

**PRESENTATION OF THE PROCEEDS OF CRIME (MONEY  
LAUNDERING) AND TERRORIST FINANCING: THE ACT,  
REGULATIONS AND RELATED ISSUES**

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## INTRODUCTION

Following extensive public consultation<sup>1</sup>, the Government of Canada tabled Bill C-22 (An Act to facilitate combating the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend or repeal certain Acts in consequence) in the House of Commons on December 15, 1999<sup>2</sup>. The Bill received Royal Assent on June 29, 2000 and thereby became the new *Proceeds of Crime (Money Laundering) Act*<sup>3</sup>. The Act has since been amended six times<sup>4</sup>, the most significant changes having occurred with the enactment of the *Anti-Terrorism Act*. Since December 24, 2001, the Act's short title is the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the *PCMLTFA*).

The government has taken a phased approach to the implementation of this new legislation. Thus, on July 5, 2000, certain provisions of the Act were proclaimed in force<sup>5</sup>, followed by other proclamations on October 28, 2001<sup>6</sup>, on December 24, 2001<sup>7</sup>, June 12, 2002<sup>8</sup>, January 6, 2003<sup>9</sup> and June 1, 2004<sup>10</sup>.

With this legislation, the Government of Canada made mandatory the reporting of suspicious financial transactions and cross-border movements of large amounts of currency. These new requirements apply to prescribed financial institutions, persons engaged in the business of foreign exchange dealing, casinos and other financial intermediaries already subject to the *Proceeds of Crime (Money Laundering) Act of 1991 (the PCMLA)*. Individuals and businesses that conduct cross-border transfers of large amounts of money are required to report these transfers to Canada Customs. Moreover, a new independent agency, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), was created. FINTRAC receives and administers the information transmitted to it in accordance with the Act, analyzes it and discloses designated information to the appropriate law enforcement and security agencies when specified conditions are met.

On June 12, 2002, s.98 of the Act came into force. It had the effect of repealing the *Proceeds of Crime (Money Laundering) Act of 1991* and completely replaced it. It also had the effect of repealing the Regulations of that Act.

In June 2004, parts of the *Public Safety Act, 2002*<sup>11</sup> came into force. The Act made changes to the PCMLTFA by providing FINTRAC with the ability to share compliance-related information with various

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<sup>1</sup> Consultation document: Creation of a suspicious transaction reporting and cross-border currency reporting régime/[www.sgc.gc.ca/FPub/pol/fconsult/fconsult.htm](http://www.sgc.gc.ca/FPub/pol/fconsult/fconsult.htm)

<sup>2</sup> On May 31, 1999, the Government of Canada had tabled in the House of Commons the same bill (Bill C-81). Because Parliament was prorogued in August 1999, this Bill had to be reintroduced in order to resurrect it.

<sup>3</sup> Chapter 17, Statutes of Canada, 2000.

<sup>4</sup> S.C. 2001, c.12; S.C. 2001, c.27; S.C. 2001 c. 32; S.C. 2001, c.41; S.C. 2004, c.11 and S.C. 2004, c.15.

<sup>5</sup> Ss.1 to 4, ss.38 and 40 to 44, subs.45(1), ss.46 to 53, para.54(b) to (d), subs.55(1), (2), and (6), ss.56 to 61, 66 to 82, 84, 85, 90 and 91(See Canada Gazette, Part II, SI/2000-55).

<sup>6</sup> Sections 5, 7, 8, 10, 11, the portion of section 54 before paragraph (b), subsections 55(3) to (5.1) and (7), and section 89 (See Canada Gazette, Part II, SI/2001-88).

<sup>7</sup> Section 9.1, paragraph 55(5.1), sections 55.1, 56.1, 60.1 and 60.2 (See Canada Gazette, Part II, SI/2002-16).

<sup>8</sup> Sections 6, 7.1 and 9, subsection 45(2) and sections 62 to 65, 83 and 98, and section 7, subsection 55(1) and 74, as amended (See Canada Gazette, Part II, SI/2002-84 and 86).

<sup>9</sup> Sections 12 to 37 and 39 and the amendments to sections 12, 15, 16, 17, 18, 21, 22, 25, 27, 32 and 36 (See Canada Gazette, Part II, SI/2002-153 and SI/2002-164).

<sup>10</sup> Amendments to s.54(b) and s.65 came into force on June 1, 2004 (See Canada Gazette, Part II, SI/2004-53).

<sup>11</sup> [S.C.2004](#), c.15.

agencies that regulate and supervise financial institutions and financial intermediaries. It also permits FINTRAC to collect information from government databases maintained for purpose of national security.

In this document, I will explain the intent of the Government of Canada as expressed in the new *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the *PCMLTFA*) and its Regulations.

## **BACKGROUND**

In 1975, the *Criminal Code* was amended to include, at section 354, the offence of possession of property obtained by crime. However, it was still difficult to seize property obtained by crime, particularly so-called "intangible" property. In this regard, I refer to the decision of the Quebec Court of Appeal in *Banque Royale du Canada c. La Reine*<sup>12</sup>.

Consequently, studies were conducted in order to find ways of improving the system, including changes that would permit the seizure and restraint of proceeds of crime of all types and the creation of more specific offences related to proceeds of crime.

The studies revealed that the penalties imposed under the regime in existence at the time were ineffective: convicted accused served their sentence, but still retained possession of the proceeds of their crime. Criminals therefore managed to profit from their crime and kept the means to re-offend. The Government of Canada therefore decided to create a proceeds of crime confiscation regime to reinforce the philosophy that no one should profit from their crime.

As a result, in 1989, Part XII.2 of the *Criminal Code* came into force. This Part is in itself a code that deals with all aspects of the proceeds of crime: specific offences, a special search warrant, a restraint order and a confiscation regime. Offences for possession and laundering of the proceeds of "designated substances offences" were also added to the *Food and Drug Act* and the former *Narcotics Act* (since repealed and replaced by the *Controlled Drugs and Substances Act (CDSA)*).

In 1991, the Government of Canada proclaimed the *Proceeds of Crime (Money Laundering) Act* whose purpose was to establish record-keeping requirements in the financial sector in order to facilitate the investigation and prosecution of money laundering offences the *Criminal Code* and the *CDSA*.

In 1993, the *Seized Property Management Act* was proclaimed and the offences of possession and laundering of the proceeds of certain crimes were added to the *Customs Act*<sup>13</sup> and the *Excise Act*<sup>14</sup>.

In 1997 and 1999, a number of amendments were made to the *Criminal Code*<sup>15</sup>, including Part XII.2, while the *Controlled Drugs and Substances Act*<sup>16</sup> came into force in May 1997. In December 1998, the *Corruption of Foreign Public Officials Act* was proclaimed. It created two proceeds of crime offences.

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<sup>12</sup> (1985) 18 CCC (3d) 98. Leave to appeal to the Supreme Court of Canada denied.

<sup>13</sup> Sections 163.1 and 163.2.

<sup>14</sup> Sections 126.1 and 126.2.

<sup>15</sup> For example, see S.C., 1997, c. 18 and c. 23; S.C. 1999, c. 5 (Bills C-17, C-95, C-51).

<sup>16</sup> S.C. 1996, c. 19 (Bill C-8).

In 2001, significant changes were made to the *Criminal Code* and related statutes in respect of provisions dealing with proceeds of crime and offence-related property with the enactment of the *Organized Crime Act* (Bill C-24).

In late 2001, the *Anti-Terrorism Act* made significant changes to the PCMLTFA to include obligations in respect of reporting suspected terrorist financing activities as well as to enlarge FINTRAC's mandate to include the detection, deterrence and prevention of the financing of terrorist activities.

Internationally, Canada is just one of a number of countries that are addressing the problems caused by the laundering of the proceeds of crime and terrorist financing. International initiatives in this area include:

- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna 1988), to which Canada is a signatory;
- European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg 1990);
- United Nations Convention for the Suppression of the Financing of Terrorism (1999);
- United Nations Convention Against Transnational Organized Crime, ratified by Canada in May 2002;
- The creation of FATF (Financial Action Task Force on Money Laundering and Terrorist Financing)<sup>17</sup> in 1990 and the adoption of its 40 Recommendations on money laundering and of its 8 Special Recommendations on Terrorist Financing. Canada has been a member of FATF since its creation.

## QUESTIONS AND ANSWERS

### *What is a "proceed of crime"?*

"Proceed of crime" is defined as follows in section 462.3(1) of the *Criminal Code*:

462.3(1) Any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of  
(a) the commission in Canada of a designated offence, or  
(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

"Designated offence" means an indictable offence under the *Criminal Code* or any other federal statute, other than an indictable offence prescribed by regulation. It also includes a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counseling in relation to such an offence.

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<sup>17</sup> The Financial Action Task Force on Money Laundering and Terrorist Financing (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. The FATF is composed of representatives of 33 countries, territories and organizations. <http://www1.oecd.org/fatf/index.htm>

The indictable offences under the following Acts are excluded from the definition of “designated offence”<sup>18</sup>:

- *Budget Implementation Act, 2000*
- *Canada Agricultural Products Act*
- *Copyright Act*
- *Excise Act* (except offences at 233(1) & 240(1))
- *Excise Tax Act*
- *Feeds Act*
- *Fertilizers Act*
- *Foreign Publishers Advertising Services Act*
- *Health of Animals Act*
- *Income Tax Act*
- *Meat Inspection Act*
- *Nuclear Safety and Control Act* (except offence under s.50)
- *Plant Protection Act*
- *Seeds Act*

These indictable offences were excluded on the basis that their enforcement already provided for an adequate administrative and monetary penalty structure.

### ***What is “laundering the proceeds of crime”?***

The laundering of the proceeds of crime (or money laundering) is the process whereby “dirty money”, produced through criminal activity, is transformed into “clean money” whose criminal origin is difficult to trace.

Laundering the proceeds of crime is an offence under the *Criminal Code*<sup>19</sup>. The offences from which proceeds of crime are derived are many and varied. These offences, called “designated offences” (explained above), include all drug-related offences (excluding simple possession), traffic in contraband alcohol and tobacco, deceptive telemarketing, bribery of officers, murder, fraud, etc.

It should be noted that most “designated offences” are crimes that generate “profits” and that are motivated by the benefits that the criminal derives from them.

Socially and economically speaking, laundering the proceeds of crime is a serious offence that endangers the social and economic well being of Canada and increases the power of criminal organizations.

### ***Why must criminals launder the profits from their crimes?***

Criminals are paid in cash, most often in small denominations. Possession of a large amount of cash, whose source is difficult to explain, can raise doubts regarding the legality of this source. Criminals

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<sup>18</sup> Canada Gazette, Part II, SOR/2002-63.

<sup>19</sup> Section 462.31.

therefore look for ways to conduct transactions, without attracting police attention. They launder their money, i.e. try to disguise it, by giving the impression that it comes from a legitimate source.

### *What are terrorist activity financing offences?*

This term is defined at s.2 of the *PCMLTFA*. It refers to specific offences under the *Criminal Code* (s.83.02, 83.03 or 83.04 and 83.12), which includes the collection of property for purpose of committing "terrorist activities" or for the use or the benefit of a "terrorist group".

A terrorist group is a "listed entity" or an entity that has as one of its purposes or activities facilitating or carrying out any "terrorist activity". Terrorist groups also include an association of such entities<sup>20</sup>.

A "listed entity" is a person, group, trust, partnership or fund or an unincorporated association or organization<sup>21</sup> for which the Governor in Council believes on reasonable grounds that:

- The entity has knowingly carried out, attempted to carry out, participated in or facilitated a "terrorist activity" or
- The entity is knowingly acting on behalf of, at the direction of or in association with an entity that has knowingly carried out, attempted to carry out, participated in or facilitated a "terrorist activity"<sup>22</sup>.

