

COMMISSION OF INQUIRY INTO  
MONEY LAUNDERING IN BRITISH COLUMBIA

Report on Accountants, Money Laundering, and Anti-Money Laundering

THE **aml**SHOP.



## 2 RESTRICTIONS

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## 4 TABLE OF CONTENTS

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1	BACKGROUND .....	2
2	RESTRICTIONS.....	3
3	AUTHORSHIP .....	3
4	TABLE OF CONTENTS.....	5
5	METHODOLOGY AND MATERIALS CONSULTED .....	6
6	ACCOUNTANT INVOLVEMENT IN MONEY LAUNDERING.....	7
6.1	INTERNATIONAL REPORTS OF ACCOUNTANT INVOLVEMENT IN MONEY LAUNDERING .....	7
6.2	CANADA AND MONEY LAUNDERING .....	10
6.3	DOMESTIC REPORTS OF ACCOUNTANT INVOLVEMENT IN MONEY LAUNDERING .....	10
7	EFFECTIVENESS OF REGIME TO ADDRESS ACCOUNTANT INVOLVEMENT IN MONEY LAUNDERING .....	14
7.1	BASIS FOR ANALYSIS.....	14
7.2	RELEVANT FATF RECOMMENDATIONS .....	14
7.3	FATF EFFECTIVENESS STANDARDS.....	15
7.4	TECHNICAL ADHERENCE TO FATF STANDARDS .....	15
7.4.1	What is an Accountant?.....	15
7.4.2	Triggering, Specified and Qualifying Activities .....	19
7.4.3	Summary of Technical Comparison: FATF and Canadian Standards .....	19
7.5	CONSIDERATION OF EFFECTIVENESS .....	21
7.5.1	Monitoring and Oversight of Compliance .....	21
7.5.2	Standards Related to Assurance and Money Laundering.....	26
7.5.3	Suspicious Transaction Reporting.....	27
8	CONCLUSIONS.....	29
8.1.	REGULATIONS .....	31
8.2.	SELF-REGULATORY ORGANIZATIONS .....	31
9	APPENDIX A – MATERIALS CITED.....	33
10	APPENDIX B – FINTRAC’S SUMMARY OF THE ANTI-MONEY LAUNDERING OBLIGATIONS OF ACCOUNTANTS.....	36
11	APPENDIX C – SUMMARY OF FATF 3RD MUTUAL EVALUATION FINDINGS RELEVANT TO ACCOUNTANTS .....	38

## 5 METHODOLOGY AND MATERIALS CONSULTED

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9. Our methodology involved researching and summarizing information from open sources and paid sites, as well as drawing on our experience as anti-money laundering professionals and accountants. Sources are referenced throughout this report and cited in Appendix A - Materials Cited.
10. Any mention of potential or actual breaches of professional standards in Canada is based on publicly available information. No part of this report is intended to impact the reputation of the accounting profession as a whole. In any large group of individuals there will be some who do adhere to relevant standards and laws, and those are the focus of this report. Our work also addresses the reported deficiencies in Canada's anti-money laundering regime related to its design. Highlights of those deficiencies, particularly those related to self-regulatory organization, are not intended to suggest failings of those organizations but rather as faults in the design of the national regime.
11. For the purposes of this report, we have adopted a broad definition of accountant and accounting services. Our definition focuses on the activities performed by the individual or their firm, rather than their training or designations here or abroad. According to the Financial Action Task Force (FATF), the international anti-money laundering standard-setting body, accounting services include:
  - a) audit and assurance services, including reporting accountant work in initial public offerings,
  - b) reviewing financial records,
  - c) preparing financial statements and accounting reports,
  - d) developing budgets,
  - e) designing accounting systems,
  - f) providing advice on accounting matters,
  - g) bookkeeping and the preparation of annual and periodic accounts,
  - h) payroll services,
  - i) tax compliance work, return preparation and advice,
  - j) advice on the structuring of transactions,
  - k) due diligence in relation to mergers and acquisitions,
  - l) succession advice,
  - m) advice on investments and customer of client money,
  - n) management consulting,
  - o) forensic accounting, and,
  - p) liquidation, insolvency, receiver-manager and bankruptcy-related services. (Financial Action Task Force, 2008) (Financial Action Task Force, 2019)
12. Accordingly, for the purposes of this report, individuals engaged in those services are considered *accountants* and firms who engage in those services are considered *accounting firms*.

13. We have also adopted the Criminal Code of Canada definition for money laundering (laundering the proceeds of crime) for the purposes of this report, as set out below:

**LAUNDERING PROCEEDS OF CRIME 462.31 (1)**

Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that, or being reckless as to whether, all or a part of that property or of those proceeds was 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.

## 6 ACCOUNTANT INVOLVEMENT IN MONEY LAUNDERING

### 6.1 INTERNATIONAL REPORTS OF ACCOUNTANT INVOLVEMENT IN MONEY LAUNDERING

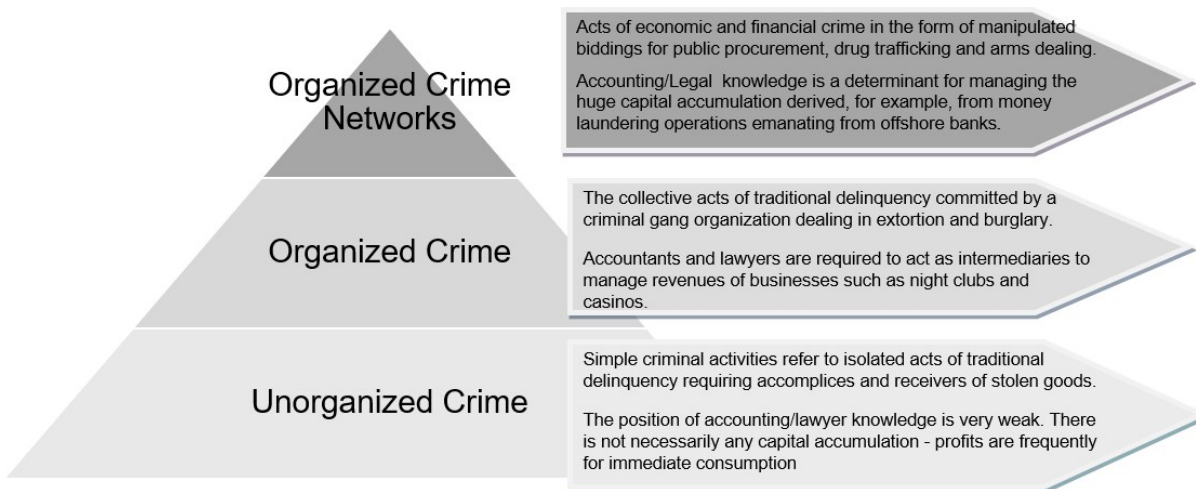
“Money laundering remains a serious global threat. In 2019, increasingly sophisticated criminal organizations, terrorists, kleptocrats, and other illicit actors continued to seek out the weak links in global anti-money laundering and countering the financing of terrorism (AML/CFT) countermeasures. Jurisdictions flooded with illicit funds are vulnerable to the breakdown of the rule of law, the corruption of public officials, and destabilization of their economies. New technologies, growing diversification of and linkages between transnational criminal organizations, and the funding of terrorist groups only exacerbate the challenges faced by the financial, law enforcement, supervisory, legal, and intelligence communities. (United States Department of State: Bureau for International Narcotics and Law Enforcement Affairs, 2020)

“Whilst some accountants may be unwittingly caught up in money laundering, it is relevant to ask how much of this activity cannot easily take place without the active/passive involvement of accountants. Accountants know the international financial systems, can create nominee (or shell) companies to receive the proceeds of money laundering and create a labyrinth of misleading audit trails.” (Sika & Willmott, 1998)

14. The trend of professional involvement in money laundering gained prominence in an FATF Annual Report published in 1997. According to this report, “As anti-money laundering regulations have increased in many countries, the criminals place increasing reliance on professional money laundering facilitators. The experts reported a significant number of cases involving lawyers, accountants, financial advisors, notaries, secretarial companies and other fiduciaries whose services are employed to assist in the disposal of criminal profits ... The making available of bank accounts and the provision

of professional advice and services as to how and where to launder money is likely to increase as countermeasures become more effective.” (Financial Action Task Force, 1997)

15. The Egmont Group, a united body of 166 Financial Intelligence Units (FIUs), reduced all money laundering typologies to fix essential types. One of these was a misuse of legitimate businesses, which referred to the increasing use of accountants and lawyers for money laundering. (Egmont Group, 2000)
16. It has been suggested that accountants are vulnerable to exploitation of money laundering because they have the expertise to deal with its complexity. They also provide a wide range of services useful to money laundering objectives and the good reputation of their profession adds legitimacy to transactions. (He, 2006)
17. In his 2008 paper, Frédéric Compin developed a methodology to categorize accountants’ involvement in money laundering. He first considered the “vertical or hierarchical approach”, which organized accountant involvement based on the sophistication of the criminal players. We have presented his methodology in the diagram below, using his notion of the levels forming a pyramid.





