

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

MEMORANDUM

FROM: Frederica Wilson
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TO: Jonathan Herman, CEO

DATE: September 21, 2016

SUBJECT: FATF Mutual Evaluation Report

INTRODUCTION

1. The Financial Action Task Force (“FATF”) is an international inter-governmental body that sets standards for legal measures to combat money laundering and terrorist financing. Canada has been a member of the FATF since 1990.
2. The FATF has developed a series of standards ([FATF Recommendations](#)) for combating money laundering and terrorist financing. Member compliance with the standards is assessed through a mutual evaluation process. The evaluations are peer reviews, with members from different countries examining the effectiveness of a country’s system for preventing money laundering and terrorist financing and its compliance with the FATF Recommendations.
3. The [report of the most recent mutual evaluation of Canada](#) was released on September 15, 2016. As anticipated, the report is highly critical of the fact that members of the legal profession are not subject to the government’s anti-money laundering and terrorist financing regulations. The report is also dismissive of the law societies’ own regulation of these risks. The key findings of the report related to the legal profession are summarized below.

KEY FINDINGS

4. The report concludes that Canada “has made significant progress” in meeting the FATF standard since its last mutual evaluation (in 2007). The evaluators concluded, however, that the fact that lawyers and Quebec notaries are not covered by the federal regulatory scheme is a “significant concern” considering the “high risk rating” of the sector.

5. The evaluators found that the February 2015 decision of the Supreme Court of Canada holding that the federal regulations were unconstitutional as applied to legal counsel creates a “significant . . . impediment to Canada’s ability to combat ML¹ in particular in high-risk sectors such as real-estate transactions and the formation of corporations and trusts.”

6. The report suggests that in the absence of federal regulatory authority over legal counsel there is “no incentive for the profession to apply AML/CFT² measures and participate in the detection of potential ML/TF.”

7. Although aware of the No-Cash and Client Identification and Verification rules developed by the Federation and implemented by every law society in Canada, the evaluators were dismissive of their effectiveness describing as “over-confident” the suggestion that these rules mitigate the risks of legal counsel becoming involved in money-laundering or terrorist financing activities. The report also questioned the enforcement of the rules, noting “[w]hile monitoring measures are applied by the provincial and territorial law societies, they are limited in scope and vary from one province to the other.”

8. The evaluation report was also critical of Canada’s regulation of risks associated with nominee shareholding arrangements, which it suggests can be used to conceal the beneficial owners and disguise illegal funds.

9. The evaluators noted that the Canadian government had indicated (in a comprehensive risk analysis prepared as part of the evaluation process³) that it would be “revisiting the [*Proceeds of Crime (Money Laundering and Terrorist Financing) Act*] provisions relating to legal counsels, legal firms and Quebec notaries, in order to bring forward new provisions for the legal professional that would be constitutionally compliant.”

10. The report included a number of recommendations that Canada should take to bring itself into compliance with the FATF standard. Ensuring that legal counsel, legal firms and Quebec notaries are subject to the federal anti-money laundering and terrorist financing regime was the first “priority action” on the list. This recommendation is repeated a number of times throughout the report.

CONCLUSION

11. As indicated above, the negative assessment of Canada and in particular, the criticism of the regulation of the legal profession to mitigate money laundering and terrorist financing risks, was expected. Whether, as the report suggests, the Canadian government will attempt to bring in constitutionally compliant regulations to cover lawyers and Quebec notaries is not known. During a meeting between members of the Federation Executive and officials of the Department of Justice in June 2016, however,

¹ Money laundering

² Anti-money laundering/counter terrorist financing

³ [*Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*](#)

government representatives expressed concern about enforcement of the law society rules. The negative report may elevate the government's interest in this issue.

