

# Overview of the Federation of Law Societies of Canada and the Government of Canada Working Group on Money Laundering and Terrorist Financing

Presentation by the Department of Finance Canada

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PRESENTATION TO THE CULLEN COMMISSION

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# Regulation of the Legal Profession in Canada's Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) Regime

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- Lawyers were originally included in the AML/ATF Regime in 2001, under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).
- Lawyers were required to collect information about their clients and report suspicious transactions to FINTRAC. The PCMLTFA also allowed FINTRAC warrantless access to law offices and documents subject to compliance examinations.
- Following constitutional challenges launched by several law societies via the Federation of Law Societies of Canada (FLSC), injunctions were granted to suspend the application of the PCMLTFA and its regulations to lawyers pending the outcome of litigation.
- In 2015, the case was appealed to the Supreme Court of Canada (SCC), which ruled that provisions of the PCMLTFA and its regulations applying to lawyers violated sections 7 and 8 of the Charter. As a result, lawyers have been excluded from the operation of these provisions.
- The SCC acknowledged the important public purpose of Canada's AML/ATF Regime and did not preclude the possibility that Parliament could impose AML/ATF obligations on the legal profession that are within constitutional boundaries.

# Impetus for the Working Group

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- The Government recognizes that the legal profession represents a high AML/ATF risk to the Regime, and continues to work towards bringing the legal profession into the framework in a constitutionally compliant way.
- The SCC's ruling has left the regulation of the conduct of lawyers to provincial and territorial law societies, which are self-regulatory organizations.
- Law societies can play an important role in mitigating money laundering risks among the legal profession. The FLSC provides Model Rules which are adopted by the provincial and territorial bodies. These requirements are not prescribed in provincial or territorial statutes.
- The FLSC and the Government of Canada established the Working Group in June 2019 share information and explore ways to address the inherent risks of money laundering and other illicit activity that may arise in the practice of law.

# Terms of Reference

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- Main areas covered by the Terms of Reference include:
  - Mandate
  - Objectives
  - Co-Chaired by Frederica Wilson of the FLSC and Lynn Hemmings of the Department of Finance
  - Membership
  - Reporting
  - Meetings

# Mandate of the Working Group

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The mandate of this Working Group is to explore issues related to money laundering and terrorist financing (ML/TF) in the legal profession and to strengthen information sharing between the law societies and the Government of Canada.



# Objectives of the Working Group

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Objectives of the Working Group include:

- Strengthen communication and share information between the federal government and the law societies;
- Discuss how existing systems (e.g., FLSC Model Rules) can be leveraged to improve education, awareness and due diligence in the legal profession to deter and prevent ML/TF;
- Assist the FLSC in preparing and enhancing their guidance related to ML/TF; and
- Discuss best practices as well as compliance and enforcement issues in the legal profession.

# Membership of Working Group

<b>Federal Government Participants</b>	<b>FLSC Participants</b>
Department of Finance Canada	Federation of Law Societies of Canada (FLSC)
Department of Justice Canada	Law Society of Ontario
Royal Canadian Mounted Police (RCMP)	Law Society of Newfoundland and Labrador
Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)	Barreau du Québec
Canada Revenue Agency	Law Society of British Columbia

# Reporting and Meetings

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- Members of the Working Group report findings and summaries of discussions to their respective senior officials as necessary within the federal government, each provincial and territorial law society, and within the FLSC.
- The Working Group is intended to meet on a quarterly basis.
- Additionally, more senior level meetings between the Associate ADM of the Financial Sector Policy Branch of Finance Canada and the CEO of the FLSC are intended to occur at least twice a year, with additional meetings as needed.



# Work Completed: June–December 2019

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- Initial work focused on sharing information regarding the ML/TF risks observed in the legal sector and understanding the law societies' audit powers and processes to investigate breaches by members.
- 1<sup>st</sup> Meeting – June 26, 2019
  - Presentations by FINTRAC and the FLSC on ML/TF typologies and indicators of suspicious transactions.
- 2<sup>nd</sup> Meeting – December 2, 2019
  - Presentations by the Ontario and BC Law Societies on audit powers and processes.

# Work Completed: 2020

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- Meeting schedules were disrupted by COVID-19 pandemic.
- Discussed proposals to change the FLSC Model Rules and educational materials to help mitigate the risk of money laundering in the legal profession.
- 3<sup>rd</sup> Meeting – June 25, 2020
  - Presentation by Finance on recent regulatory amendments and possible changes to the FLSC Model Rules.
  - Updates from the FLSC on their review of their Model Rules and AML/ATF education materials.
  - Presentation by the Canada Revenue Agency on the regulation of registered charities and terrorist financing risks in the charities sector.

# Changes to the Model Rules

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- FLSC Model Rules are adopted by provincial/territorial law societies.
- In late 2018, prior to the formation of the Working Group, the FLSC made changes to their Model Rules to help mitigate the threat of ML/TF in the legal profession.
- The Department of Finance provided comments to the FLSC on the changes.
- Through the Working Group, the federal Government and the FLSC are once again collaborating to discuss proposals to change the Model Rules to further address ML/TF vulnerabilities and align with federal AML/ATF requirements.

# Concluding Remarks

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- The Working Group has been beneficial to both the federal government and the FLSC and Canadian law societies.
- Accomplishments of the Working Group tied to its mandate and objectives:
  - Enhanced lines of communication between federal government and FLSC and law societies
  - Improved participants' understanding of ML/TF risks and compliance and enforcement issues in the legal profession
  - Developing ways to mitigate risks in the legal profession by leveraging existing FLSC Model Rules and educational material
- The Working Group will continue to meet and advance work in accordance with its mandate and objectives.