18. Compin also considered a “horizontal or functional approach” based on a continuum from totally illegal activities to legal activities that have partially illegal elements. The table below conveys this approach. (Compin, 2008)

	TOTALLY ILLEGAL	ILLEGAL WITH LEGAL TOUCHES	LEGAL WITH ILLEGAL TOUCHES
ACTIVITY	Racketeering Drug trafficking Procuring prostitutes Smuggling Armed robbery Money counterfeiting	Kickbaks on public contracts Fraudulent misuse of public funds Casino and gaming slush funds Fiscal fraud	Insider dealing Restrictive practices Abuse of position Slush fund operations to finance political parties Window-dressing balance sheets Bogus commissions paid by middlemen Accounting manipulation
ACCOUNTANT'S INVOLVEMENT	For trafficking immigrant workers, accounting knowledge is necessary within the framework of fake or fictitious invoicing operations to provide a cover of legitimacy to shell companies.  For terrorist financing, accountants help to keep track of things without extensive records.	False invoice networks and illegal work all require accounting knowledge to help legitimize these illicit operations.  When investigators discover the use of double accountancy, the difficulty lies in distinguishing between true and false as criminal organizations diversify their activities by using legitimate commercial networks as fronts for illegal channels in order to launder their proceeds.	Accounting knowledge stems from privileged information of a financial nature. However, it is the abuse of competitive advantage rather than the accounting information itself that triggers the abuse of dominant position.  Precise accounting knowledge is used to create financial statements that serve to reassure stakeholders.

19. In its recent risk-based approach guidance for accountants, the FATF identified the following accounting functions as being the most susceptible to the potential money launderer:
- a) **Financial and tax advice** – criminals may pose as individuals seeking financial or tax advice to place assets out of reach to avoid future liabilities.<sup>1 2</sup>
  - b) **Company and trust formation** – criminals may attempt to confuse or disguise the links between the proceeds of a crime and the perpetrator by forming corporate vehicles or other complex legal arrangements (trusts, for example).
  - c) **Buying or selling of property** – criminals may use property transfers to serve as either the cover for transfers of illegal funds (layering stage) or the final investment of these proceeds after having passed through the laundering process (integration stage).
  - d) **Performing financial transactions** – criminals may use accountants to carry out or facilitate various financial operations on their behalf (e.g. cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers, etc.).

<sup>1</sup> Complicating international efforts to combat tax evasion and related money laundering is “the secrecy of data and low-level willingness of tax practitioners to submit Suspect Activity/Transaction reports.” (Egmont Group of Financial Intelligence Units: Information Exchange Working Group, 2020)

<sup>2</sup> Canada has again been ranked as a tax haven by the Tax Justice Network. (Tax Justice Network, 2020)  
Report on Accountants, Money Laundering, and Anti-Money Laundering | 9

- e) **Gaining introductions to financial institutions** - criminals may use accountants as introducers or intermediaries. This can occur both ways, as criminals may use financial institutions to gain introductions to accountants as well.
  - f) **Maintenance of incomplete records by clients** during the accounting/bookkeeping services provided by accountants can be an area of higher risk.
  - g) **Preparation, review and auditing of financial statements** may be susceptible to misuse by criminals where there is a lack of professional body oversight or required use of accounting and auditing standards. (Financial Action Task Force, 2019)
20. The most prevalent international schemes for money laundering line up well with the skills of accountants, particularly:
- a) **Exploitation of the opacity of beneficial ownership** (including the management formation of companies and trusts and acting as nominee);
  - b) **Trade based money laundering** (including accountancy services for falsified accounts and tax evasion, misuse of client accounts and of insolvency services); and,
  - c) **Alternate payment methods.** (Murray, 2018) (Financial Action Task Force, 2019) (United States Department of State: Bureau for International Narcotics and Law Enforcement Affairs, 2020)

## 6.2 CANADA AND MONEY LAUNDERING

21. Many estimates of the extent of money laundering in Canada have relied upon a range of two to five percent of gross domestic product, which is based on the range suggested for money laundering based on a percentage of global GDP by Michel Camdessus, who was the Managing Director of the International Monetary Fund at that time. (Walker & Unger, 2009) Using that range, the Criminal Intelligence Service of Canada's 2020 estimate of money laundering in Canada was CAD 45 to CAD 113 billion. (Criminal Intelligence Service of Canada, 2020). Using a model that again considers GDP as the primary variable, the Expert Panel on Money Laundering in BC Real Estate estimated money laundering in Canada to be at the lower end of the two-percent range, something in excess of CAD 40 billion.
22. Canada is designated by the United States as a Major Money Laundering Country by its Department of State and has been for at least twenty years. (United States Department of State: Bureau for International Narcotics and Law Enforcement Affairs, 2020) (United States Department of State: Bureau for International Narcotics and Law Enforcement Affairs, 2001)

## 6.3 DOMESTIC REPORTS OF ACCOUNTANT INVOLVEMENT IN MONEY LAUNDERING

23. Research into any area of money laundering in Canada is difficult because of the deliberately clandestine nature of the activity. It is also challenging because government statistics are not easily

obtained, and the rate of conviction is low. (Russell, 2019) Furthermore, professional money laundering has been somewhat insulated from criminal action due to the legacy wording of the criminal code, which was recently updated to capture the concept of recklessness. (Cole & Rodych, 2019) (Payne, March 4, 2020) (Criminal Intelligence Service of Canada, 2020). Finally, only a small subset of Canadian criminal case decisions are reported.

24. Some secondary government sources provide insights into the risks of accountant involvement in money laundering.
25. RCMP reports and their new priorities related to proceeds of crime are focused on Professional Money Launderers (PMLs) who are, or are assisted by, accountants. The RCMP reports that PMLs are central to some of the most significant money laundering drivers in the country, including trade-based money laundering and securities fraud. "Of particular concern to law enforcement are OCGs and criminals that launder funds by engaging PMLs who offer their services for a fee. PMLs coordinate operations for OCGs, individual criminals, and also themselves. *This type of criminal can include corrupt and dishonest professionals such as accountants, bankers, and lawyers* [emphasis added], as well as owners or affiliates of money services business and trading (import/export) companies. PMLs sell their services to OCGs and other criminals, but are often not part of the criminal activities that generate the proceeds of crime they launder. This permits them to remain insulated from the predicate offences, and makes it difficult for investigators and prosecutors to prove knowledge of the illicit origins of the funds. Some Canadian PMLs are estimated to launder hundreds of millions of dollars CAD per year." (Criminal Intelligence Service of Canada, 2020) (Payne, March 4, 2020)
26. FINTRAC's research also points out that "in some cases, professional money launderers occupy positions such as accountants, bankers, lawyers and MSB owners, and use their occupation, business infrastructure and knowledge to facilitate money laundering for criminal clients, providing a veneer of legitimacy to criminals and criminal organizations." (Financial Transactions and Reports Analysis Centre of Canada, 2015)
27. The Canadian government received information about accountant involvement in terrorist financing in 2015 during Standing Committee on Finance hearings from Professor Tupman, an expert on the linkages between organized crime and terrorism. "My fifth point is that again over the last five years we've seen the rise of the terrorist accountant. It sounds like a contradiction in terms. Accountants are supposed to be terribly dull people and terribly worthy, but accountants are now very important in assessing businesses for the tax or extortion they're going to pay to the terrorist organization. We need to remember that not just banks lend money, but also accountancy firms and firms of solicitors. We need to pay more attention to the accountancy profession." (Tupman, 2015) At those same hearings, Paul Kennedy, a policing expert, also called out the role of the accountant in crime and

terrorist financing: "The federal government assumes about 30% of the cost of the RCMP policing at the local levels. This commitment not only distracts the RCMP from its federal policing role, but it occasions the development of a recruitment and developmental model ill-suited for a police force that is required to successfully investigate a new class of crime. This is the type of criminal activity which includes terrorism and is interprovincial, national, and international in scope. Such criminal actors employ the latest technology and are supported by lawyers and accountants." (Kennedy, 2015)