"Terrorist activity" is action that takes place either within or outside of Canada that:

- Is an offence under one of the UN anti-terrorism conventions and protocols; or
- Is taken for political, religious or ideological purposes and intimidates the public concerning its security, or compels a government to do something, by intentionally killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people or by seriously interfering with or disrupting an essential service, facility or system<sup>23</sup>.

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<sup>20</sup> S.83.01 of the *Criminal Code*.

<sup>21</sup> Definition of "entity" at s.83.01 of the *Criminal Code*.

<sup>22</sup> Section 83.05 of the *Criminal Code*.

<sup>23</sup> Defined at s.83.01 of the *Criminal Code*.

## THE PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT AND REGULATIONS

### Summary

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the *PCMLTFA* or the Act) consists of five parts.

Part I requires the keeping of records, the reporting of suspicious financial transactions, terrorist property and of prescribed financial transactions (large cash transactions and international electronic funds transfers). This mechanism will facilitate investigations and prosecutions involving the laundering of proceeds of crime and the financing of terrorist activities.

Part II creates the obligation to report to Revenue Canada – Customs the importing or exporting of currency or monetary instruments of a value greater than \$10,000 in Canadian dollars.

Part III establishes an independent agency to collect, analyze, assess and disclose designated information in order to assist in the detection, prevention and deterrence of money laundering and the financing of terrorist activities. This agency, known as the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), is also responsible for ensuring compliance with Part I of the Act.

Part IV authorizes the Governor in Council to make regulations. To date, three regulations have been made: the Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations (the STR Regulations)<sup>24</sup>, as amended to take into consideration the amendments to the Act as a result of the enactment of the *Anti-Terrorism Act*<sup>25</sup>; the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (the PCMLTFA Regulations)<sup>26</sup>, as amended<sup>27</sup>, and the Cross-border Currency and Monetary Instruments Reporting Regulations (the CBCMI Regulations)<sup>28</sup>, as amended<sup>29</sup>.

Part V creates offences, including the failure to report suspicious financial transactions and the prohibited use of information under the control of FINTRAC.

### Provisions in force

As mentioned in the introduction, the Government of Canada has taken a phased approach to the implementation of this new legislation. Since January 6, 2003, all provisions of the Act are in force.

### Objects of the Act

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<sup>24</sup> Canada Gazette, Part II, SOR/2001-317.

<sup>25</sup> Canada Gazette, Part II, SOR/2002-185, SOR/2003-102 and SOR/2003-358.

<sup>26</sup> Canada Gazette, Part II, SOR/2002-184.

<sup>27</sup> Canada Gazette, Part II, SOR/2002-413, SOR/2003-102, and SOR/2003-358.

<sup>28</sup> Canada Gazette, Part II, SOR/2002-412.

<sup>29</sup> Canada Gazette, Part II, SOR/2003-358.

As provided in section 3, the objectives of the Act are:

- To facilitate the detection, investigation and prosecution of money laundering and terrorist activities financing offences and to deter money laundering and terrorist financing activities;
- To respond to the threat posed by organized crime while protecting personal information;
- To assist in fulfilling Canada's international commitments.

Thus, from the outset, the two competing interests – law enforcement and privacy – are recognized. The legislation was crafted with a view to balancing these two interests.

### Application of the Act

Part I of the Act applies to the persons and entities listed in section 5 and the persons described in the Regulations. In short, the new Act applies to the same persons and entities that were covered by the *PCMLA of 1991*. Moreover, Crown corporations (s. 5(l)) are subject to the new Act, as well as the employees of the persons and entities it covers (s. 5(m)).

The STR Regulations describe the persons and entities subject to Part I, which includes money services business and real estate brokers and sale representatives when they engage in the prescribed activities. Professionals, such as accountants, must meet the requirements of the Act when they perform certain activities.

Lawyers and notaries were initially subject to Part I, however were removed from the list on March 20, 2003<sup>30</sup>. The Government intends on putting into place a new regime for legal counsel which better takes into account the nature of their duties, following consultations<sup>31</sup>. Section 11 of the Act provides that the obligations created by Part I do not compromise the solicitor-client privilege.

The following is a list of persons and entities that are subject to Part I of the PCMLTFA:

- Banks, coops, credit unions, trust and loan companies;
- Life insurance companies, brokers or agents;
- Money service business;
- Securities dealers;
- Foreign exchange dealers;
- Accountants
- Real estate brokers or sales representatives;
- Commercial casinos;
- Crown corporations;
- Employees of the above, for purpose of s.7 only.

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<sup>30</sup> Canada Gazette, Part II, SOR/2003-102 amends the list to remove legal firms.

<sup>31</sup> On November 8, 2001, the Federation of Law Societies and the Law Society of B.C. initiated an action challenging the constitutional validity of the application of the Act to legal counsels. Injunctions are in place in all provinces and two territories, suspending the application of Part I of the Act insofar as they apply to legal counsel. The parties have reached an agreement on how to proceed with the litigation. See: <http://www.flsc.ca/>.



For purpose of this paper, “reporting entities” will be a reference to the persons and entities that are subject to Part I of the Act.

Part II of the Act applies to the persons and entities referred to in subsection 12(3):

- persons having currency or monetary instruments in their possession when they arrive in or depart from Canada;
- the importer or the exporter of currency or monetary instruments, in the case of currency or monetary instruments imported into Canada by courier or as mail;
- the exporter of currency or monetary instruments, in the case of currency or monetary instruments exported from Canada by courier or as mail;
- the person in charge of the conveyance used to convey currency or monetary instruments arriving in or departing from Canada;
- in any other case, the person on whose behalf the currency or monetary instruments are imported or exported.

## **Part I**

The reporting entities listed above have four obligations under the Act and regulations:

- Record keeping;
- Reporting;
- Client identification;
- Compliance.

### **Record Keeping Obligation**

Section 6 creates an obligation for persons and entities subject to Part I to keep the records prescribed by the Regulations and retain them in the manner prescribed. The PCMLTF Regulations<sup>32</sup>, which came into force on June 12, 2002, lists the record each reporting entity must keep. See Annex 1 for a list of all records that must be maintained by each reporting entity. These records may be retained in machine-readable or electronic form, if a paper record can readily be produced from the machine, for a period of five years<sup>33</sup>. This record-keeping obligation formerly existed at section 4 of the *PCMLA of 1991*.

Every person or entity that knowingly contravenes this record-keeping obligation is guilty of the offence provided for in section 74.

### **Reporting Obligations**

#### *Suspicious Transaction Report*

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<sup>32</sup> Sections 13, 14, 15, 18, 19, 20, 22, 23, 25, 26, 29, 30, 33, 36, 39, 41, 42, 43, 48 and 49.

<sup>33</sup> Ibid, sections 68 and 69.

Section 7 creates a new reporting obligation. Reporting entities must report to FINTRAC suspicious transactions, i.e., financial transactions in respect of which there are reasonable grounds to suspect that the completed transactions are related to the commission of a money laundering offence or a terrorist activity financing offence, within 30 days of forming their suspicions. The provision creating the obligation to report suspicious transactions in relation to money laundering came into force on November 8, 2001. The obligation to report suspicious transactions in relation to terrorist activity financing offence began on June 12, 2002. The STR Regulations prescribe the information that must be contained in the suspicious transaction report and the format of the report (see Annex 2 - [http://www.fintrac.gc.ca/publications/STR\\_e.pdf](http://www.fintrac.gc.ca/publications/STR_e.pdf)).

The reporting entity that knowingly contravenes this obligation to report suspicious transactions is guilty of the offence provided for in section 75. An employee of a reporting entity can rely on the defence provided for in subsection 75(2) if this employee reported the suspicious transaction to his or her superior.

The Act does not define a suspicious transaction, however FINTRAC issues Guidelines which contain money laundering and terrorist financing indicators<sup>34</sup> with a view of assisting reporting entities to identify suspicious transactions.

#### *Tipping-off Offence*

As provided in section 8, no person or entity shall disclose that they have reported a suspicious transaction to FINTRAC, or disclose the contents of such a report, with the intent to prejudice a criminal investigation, whether or not a criminal investigation has begun. This prohibition is intended to prevent information leaks by the reporting entities to which this Part applies. Such leaks could prejudice criminal investigations into money laundering and terrorist financing activities and undermine efforts to combat organized crime and terrorism.

Contravening section 8 is an offence under section 76.

#### *Terrorist Property Report*

As of June 12, 2002, reporting entities must report to FINTRAC forthwith (immediately upon the discovery of the information, without delay):

- The existence of property in their possession or control that they know is owned or controlled by or on behalf of a terrorist group;
- A transaction or proposed transaction in respect of property in their possession or control that they know is owned or controlled by or on behalf of a terrorist group.

A terrorist group is a "listed entity" or an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity. Terrorist groups also include an association of such entities<sup>35</sup>.

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<sup>34</sup> <http://www.FINTRAC.gc.ca/index.htm>

<sup>35</sup> S.83.01 of the *Criminal Code*.

A "listed entity" is a person, group, trust, partnership or fund or an unincorporated association or organization<sup>36</sup> for which the Governor in Council believes on reasonable grounds that:

- the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or
- the entity is knowingly acting on behalf of, at the direction of or in association with an entity that has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity<sup>37</sup>.

This list of entities is published in the Canada Gazette and is subject to regular updates and reviews. As of December 1, 2004, the Governor in Council listed 35 entities<sup>38</sup>.

"Terrorist activity" is action that takes place either within or outside of Canada that:

- Is an offence under one of the UN anti-terrorism conventions and protocols; or
- Is taken for political, religious or ideological purposes and intimidates the public concerning its security, or compels a government to do something, by intentionally killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people or by seriously interfering with or disrupting an essential service, facility or system.

This report, commonly referred to as the terrorist property report, must contain the information that is prescribed in the Regulations and must be sent forthwith to FINTRAC in a manner consistent with Regulations<sup>39</sup> (see Annex 3 - [http://www.fintrac.gc.ca/publications/TPR\\_e.pdf](http://www.fintrac.gc.ca/publications/TPR_e.pdf)).

This reporting obligation mirrors the obligation to report terrorist property to the RCMP and CSIS pursuant to s.83.1 of the *Criminal Code*.

#### *Large Cash Transaction Report and International Electronic Funds Transfer Report*

Section 9 obliges reporting entities to report to FINTRAC the prescribed financial transactions. The PCMLTF Regulations prescribed two types of financial transactions that must be reported: large cash transactions and international electronic funds transfers. Between June 12, 2002, and March 30, 2003, reporting entities had to report international electronic funds transfers (described below) through the SWIFT message. Since March 31, 2003, international electronic funds transfers through all electronic systems have to be reported within 5 days. The obligation to report large cash transactions within 15 days came into force on January 31, 2003.

A large cash transaction report indicates the receipt of an amount of \$10,000 or more in cash in the course of a single transaction (two or more transaction by the same person/entity in a 24-hour period) and contains the detailed information as described in the Regulations (see Annex 4 - [http://www.fintrac.gc.ca/publications/LCTR\\_e.pdf](http://www.fintrac.gc.ca/publications/LCTR_e.pdf)).

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<sup>36</sup> Definition of "entity" at s.83.01 of the *Criminal Code*.

<sup>37</sup> Section 83.05 of the *Criminal Code*.

<sup>38</sup> Canada Gazette, Part II, SI/2004-155.

<sup>39</sup> Sections 10, 11 and 12 of the STR Regulations.

An international electronic funds transfer report indicates the sending outside Canada or the receiving into Canada \$10,000 or more in the course of a single transaction (includes two or more transaction by the same person/entity in a 24-hour period) and contains the detailed information described in the Regulations (see Annex 5 - [http://www.fintrac.gc.ca/publications/EFTNS\\_e.pdf](http://www.fintrac.gc.ca/publications/EFTNS_e.pdf)).

Failure to report these two types of financial transactions is an offence under section 77. An accused can rely on the defence provided for in subsection 77(2) if the accused can establish that he or she exercised all due diligence to prevent its commission.

