

Requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

British Columbia Notaries

2008

Presentation Overview

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- Overview of money laundering and terrorist financing
- British Columbia notaries and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA)
- FINTRAC's compliance approach
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Introduction

- New requirements under the PCMLTFA for British Columbia notaries and British Columbia notary corporation are effective on December 30, 2008;
- FINTRAC will be responsible for ensuring compliance with these legislative and regulatory obligations.

FINTRAC

- FINTRAC is Canada's financial intelligence unit. The Centre produces financial intelligence for law enforcement and national security agencies. FINTRAC is uniquely positioned to analyze millions of financial reports to produce this intelligence.
- Created in 2000 under the PCMLTFA.
- Plays an integral role in Canada's effort to combat organized crime and terrorism.
- Independent agency reporting to the Minister of Finance and Parliament.
- Operates at arm's length from law enforcement and other bodies.
- Works in partnership with individuals and entities subject to the PCMLTFA.

FINTRAC's Role

- **Collect, analyze, assess and disclose** information related to money laundering, terrorist activity financing and threats to the security of Canada.
- **Ensure compliance** with obligations under Part 1 of the PCMLTFA and related regulations.
- Ensure **protection of personal information** under its control.
- Enhance **public awareness** of money laundering and **terrorist financing**.

What Is Money Laundering?

- The United Nations defines money laundering as “any act or attempted act to disguise the source of money or assets derived from criminal activity”.
- Essentially it is the process where “dirty money” is transformed into “clean money”.
- More than just cash, it also includes valuable items (for example real estate, diamonds) and other kinds of funds (for example electronic funds).

Stages of Money Laundering

- **Placement** – initial stage of putting the cash into the financial system
- **Layering** – creating layers of financial transactions to disguise the audit trail and sources of funds
- **Integration** – placing the laundered funds back into the economy to create a perception of legitimacy

For more information, please consult *Guideline 1: Background*.

What Is Terrorist Financing?

- Terrorist financing is the process by which money is provided to an individual or group to fund terrorist activities
- Different from money laundering - funds may be either from legitimate or illegitimate sources, but used to help facilitate a terrorist act
- Often deal in smaller amounts than money laundering

For more information, please consult *Guideline 1: Background*.

Reasons for Including B.C. Notaries

- Notaries in British Columbia engage in many activities that may be vulnerable to money laundering and terrorist financing.
- Act as intermediaries
- In particular:
 - Facilitating the buying and selling of real estate
 - Holding trust accounts for clients
 - Performing financial transactions

Vulnerable Real Estate Transactions

- Purchase real estate, registered in the name of a trust
- Use of nominees
- Property transfers concealing transfer of illegal funds
- International real estate flip
- Under-invoicing
- Placement deposits

B.C. Notaries and the PCMLTFA

As of December 30, 2008, B.C. notaries will be subject to PCMLTFA requirements when they engage in the following activities:

- Receiving or paying funds (other than professional fees, disbursements, expenses or bail);
- Purchasing or selling securities, real properties or business assets or entities;
- Transferring funds or securities by any means; or
- Giving instructions in relation to those activities.

B.C. Notaries Obligations

When engaging in the activities listed previously, BC notaries will have to:

- Report suspicious transactions
- Report large cash transactions
- Report terrorist property
- Keep records and ascertain identity
- Implement a compliance regime

Large Cash Transactions

- B.C. notaries will have to report transactions involving amounts of \$10,000 or more received in **cash**
- Will have to be reported to FINTRAC within 15 days of receipt of cash
- 24-hour rule

For more information, please consult *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC*.

Large Cash Transactions (cont'd)

- When conducting a large cash transaction, B.C. notaries will have to:
 - Create and keep a record of transaction on file.
 - Identify client and keep client identification information.
 - Take measures to determine whether cash is coming from a third party.

For more information, please consult *Guideline 6J: Record Keeping and Client Identification for British Columbia Notaries*.