28. Canada's 2015 risk assessment refers to the vulnerabilities of the Accounting sector as "Medium" (the same rating as Wholesale and Corporate Money Services Businesses). In defending that assessment, the narrative refers to "the large number of practitioners with specialized knowledge and expertise that may be vulnerable to being exploited wittingly or unwittingly for illicit purposes." It also points out that the relevant expertise "encompasses financial and tax advice and company and trust formation." The narrative does not reference specific cases, or specific sources consulted to arrive at those conclusions. (Government of Canada, 2015)
29. In early research, Professor Schneider was granted access to RCMP proceeds of crime cases successfully closed between 1993 and 1998. Schneider found that an accountant had come into contact with the proceeds of crime in approximately nine percent of the sample cases. He concluded that in most cases, the professionals involved did not appear to know the source of funds, nor did there appear to be overt indicators. In other cases, Schneider found clear indicators, and in some that the accountant was directly involved. He observed that "like a legitimate company, criminal entrepreneurs must keep track of their revenue and expenses, as well as assets and liabilities. Ideally, this job is best carried out by someone possessing accounting or bookkeeping skills ... A principal job of an accountant working for a successful criminal enterprise is to keep track of the volumes of cash generated and spent." (Stephen Schneider, 2004)
30. Our research included searching the Canadian Legal Information Institute for reported criminal cases that referenced the criminal code section. Specifically, we searched for cases related to laundering the proceeds of crime and accountant, filtered to exclude those where references were made to those tasked with summarizing or providing opinion on accounting records for court purposes. We did not distinguish cases by their outcome. That research yielded some anecdotal instances of accountant involvement in money laundering.
  - a) Alkhalil c. R., 2020 QCCQ 4470 (CanLII), <<http://canlii.ca/t/jb1jv>>: a civilian police agent becomes the accountant for a cocaine organized crime group.
  - b) R v Neilson, 2020 ABQB 556 (CanLII), <<http://canlii.ca/t/j9rw1>>: accountant laundering the proceeds of his securities fraud.
  - c) Director of Civil Forfeiture v PacNet Services Ltd., 2019 BCSC 1658 (CanLII), <<http://canlii.ca/t/j2mxl>>: unnamed public accounting firm in British Columbia reported to

be the recipient of a bank draft from a sanctioned entity, which funds were to be held in trust, presumably since the defendant entity did not have a vessel in which to hold and disburse it in their own name<sup>3</sup>.

- d) R. v. Abdel, 2018 ONSC 6002 (CanLII), <<http://canlii.ca/t/hvl90>>: accountant used to launder proceeds through a legitimate business.
- e) O'Reilly c. R., 2017 QCCA 1283 (CanLII), <<http://canlii.ca/t/hnrg9>>: lawyer- accountant laundering the proceeds of trafficking contraband cigarettes between Quebec and Nova Scotia.
- f) SPYru Inc (Re), 2014 BCSECCOM 53 (CanLII), <<http://canlii.ca/t/g315z>>: bookkeeper making payments out of the proceeds of securities fraud.
- g) R. v. Lacroix, 2009 QCCS 4004 (CanLII), <<http://canlii.ca/t/27jmk>>: accounting entries used to conceal and convert the proceeds of securities fraud.
- h) R. v. Loewen, 1999 CanLII 18745 (MB CA), <<http://canlii.ca/t/234p2>>: an accountant is accused of acting as a professional money launderer while acting as a bookkeeper for a trucking business.
- i) Elias v. Law Society of British Columbia, 1996 CanLII 1359 (BC CA), <<http://canlii.ca/t/1f08l>>: Individual formerly of a chartered accounting practice in British Columbia coordinating with a lawyer to transfer crated cash from the Philippines to Hong Kong.
- j) R. v. Joubert, 1992 CanLII 1073 (BC CA), <<http://canlii.ca/t/1d9r7>>: Accountant with direct knowledge of lawyer money laundering.

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<sup>3</sup> While the funds were held in trust accounts in this case, accounting firm bank accounts can and have been used in the firm's own name to process client funds, and might provide a veil of legitimacy for nefarious transactions.

## 7 EFFECTIVENESS OF REGIME TO ADDRESS ACCOUNTANT INVOLVEMENT IN MONEY LAUNDERING

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### 7.1 BASIS FOR ANALYSIS

31. To consider the effectiveness of Canada's anti-money laundering regime with respect to the accounting sector, we have employed the FATF methodology designed for that purpose. There are two aspects to its assessment framework:
- a) The technical compliance assessment which considers the alignment of the regime with the FATF recommendations;
  - b) The effectiveness assessment, which assesses whether the regime elements are producing the expected outcomes and results. (Financial Action Task Force, 2019) We have also considered international standards in our analysis.

### 7.2 RELEVANT FATF RECOMMENDATIONS

32. Three of the 40 FATF recommendations relate to designated non-financial businesses and professions (DNFBPs), which includes accountants, particularly recommendations 22, 23 and 28. Together, those recommendations state that accountants should be required to:
- a) Apply customer due diligence and record-keeping recommendations when they prepare for or carry out qualifying activities;
  - b) Report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to qualifying activities. (Financial Action Task Force, 2019)
33. Recommendation 23 also states that: "Countries are encouraged to extend the [suspicious transaction] reporting requirement *to the rest of the professional activities of accountants, including auditing* [emphasis added]," which reporting may be made to a self-regulatory body if there are appropriate forms of co-operation the place with the Financial Intelligence Unit.
34. To ensure compliance with recommendations 22 and 23, recommendation 28 asks that countries also subject accountants to effective systems to monitor and ensure compliance on a risk-sensitive basis. That compliance can be accomplished through a supervisor or self-regulatory body, provided that such a body can ensure, with adequate powers, financial, human, and technical resources that, that its members:
- a) Comply with the specified obligations;
  - b) Take measures to prevent criminals or their associates from being professionally accredited;
  - c) Take measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function [in an entity

involved in accounting];

- d) Have effective, proportionate, and dissuasive sanctions (those that are effective, proportionate and dissuasive, and available for natural or legal persons) to deal with failure to comply with specified obligations. (Financial Action Task Force, 2019)

### 7.3 FATF EFFECTIVENESS STANDARDS

35. To evaluate the effectiveness of a country's regime to deal with money laundering risks, the FATF publishes a methodology. This methodology seeks two key outcomes with respect to the regulation of DNFBPs:

- a) Immediate Outcome 3: Supervisors appropriately supervise, monitor and regulate DNFBPs for compliance with AML/CFT requirements commensurate with their risks. To that end, supervisors provide DNFBPs with adequate feedback and guidance on compliance with requirements, improve the level of AML/CTF compliance, and discourage attempts by criminals to abuse the sector; and
- b) Immediate Outcome 4: DNFBPs understand the nature and level of their money laundering and terrorist financing risks; develop and apply AML/CTF policies, internal controls, and programmes to adequately mitigate those risks, conduct risk-sensitive due diligence, and report suspicious transactions. These efforts ultimately lead to a reduction in money laundering and terrorist financing activity within these entities. (Financial Action Task Force, 2019)

### 7.4 TECHNICAL ADHERENCE TO FATF STANDARDS

#### 7.4.1 What is an Accountant?

36. Canada's anti-money laundering legislation uses the following definitions for accountants and accounting firms:

- a) Accountant means a chartered accountant, a certified general accountant or a certified management accountant.<sup>4</sup>
- b) Accounting firm means an entity that is engaged in the business of providing accounting services to the public and has at least one partner, employee or administrator who is an accountant.<sup>5</sup>

<sup>4</sup> The definition is being amended by the Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2018 to read: accountant means a chartered accountant, a certified general accountant, a certified management accountant or, if applicable, a chartered professional accountant.

<sup>5</sup> Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, subsection 1(2).