Subsection 9(2) provides for certain exceptions to the requirement to report prescribed financial transactions. In other words, reporting entities can be exempted from making the prescribed report if certain conditions are met. For example, see s.50 of the PCMLT Regulations for the exemption in respect of large cash transactions in respect of a business client.

A person or entity that invokes an exception provided in subsection 9(2), but who does not maintain the list required to be maintained under subsection 9(3), is guilty of an offence under section 77.

See Annex 1 for a summary of the reporting requirements of each reporting entity.

### *Immunity*

A person or entity that reports to FINTRAC in good faith a suspicious transaction (s.7), terrorist property (s.7.1), a large cash transaction or an international electronic funds transfer (s. 9) is immune from prosecution (s.10). This immunity under section 10 is similar to the immunity under section 462.47 of the *Criminal Code*.

This mandatory reporting scheme was added to the Act because the former model of volunteer reporting was ineffective. Essentially, the RCMP had entered into cooperative agreements with certain deposit-taking institutions for the voluntary reporting of suspected money laundering activities to the police. Though these measures produced some positive results, the agreements were limited to deposit taking institutions and did not cover other sectors vulnerable to money laundering, such as casinos, currency exchanges, insurance companies and securities dealers. Also, where cooperative agreements existed, reporting was uneven. Hence the need for mandatory reporting.

### **Client Identification Obligation**

The PCMLTF Regulations create the obligation to verify customers' identification. It builds on the former client identification requirement by requiring reporting entities to ascertain the identity of their clients<sup>40</sup>. The Regulations specify which type of financial activity triggers the client identification requirement, prescribes when client identification must be made and how it should be verified. Annex 1 outlines the details of the client identification requirement for each reporting entity, as it is since June 12, 2002.

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<sup>40</sup> Sections 53 to 67 of the PCMLTF Regulations.

## Compliance Obligation

The PCMLTF Regulations require the implementation of a compliance regime<sup>41</sup>. The compliance regime shall include, as far as practicable:

- the appointment of a person who is to be responsible for the implementation of the regime;
- the development and application of compliance policies and procedures;
- a review of those policies and procedures, conducted as often as necessary, to test their effectiveness; and
- an ongoing compliance training program for employees, agents or persons, where the person or entity has employees or agents or persons authorized to act on its behalf.

This obligation, which came into force on June 12, 2002, is applicable to the reporting entity, and not to employees<sup>42</sup>.

## Part II

Part II of the Act deals with the cross-border movement of currency and monetary instruments.

### Cross-Border Currency Reporting

Since January 6, 2003, s.12 obliges every person or entity to report to a customs officer the importation or exportation of currency or monetary instruments of a value equal to or greater than \$10,000 in Canadian dollars or its equivalent in foreign currency<sup>43</sup>. The officers send the reports to FINTRAC (subs.12(5)). See Annex 5 for the cross-border currency or monetary instrument report (<http://www.cbsa-asfc.gc.ca/E/pbg/cf/e667/e667-02b.pdf>).

If a cross border currency or monetary instrument report is made, the person in possession of the currency or monetary instrument must answer truthfully any questions that the officer asks with respect to the information required to be contained in the report; and present the currency or monetary instruments that they are carrying or transporting, as requested by the officer (subs.12(4)). Providing untruthful answers and failing to cooperate with the officer is an offence under s.74.

If the customs officer suspects on reasonable grounds that the person has secreted on or about their person currency or monetary instruments whose value is greater than the prescribed amount and that the currency or monetary instruments have not been reported in accordance with subsection 12(1), the officer may search the person (s.15). Thus, any person who has arrived in Canada, is about to leave Canada, or has had access to an area designated for use by persons about to leave Canada who does not make a report or makes a false report can be searched.

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<sup>41</sup> S.71 of the PCMLTF Regulations.

<sup>42</sup> S.6 and subs.71(1) of the PCMLTF Regulations.

<sup>43</sup> S.2 of the CBCMI Regulations.

Conveyances and baggage may also be searched (s.16). If a customs officer suspects on reasonable grounds that there are, on or about the conveyance, currency or monetary instruments whose value is greater than the prescribed amount and that have not been reported in accordance with subsection 12(1), the officer can stop the conveyance, board it and search it. The officer can also search baggage, by examining anything in it and opening any package or container in it.

If the customs officer believes on reasonable grounds that the report is not in accordance with subsection 12(1), the officer has the discretion to seize or not the currency or monetary instruments (seizure-forfeiture) (subsection 18(1)). If the officer chooses to seize, the officer must return the seized currency and monetary instruments to its lawful owner on payment of a penalty, unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime or are for the financing of terrorist activities. In such a case, the officer can retain the currency or monetary instruments (subs.18(2)) and send it to the Department of Public Works and Government Services (PWGSC) (subs. 22(2)) for proper management in accordance with the *Seized Property Management Act*.

The customs officer must record in writing the reasons for the seizure (subs.19.1) and must immediately report the circumstances of the seizure to the Deputy Minister of National Revenue and to FINTRAC (s. 20).

Subject to limited conditions, currency or monetary instruments seized at the border (subs.18(1)) are forfeited to Her Majesty in Right of Canada from the time of the contravention of the reporting obligation under s.12 (s. 23). No act or proceeding after the forfeiture is necessary to effect the forfeiture. Moreover, the forfeiture of currency or monetary instruments is final except in the case of a decision by the Minister following a review, (sections 25 to 31)<sup>44</sup>, forfeiture is not subject to review or to be set aside or otherwise dealt with (s.24).

Subsection 12(2) provides for certain exceptions to the reporting obligation. Certain persons or entities are exempt from reporting the cross-border movement of currency and monetary instruments if the prescribed conditions are met and they satisfy the customs officer that those conditions have been met. See s.9 of the CBCMI Regulations for the current exceptions.

Also, s.13 gives an importer or exporter the option of deciding not to proceed with the importation or exportation. However, this option must be exercised before the customs officer retains the currency or monetary instruments or before they are forfeited.

Where the importer or exporter indicates to a customs officer that they have currency or monetary instruments to report, but the report has not yet been completed, the officer may, after giving the importer or exporter notice (in person or by registered mail if the person is not present, to the person's last known address<sup>45</sup>), retain the currency or monetary instruments for seven days after the notice is given or sent<sup>46</sup> (subsection 14(1)). Subsection 14(4) describes the content of this notice. The importer or exporter will thus be given time to obtain the information necessary to complete the report.

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<sup>44</sup> This scheme is similar to the one found in section 129 ff. of the *Customs Act*.

<sup>45</sup> S.16(1) of the CBCMI Regulations.

<sup>46</sup> S.17(b) of the CBCMI Regulations.

In case of currency or monetary instruments imported or exported by courier or as mail, the notice shall be given within 60 days of the importation or exportation. The retention period is of 30 days after the notice is given<sup>47</sup>.

If the officer still has the currency or monetary instruments at the end of the period indicated in the notice, they are forfeited to Her Majesty in Right of Canada (14(5)). The officer will therefore send the incomplete report to FINTRAC (subsection 14(5)) and the currency or monetary instruments to PWGSC (subs.22(1)). Under the Act, there is no recourse against such forfeiture.

Mail may be examined and opened when an officer suspects on reasonable grounds that it contains currency or monetary instruments of a value equal to or greater than the amount prescribed at subs.12(1) (s.17 to 22).

### Recourse from Seizure

The Act, at sections 25, 26 and 27, provides recourse in respect of the seizure by providing a mechanism for review by the Minister of National Revenue.

A request for a review by the Minister applies only to the contravention of subsection 12(1). In other words, a person from whom currency or monetary instruments were seized under section 18, or the lawful owner of this currency or these instruments, may only ask the Minister to decide whether or not a report was made in accordance with the requirements of subsection 12(1) (s. 25). The Minister cannot decide that the currency or monetary instruments are proceeds of crime or are for financing terrorist activities.

As indicated earlier, this remedy does not apply to forfeiture referred to in subsection 14(5), i.e. when the currency or monetary instruments are left at the border pending the completion of the subs.12(1) report.

If, after examining the request, the Minister decides that subsection 12(1) was not contravened, i.e. that the importation or exportation of currency or monetary instruments was properly reported, the penalty paid or the currency or monetary instruments<sup>48</sup> are returned to the person who requested the decision (s. 28).

If, after examining the request, the Minister decides that subsection 12(1) was contravened, i.e. that the report under subs.12(1) was not made, or was incomplete or inaccurate, the Minister can decide one of three things (s. 29):

- to return the currency or monetary instruments<sup>49</sup> on payment of a penalty or without penalty;
- to return all or part of the penalty paid; or

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<sup>47</sup> S.16(2) and 17(a) of the CBCMI Regulations.

<sup>48</sup> If the currency or monetary instruments are sold pursuant to the *Seized Property Management Act*, their value at the time of seizure will be returned to the person who requested the decision (s. 28).

<sup>49</sup> If the currency or monetary instruments were sold under the *Seized Property Management Act*, the total amount paid will be the proceeds of the sale, less any management costs incurred by Her Majesty the Queen in Right of Canada (subs. 29(2)).

- to confirm the forfeiture of the currency or monetary instruments.

The Minister's decision may be appealed in the Federal Court (s. 30).

The Act also provides third parties with a remedy. Section 32 expressly provides a remedy to any person, other than the person in whose possession the currency or monetary instruments were when they were seized, who claims an interest in the currency or monetary instruments seized under Part II, by filling a notice in writing to the court.

Under section 33, a court, as defined in subsection 32(5), can issue an order recognizing the applicant's interest and declaring the nature and extent of this interest, if the court is satisfied that the applicant (s. 33):

- acquired the interest in good faith before the contravention;
- is innocent of any complicity or any collusion in relation to that contravention; and
- exercised all reasonable care to ensure that the currency or monetary instruments were reported.

This order may be appealed to the Court of Appeal (s. 34).

### **Disclosure and Use of Information Collected at the Border**

Sections 36 and 37 control the use and disclosure of information obtained by the customs officer for the purposes of Part II, including a report made under subsection 12(1).

There is a general prohibition against the disclosure and use the information obtained under Part II of the Act for any purpose other than for the exercising of powers or performing of duties and functions under Part II of the Act (subs. 36(4) and s. 37).

There are, however, exceptions to the prohibition. A customs officer may disclose the information obtained under Part II to:

- the appropriate police force if the officer has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering or terrorist activity financing offence (subs. 36(2));
- to FINTRAC if the officer has reasonable grounds to suspect that the information would be of assistance in the detection, prevention or deterrence of money laundering or financing of terrorist activities (subs. 36(3)).

In both these cases, the customs officer must record in writing the reasons for disclosing the information to the police and to FINTRAC (subs.36(3.1)).

Finally, an official (defined) will comply with a subpoena or an order to produce documents only in the course of criminal proceedings under a federal Act or legal proceedings that relate to the administration or enforcement of Part II (subs. 36(5)).



### Part III

Part III of the Act has a specific purpose whose origin is to be found in paragraph 3(a)(iii). Section 40 stipulates the object of Part III is to establish an independent agency that acts at arm's length from law enforcement agencies, Revenue Canada, the Canadian Security Intelligence Service and the Department of Citizenship and Immigration. This agency, called the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), is Canada's financial intelligence unit (s. 41) and its mandate is to collect, analyze, assess and disclose information to assist in the detection, prevention and deterrence of money laundering and the financing of terrorist activities (ss. 40 and 54). FINTRAC's mandate also includes ensuring compliance with Part I of the Act and enhancing public awareness and understanding of matters related to money laundering and financing of terrorist activities (s.40 & 58).

A Director, who is appointed by the Governor in Council for a 5-year term, heads FINTRAC. The Director reports directly to the Minister of Finance (see sections 41 to 51).