Suspicious Transactions

- If you suspect that a transaction or an attempted transaction is related to the commission or attempted commission of a money laundering offence or a terrorist activity financing offence, you will have to:
 - Report within 30 days following the fact that gave rise to the suspicion
 - Keep a copy of the report
 - Take reasonable measures to ascertain identity of the individual (some exceptions apply)
- Whether in cash or not and regardless of amount.

For more information, please consult *Guideline 2: Suspicious Transactions*, *Guideline 3: Submitting Suspicious Transaction Reports to FINTRAC* and *Guideline 6J: Record Keeping and Client Identification for British Columbia Notaries*.

Suspicious Attempted Transactions

- An attempted transaction is an incomplete transaction that a client intended to conduct and took some form of action.
- An attempted transaction includes negotiations or discussions to conduct the transaction and involves concrete measures taken by either the B.C. notary or the client.
- The fact that a transaction was not completed does not by itself imply suspicious activity.

Indicators of Suspicious Transactions

- Client does not live in your district.
- Client uses an unknown intermediary.
- Client uses forged or fake documents.
- Client is reluctant to discuss financial affairs.
- Client has unusual payments from unlikely sources.
- Client has a history of changing notary/accountant.
- Client seeks mediation for premature redemption of mortgage loan.
- Client uncertain of location of company records.
- Client carries non-existent or satisfied debt shown as current on financial statements.
- Client has no employees, which is unusual for the type of business.

Indicators of Suspicious Transactions (cont'd)

- Client transacts with foreign companies for no legitimate, legal or commercial reason.
- Client forms several different companies for no legitimate reason.
- Client forms or purchases a company with a suspicious corporate objective or a corporate objective irrelevant to client's normal activities.
- Client pays unusual consultant fees to offshore companies.
- Client's records repeatedly reflect sales at less than cost, putting the company at a loss, but the continues to operate.
- Client conducts business transactions that are inconsistent with its business.

Indicators of Suspicious Transactions (cont'd)

- Client earns unusual profit margins after several real estate transactions.
- Client invoiced by entities located in a country that does not have adequate money laundering laws, known as a corporate tax haven or for its secretive banking practices.
- Payments made to notary's account in the client's name, originating from entities located in suspicious country.
- Client shareholder loans not consistent with business activity.
- Client misstates business activity.
- Client makes large payments to subsidiaries or controlled companies that are not within the normal course of business.
- Client acquires large personal and consumer assets when this type of transaction is inconsistent with ordinary business.

Terrorist Property

- When you know or believe that there is property in your possession or control that is owned or controlled by or on behalf of a terrorist, a terrorist group or a listed person, you will have to:
 - Report it to FINTRAC using a terrorist property report (TPR) **paper** form
 - TPRs must be submitted to FINTRAC **without** delay
- Current obligations require similar reports be made to the RCMP and CSIS.

For more information, please consult *Guideline 5: Submitting Terrorist Property Reports to FINTRAC*.

How to Submit Reports to FINTRAC?



- B.C. notaries must submit all STRs and LCTRs electronically if they have the technical capability to do so. TPRs are submitted on paper.
- Reporting mechanisms
 - Electronic:
 - By F2R (via FINTRAC's secure Web site)
 - Paper:
 - By fax
 - By mail

Record Keeping and Client Identification

When engaging in the activities listed previously, B.C. notaries will have to:

- Keep a large cash transaction record and a copy of any suspicious transaction reports
- Keep a receipt of funds record for transactions of \$3000 or more (if received from corporation, must keep copy of binding document)
- Identify the client in all the situations listed above.

Receipt of funds record not required if large cash transaction record being kept.

Client Identification

- If client is present, refer to a valid government-issued identification document.
- Other options for ascertaining client identity are available in non-face-to-face situations (e.g. telephone, Internet services).
- May rely on an agent to take identification measures when there is a written agreement for that purpose.
- If a new obligation to ascertain the identity of a client arises for an individual previously identified, a B.C. notary is not required to ascertain their identity again if they recognize the individual.
- B.C. notaries must always ascertain the individual's identity again if they have **doubts** about the accuracy of the identification information obtained previously.