37. No further specification about what constitutes “providing accounting services to the public” is provided in the anti-money laundering legislation, nor is it found in FINTRAC guidance or its glossary. Neither does that section reference any other legislation.
38. The Chartered Professional Accountants Act of British Columbia does not define accounting services. However, it does define professional accounting, which is regulated by CPA BC, as comprising one or more of the following services:
- a) performing an audit engagement and issuing an auditor's report in accordance with the standards of professional practice published by the Chartered Professional Accountants of Canada, as amended from time to time, or an audit engagement or a report purporting to be performed or issued, as the case may be, in accordance with those standards;
  - b) performing any other assurance engagement and issuing an assurance report in accordance with the standards of professional practice published by the Chartered Professional Accountants of Canada, as amended from time to time, or an assurance engagement or a report purporting to be performed or issued, as the case may be, in accordance with those standards;
  - c) issuing any form of certification, declaration or opinion with respect to information related to a financial statement or any part of a financial statement, on the application of:
    - i) financial reporting standards published by the Chartered Professional Accountants of Canada, as amended from time to time, or
    - ii) specified auditing procedures in accordance with standards published by the Chartered Professional Accountants of Canada, as amended from time to time.<sup>6</sup>
39. “Public practice” is defined by CPABC as meaning “providing or offering to provide public accounting services or other regulated services to the public”. That definition seems to segregate public accounting services and regulated services, the former would ostensibly fall into the category of “providing accounting services to the public” for the purpose of Canada’s anti-money laundering legislation, and the latter would be excluded. “Other regulated services” are defined to include:
- a) Providing an accounting service involving summarization, analysis, advice, counsel or interpretation, other than an accounting service that is part of but incidental to the provider’s primary occupation which is not accounting;
  - b) Providing a forensic accounting, financial investigation or financial litigation support service;
  - c) Providing advice, counsel or interpretation with respect to taxation matters;
  - d) Preparing a tax return or other statutory information filing;
  - e) Any other services described in the regulations.

<sup>6</sup> Chartered Professional Accountants Act of British Columbia, section 47.



40. By contrast, the Chartered Professional Accountants Act of Alberta includes in its definition of definition of “accounting services” and “public accounting practice”.
- a) “accounting services” includes summarization, analysis, advice or counsel about or interpretation of accounting matters, but does not include
    - i) bookkeeping, or
    - ii) any accounting service that is performed incidentally by a provider whose primary occupation is not accounting<sup>7</sup>.
  - b) “public accounting practice” means the providing of, or the offering to provide, one or more of the following services to the public:
    - i) accounting services;
    - ii) forensic accounting;
    - iii) financial investigation or financial litigation support services;
    - iv) advice about or interpretation of taxation matters;
    - v) preparation of a tax return or other statutory information filing, if the return or filing is prepared in conjunction with any service referred to in subclauses (i) to (iii).<sup>8</sup>
41. In Ontario, “providing accounting services to the public” is specifically defined as including:
- a) the performance of any engagement addressed by the standards in the CPA Canada Handbook-Assurance for which a licence is not required under the Public Accounting Act, 2004 to perform the engagement;
  - b) accounting insofar as it involves analysis, advice, and interpretation in an expert capacity, but excluding record-keeping;
  - c) taxation, insofar as it involves advice and counselling in an expert capacity, but excluding mechanical processing of returns;
  - d) compilation services, if it can reasonably be expected that all or any portion of the compilation or associated materials prepared by the Member providing the service will be relied upon or used by a third party, whether or not a licence is required under the Public Accounting Act, 2004; and,
  - e) such other services or activities as may be determined by the Council from time to time.<sup>9</sup>

<sup>7</sup> Chartered Professional Accountants Act of Alberta, paragraph 1(b).

<sup>8</sup> *Ibid.*, paragraph 1(vv).

<sup>9</sup> By-law relating generally to the conduct of the affairs of the Chartered Professional Accountants of Ontario, By-law 1.1.53.

42. The inconsistent—and sometimes absent—definition of “providing accounting services to the public” from one province to another make it difficult to ascertain, missing specification in the anti-money laundering legislation or in FINTRAC guidance. Firms are subject to the anti-money laundering legislation. More problematic is that self-regulation does not apply to the same spectrum of activities across the country, and therefore cannot be relied upon to ensure the fitness of participants in those activities, nor their adherence to anti-money laundering expectations.
43. Based on its description of Canada’s sector and the most recent risk-based approach guidance for accountants, the FATF considers all of the following activities to comprise accounting services by firms or individuals, which is more consistent with the CPA Alberta legislation:
- a) audit and assurance services, including reporting accountant work in initial public offerings,
  - b) reviewing financial records,
  - c) preparing financial statements and accounting reports,
  - d) developing budgets,
  - e) designing accounting systems,
  - f) providing advice on accounting matters,
  - g) bookkeeping and the preparation of annual and periodic accounts,
  - h) payroll services,
  - i) tax compliance work, return preparation and advice,
  - j) advice on the structuring of transactions,
  - k) due diligence in relation to mergers and acquisitions,
  - l) succession advice,
  - m) advice on investments and customer of client money,
  - n) management consulting,
  - o) forensic accounting, and,
  - p) liquidation, insolvency, receiver-manager and bankruptcy-related services. (Financial Action Task Force, 2008) (Financial Action Task Force, 2019)
44. Since 2011, FINTRAC has maintained that trustees in bankruptcy services, even if provided by an accountant or accounting firm, are not triggering activities.<sup>10</sup> (Financial Transactions and Reports Analysis Centre of Canada, 2011)

<sup>10</sup> This position is meant to be reflected the legislation through amendments in the Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2018.

#### 7.4.2 Triggering, Specified and Qualifying Activities

45. Once determined to be an accountant or accounting firm, the legislation only applies if they engage in or provide instructions to do any of the following “on behalf of any individual or entity” outside of the context of fees, or an audit, review or compilation engagement carried out in accordance with the required standards<sup>11</sup>:

- a) receiving or paying funds (unless an accountant on behalf of their employer);
- b) purchasing or selling securities, real property or business assets or entities (unless an accountant on behalf of their employer); or,
- c) transferring funds or securities by any means.<sup>12</sup>

46. We refer to the activities in the preceding paragraph as “qualifying activities”, although FINTRAC sometimes refers to them in their materials as “triggering activities”.

#### 7.4.3 Summary of Technical Comparison: FATF and Canadian Standards

47. There is a disparity between the nature and extent of qualifying activities and the FATF recommendations for the scope of the application of anti-money laundering standards to accountants. The table that follows is based on the information presented in earlier paragraphs and is designed to illustrate this disparity.

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<sup>11</sup> This aspect of the legislation is curious for two reasons. First, it is difficult to conceive of a context in which the listed activities would be conducted in the course of an assurance engagement. Second, it leaves open the possibility that the activities, if somehow conducted in the course of an assurance engagement, somehow deviated from the assurance standards, the exemption would cease to apply.

<sup>12</sup> *Ibid.* section 34.

CATEGORY OF STANDARD	FATF RECOMMENDATION	CANADIAN LEGISLATION
Accounting services offered by accountants and accounting firms that would subject them to fitness and anti-money laundering supervision	<ul style="list-style-type: none"> <li>a) Audit and assurance services, including reporting accountant work in initial public offerings,</li> <li>b) reviewing financial records,</li> <li>c) preparing financial statements and accounting reports,</li> <li>d) developing budgets,</li> <li>e) designing accounting systems,</li> <li>f) providing advice on accounting matters,</li> <li>g) bookkeeping and the preparation of annual and periodic accounts,</li> <li>h) payroll services,</li> <li>i) tax compliance work, return preparation and advice,</li> <li>j) advice on the structuring of transactions,</li> <li>k) due diligence in relation to mergers and acquisitions,</li> <li>l) succession advice,</li> <li>m) advice on investments and customer of client money,</li> <li>n) management consulting,</li> <li>o) forensic accounting, and,</li> <li>p) liquidation, insolvency, receiver-manager and bankruptcy related services.</li> </ul>	Definition varies by province. Insolvency is specifically exempted by FINTRAC guidance.
Level of involvement	Accountants be covered when they prepare for or carry out transactions related to specified activities for their client.	Accountants to be covered only when they engage in, or provide instructions in respect of specified activities, not preparation and not advice.
Specified Activities for Full Application of AML Requirements	<ul style="list-style-type: none"> <li>a) buying and selling of real estate;</li> <li>b) managing of client money, securities or other assets;</li> <li>c) management of bank, savings or securities accounts;</li> <li>d) organisation of contributions for the creation, operation or management of companies;</li> <li>e) <ul style="list-style-type: none"> <li>(i) creation, operation or management of legal persons or arrangements,<sup>13</sup></li> <li>(ii) buying and selling of business entities.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>a) purchasing or selling of real property;</li> <li>b) receiving or paying or transferring funds, purchasing or selling or transferring securities, or business assets or entities;</li> <li>c) receiving or paying or transferring funds, purchasing or selling or transferring securities;</li> <li>d) Not addressed.</li> <li>e) <ul style="list-style-type: none"> <li>(i) Not addressed.</li> <li>(ii) purchasing or selling of business assets or entities</li> </ul> </li> </ul>

<sup>13</sup> While we understand that the creation or management of legal persons or arrangements may constitute the practice of law, preparation for such transactions falls within the scope of qualifying activities of the FATF recommendations, and such activity is routinely conducted by accountants.