### Privacy Protection

Section 8 of the *Canadian Charter of Rights and Freedom*, which is included in the Canadian constitution, guarantees protection against unreasonable searches and seizures<sup>50</sup>. The purpose of s.8 is to protect individuals' right of privacy against State intrusion. The limits on such state action are determined by balancing the right of citizens to have respected a reasonable expectation of privacy against the state interest in law enforcement. Section 8 will be implicated if the individual who is claiming a Charter breach can show that he had a reasonable expectation of privacy in the place searched or the material seized. If no such expectation exists, there can be no Charter breach. The expectation of privacy varies with the context<sup>51</sup>.

Section 8 protects certain aspects of informational privacy<sup>52</sup>:

In modern society, especially, retention of information about oneself is extremely important. We may, for one reason or another, wish or be compelled to reveal such information, but situations abound where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which it is divulged, must be protected.

... in order for constitutional protection to be extended, the information seized must be of a "personal and confidential" nature. In fostering the underlying values of dignity, integrity and autonomy, it is fitting that s. 8 of the Charter should seek to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the lifestyle and personal choices of the individual.

The Supreme Court of Canada in *R. v. Tessling*<sup>53</sup> quoted the foregoing passage from the *Plant* decision and added at paragraph 26:

<sup>50</sup> Section 8 reads: Everyone has the right to be secure against unreasonable search or seizure.

<sup>51</sup> [Hunter v. Southam Inc.](#), [1984] 2 S.C.R. 145, at pages. 159 and 160.

<sup>52</sup> *R. v. Plant* [1993] 3 S.C.R. 281; *R. v. Dyment* [1988] 2 S.C.R. 417, at pages 429 and 430.

<sup>53</sup> [2004] S.C.J. No. 63.

I emphasize the word "include" because Sopinka J. was clear that his illustration ("intimate details of the lifestyle and personal choices") was not meant to be exhaustive, and should not be treated as such. Nevertheless, *Plant* clearly establishes that not all information an individual may wish to keep confidential necessarily enjoys s. 8 protection. [Underlining mine].

The following factors are considered when deciding whether the protection afforded by s.8 of the *Charter* applies to personal information<sup>54</sup>:

- the nature of the information itself;
- the nature of the relationship between the party releasing the information and the party claiming its confidentiality;
- the place where the information was obtained;
- the manner in which it was obtained;
- the seriousness of the crime being investigated.

Thus, once a search comes within the ambit of s.8 of the *Charter*, the requirements of the *Charter*, as established by the Supreme Court of Canada in the matter of *Hunter v. Southam*<sup>55</sup>, must be complied with. First, prior authorization, where feasible, is a precondition for a valid search and seizure. Second, the person authorizing the search must be able to assess the evidence as to whether the standard has been met, in an entirely neutral and impartial manner. The person performing this function need not be a judge, but he must at a minimum be capable of acting judicially. Third, there must be reasonable and probable grounds, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of the search.

There exists a level of expectation of privacy in respect of certain banking information:

The information at issue consists of personal financial records, obtained from a bank. It is clear that these records are of the sort that the respondent would expect would remain confidential, as they are part of what Sopinka J. referred to as the "biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state" (*Plant, supra*, at p. 293). This would clearly point towards a finding that the respondent did have a reasonable expectation of privacy in relation to those records<sup>56</sup>.

The regime created under the PCMLTFA provides for the systematic collection of personal information by the State, without any reason to neither believe nor suspect that an offence has been committed and without prior authorization by an independent third party. To the contrary, other than suspicious transaction reports, the State, through FINTRAC, collects personal information about individual who conducts certain financial transactions with a view of detecting the commission of a criminal offence. However, in order to minimize the possible risk of violating the *Charter*, FINTRAC collects but certain specific information in respect of certain financial transactions which have been identified as being relevant to the detection of money laundering and financing of terrorist activities, as further explained below.

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<sup>54</sup> Ibid.

<sup>55</sup> [1984] 2 S.C.R. 145.

<sup>56</sup> *Schreiber v.A.G. (Canada)* [1998] 1 S.C.R. 842, par. 22.

Also, once the information is collected by FINTRAC, the Act provides for rigid controls on the use and disclosure of the information it control, as further explained below.

## **Detecting Money Laundering and Financing of Terrorist Activities**

FINTRAC'S primary mandate is to assist in the detection, prevention and deterrence of money laundering and of the financing of terrorist activities. This aspect of its mandate involves three steps: receipt and collection of information, analysis of information and disclosure of information.

### *Receipt and Collection of Information*

Sections 54(a) and (b) of the Act list the types of reports and information that FINTRAC receives and collects for analytical purpose:

- suspicious transactions reports (s .7);
- terrorist property reports (s.7.1);
- large cash transaction reports; (s.9)
- international electronic funds transfer, (s .9);
- reports filed pursuant to other Acts (none prescribed to date) (s.9.1);
- reports on the cross-border movement of currency or monetary instruments (s. 12);
- incomplete reports on the cross-border movement of currency or monetary instruments (subs. 14(5));
- reports on border seizures (s. 20);
- information provided by foreign agencies with powers and duties similar to those of FINTRAC;
- information provided by law enforcement agencies or government institutions or agencies;
- information voluntarily provided by the public about suspicions of money laundering or financing of terrorist activities;
- public information that it considers relevant to money laundering and financing of terrorist activity, including commercially available databases;
- information that it considers relevant to money laundering and terrorist financing that is contained in databases held by federal or provincial governments, for purposes related to law enforcement activities, and in respect of which an agreement has been concluded.

### *Analysis*

Upon the receipt of the information listed above, FINTRAC assesses and analyzes it with a view of detecting money laundering, terrorist financing activities, and threat to the security of Canada (s.54(c), subs.55(3) and subs.55.1(1)).

### *Disclosure*

FINTRAC must disclose “designated information” to appropriate police forces when it has reasonable grounds to suspect, based on its analysis of the information, that it would be relevant to investigating or prosecuting a money laundering or terrorist activity financing offence (paragraph 55(3)(a)).

FINTRAC must also disclose “designated information” to the Canadian Security Intelligence Service where it has reasonable grounds to suspect, based on its analysis of the information, that it would be relevant to threats to the security of Canada within the meaning of section 2 of the *Canadian Security Intelligence Service Act* (paragraph 55.1(1)).

Disclosure of “designated information” is also possible to the Minister of National Revenue and to the Department of Citizenship and Immigration when a two-fold test is met:

- FINTRAC must disclose “designated information” to the Minister of National Revenue where it has reasonable grounds to suspect, based on its analysis of the information, that it would be relevant to investigating or prosecuting a money laundering or terrorist activity financing offence and if it determines that the information is relevant to a tax evasion offence (paragraph 55(3)(b));
- FINTRAC must disclose “designated information” to the Department of Citizenship and Immigration where it has reasonable grounds to suspect, based on its analysis of the information, that it would be relevant to investigating or prosecuting a money laundering or terrorist activity financing offence and if it determines that the information would promote the objective set out paragraph 3(1)(i) of the *Immigration and Refugee Protection Act* and is relevant to determining whether a person is a person described in sections 34 to 42 of that Act or to an offence under any of sections 117 to 119, 126 or 127 of that Act.

Thus, in order to comply with the requirements of s.8 of the *Charter* above mentioned, FINTRAC, in a neutral and independent fashion, assess the facts that tend to show that there exist reasonable grounds to suspect that an offence has been committed, prior to disclosing information. Once those conditions are met, FINTRAC will disclose “designated information”.

“Designated information” is a term defined at subsections 55(7) and 55.1(3) and the Regulations<sup>57</sup>. It refers to information relating to the financial transactions or importation/exportation that form the basis of the suspicions of money laundering or terrorist financing activities. Designated information includes: information about the place where the transaction occurred; information about the transaction; information about the individual or corporation involved in the transaction.

In all the cases mentioned above, FINTRAC must record in writing the reasons for its decision to disclose the information (subs.55(5.1) and 55.1(2)).

In summary, the “designated information” is a financial intelligence product produced by FINTRAC. It is provided to the law enforcement and security agencies so that they can pursue the necessary investigations.

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<sup>57</sup> See also s.13 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations.

## Controlling the Use and Disclosure of Information

Section 40(c) of the Act requires FINTRAC to ensure that personal information under its control is protected from unauthorized disclosure. The Act also provides strict control over the use and disclosure of information received and collected by FINTRAC.

Thus, the general principle is that FINTRAC is prohibited from disclosing information in its possession (subs.55(1)). However, the Act provides exceptions by expressly authorizing disclosure of information in the circumstances described in the Act. In addition to the exceptions mentioned above (55(3), 55.1(1)), the disclosure of information is also possible in these circumstances:

- FINTRAC may disclose “designated information” to an agency of a foreign state or of an international organization established by the governments of foreign states that has powers and duties similar to those of FINTRAC where there is a written agreement respecting the exchange information (subs.56.1(1), (2), (3))(see below);
- FINTRAC may disclose information for purposes of feedback, research and public education provided the information does not identify an individual (s .58);
- FINTRAC may disclose to law enforcement agencies any information of which it becomes aware in ensuring compliance with Part I and that it suspects on reasonable grounds is evidence of a contravention of Part I (s. 65) (see below);
- The Director provides the Minister and the Minister’s advisor with information necessary to permit the Director and the Minister to discharge their functions (s.52 and 53);
- FINTRAC, its employees and any person who obtained, had or has access to information in the possession of FINTRAC can use and disclose the information for purposes of exercising their powers and performing their duties and function (subss.55(2), 55(6) and 57).

Every person or entity, including FINTRAC and its employees, who knowingly makes an unauthorized disclosure of information or improperly uses information is guilty of an offence under section 74.

In order to ensure additional protection to the information in FINTRAC’s possession, the Act gives broad immunity from compulsory processes to FINTRAC and any person who had access to FINTRAC information. Except in the course of court proceedings in respect of a money laundering offence or a terrorist activity financing offence, an offence under the Act, and subject to section 36 of the *Access to Information Act* and section 34 of the *Privacy Act*, no one can be compelled to testify or produce documents of FINTRAC (s.59).

Finally, except by order for disclosure of information under subsection 60(4) and 60.1(3), no search warrant or order for disclosure of information may be issued in respect of FINTRAC (subs. 59(2) and 60(1)).

## Production Orders

Police officers who need access to additional FINTRAC information in order to pursue their criminal investigation must first obtain a court order called a production order. CSIS employees who require access to additional FINTRAC information in order to pursue their national security investigation must

also obtain a production order. The Act provides for two types of such orders, found at s.60 and s.60.1 of the Act.

Section 60 describes the terms and conditions of orders for the disclosure of information. The following is a summary of some of the key elements.

The application for the production order is:

- by the Attorney General (subs. 60(2));
- *ex parte*, in writing to a judge of a superior court (subs.60(3));
- accompanied by an affidavit sworn by the Attorney General or a specially designated person (subs.60(3));
- for the purposes of an investigation in respect of a money laundering offence or a terrorist activity financing offence (subs. 60(2));

The order will be granted if the judge is satisfied that there are reasonable grounds to believe that:

- the person in relation to whom the information or documents are required committed or benefited from the commission of a money laundering offence or a terrorist activity financing offence, and that the information or documents requested are likely to be of substantial value in the investigation in question; and
- it is in the public interest to allow access to the information,

the judge may order the Director to allow access to the information or documents requested.

The judge may add the conditions that he considers advisable in the public interest (subs. 60(4)).

The order will be served on FINTRAC's Director or his designate for execution.

The Director may object to the disclosure of the information in respect of which an order is being sought by certifying that the information should not be disclosed on the grounds set out in subsection 60(8), namely:

- an agreement signed by the Government of Canada prohibits disclosure;
- the information is privileged by law;
- the information has been placed in a sealed package pursuant to a law or a court order; or
- the disclosure of the information would not be in the public interest.

Examples of public interest immunity include:

- disclosure of information that would reveal or tend to reveal the identity of a person who provided information on a confidential basis;
- disclosure of information would identify or tend to identify relationships with other police forces, security and intelligence agencies in Canada and elsewhere, and disclose information received in confidence from such sources; disclosure of information would identify or tend to identify techniques and methods of operation.