For more information, please consult *Guideline 6J: Record Keeping and Client Identification for British Columbia Notaries*.

Compliance Regime

If engaged in the activities listed previously, B.C. notaries will also have to implement a compliance regime that includes:

- The **appointment of a compliance officer**
- The development and application of **written compliance policies and procedures.**
- The **assessment and documentation of risks** of money laundering and terrorist financing and measures to mitigate high risks
- Implementation and documentation of an **ongoing compliance training program** for all employees and agents (mandataries)
- A **documented review** of the effectiveness of policies and procedures, training program and risk assessment every two years
 - For corporations and other entities, report in writing findings of the review to senior officer including updates and implementation status

For more information , please consult *Guideline 4: Implementation of a Compliance Regime.*

Risk-Based Approach

- A risk-based approach allows B.C. notaries to identify and measure potentially higher risks and develop strategies to mitigate them so they can focus resources where most needed to manage risks within its own acceptable tolerance levels.
- Client identification, record keeping and reporting requirements still apply. The risk-based approach serves as an enhancement to those requirements.
- The risk-based approach will vary depending on the size and complexity of the B.C. notary's operations.

Risk-Based Approach: Requirements

- Assess and document, as appropriate for the B.C. notary, the risk of money laundering or terrorist financing offences in the course of its activities.
- The risk assessment must take into account the B.C. notary's:
 - clients
 - business relationships
 - products and services
 - delivery channels
 - geographic location of activities and the location of its clients
 - other relevant factors related to its business

Risk-Based Approach: Requirements (cont'd)

- For all activities that pose a **high** money laundering or terrorist financing risk, B.C. notaries must develop and apply policies and procedures to:
 - mitigate the identified risks of money laundering or terrorist financing offences;
 - take reasonable measures to keep client ID information up to date every two years; and
 - take reasonable measures to conduct ongoing monitoring to detect suspicious transactions.

For more information, please consult *Guideline 4: Implementation of a Compliance Regime*.

Risk-Based Approach – Tools

- FINTRAC's Guideline 4 provides checklists which can be used to help develop a risk assessment.
- The checklists take into account products & services, delivery channels, geographical locations, and clients and business relationships.
- Guideline 4 also includes information on what the risk assessment must include, risk mitigation measures and suggestions on how to monitor high risk clients when needed.
- For more information, a web-based seminar on the risk-based approach is also available on FINTRAC's Web site.

FINTRAC's Compliance Approach

- FINTRAC favours a cooperative approach.
- FINTRAC will work with B.C. notaries to assist them in understanding their requirements.
- Our experience indicates that the vast majority of individuals and entities subject to the PCMLTFA wish to comply with their legislative obligations.

FINTRAC's Compliance Authority

- FINTRAC officers have the authority to enquire into the business of individuals and entities subject to the PCMLTFA.
- FINTRAC officers also have the authority to require from individuals or entities subject to the PCMLTFA, any document or other information relevant for compliance purposes.
- Can be done by :
 - Administration of a questionnaire
 - Examination
 - Request for information

How Examinations Are Conducted

Examination process:

- May contact the B.C. notary in advance to schedule meeting
- Test effectiveness of mechanisms and controls
- Exit meeting
- Findings letter

Examination findings and follow-up action

- If compliant – report highlights scope and results
- If non-compliance detected - report identifies areas in need of corrective action
- Request action plan (if required)

Penalties

- FINTRAC will have the ability to issue an administrative monetary penalty as a response to non-compliance.
- Criminal penalties, including fines up to \$2 million or up to five years in jail, can also apply for serious non-compliance.

Timeline

- Provisions affecting B.C. notaries are effective **December 30, 2008.**

For More Information

Please consult FINTRAC's Web site:

www.fintrac-canafe.gc.ca