CATEGORY OF STANDARD	FATF RECOMMENDATION	CANADIAN LEGISLATION
Specified Activities for Only Suspicious Transaction Reporting	"Extended to the rest of the professional activities of accountants, including auditing" <sup>14</sup>	Only specified activities subject to suspicious transaction reporting. Assurance activities specifically excluded.

48. As illustrated in the table above, Canada’s regime regarding accountants is technically not compliant with FATF recommendations. The FATF’s own technical evaluations of Canada’s regime since 2008 are summarized below, along with considerations of the achievement of expected outcomes and results.

## 7.5 CONSIDERATION OF EFFECTIVENESS

### 7.5.1 Monitoring and Oversight of Compliance

49. Perhaps because of the wording of Canada’s legislation, the FATF mutual evaluations of Canada with respect to the accounting sector have historically focused on the role of professional accounting bodies as self-regulatory organizations. That analysis does not completely cover the sector because, as explained, not all accounting services are subject to supervision. This is due to the parameters of each province’s CPA legislation, by-laws and regulations.

50. In their third mutual evaluation of Canada’s anti-money laundering and combating of the financing of terrorism regime, the FATF found that significant deficiencies against prevailing recommendations relevant to the accounting sector. Those deficiencies are summarized in Appendix C – Summary of FATF 3rd Mutual Evaluation Findings Relevant to Accountants.

51. Of their findings in that evaluation, the most significant is related to monitoring and oversight of accountant and accounting firm compliance as well as deficiencies in suspicious transaction reporting. It was also commented that accountants were not subject to beneficial ownership requirements, nor required sanctions and politically exposed person screening.<sup>15</sup>

52. Canada’s fourth mutual evaluation findings were published in 2016. Some of the findings related to accountants were repeated. Again, the most significant deficiencies related to monitoring and oversight of accountant and accounting firm compliance as well as deficiencies in suspicious transaction reporting. (Financial Action Task Force, 2016)

<sup>14</sup> Auditors are required to report suspicious transactions to competent authorities in the United States, the United Kingdom, and Australia. (Salehi, et al., 2020)

<sup>15</sup> Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2018 will subject the accounting sector to beneficial ownership requirements and politically exposed foreign person screening in 2021 in certain circumstances, but not required sanctions screening.

53. The third evaluation report asserted that “Limited staff resources deprives FINTRAC of closely and efficiently monitoring DNFBSs’ compliance with the PCMLTFA requirements especially in sectors/provinces where the primary regulators or SROs are not or insufficiently involved in AML/CFT compliance supervision.”
54. FINTRAC’s attempt to assess a large volume of accountants (1,500 in 2006/2007) for compliance by way of questionnaires resulted in a response rate of 75%. This is low when compared to 100% for casinos, 89% for financial institutions, and 63% for real estate brokers. (Financial Action Task Force, 2008) An additional 1,480 compliance assessment questionnaires were sent in 2011/2012. The response rate for these questionnaires is unknown. Also unknown is whether there was an overlap between the first and second rounds of questionnaires. (Financial Action Task Force, 2014) There have been few actual examinations of accounting firms. The following is a summary based on the third mutual evaluation report, the sixth follow-up report following the third mutual evaluation, and the fourth mutual evaluation:
- 2004/2005 – 0
  - 2005/2006 – 19
  - 2006/2007 – 7 (partial statistic)
  - 2008/2009 – 21
  - 2009/2010 – 48
  - 2010/2011 – 20
  - 2011/2012 – 0
  - 2012/2013 – 25
  - 2013/2014 – 11
  - 2014/2015 – 10
55. Even considering the use of compliance assessment questionnaires, the FATF clearly states in its third evaluation that this level of examination is not sufficient for the purpose: “Quite obviously, such a limited number of on-site examinations made by FINTRAC compared with the number of potential reporting entities cannot be considered as sufficient to ensure an effective monitoring of compliance even if FINTRAC targets its examinations based on a comprehensive risk assessment. It should be completed by interventions of provincial regulators or SROs. However, these institutions are not in charge of ensuring AML/CFT compliance, and as for the other sectors examined above, their level of involvement in that area, the regulatory basis on which they rely and the methodology adopted may strongly differ from one province or sector to another.” (Financial Action Task Force, 2008)

56. With the FATF’s estimate of a primary population of accountants at 3,829, and assuming no repeat examinations, FINTRAC has examined approximately four percent of the primary reporting entities in this sector.
57. In their third mutual evaluation, the FATF noted that “the largest 20 [accounting] firms generated 54% of the total operating revenues. (Financial Action Task Force, 2008) Even if those firms were among those selected for FINTRAC examination, we are not persuaded that operating revenues proportionately represent the extent of qualifying activities in the country, or provide insights into the highest risk qualifying activities in the country.
58. FINTRAC examination results in the accounting sector have revealed issues in the design of reporting entity compliance issues. The statistics below indicate the percentage of firms examined that were cited for at least one deficiency in their compliance structure over the noted period. Many of those deficiencies related to failures in the money laundering risk assessments and effectiveness reviews of the examined. (Financial Transactions and Reports Analysis Centre of Canada, 2015)
- 2008/2009 – 38% (8 of 21)
  - 2009/2010 – 52% (25 of 48)
  - 2010/2011 – 45% (9 of 20)
  - 2011/2012 – no examinations
  - 2012/2013 – 92% (23 of 25)
  - 2013/2014 – 64% (7 of 11)
59. No examination of reporting entities in the accounting sectors has ever resulted in a public administrative monetary penalty on that subject. This is supported by a thorough review of the FINTRAC website ([fintrac-canafe.gc.ca/pen/4-eng](http://fintrac-canafe.gc.ca/pen/4-eng)), accessed October 1 - 15, 2020, along with the personal knowledge of the authors. No FINTRAC penalties have been the subject of a public notice between May 11, 2016 and November 6, 2020, for any reporting entity sector.<sup>16</sup>
60. Additionally, the FATF found that while provincial supervisors had tools at their disposal for effective oversight, there was “no evidence that these are dissuasive, effective and proportionate, since no data or statistics regarding sanctions taken by these regulators on the ground of AML/CFT non-compliance issues have been made available to the assessment team.” (Financial Action Task Force, 2008)

<sup>16</sup> Two penalties were published after that date and before the updated version of this report, one in respect of a casino, and another in respect of a money services business.