If challenged, the Director's certificate will be determined by the Federal Court (subs. 60(9)) and this decision can be appealed to the Federal Court of Appeal (subs. 60(12)).

The production order at s.60.1 is available to CSIS employees. This provision mirrors the requirements of s.60, with these differences: the application is made by the Director or an employee of CSIS, with the Solicitor General's approval, to the Federal Court, for purposes of an investigation to a threat to the security to Canada (s.60.1(1)). These requirements reflect the current requirements to obtain a search warrant under s.21 of the *CSIS Act*.

The order for disclosure of information is a relatively new investigative tool in Canada. Besides the Act, the only other Canadian legislation that makes provision for such an order is the *Criminal Code* at s.462.48 (for obtaining tax information), s.487.012 (for obtaining documentary evidence) and s.487.013 (for obtaining financial or commercial information).

## Compliance

FINTRAC is responsible for ensuring compliance with Part I of the Act, i.e., ensuring that the requisite reports are submitted to FINTRAC and that records are kept in accordance with the Act and Regulations, among other things.

The compliance measures are detailed in sections 62 to 64. More specifically, section 62 authorizes the examination, from time to time, of the documents and activities of the persons and entities referred to in section 5 for compliance purposes. Section 63 specifies that in the case of a dwelling house, a warrant will be required to enter to examine records if the occupant does not consent to entry. If a document that is about to be examined in the course of a compliance audit is in the possession of a lawyer, or is not in the possession of a lawyer but the person who possesses the document contends that a claim of solicitor-client privilege may be made in respect of that document, s.64 provides a mechanism to claim solicitor-client privilege in respect of the document. This scheme is similar to the one found at s.488.1 of the *Criminal Code*<sup>58</sup>.

In order to assist reporting entities to comply with the requirements of the Act and Regulations, FINTRAC has published Guidelines, available through their web site<sup>59</sup>. The Guidelines provide background information about money laundering and terrorist financing, including their international nature. They also provide an outline of the Canadian legislative requirements for a compliance regime, record keeping, client identification and sending reports to FINTRAC, among other things.

As indicated earlier, if, in the course of a compliance examination, FINTRAC becomes aware of information it suspects on reasonable grounds is evidence of a contravention of Part I, FINTRAC may disclose the information to the appropriate law enforcement agency (s. 65).

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<sup>58</sup> The Supreme Court of Canada in the matter of *Lavallée, Rackel & Heintz v. Canada (Attorney General)* concluded on September 12, 2002 that s.488.1 of the *Criminal Code* was unconstitutional on the basis that it did not adequately protect privileged documents in the possession of lawyers. Amendments to the *Criminal Code* and the *PCMLTFA* are being considered.

<sup>59</sup> [http://www.fintrac.gc.ca/publications/guide/guide\\_e.asp](http://www.fintrac.gc.ca/publications/guide/guide_e.asp)

## FINTRAC and Foreign Agencies

As money laundering and the financing of terrorist activities know no borders, FINTRAC can receive information from and disclose “designated information” to foreign agencies.

In order to be able to disclose information to a foreign agency, there must be a written agreement regarding the exchange of information between FINTRAC and a foreign agency. The Act provides for two types of agreements: government-to-government and agency-to-agency.

The Minister of Finance may enter into a written agreement on behalf of the Government of Canada with the government of the foreign state or an international organization established by the governments of foreign states, regarding the exchange of information between FINTRAC and a foreign agency that had powers and duties similar to those of FINTRAC (subs.56(1)).

FINTRAC, with the approval of the Minister, may enter into a written agreement with an agency of a foreign state that has powers and duties similar to FINTRAC’s, regarding the exchange of information between FINTRAC and that agency (subs.56(2)).

These agreements must contain two conditions in respect of the information disclosed by FINTRAC:

- the information can only be used for purposes relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence; and
- the information must be treated in a confidential manner and not be further disclosed without the express consent of FINTRAC. (56(3)).

Once an agreement is signed, FINTRAC can disclose “designated information” to the agency of the foreign state or of the international organization,

- when FINTRAC has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence (spontaneous disclosure) (56.1(1) and (2));
- in response to a query from the institution or agency, when FINTRAC has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence (upon request disclosure) (56.1(2.1)).

As indicated, FINTRAC will disclose “designated information” to the foreign agency, a term defined at subs.56.1(5) and the STR Regulations.

FINTRAC must record in writing the reasons for its decision to disclose the information to a foreign agency (subs.56.1(4)).

Other than “designated information”, FINTRAC cannot disclose information to a foreign agency. A production order is unavailable to a foreign agency.



Currently, there are approx. 85 countries that have operating agencies with powers and duties similar to those of FINTRAC. Such agencies are called financial intelligence units. In 1995, a group of financial intelligence units began working together and created an informal organization called the Egmont Group<sup>60</sup>. This group provides a forum for the Units to improve support to their respective country's anti-money laundering programme. FINTRAC was formally recognized as a financial intelligence unit and admitted as a member of the Egmont Group in June 2002.

FINTRAC currently has signed agreements with the financial intelligence units of the following countries:

- |                               |                     |
|-------------------------------|---------------------|
| - United States (FinCEN)      | - Panama (UAF)      |
| - United Kingdom (NCIS)       | - El Salvador (UIF) |
| - Belgium (CTIF)              | - Latvia (KD)       |
| - Australia (AUSTRAC)         | - Bulgaria (FIA)    |
| - Mexico (DGAIO)              | - Cyprus (MOKAS)    |
| - Italy (UIC)                 | - Finland (MLCH)    |
| - Barbados (BFIU)             | - Monaco (SICCFIN)  |
| - Netherlands (MOT)           | - Guernsey (FIS)    |
| - Portugal (UIF)Korea (KoFIU) | - France (TRACFIN)  |

#### **Part IV**

Part IV authorizes the Governor in Council to make regulations that it considers necessary for carrying out the purposes and provisions of the Act. As indicated above, there are three Regulations under the Act: the Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations, as amended (the STR Regulations), the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, as amended (the PCMLTF Regulations), and the Cross-border Currency and Monetary Instruments Reporting Regulations (the CBCMI Regulations), as amended.

#### **Part V**

Part V creates a number of offences, the majority of which have already been mentioned earlier.

Section 78 makes officers, directors or their agents liable for the actions of their employees by considering them parties to the offences committed by their employees if they directed, authorized, assented to, acquiesced in or participated in the offence in question. Officers, directors and agents are therefore liable, on conviction, to the punishment provided for the offence, whether or not the employee has been prosecuted or convicted.

Section 79 provides that in a prosecution for an offence under sections 75 and 76, businesses and other employers can be prosecuted for offences committed by their employees in the course of their duties. To establish the guilt of the business or other employer, it is sufficient to establish that the

<sup>60</sup> [http://www.fatf-gafi.org/Ctry-orgpages/org-egmont\\_en.htm](http://www.fatf-gafi.org/Ctry-orgpages/org-egmont_en.htm)

offence was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted. However, no person shall be found guilty of the offence if they establish that they exercised all due diligence to prevent its commission. Consequently, if the employer can establish that it exercised reasonable diligence, it will have a ground of defence in respect of the offence committed by its employees or agents. The purpose of this provision is to encourage employers to take steps to ensure that their employees receive adequate training and know how to perform their duties in accordance with the new Act.

S.80 provides for an exemption from the application of the offence provisions to peace officers and their agents if the things are done for the purpose of investigating a money laundering offence. This exemption will be useful in the course of a police storefront operation.

Lastly, the time limitation for summary conviction offences covered by the Act is 12 months after the time when the events that gave rise to the proceedings took place (s .81). Normally, the time limitation for summary conviction offences is 6 months.

## **CONCLUSION**

FINTRAC has been operational since November 2001 and published three annual reports<sup>61</sup>. FINTRAC was also discussed in a chapter entitled "Implementation of the National Initiative to Combat Money Laundering" of the Auditor General of Canada's report of November 2004<sup>62</sup>. However, since the government took a phased approach to the implementation of the Act and that it takes years to develop an intelligence databank, it will take time before we are able to fully assess the impact of these new reporting requirements and FINTRAC's contribution to the investigation and prosecution of money laundering and terrorist activities financing offences. To that effect, a Parliamentary Committee will review the administration and operation of this Act sometime in 2005 (s.72).

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<sup>61</sup> [http://www.fintrac.gc.ca/publications/pub\\_e.asp#1](http://www.fintrac.gc.ca/publications/pub_e.asp#1)

<sup>62</sup> <http://www.oag-bvg.gc.ca/domino/rapports.nsf/html/20041102cf.html>

## Summary of the Obligations of the Reporting Entities under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and Regulations

### Date of coming in force

Suspicious Transaction Report – Money Laundering	November 8, 2001
Suspicious Transaction Report – Terrorist Financing Activities	June 12, 2002
Terrorist Property Report	June 12, 2002
Electronic Funds Transfer – SWIFT	June 12, 2002
Record Keeping	June 12, 2002
Client ID	June 12, 2002
Cross Border Currency & Monetary Instruments	January 6, 2003
Large Cash Transaction Report	January 31, 2003
Electronic Funds Transfer - All	March 31, 2003

November 6, 2003

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## Obligations of Financial Entities<sup>63</sup>

Financial Transaction Reporting Obligations <sup>64</sup>	Record Keeping Obligations <sup>65</sup>	Ascertaining Client ID
<p><u>S.7 Act</u></p> <p>Must send a suspicious transaction report to FINTRAC when reasonably suspects a financial transaction is related to a money laundering or terrorist financing activity offence within 30 days of detecting the suspicions.</p> <p><u>s.7.1 Act</u></p> <p>Must send terrorist property report to FINTRAC without delay when:</p> <ul style="list-style-type: none"> <li>▪ knows property in their possession or control is owned or controlled by or on behalf of a terrorist group;</li> <li>▪ a transaction or proposed transaction in respect of property they know is owned or controlled on behalf of a terrorist group.</li> </ul> <p><u>S.12</u></p> <p>Must send report to FINTRAC when:</p> <ul style="list-style-type: none"> <li>▪ receives \$10,000 or more cash in a single transaction, unless from another financial entity or</li> </ul>	<p><u>S.13</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>▪ large cash transaction record when receives \$10,000 or more cash in a single transaction, unless cash from another financial entity or a public body.</li> </ul> <p><i>Exception:</i> No need to keep LCTR if information that must be in the record is readily available from other kept records (subs.52(2)).</p> <p><u>S.8</u></p> <p>Must keep records about third party when large cash transaction conducted on behalf of a third party.</p> <p><u>S. 14</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>▪ Signature cards;</li> <li>▪ Part of official corporate records;</li> <li>▪ Account operating agreements;</li> <li>▪ Deposit slips;</li> <li>▪ Debit and credit memos;</li> <li>▪ Accounts statements;</li> <li>▪ Cleared checks (or an</li> </ul>	<p><u>s.53 &amp; 64 Regs</u></p> <p>At the time of the transaction, must ascertain the id of every individual who conducts a large cash transaction, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record unless done so before and remember the person.</li> </ul> <p>No need to verify ID when deposit is in a corporate account or to an ATM.</p> <p><u>s. 54(1)(a) &amp; s.64</u></p> <p>Must ascertain the identity of every person who signs a signature card (when opening an account) by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record before any transaction is carried out, other than the initial deposit.</li> </ul>

<sup>63</sup> Foreign bank as per s.2 of the *Bank Act* in respect of its business in Canada; Bank as per the *Bank Act*; Cooperative credit society, savings and credit union or *caisse populaire* that is regulated by a provincial Act; Association that is regulated by the *Cooperative Credit Associations Act*; Company to which the *Trust and Loan Companies Act* applies; Trust company and loan company regulated by a provincial Act; and Department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities or sells or redeems money orders.

<sup>64</sup> Report forms are annexed in the regulations.

<sup>65</sup> Records must be kept for a period of 5 years.

