention and Control of Financial Fraud*. Beijing: China Democracy and System of Law Publishing House.

The impact is profound and long-lasting, no matter how much damage has been done to the bilateral relationship recently.

These dialogues also helped the key justice departments in both countries develop a better understanding of each other's systems and practices, which facilitated progress in cooperation. On July 23, 2011, China's most wanted fugitive Lai Chang Xing was sent back to China from Vancouver, after fighting the government of Canada for 12 years. From July 2011 to April 2013, according to Ambassador Guy Saint-Jacques of Canada, CBSA (Canadian Border Services Agency) successfully deported 590 illegal Chinese immigrants back to China.¹⁹⁹ We should continue to remove foreign criminals from Canada, unless Canada decides to change the law, expand Canadian jurisdiction, and prosecute them here.

We should also be aware of the legal treaties and agreements.

In 1994, Canada and China signed the Treaty on Mutual Legal Assistance in Criminal Matters (MLAT).²⁰⁰ This treaty requires cooperation in the sharing of criminal intelligence, transferring of evidence and witnesses et al. It will be a loss to Canada if we stop using it.

In 2010, the Ministry of Public Security of China and the Royal Canadian Mounted Police signed a Memorandum of Understanding on Cooperation in Combating Crime.²⁰¹ This MOU promises police cooperation in the prevention and investigation of 11 types of criminal activities, including drug trafficking, transnational organized crime, financial and economic crime, money laundering.

On November 8, 2014, Canada and China signed the Agreement on Cooperation and Mutual Administrative Assistance in Customs Matters.²⁰² This Agreement stipulates that both countries assist each other "to prevent, investigate, and combat customs offenses".

In 2016, Canada and China signed the Agreement on Sharing and Return of Forfeited Assets.²⁰³

Even though the bilateral relations are in their worst time now, I recommend that both the federal and provincial governments continue to make use of these agreements to maintain cooperation in fighting money laundering and organized crimes when the timing is appropriate.

It appears that the Canadian government will develop a new China approach that will better serve the interest of Canada. This important policy development should take into consideration of current geopolitics in the world, public opinions in Canada, and Canada's national security and values.

¹⁹⁹ Zhang, Yan and Qin Jize, *China Daily*, April 25, 2013, "Canada to return illegal assets", at https://usa.chinadaily.com.cn/china/2013-04/25/content_16447021.htm

²⁰⁰ Global Affairs Canada, Treaty Between Canada and the People's Republic of China on Mutual Legal Assistance in Criminal Matters, signed on July 29, 1994.

²⁰¹ Ministry of Foreign Affairs of China, *Memorandum of Understanding between the Ministry of Public Security of China and the Royal Canadian Mounted Police on Cooperation in Combating Crime*, signed on June 24, 2010.

²⁰² Global Affairs Canada, Agreement between the Government of Canada and the Government of the People's Republic of China on Cooperation and Mutual Administrative Assistance in Customs Matters, signed on Nov. 8, 2014.

²⁰³ Office of Prime Minister of Canada, Sept. 23, 2016, "Joint Statement Between the People's Republic of China and Canada", at <https://pm.gc.ca/en/news/statements/2016/09/23/joint-statement-between-canada-and-peoples-republic-china>

Indeed, to manage the increasingly complicated relationship with China, Canada must take a more comprehensive and balanced approach with greater caution, wisdom and strength. Most Chinese Canadians will support this change.

Recommendations

Recommendation 40. For the B.C. Inquiry and follow-up discussions, we should assess Canada's AML/CTF system and practices and explore our law and policy options in accordance with the international standards that are stipulated by FATF in its Recommendations.

Recommendation 41. We should continue the effort to engage China in dialogues to address our common concerns in criminal justice and crime prevention, when the timing is appropriate.

Recommendation 42. Even though the bilateral relations are in their worst time now, relevant authorities of both the federal and provincial governments should continue to make use of all the treaties and agreements with China to maintain cooperation in fighting money laundering and organized crimes, when the timing is appropriate.