61. We reviewed the professional discipline case decisions of Chartered Professional Accountants of British Columbia and Chartered Professional Accountants of Ontario published on their websites<sup>17</sup> for the years 2017 to 2020 inclusive and found none related to compliance with Canadian anti-money laundering or counter-terrorist financing or sanctions legislation.<sup>18</sup>
62. Based on the outcomes of that review and the authors' personal knowledge, practice inspections of Chartered Professional Accountants of Ontario and Chartered Professional Accountants of British Columbia do not include anti-money laundering in their scope. Paragraph 102.1 of the Chartered Professional Accountants of British Columbia's Code of Professional Conduct imposes an obligation to promptly notify their registrar upon being found guilty or pleading guilty to a criminal offence or violation of the provisions of any securities legislation in effect in any jurisdiction, and even disciplinary processes of other professional regulatory bodies. While FINTRAC can elect to refer non-compliance for criminal prosecution rather than citing violations for administrative monetary penalties and has done so roughly 50 times in its history, we are aware of no convictions.<sup>19</sup> Rule 102.4 requires notification to the CPABC by a registrant of being found guilty of a failure to comply with the requirements of a regulatory body, or having entered into a settlement agreement in respect of compliance lapses. Guidance paragraph 2 for rule 102 holds that such offences might include money laundering or financing terrorism. (Chartered Professional Accountants of British Columbia, 2018)
63. Under the noted regimes self-regulatory organizations would be reliant on the outcomes of FINTRAC examinations to become aware of anti-money laundering compliance deficiencies and pursue discipline. The awareness would have to be through the publication of a penalty, which has not yet occurred for an accountant or accounting firm. As far as the authors are aware, there is no memorandum of understanding between any provincial accounting body and FINTRAC (such as

<sup>17</sup> For CPA Ontario I referred to this site from October 1, 2020 to October 15, 2020: <https://ebusiness.cpaontario.ca/discipline/RulesIndex.cfm>; and for CPA British Columbia I referred to <https://www.bccpa.ca/member-practice-regulation/ethics-and-discipline/discipline-summaries/resolutions-of-discipline-proceedings> and <https://www.bccpa.ca/member-practice-regulation/ethics-and-discipline/discipline-summaries/investigation-committee-determinations-and-recommendations>

<sup>18</sup>. The disciplinary cases in that period published by the Chartered Professional Accountants of British Columbia related to the following subjects, based on our categorization of the core issue for which the disciplinary case was pursued: Due care - tax returns; Lawyers trust report deficiency; Unlicensed/Uninsured public accounting; Audit rotation/audit failures; Motor vehicle incident; Maintenance of insurance; Failure to supervise employee; Loan to client; Fraud against employee/firm; Cooperation with institute; Unauthorized practice of law; Independence; Continuing professional development; Unprofessional language; Communication with predecessor; Due care - client records; false or misleading documents; and, plagiarism.

<sup>19</sup> Rule 201 reminds those subject to the rules that they "should be cognizant of and comply with the provisions of any legislative requirements pertaining to any of the registrant's professional services", although it could be interpreted to apply only licensing related legislation based on the wording of section 201.1. Rule 213 holds that "A registrant shall not associate with any activity that the registrant knows, or should know, to be unlawful.



there is, for instance, with the self-regulatory Organization of Canada).<sup>20</sup>

64. To the extent that they cover accounting services, the provincial accountant acts, regulations, by-laws, and codes of professional conduct contain measures to discourage criminal involvement in regulated firms and by regulated individuals in the sector.
65. There are some gaps in the Chartered Professional Accountants of British Columbia Code of Conduct when compared to the Handbook of the International Code of Ethics for Professional Accountants. This handbook is published by the International Ethics Standards Board for Accountants of the International Federation of Accountants (IFAC) (the "IFAC Handbook"), of which Chartered Professional Accountants of Canada is a member. (International Federation of Accountants, 2020) IFAC's mission is "to serve the public interest by supporting the development of high-quality international standards; promoting the adoption and implementation of these standards; building the capacity of professional accountancy organizations; and speaking out on public interest issues." (International Federation of Accountants, 2018) The main divergence relevant to money laundering related to the subject referred in the Chartered Accountants of British Columbia's Code of Professional Conduct calls Rule 212: Handling the property of others, and the IFAC Handbook's Section 350: Custody of Client Assets. While the former is silent on anti-money laundering measures, the latter provides that:
- 350.4 As part of client and engagement acceptance procedures related to assuming custody of client money or assets, a professional accountant shall:
- a) Make inquiries about the source of the assets; and
- b) Consider related legal and regulatory obligations.
- 350.4 Inquiries about the source of client assets might reveal, for example, that the assets were derived from illegal activities, such as money laundering. In such circumstances, a threat would be created and the provisions of Section 360 would apply. (International Federation of Accountants, 2018)
66. The national provincial accounting body, Chartered Professional Accountants Canada, has published the guide for anti-money laundering compliance. This is referenced on some provincial body websites but is now not current with prevailing and known new anti- money laundering legislation, guidance and risk. (McGuire, 2014)

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<sup>20</sup> It is conceivable that Chartered Professional Accountants of British Columbia might become aware of money laundering compliance lapses because of the operation of Rule 211 of the Code of Conduct, which requires the registrants to report to the Registrar apparent breaches of the code "or any information raising doubt as to the competence, integrity or capacity to practise of another registrant or applicant", with certain exceptions. While anti-money laundering violations might not breach the rule 201, it might be captured as a matter of integrity or "unlawful activity" under rule 213.

67. Chartered Professional Accountants of Canada makes available to its members a “Practitioner’s Toolkit”, designed “to provide practitioners with guidance on practice- related matters.” This toolkit contains an entire module on regulatory and risk management. Despite the name of that module, there is no reference within it, nor within the balance of the toolkit that references the obligations of practitioners to anti-money laundering legislation or standards. (Chartered Professional Accountants of Canada, 2017)
68. Together with the International Federal of Accountants, the Chartered Professional Accountants of Canada recently published and publicized their white paper on approaches to beneficial ownership transparency, with a view to the enhancement of the global framework to reduce financial crime. (International Federation of Accountants and Chartered Professional Accountants of Canada, 2019)
69. It is the view of the authors that the FINTRAC guidance on the risk-based approach (Financial Transactions and Reports Analysis Centre of Canada, 2018) for accountants is insufficient, especially since it is the compliance regime element with which reporting entities in the sector had the most difficulty. Particularly:
- a) It does not sufficiently function as a workbook with a workflow for what should be its target audience (individual accountants and small to mid-sized accounting firms);
  - b) It does not have fidelity to the underlying legislation;
  - c) It does not sufficiently address the threats and vulnerabilities of accountants using authoritative sources, nor their significance/weighting by the specified factors, nor relate them to triggering activities and transaction risk;
  - d) It does not provide a complete or rigorous method for inherent or residual risk, or particulars about the ways by which mitigating controls reduce inherent risk;
  - e) It does not address terrorist financing risk in a meaningful way;
  - f) It does not provide parameters for open source research;
  - g) It does not provide processes or indicators to address the concepts of effectiveness as a means for evaluation and revision over time.

#### 7.5.2 Standards Related to Assurance and Money Laundering

70. It was explained earlier in the report that assurance services are not subject to suspicious transaction reporting requirements, contrary to the FATF recommendation. Notwithstanding, the Canadian Standard on Quality Control requires that audit firms establish “policies and procedures for the acceptance and continuance of client relationships and specific engagements, designed to provide the firm with reasonable assurance that it will only undertake or continue relationships and engagements where the firm ... has considered the integrity of the client, and does not have information that would lead it to conclude that the client lacks integrity.” The explanatory notes go on to say that the firm

might consider:

- a) The identity and business reputation of the client's principal owners, key management, and those charged with its governance.
- b) The nature of the client's operations, including its business practices.
- c) Information concerning the attitude of the client's principal owners, key management and those charged with its governance towards such matters as aggressive interpretation of accounting standards and the internal control environment.
- d) Whether the client is aggressively concerned with maintaining the firm's fees as low as possible.
- e) Indications of an inappropriate limitation in the scope of work.
- f) *Indications that the client might be involved in money laundering or other criminal activities* [emphasis added]. (Canadian Professional Accountants of Canada, 2009)

71. Canadian Auditing Standards (CAS) 250 relates to the consideration of laws and regulations in an audit of financial statements. Section 29 requires that "if the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether law, regulation or relevant ethical requirements:

- a) Require the auditor to report to an appropriate authority outside the entity.
- b) Establish responsibilities under which reporting to an appropriate authority outside the entity may be appropriate in the circumstances." (Chartered Professional Accountants of Canada, 2018)

### 7.5.3 Suspicious Transaction Reporting

72. Suspicious transaction reporting statistics represent an objective and key performance indicator of a reporting entity sector's understanding of the nature and level of their money laundering and terrorist financing risks, as well as its application of risk-sensitive controls. FINTRAC depends on these reports to fulfil their mandate and say that their enforcement of regulatory expectations is designed to achieve "compliance for intelligence." (Financial Transactions and Reports Analysis Centre of Canada, 2017)

73. The FATF reported the following deficiencies related to suspicious transaction reporting and accountants in their third mutual evaluation:

- a) Professionals face some difficulties to clearly determine which firms or individuals are subject to the requirement and what should be reported. The challenge in that determination motivated an entire chapter titled "Determining if the Obligations Are Applicable" in CPA Canada's Guide to Comply with Canada's Anti-Money Laundering Legislation. (McGuire, 2014) The FATF raised the same issue in their fourth mutual evaluation in which they wrote,