Financial Transaction Reporting Obligations <sup>64</sup>	Record Keeping Obligations <sup>65</sup>	Ascertaining Client ID
<p>a public body (within 15 days);</p> <ul style="list-style-type: none"> <li>▪ sends* or receives an international electronic funds transfer of \$10,000 or more in a single transaction using any system (within 5 days).</li> </ul> <p>(* unless provides the sending financial entity with the name and address of client.)</p> <p><i>Exceptions:</i> Report unnecessary if business client that meets all the conditions in s.50.</p> <p><i>Single transaction:</i> Two or more transactions within 24 hrs that total \$10,000 or more.</p>	<p>image thereof);</p> <ul style="list-style-type: none"> <li>▪ Client credit files;</li> <li>▪ Currency exchange transaction ticket.</li> </ul> <p><u>S.15</u></p> <p>Trust companies have these additional record keeping obligation in respect of trusts:</p> <ul style="list-style-type: none"> <li>▪ trust deeds;</li> <li>▪ information regarding settlors.</li> </ul> <p>If institutional trusts, must also keep parts of official corporate records.</p> <p><u>S.11</u></p> <p>Trust companies must keep records about the beneficiaries of inter vivos trusts.</p>	<p>If the person is not physically present to open the account, by a cleared cheque.</p> <p>In the case of a corporate account, verify the ID of three persons authorized to act on the account.</p> <p>Verify ID before any transaction is carried out, other than the initial deposit.</p> <p><u>s.9</u></p> <p>When the account is opened, must determine whether the account will be used by or on behalf of a third party.</p> <p><u>s.54(1)(b) &amp; s.64</u></p> <p>At the time of transaction, must ascertain the identity of every person who requests an electronic funds transfer of \$3,000 or more, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport; or</li> <li>- any other similar record</li> </ul> <p>unless the person has signed a signature card or is authorized to act on the account.</p> <p><u>s.54(1)(c) &amp; s.64</u></p> <p>At the time of transaction, must ascertain the identity of every person who conducts a foreign currency exchange transaction of</p>

Financial Transaction Reporting Obligations <sup>64</sup>	Record Keeping Obligations <sup>65</sup>	Ascertaining Client ID
		<p>\$3,000 or more, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport; or</li> <li>- any other similar record</li> </ul> <p>unless the person signed a signature card</p> <p><u>s.54(1)(d) &amp; s.65</u></p> <p>Must confirm the existence of and ascertain the name and address of every corporation for which the financial entity opens an account and the names of the corporation's directors by referring to:</p> <ul style="list-style-type: none"> <li>- its certificate of corporate status;</li> <li>- a record that it is required to file annually under the applicable provincial securities legislation;</li> <li>or</li> <li>- any other record that ascertains its existence as a corporation</li> </ul> <p>before any transaction is carried out, other than the initial deposit.</p> <p><u>s.54(1)(e) &amp; s.66</u></p> <p>Must confirm the existence of every entity, other than a corporation, for which the financial entity opens an account by referring to:</p> <ul style="list-style-type: none"> <li>- a partnership agreement;</li> <li>- articles of association; or</li> <li>- other similar record</li> </ul> <p>before any transaction is carried out, other than the initial deposit.</p> <p>Client ID unnecessary if:</p> <ul style="list-style-type: none"> <li>- already have an account with the same financial entity;</li> <li>- already ID the person and</li> </ul>

Financial Transaction Reporting Obligations <sup>64</sup>	Record Keeping Obligations <sup>65</sup>	Ascertaining Client ID
		<p>remembers the person; - other.</p> <p>s.55</p> <p>Trust companies have similar verifications to make in respect of inter vivos and institutional trusts.</p> <p>s.67</p> <p>When ID is verified, must note on the relevant document the DOB, type and no. of document relied on and information about account.</p>

**Obligations of Casinos<sup>66</sup>**

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<sup>66</sup> "casino" means a person or entity that is licensed, registered, permitted or otherwise authorized to do business under any of paragraphs 207(1)(a) to (g) of the Criminal Code and that conducts its business activities in a permanent establishment  
a) that the person or entity holds out to be a casino and in which roulette or card games are carried on; or  
(b) where there is a slot machine, which, for the purposes of this definition, does not include a video lottery terminal.  
It does not include a person or entity that is a registered charity as defined in subsection 248(1) of the Income Tax Act and is licensed, registered, permitted or otherwise authorized to carry on business temporarily for charitable purposes, if the business is carried out in the establishment of a casino for

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p><u>S.7 Act</u></p> <p>Must send a suspicious transaction report to FINTRAC when reasonably suspects a financial transaction is related to a money laundering or terrorist financing activity offence within 30 days of detecting the suspicions.</p> <p><u>s.7.1 Act</u></p> <p>Must send terrorist property report to FINTRAC without delay when:</p> <ul style="list-style-type: none"> <li>▪ knows property in their possession or control is owned or controlled by or on behalf of a terrorist group;</li> <li>▪ a transaction or proposed transaction in respect of property they know is owned or controlled on behalf of a terrorist group.</li> </ul> <p><u>S.40</u></p> <p>Must send report (LCTR) to FINTRAC within 15 days of receiving \$10,000 or more cash in a single transaction, unless from a financial entity.</p> <p><i>Single transaction:</i> Two or more transactions within 24 hrs that total \$10,000 or more.</p>	<p><u>S.41</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>▪ large cash transaction record when receives \$10,000 or more cash in a single transaction, unless cash from another financial entity.</li> </ul> <p><i>Exception:</i> No need to keep LCTR if information that must be in the record is readily available from other kept records (subs.52(2)).</p> <p>LCTR needed for these transactions involving \$10,000 or more:</p> <ul style="list-style-type: none"> <li>▪ Sale of chips, tokens or plaques;</li> <li>▪ Front cash deposits;</li> <li>▪ Safekeeping deposits;</li> <li>▪ Repayment of credit;</li> <li>▪ Bets of currency;</li> <li>▪ Sale of casino cheques.</li> </ul> <p><u>S.8</u></p> <p>Must keep records about third party when large cash transaction conducted on behalf of a third party.</p> <p><u>S.42</u></p> <p>Must keep large cash disbursements record where total amount of cash disbursed is \$10,000 or more, in the course of these transactions:</p>	<p><u>s.53 &amp; 64 Regs</u></p> <p>At the time of the transaction, must ascertain the id of every individual who conducts a large cash transaction, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record.</li> </ul> <p>unless done so before and remember the person.</p> <p><u>s. 60 (a) &amp; s.64</u></p> <p>Must ascertain the identity of every person who signs a signature card (when opening an account) by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record</li> </ul> <p>before any transaction is carried out, other than the initial deposit.</p> <p>If the person is not physically present to open the account, by a cleared cheque.</p> <p>In the case of a corporate account, verify the ID of three persons authorized to act on the account.</p>

not more than two consecutive days at a time under the supervision of an employee of the establishment.



Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
	<ul style="list-style-type: none"> <li>▪ the redemption of chips, tokens or plaques;</li> <li>▪ front cash withdrawals;</li> <li>▪ safekeeping withdrawals;</li> <li>▪ advances on any form of credit, including advances by markers or counter cheques;</li> <li>▪ payments on bets, including slot jackpots;</li> <li>▪ payments to a client of funds received for credit to that client or any other client;</li> <li>▪ the cashing of cheques or other negotiable instruments; and</li> <li>▪ reimbursements to clients of travel and entertainment expenses.</li> </ul> <p><i>Exception:</i> Large cash disbursement record need not be kept if information readily obtainable from other kept records (s.44).</p> <p><b>S.43</b></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>- in respect of every client account: <ul style="list-style-type: none"> <li>▪ Signature cards;</li> <li>▪ Deposit slips;</li> <li>▪ Account operating agreements;</li> <li>▪ Debit and credit memo;</li> </ul> </li> <li>- An extension of credit record in respect of every extension of credit of \$3000.00 or more;</li> <li>- A transaction ticket in respect of every currency exchange of \$3000.00 or more.</li> </ul>	<p><u>s.9</u></p> <p>When the account is opened, must determine whether the account will be used by or on behalf of a third party.</p> <p><u>s.60(b) &amp; s.64</u></p> <p>At the time of transaction, must ascertain the identity of every person for which a large cash disbursement record is kept, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport; or</li> <li>- any other similar record.</li> </ul> <p><u>s.60(c) &amp; s.64</u></p> <p>At the time of transaction, must ascertain the identity of every person for which an extension of credit record is kept, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport; or</li> <li>- any other similar record.</li> </ul> <p><u>s.60(d) &amp; s.64</u></p> <p>At the time of transaction, must ascertain the identity of every person for which a transaction ticket is kept, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> </ul>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
		<ul style="list-style-type: none"> <li>- passport; or</li> <li>- any other similar record.</li> </ul> <p><u>s.60(e) &amp; s.65</u></p> <p>Must confirm the existence of and ascertain the name and address of every corporation for which the casino opens an account and the names of the corporation's directors by referring to:</p> <ul style="list-style-type: none"> <li>- its certificate of corporate status;</li> <li>- a record that it is required to file annually under the applicable provincial securities legislation;</li> <li>or</li> <li>- any other record that ascertains its existence as a corporation before any transaction is carried out, other than the initial deposit.</li> </ul> <p><u>s.60(f) &amp; s.66</u></p> <p>Must confirm the existence of every entity, other than a corporation, for which the casino opens an account by referring to:</p> <ul style="list-style-type: none"> <li>- a partnership agreement;</li> <li>- articles of association; or</li> <li>- other similar record</li> </ul> <p>before any transaction is carried out, other than the initial deposit.</p> <p>Client ID unnecessary if:</p> <ul style="list-style-type: none"> <li>- already have an account with the same casino;</li> <li>- already ID the person and remembers the person.</li> </ul> <p>s.67</p> <p>When ID is verified, must note on the relevant document the DOB, type and no. of document relied on and information about account.</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID

Obligations of Securities Dealers

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p><u>S.7 Act</u></p> <p>Must send a suspicious transaction report to FINTRAC when reasonably suspects a financial transaction is related to a money laundering or terrorist financing activity offence within 30 days of detecting the suspicions.</p> <p><u>s.7.1 Act</u></p>	<p><u>S.22 Regs</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>- a large cash transaction record when receives \$10,000 or more cash in a single transaction, unless cash from financial entity or public body.</li> </ul> <p><i>Exception:</i> No need to keep LCTR if information that must be in the</p>	<p><u>s.53 &amp; s.64 Regs</u></p> <p>At the time of the transaction, must ascertain the id of every individual who conducts a large cash transaction, by referring to:</p> <ul style="list-style-type: none"> <li>- Birth certificate;</li> <li>- Driver's license;</li> <li>- Provincial health insurance card (where permitted);</li> <li>- Passport;</li> <li>- Any other similar record,</li> </ul>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p>Must send a terrorist property report to FINTRAC without delay when:</p> <ul style="list-style-type: none"> <li>- knows property in their possession or control is owned or controlled by or on behalf of a terrorist group;</li> <li>- a transaction or proposed transaction in respect of property they know is owned or controlled on behalf of a terrorist group.</li> </ul> <p><u>S.21 Regs</u></p> <p>Must send report (LCTR) to FINTRAC within 15 days of receiving \$10,000 or more cash in a single transaction, unless from a financial entity or a public body.</p> <p><i>Single transaction:</i> Two or more transactions within 24 hrs that total \$10,000 or more.</p>	<p>record is readily available from other kept records (subs.52(2)).</p> <p><b>S.8</b></p> <p>Must keep records about third party when large cash transaction conducted on behalf of a third party.</p> <p><u>S.23</u></p> <p>Must keep in respect of every account:</p> <ul style="list-style-type: none"> <li>- a signature card, an account operating agreement or an account application</li> </ul> <p>unless is the account of a financial entity or another securities dealer.</p> <p>Must keep in case of a corporate account parts of official corporate records.</p> <p>Must keep in case of an account of a person or entity other than a corporation, a record of the name and address and nature of the principle business or occupation of the person or entity.</p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>• New account application;</li> <li>• Confirmation of purchase of sale;</li> <li>• Guarantee;</li> <li>• Trade authorization;</li> <li>• Power of attorney;</li> <li>• Joint account agreement;</li> <li>• All correspondence that pertains to the operations of an account;</li> <li>• Client statements.</li> </ul>	<p>unless done so before and remember the person.</p> <p>Unnecessary if a deposit in a corporate account or through an ATM.</p> <p><u>s.57(1) &amp; 64</u></p> <p>Within 6 months of opening an account, must ascertain ID of every person who is authorized to give instruction on the account, by referring to:</p> <ul style="list-style-type: none"> <li>- Birth certificate;</li> <li>- Driver's license;</li> <li>- Provincial health insurance card (where permitted);</li> <li>- Passport;</li> <li>- Any other similar record.</li> </ul> <p>unless done so before and remember the person.</p> <p>If the person is not physically present when the account is opened, ascertain ID by a cleared cheque or confirming that the person holds an account at a financial entity.</p> <p>NOTA: There are numerous exceptions to the verification of ID requirement.</p> <p><u>s.57(3) &amp; 65</u></p> <p>Within 6 months of opening an account, must confirm the existence of and ascertain the name and address of every corporation for which there it opens an account and the names of the corporation's directors by referring to:</p> <ul style="list-style-type: none"> <li>- its certificate of corporate status;</li> <li>- a record that it is required to file</li> </ul>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
		<p>annually under the applicable provincial securities legislation; or</p> <ul style="list-style-type: none"> <li>- any other record that ascertains its existence as a corporation unless done so before.</li> </ul> <p><u>s.57(4) &amp; 66</u></p> <p>Within 6 months of opening an account, must confirm the existence of every entity, other than a corporation, for which there is an account by referring to:</p> <ul style="list-style-type: none"> <li>- a partnership agreement;</li> <li>- articles of association; or</li> <li>- other similar record</li> </ul> <p>unless done so before.</p> <p><u>S.9</u></p> <p>Obligations to take reasonable measures to determine if account will be used by or on behalf of a third party.</p> <p><i>Exception:</i> Account holder is a financial entity or securities dealers engaged in securities dealing in Canada.</p> <p><u>s.67</u></p> <p>When ID is verified, must note on the relevant document the DOB, type and no. of document relied on and information about account.</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID

Obligations of Real Estate Brokers or Sales Representatives

When Obligations Arise
<p><u>s.37</u></p> <p>Must comply with these obligations when in the course of a real estate transaction on behalf of any person or entity, engages in these activities:</p> <ul style="list-style-type: none"> <li>▪ Receipt or payment of funds;</li> <li>▪ Deposit or withdrawal of funds;</li> <li>▪ Transfer of funds by any means,</li> </ul> <p>unless sales representative is an employee or an agent (s.6).</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p><u>S.7 Act</u></p> <p>Must send a suspicious transaction report to FINTRAC when reasonably suspects a financial transaction is related to a money laundering or terrorist financing activity offence within 30 days of detecting the suspicions.</p> <p><u>s.7.1 Act</u></p> <p>Must send a terrorist property report to FINTRAC without delay when:</p> <ul style="list-style-type: none"> <li>- knows property in their possession or control is owned or controlled by or on behalf of a terrorist group;</li> <li>- a transaction or proposed transaction in respect of property they know is owned or controlled on behalf of a terrorist group.</li> </ul> <p><u>S.38 Regs</u></p> <p>Must send report (LCTR) to FINTRAC within 15 days of receiving \$10,000 or more cash in a single transaction, unless from a financial entity or a public body.</p> <p><i>Single transaction:</i> Two or more transactions within 24 hrs that total \$10,000 or more.</p>	<p><u>S.39 Regs</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>- a large cash transaction record when receives \$10,000 or more cash in a single transaction, unless cash from financial entity or public body.</li> </ul> <p><i>Exception:</i> No need to keep LCTR if information that must be in the record is readily available from other kept records (subs.52(2)).</p> <p><b>S.8</b></p> <p>Must keep records about third party when large cash transaction conducted on behalf of a third party.</p>	<p><u>s.53 &amp; s.64 Regs</u></p> <p>At the time of the transaction, must ascertain the id of every individual who conducts a large cash transaction, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record, unless done so before and remember the person.</li> </ul> <p>Unnecessary if a deposit in a corporate account or through an ATM.</p> <p><u>s.67</u></p> <p>When ID is verified, must note on the relevant document the DOB, type and no. of document relied on and information about account.</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID

**Obligations of Money Services Business**

When Obligations Arise
<p><u>s.27</u></p> <p>Must comply with these obligations when:</p> <ul style="list-style-type: none"> <li>▪ remits or transmits funds by any means through any person, entity or electronic funds transfer network;</li> <li>▪ issues or redeems money orders, traveler's check or other similar instrument.</li> </ul> <p><i>Exception:</i> No such obligation when redeems cheques payable to a named person or entity.</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p><u>S.7 Act</u></p> <p>Must send a suspicious transaction report to FINTRAC when</p>	<p><u>S.29 Regs</u></p> <p>Must keep:</p>	<p><u>s.53 &amp; s.64 Regs</u></p> <p>At the time of the transaction, must ascertain the id of every individual</p>



Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p>reasonably suspects a financial transaction is related to a money laundering or terrorist financing activity offence within 30 days of detecting the suspicions.</p> <p><u>s.7.1 Act</u></p> <p>Must send a terrorist property report to FINTRAC without delay when:</p> <ul style="list-style-type: none"> <li>- knows property in their possession or control is owned or controlled by or on behalf of a terrorist group;</li> <li>- a transaction or proposed transaction in respect of property they know is owned or controlled on behalf of a terrorist group.</li> </ul> <p><u>S.28 Regs</u></p> <p>Must send report to FINTRAC when:</p> <ul style="list-style-type: none"> <li>- receives \$10,000 or more cash in a single transaction, unless from a financial entity or a public body (within 15 days);</li> <li>- sends* or receives an international electronic funds transfer of \$10,000 or more in a single transaction (within 5 days).</li> </ul> <p>(* unless provides the sending financial entity with the name and address of client.)</p> <p><i>Single transaction:</i> Two or more transactions within 24 hrs that total \$10,000 or more.</p>	<ul style="list-style-type: none"> <li>- a large cash transaction record when receives \$10,000 or more cash in a single transaction, unless cash from financial entity or public body.</li> </ul> <p><i>Exception:</i> No need to keep LCTR if information that must be in the record is readily available from other kept records (subs.52(2)).</p> <p><b>S.8</b></p> <p>Must keep records about third party when large cash transaction conducted on behalf of a third party.</p> <p><u>S.30</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>• Client information record when ongoing business relationship;</li> <li>• Parts of official corporate records when the client is a corporation;</li> <li>• A record of the date, the amount received, the name and address of the person who gives the amount, and identify how it was paid (cash, cheque, travelers cheques, money order or other negotiable instruments) when \$3000 or more is received to purchase travelers checks, money orders or other similar negotiable instruments;</li> <li>• A record of the name and address of the person and the name of the issuer of the money order when \$3000 or more in money order is cashed;</li> </ul>	<p>who conducts a large cash transaction, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record,</li> </ul> <p>unless done so before and remember the person.</p> <p><u>s.59(a) &amp; s.64</u></p> <p>At the time of the transaction, must ascertain ID of every individual who:</p> <ul style="list-style-type: none"> <li>- buys or cashes money orders, travellers cheques or other similar negotiable instruments;</li> <li>- remits or transmits by any means, through any person, entity or EFT network</li> </ul> <p>for \$3000 or more and there is no client information record, unless done so before and remember the person.</p> <p>ID ascertained by referring to the person's:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record.</li> </ul> <p><u>s.59(b) &amp; s.64</u></p> <p>At the time of a transaction of \$3000 or more, must ascertain ID of every individual for whom a client information record is required to be kept, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> </ul>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
	<ul style="list-style-type: none"> <li>• A record of the name and address of the person who initiated the remittance or transmission of \$3000 or more by any means or through any person, entity or EFT network.</li> </ul>	<ul style="list-style-type: none"> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record unless done so before and remember the person.</li> </ul> <p><u>s.59(c) &amp; s.65</u></p> <p>Within 6 months of creating the client information record, must confirm the existence of and ascertain the name and address of every corporation for which a client information record must be kept and the names of the corporation's directors by referring to:</p> <ul style="list-style-type: none"> <li>- its certificate of corporate status;</li> <li>- a record that it is required to file annually under the applicable provincial securities legislation;</li> <li>or</li> <li>- any other record that ascertains its existence as a corporation unless done so before.</li> </ul> <p><u>s.59(d) &amp; s.66</u></p> <p>Within 6 months of creating the client information record, must confirm the existence of every entity, other than a corporation, for which a client information record must be kept by referring to:</p> <ul style="list-style-type: none"> <li>- a partnership agreement;</li> <li>- articles of association; or</li> <li>- other similar record unless done so before.</li> </ul> <p><u>s.10</u></p> <p>When creating a client information record, must determine if the client is acting on behalf of a third party.</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
		<p><u>s.67</u></p> <p>When ID is verified, must note on the relevant document the DOB, type and no. of document relied on and information about account.</p>

**Obligations of Life Insurance Companies and Life Insurance Brokers or Agents**

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p><u>S.7 Act</u></p> <p>Must send a suspicious transaction report to FINTRAC when reasonably suspects a financial transaction is related to a money laundering or terrorist financing activity offence within 30 days of detecting the suspicions.</p> <p><u>s.7.1 Act</u></p> <p>Must send a terrorist property report to FINTRAC without delay when:</p> <ul style="list-style-type: none"> <li>- knows property in their possession or control is owned or controlled by or on behalf of a terrorist group;</li> <li>- a transaction or proposed transaction in respect of property they know is owned or controlled on behalf of a terrorist group.</li> </ul>	<p><u>S.18 Regs</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>- a large cash transaction record when receives \$10,000 or more cash in a single transaction, unless cash from financial entity or public body.</li> </ul> <p><i>Exception:</i> No need to keep LCTR if information that must be in the record is readily available from other kept records (subs.52(2)).</p> <p><i>Exceptions:</i> As listed at subs.62(1).</p> <p><b>S.8</b></p> <p>Must keep records about third party when large cash transaction conducted on behalf of a third party.</p> <p><u>S.19</u></p>	<p><u>s.53 &amp; s.64 Regs</u></p> <p>At the time of the transaction, must ascertain the id of every individual who conducts a large cash transaction, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record, unless done so before and remember the person.</li> </ul> <p>Unnecessary if a deposit in a corporate account or through an ATM.</p> <p><u>s.56(1) &amp; 64</u></p> <p>Within 6 months of creating a client information record, must ascertain ID of every person, acting on their own or a third parties' behalf, for</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p><u>S.17 Regs</u></p> <p>Must send report (LCTR) to FINTRAC within 15 days of receiving \$10,000 or more cash in a single transaction, unless from a financial entity or a public body.</p> <p><i>Exceptions:</i> As listed at subs.62(1).</p> <p><i>Single transaction:</i> Two or more transactions within 24 hrs that total \$10,000 or more.</p>	<p>Must keep:</p> <ul style="list-style-type: none"> <li>- client information record when client purchase an immediate or deferred annuity or a life insurance policy for \$10,000 or more, irrespective of the means of payment;</li> </ul> <p>unless policy is:</p> <ul style="list-style-type: none"> <li>- exempt (Income Tax Act) or;</li> <li>- group life with no cash surrender or savings component.</li> </ul> <p>When policy is a group life insurance policy, the client information record relates to the applicant (i.e. individual group member).</p> <p><u>s.20</u></p> <p>When client information record relates to a corporation, must keep part of official corporate records.</p>	<p>whom there is a client information record, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record.</li> </ul> <p>unless done so before and remember the person.</p> <p>If the person is not physically present when the client information record is created, ascertain ID by a cleared cheque or confirming that the person holds an account at a financial entity.</p> <p>NOTA: There are numerous exceptions to the verification if ID requirement.</p> <p><u>s.56(3) &amp; s.65</u></p> <p>Within 6 months of creating a client information record, must confirm the existence of and ascertain the name and address of every corporation for which there is a client information record and the names of the corporation's directors by referring to:</p> <ul style="list-style-type: none"> <li>- its certificate of corporate status;</li> <li>- a record that it is required to file annually under the applicable provincial securities legislation;</li> <li>or</li> <li>- any other record that ascertains its existence as a corporation unless done so before.</li> </ul> <p><u>S.56(4) &amp; s.66</u></p> <p>Within 6 months of creating a client information record, must confirm the</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
		<p>existence of every entity, other than a corporation, for which there is a client information record by referring to:</p> <ul style="list-style-type: none"> <li>- a partnership agreement;</li> <li>- articles of association; or</li> <li>- other similar record</li> </ul> <p>unless done so before.</p> <p><u>s.10</u></p> <p>When creating a client information record, must determine if the client is acting on behalf of a third party.</p> <p><u>s.67</u></p> <p>When ID is verified, must note on the relevant document the DOB, type and no. of document relied on and information about account.</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID

**Obligations of Persons or Entities Engaged in the Business of Foreign Exchange Dealers**

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p><u>S.7 Act</u></p> <p>Must send a suspicious transaction report to FINTRAC when reasonably suspects a financial transaction is related to a money laundering or terrorist financing activity offence within 30 days of detecting the suspicions.</p> <p><u>s.7.1 Act</u></p> <p>Must send a terrorist property report to FINTRAC without delay when:</p> <ul style="list-style-type: none"> <li>- knows property in their possession or control is owned or controlled by or on behalf of a terrorist group;</li> <li>- a transaction or proposed transaction in respect of property they know is owned or controlled on behalf of a terrorist group.</li> </ul> <p><u>S.24 Regs</u></p> <p>Must send report to FINTRAC when:</p>	<p><u>S.25 Regs</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>- a large cash transaction record when receives \$10,000 or more cash in a single transaction, unless cash from financial entity or public body.</li> </ul> <p><i>Exception:</i> No need to keep LCTR if information that must be in the record is readily available from other kept records (subs.52(2)).</p> <p><b>S.8</b></p> <p>Must keep records about third party when large cash transaction conducted on behalf of a third party.</p> <p><u>S.26</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>- client information record;</li> <li>- part of corporate record if client is a corporation;</li> <li>- transaction ticket;</li> </ul>	<p><u>s.53 &amp; s.64 Regs</u></p> <p>At the time of the transaction, must ascertain the id of every individual who conducts a large cash transaction, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record,</li> </ul> <p>unless done so before and remember the person.</p> <p><u>s.58(1)(a) &amp; s.64</u></p> <p>At the time of the transaction, must ascertain ID of every individual for whom there is a client information record, or persons acting on their behalf, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record</li> </ul> <p>unless done so before and</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<ul style="list-style-type: none"> <li>- receives \$10,000 or more cash in a single transaction, unless from a financial entity or a public body (within 15 days);</li> <li>- sends* or receives an international electronic funds transfer of \$10,000 or more in a single transaction (within 5 days).</li> </ul> <p>(* unless provides the sending financial entity with the name and address of client.)</p> <p><i>Single transaction:</i> Two or more transactions within 24 hrs that total \$10,000 or more.</p>	<ul style="list-style-type: none"> <li>- client credit file;</li> <li>- internal memo concerning account operations.</li> </ul>	<p>remember the person.</p> <p><u>s.58(1)(b) &amp; s.64</u></p> <p>At the time of the transaction, must ascertain ID of:</p> <ul style="list-style-type: none"> <li>- every individual who conducts a transaction of \$3000 or more and there is no client information record unless done so before and remember the person.</li> </ul> <p>ID ascertained by referring to the person's:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record.</li> </ul> <p><u>s.58(2) &amp; s.63(2)</u></p> <p>Within 6 months of creating a client information record, must confirm the existence of and ascertain the name and address of every corporation for which there is a client information record and the names of the corporation's directors by referring to:</p> <ul style="list-style-type: none"> <li>- its certificate of corporate status;</li> <li>- a record that it is required to file annually under the applicable provincial securities legislation;</li> </ul> <p>or</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
		<p>- any other record that ascertains its existence as a corporation unless done so before.</p> <p><u>S.58(3) &amp; s.66</u></p> <p>Within 6 months of creating a client information record, must confirm the existence of every entity, other than a corporation, for which there is a client information record by referring to:</p> <ul style="list-style-type: none"> <li>- a partnership agreement;</li> <li>- articles of association; or</li> <li>- other similar record</li> </ul> <p>unless done so before.</p> <p><u>s.10</u></p> <p>When creating a client information record, must determine if the client is acting on behalf of a third party.</p> <p><u>s.67</u></p> <p>When ID is verified, must note on the relevant document the DOB, type and no. of document relied on and information about account.</p>



Obligations of Departments or Agents of Her Majesty in Right of Canada or of a Province

When Obligations Arise
<p><u>s.45</u></p> <p>When accepts deposit liabilities in the course of providing financial services to the public.</p>
<p><u>s.46</u></p> <p>When it sells or redeems money orders in the course of providing financial services to the public.</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p><u>S.7 Act</u></p> <p>Must send a suspicious transaction report to FINTRAC when reasonably suspects a financial transaction is related to a money laundering or terrorist financing activity offence within 30 days of detecting the suspicions.</p> <p><u>s.7.1 Act</u></p> <p>Must send a terrorist property report to FINTRAC without delay when:</p> <ul style="list-style-type: none"> <li>- knows property in their possession or control is owned or controlled by or on behalf of a terrorist group;</li> <li>- a transaction or proposed transaction in respect of property they know is owned or controlled on behalf of a terrorist group.</li> </ul> <p align="center"><b>S.47</b></p>	<p><u>S.48</u></p> <p>When selling or redeeming money orders, must keep:</p> <ul style="list-style-type: none"> <li>• large cash transaction record when receives \$10,000 or more cash in a single transaction, unless cash from financial entity or public body.</li> </ul> <p><i>Exception:</i> No need to keep LCTR if information that must be in the record is readily available from other kept records (subs.52(2)).</p> <p><b>S.8</b></p> <p>Must keep records about third party when large cash transaction conducted on behalf of a third party.</p> <p><u>S.49</u></p> <p>When selling or redeeming money orders, must keep:</p>	<p><u>s.53 &amp; s.64 Regs</u></p> <p>When selling or redeeming money orders, at the time of the transaction, must ascertain the ID of every individual who conducts a large cash transaction, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record, unless done so before and remember the person.</li> </ul> <p><u>s.61(a) &amp; 64(1)(b)</u></p> <p>When selling or redeeming money orders or other similar negotiable instruments, within 6 months of creating the client information record, must ascertain the ID of the person by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> </ul>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p>When selling or redeeming money orders, must send report (LCTR) to FINTRAC within 15 days of receiving \$10,000 or more cash in a single transaction, unless receives cash from financial entity or public entity.</p> <p><i>Single transaction:</i> Two or more transactions within 24 hrs that total \$10,000 or more.</p>	<ul style="list-style-type: none"> <li>- client information record;</li> <li>- parts of official corporate records when client a corporation.</li> </ul> <p>When sells \$3000 or more of money order or similar negotiable instrument, must record:</p> <ul style="list-style-type: none"> <li>- the date;</li> <li>- the amount received;</li> <li>- the name and address of the person who gave the amount;</li> <li>- whether the amount is paid in cash, cheques, traveller's cheques, money orders or other similar negotiable instruments.</li> </ul> <p>When cashes money order of \$3000 or more, must record:</p> <ul style="list-style-type: none"> <li>- the name and address of the person cashing the money orders;</li> <li>- the name of the issuer of the money orders</li> </ul> <p>NOTA: Numerous exceptions.</p>	<ul style="list-style-type: none"> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record unless done so before and remember the person.</li> </ul> <p>If the person is not physically present when client information record is created, confirm ID by a cleared cheque or through a financial entity where the person holds an account in his name.</p> <p><u>s.61(b) &amp; s.64(1)(d)</u></p> <p>When selling or redeeming money orders or other similar negotiable instruments for \$3000 or more, at the time of the transaction, must ascertain ID of every person who conducts a transaction for which there is no client information record, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record unless done so before and remember the person.</li> </ul> <p><u>s.61(c) &amp; s.65</u></p> <p>When selling or redeeming money orders or other similar negotiable instruments, within 6 months of creating the client information record, must confirm the existence of and ascertain the name and address of every corporation for which there is a client information record and the names of the</p>

Financial Transaction Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
		<p>corporation's directors by referring to:</p> <ul style="list-style-type: none"> <li>- its certificate of corporate status;</li> <li>- a record that it is required to file annually under the applicable provincial securities legislation;</li> <li>or</li> <li>- any other record that ascertains its existence as a corporation unless already done so.</li> </ul> <p><u>S.61(d) &amp; s.66</u></p> <p>When selling or redeeming money orders or other similar negotiable instruments, within 6 months of creating the client information record, must confirm the existence of every entity, other than a corporation, for which there is a client information record by referring to:</p> <ul style="list-style-type: none"> <li>- a partnership agreement;</li> <li>- articles of association; or</li> <li>- other similar record</li> </ul> <p>unless already done so.</p> <p><u>s.10</u></p> <p>When creating a client information record, must determine if the client is acting on behalf of a third party.</p> <p><u>s.67</u></p> <p>When ID is verified, must note on the relevant document the DOB, type and no. of document relied on and information about account.</p>

Obligations of Accountants and Accounting Firms

When Obligations Arise
<p><u>s.34</u></p> <p>Must comply with these obligations when engaged on behalf of any person or entity, including giving instructions on behalf of any person or entity, in following activities:</p> <ul style="list-style-type: none"> <li>• receipt or payment of funds;</li> <li>• purchase or sale of securities, real properties or business assets or entities;</li> <li>• transfer of any funds or securities by any means;</li> <li>• receives professional fees for these listed activities.</li> </ul> <p><i>Excluded:</i> Audits, reviews or compilation engagements as per the CICA Handbook.</p> <p><i>Excluded:</i> Listed activities conducted by an accountant on behalf of his employer.</p>

Reporting Obligations	Record Keeping Obligations	Ascertaining Client ID
<p><u>S.7 Act</u></p> <p>Must send a suspicious transaction report to FINTRAC when reasonably suspects a financial transaction is related to a money laundering or terrorist financing activity offence within 30 days of detecting the suspicions.</p> <p><u>s.7.1 Act</u></p> <p>Must send a terrorist property report to FINTRAC without delay when:</p> <ul style="list-style-type: none"> <li>- knows property in their possession or control is owned or controlled by or on behalf of a terrorist group;</li> </ul>	<p><u>S.35 Regs</u></p> <p>Must keep:</p> <ul style="list-style-type: none"> <li>- a large cash transaction record when receives \$10,000 or more cash in a single transaction, unless cash from financial entity or public body.</li> </ul> <p><i>Exception:</i> No need to keep LCTR if information that must be in the record is readily available from other kept records (subs.52(2)).</p> <p><b>S.8</b></p> <p>Must keep records about third party when large cash transaction</p>	<p><u>s.53 &amp; s.64 Regs</u></p> <p>At the time of the transaction, must ascertain the id of every individual who conducts a large cash transaction, by referring to:</p> <ul style="list-style-type: none"> <li>- birth certificate;</li> <li>- driver's license;</li> <li>- provincial health insurance card (where permitted);</li> <li>- passport;</li> <li>- any other similar record, unless done so before and remember the person.</li> </ul> <p><u>s.67</u></p> <p>When ID is verified, must note on the relevant document the DOB,</p>