“The accountants’ level of awareness of ALM/CTF obligations is low. The competent professional association underlined that, in the absence of guidance and outreach efforts, accountants are often unclear as to when they are subject to the AML/CFT regime.” (Financial Action Task Force, 2016);

- b) There is currently no explicit provision requiring that accountants pay attention to all complex, unusual large transactions that have no apparent or visible economic or lawful purpose, and it does not cover the full range of monitoring situations as stipulated in the recommendations;
- c) Effective implementation of the suspicious transaction reporting requirement is limited by the fact that accountants are only required to identify and ascertain the identity of their clients in the case of large cash transactions;
- d) The circumstances in which accountants to have to report suspicious transactions under the legislation are too limited;
- e) The Suspicious Transaction Reporting requirement does not yet cover attempted transactions;
- f) There is no general enforceable requirement for accountants to give special attention to transactions or business relationships connected with persons from or in countries that do not or insufficiently apply FATF recommendations but only through guidance or advisories sent on a case by case basis.
- g) There are no effective measures in place whereby accountants are advised of countries that have specific weaknesses in their AML/CTF systems; and,
- h) The relatively low numbers of STRs sent by real estate agents/sales representatives and accountants raise significant concerns in relation to the effectiveness of the reporting system in these sectors. (Financial Action Task Force, 2008)

74. The following table summarizing suspicious transaction reporting filing by the DNFBP sector is copied directly from the evaluation. (Financial Action Task Force, 2008)

	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007	<b>Total</b>
Accountants	7	20	20	40	20	12	<b>119</b>
Casinos	143	498	360	390	420	223	<b>2 034</b>
Legal counsel <sup>159</sup>	5	2	3	0	0	0	<b>10</b>
Real estate agents/sales representatives	2	8	6	6	12	1	<b>35</b>

75. Suspicious transaction reporting essentially ceased in 2011/2012, with only a single report filed in 2012/2013, and no reports filed in either 2013/2014 or 2014/2015. The FATF observed that “the accountants’ level of awareness of AML/CTF is quite low,” and “the fact that no STRs have been filed

by accountants and BC notaries, and the low number of STRs received from the real estate sector raise control". (Financial Action Task Force, 2016)

76. Subsequent to the initial release of this report, the Commission provided updated reporting statistics from FINTRAC. According to those statistics, there was a single suspicious transaction filed in 2015 (presumably calculated by calendar year, given the disparity with the FATF statistics), three in 2016, one in 2017, and one in 2018. The Commission's statistics include large cash transaction reports filed by accountants, including one in 2014, fourteen in 2015, four in 2016, none in 2017, and one in 2018. (Financial Transactions and Reports Analysis Centre of Canada, 2020)

## 8 CONCLUSIONS

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*What is the extent and nature of accountant involvement in money laundering domestically and internationally, based on authoritative sources?*

77. The role of accountants in money laundering internationally has been escalating since the adoption of anti-money laundering standards. This is due to the complexity of money laundering at scale, the nature of their expertise, and the credibility that the collective reputation of the profession brings. Without additional controls, the role of the accountant and professional money launderer will continue to gain prominence to keep pace with the enhancements to global anti-money laundering measures and their more consistent application worldwide.
78. The extent of accountant involvement in money laundering changes based on the sophistication of the organization for which they are laundering funds and the degree to which the organization's activities are illegal. Accountant expertise becomes more critical as organizations become more sophisticated and geographically diverse, and as they accumulate capital from excess criminal profits. The most prevalent money laundering techniques used by accountant, wittingly and not, and those that are causing the greatest international concern generally include:
- a) the exploitation of the opacity of beneficial ownership
  - b) trade based money laundering
  - c) the use of new and alternative payment systems
- The crimes from which those funds derive range from corruption to tax evasion, securities fraud, narcotics offences and human trafficking.

79. In Canada, the lower end of estimated money laundering volumes is approximately CAD 40 billion. Researchers and supra-national bodies have pointed out that those volumes of funds require professional assistance to launder effectively. Indeed, credible research has pointed to accountant involvement in money laundering since it was criminalized. Today, the priorities of the RCMP, Department of Finance and FINTRAC are biased towards professional money launderers, including accountants. Those priorities will be supported with a 2019 change to the Criminal Code that adds

the concept of recklessness to the offence. The absence of that element and generally low enforcement levels in Canada are just some of the factors that have led to few reported criminal cases of money laundering involving accountants. Those few cases that the research yielded confirm that accountants are sought after to assist criminals to launder their funds – even when they are covert police agents - with a tendency towards co-mingling in legitimate businesses. One of the most concerning of the cited cases involved a public accounting firm reportedly accepting a bank draft on behalf of a British Columbia company, which was then subject to US sanctions. They were presumably accepting those funds for the entity since the entity did not have a vessel to hold and disburse it in their own name. The concern here is that not just the use of professional expertise to arrange such a transaction, but that accounting firms' accounts or trust accounts would be used for this purpose, as a lawyer's trust account would be in a similar situation.

*How effective are the current anti-money laundering regulations and related self-regulatory practices at addressing the threat caused by accountant involvement in money laundering in British Columbia and Canada?*

80. Canada's current anti-money laundering regulations and self-regulatory practices are not effective in addressing the threat caused by accountant involvement in money laundering in British Columbia and Canada.
81. First, the regulations and practices are not technically compliant with the FATF recommendations in critical ways, as summarized in the table following paragraph 45. The regulations do not scope all activities that would classify an individual as an accountant or an entity as an accounting firm. Nor do they cover all the qualifying activities that should be subject to identification and monitoring and record-keeping and suspicious transaction reporting, notably: the organization of contributions for the creation, operation or management of companies; and the creation, operation or management of legal persons or arrangements. As explained in the reply to the first question, those activities are critical to the most prevalent money laundering schemes in Canada and internationally. Neither is auditing or other relevant accounting activities subject to suspicious transaction reporting.
82. The effectiveness of the regime is compromised to the extent that there is no monitoring or supervision or fit-for-purpose analysis for the anti-money laundering purposes of individuals and entities that do not fall under the jurisdiction of provincial accounting bodies. This is because of the variety of definitions of public accounting and the limitations of the anti-money laundering legislation that excludes those individuals and entities from FINTRAC examinations.
83. The effectiveness of the regime related to the accounting sector is compromised even for those individuals and entities who do fall in scope. This is because of their lack of understanding of the application of the requirements, the historically low rate of FINTRAC examinations, the failings in risk-

based approach guidance, and the limited involvement of professional accounting bodies in anti-money laundering compliance and education.

84. Most concerning to the FATF is the negligible number of suspicious transaction reports produced by the sector. They represent an objective and key performance indicator of the reporting entity sector's understanding of the nature and level of their money laundering and terrorist financing risks; and application of risk-sensitive controls. FINTRAC depends on these reports to fulfil its mandates.

*How could British Columbia's or Canada's regulatory or self-regulatory regimes be modified to diminish the threat of accountant involvement in money laundering, or increase the effectiveness of mitigation measures?*

85. Our recommendations do not include matters that have already been addressed by regulations that have been published but are not yet in force.

#### 8.1. REGULATIONS

86. The definition of accountant should be amended to include all those who perform the FATF-specified accounting service, rather than being focused on only those with professional designations.
87. The scope of specified activities for client identification, client monitoring, record-keeping, and suspicious transaction reporting should be expanded to align with the specified activities of the FATF recommendations. That scope should also include preparation for those activities, rather than just their execution.
88. All FATF-specified accounting services should be subject to suspicious transaction reporting, including, for instance, auditing.
89. Specified activities should be subject to ongoing sanctions list screening.
90. Consideration should be given to a registry of those performing FATF-specified accounting services outside of the supervision of a self-regulatory organization, accompanied by background screening of owners, managers, and key employees.

#### 8.2. SELF-REGULATORY ORGANIZATIONS

91. Self-regulatory organizations should consider entering into formal agreements with FINTRAC to share intelligence and compliance-related information, particularly related to member discipline.
92. Self-regulatory organizations should include modules within their practice inspections for compliance with anti-money laundering standards, which should, at the very least, consider the most recent documented biennial effectiveness review and a review of bank account activity.
93. Self-regulatory organizations should update their annual declaration forms to inquire about member

involvement in specified activities for the purpose of informing risk- sensitive practice inspections and other inquiries.

94. Self-regulatory organizations should consider amending their standards to:
- a) Require member self-reporting of FINTRAC-cited deficiencies that are rated by FINTRAC as serious or very serious, and consider pursuing disciplinary measures as a matter of integrity and reputation.
  - b) Include anti-money laundering guidance with standards relating to handling the property of others.
  - c) Include anti-money laundering guidance or references in their practice materials, including the Practitioner’s Toolkit.
  - d) Prohibit the acceptance of significant volumes of cash.
95. FINTRAC
- a) Should upgrade its risk-based approach guidance for accountants to align with the expectations articulated in the FATF risk-based approach guideline of 2019.
  - b) Should be required to include self-regulatory organizations as disclosure recipients in instances where FINTRAC has reasonable grounds to suspect that designated information relates to a current or past regulated member’s involvement in a money laundering offence or a terrorist activity financing offence.
  - c) Should expand its examination and outreach to the sector, ideally in cooperation with the self-regulatory organizations.
96. Thank you for engaging us in this matter.
97. Questions or requests for corrections may be directed to [matt@theamlshop.ca](mailto:matt@theamlshop.ca)

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## 9 APPENDIX A – MATERIALS CITED

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## 10 APPENDIX B – FINTRAC’S SUMMARY OF THE ANTI-MONEY LAUNDERING OBLIGATIONS OF ACCOUNTANTS

The screenshot shows the website for the Financial Transactions and Reports Analysis Centre of Canada. The page title is "Accountants". The navigation menu includes: Obligations, Guidance, Reporting to FINTRAC, Reporting entities, Financial intelligence, and Publications. The breadcrumb trail is: Home → Reporting entities → Accountants.

**Accountants**

Accountants and accounting firms must fulfill specific obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and associated Regulations to help combat money laundering and terrorist financing in Canada. This means that you have obligations if you are a chartered accountant, a certified general accountant or a certified management accountant. You also have obligations if you are an accounting firm which is defined as an entity engaged in the business of providing accounting services to the public that has at least one partner, employee or administrator that is an accountant.

Accountants and accounting firms are subject to the PCMLTFA when they engage in any of the following activities on behalf of any individual or entity, or give instructions on behalf of any individual or entity in respect of:

- receiving or paying funds;
- purchasing or selling securities, real properties or business assets or entities; or
- transferring funds or securities by any means.

You are subject to the requirements described further below when you engage in these activities, regardless of whether you receive fees or have a formal letter of engagement to do so. In other words, even if you carry out these activities on a voluntary basis, you are subject to the requirements of the PCMLTFA.

If you are paid for your accounting services, the receipt of the professional fees does not trigger associated obligations under the PCMLTFA.

When you **give instructions** for any of the triggering activities, it means that you actually direct the movement of funds. By contrast, when you **provide advice** to your clients, it means that you make recommendations or suggestions to them. Providing advice is not considered to be giving instructions.

- **Example of giving instructions:** "Based on my client's instructions, I request that you transfer \$15,000 from my client's account, account number XXX, to account number YYY at Bank X in Country Z."
- **Example of providing advice:** "For tax purposes, we recommend that you transfer your money into a certain investment vehicle."

If you are an employee of an accountant or accounting firm, the requirements described further below are the responsibility of your employer, except with respect to reporting suspicious transactions and terrorist property, which is applicable to both you and the employer.

Accountants and accounting firms are responsible for providing FINTRAC with certain transaction reports, for implementing a compliance program and for keeping records that may be required for law enforcement investigations. Their obligations under the PCMLTFA and associated Regulations are described below.

## Compliance program

A comprehensive and effective compliance program is the basis of meeting all of your obligations under the PCMLTFA and associated Regulations. During a FINTRAC examination, it is important to demonstrate that the required documentation is in place and that employees, agents, and all others authorized to act on your behalf are well trained and can effectively implement all the elements of your compliance program. A senior officer must approve the compliance program and the compliance officer must have the necessary authority to carry out the requirements of the program. You must:

- Appoint a compliance officer responsible for the implementation and oversight of the compliance program;
- Develop and apply written compliance policies and procedures that are kept up to date and approved by a senior officer;
- Apply and document a risk assessment, including mitigation measures and strategies;
- Develop and maintain a written training program for employees, agents, and others authorized to act on your behalf; and
- Review your compliance program (policies and procedures, risk assessment and training program) every two years for the purpose of testing its effectiveness.

See [Compliance program requirements](#), the [Risk-based approach guide](#) and the [Risk-based approach workbook for accountants](#) for more information on these obligations.

## Know your client

As an accountant or accounting firm, you must verify the identity of clients for certain activities and transactions according to the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (PCMLTFR). Part of knowing your client includes following the methods to identify clients, as well as conducting certain additional activities as listed below:

- [When to identify individuals and confirm the existence of entities – Accountants](#);
- [Methods to identify individuals and confirm the existence of entities](#);
- [Business relationship requirements](#);
- [Ongoing monitoring requirements](#); and
- [Third party determination requirements](#).

## Reporting

Accountants and accounting firms are required to complete reports about certain transactions and property and submit them to FINTRAC. Financial transaction reports are critical to FINTRAC's ability to analyze transactions in order to develop financial intelligence that is disclosed to law enforcement and partner agencies. Therefore, the quality of your reporting will be reviewed by FINTRAC in examinations.

**Suspicious transactions:** You must submit a suspicious transaction report (STR) **as soon as practicable** after completing the measures required to establish reasonable grounds to suspect that a transaction is related to the commission or the attempted commission of a money laundering/terrorist activity financing offence. The following STR guidance pieces explain how to identify and report suspicious transactions and should be read together. See [What is a suspicious transaction report?](#), [Reporting suspicious transactions to FINTRAC](#) and [Money laundering and terrorist financing indicators - Accountants](#).

**Terrorist property:** When you know that property in your possession or under your control is owned, controlled by or on behalf of a terrorist or a terrorist group, you must submit a report without delay. You must also submit a report to the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS). See [Guideline 5: Submitting Terrorist Property Reports](#).

**Large cash transactions:** When you receive \$10,000 CAD or more in cash (including taxes or other fees) either in a single transaction or in multiple transactions within a 24-hour period, you must submit a report within 15 calendar days. See [Guideline 7A: Submitting Large Cash Transaction Reports to FINTRAC electronically](#) and [Guideline 7B: Submitting Large Cash Transaction Reports to FINTRAC by paper](#).

If you have a computer and an internet connection, you must submit all reports to FINTRAC electronically, except Terrorist Property reports, which can only be submitted on paper.

## Record keeping

You are responsible for keeping certain transaction and client identification records. These records are to be kept in such a way that they can be provided to FINTRAC within 30 days if required to do so. See [Record keeping for accountants](#) for details.

## Penalties for non-compliance

Non-compliance with Part 1 or 1.1 of the PCMLTFA may result in [criminal or administrative monetary penalties](#).

## Glossary

FINTRAC has created a [Guidance glossary](#) that defines certain terms used throughout its guidance documents.

## **11 APPENDIX C – SUMMARY OF FATF 3RD MUTUAL EVALUATION FINDINGS RELEVANT TO ACCOUNTANTS**

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1. The circumstances in which accountants have to carry out customer identification are too narrow, and the required customer identification measures are substantially very basic and extremely limited;
2. Canada has not implemented any specific AML/CTF measures concerning politically exposed persons that are applicable to accountants;
3. There are no specific legislative or other enforceable obligations for accountants to take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes;
4. Accountants are not required to have policies and procedures in place to address any specific risk associated with non-face-to-face business relationships or transactions;
5. There are currently no provisions for accountants that address the issue of relying on intermediaries or third parties to perform elements of the customer due diligence process outside the outsourcing type of scenario;
6. The circumstances in which accountants have to keep records are too limiting;
7. There is currently no explicit provision requiring that accountants pay attention to all complex, unusual large transactions that have no apparent or visible economic or lawful purpose, and it does not cover the full range of monitoring situations as stipulated in the recommendations;
8. The circumstances in which accountants have to carry out customer identification are too restrictive;
9. Professionals face some difficulties to clearly determine which firms or individuals are subject to the requirement and what should be reported [emphasis added];
10. Effective implementation of the suspicious transaction reporting requirement is limited by the fact that accountants are only required to identify and ascertain the identity of their clients in the case of large cash transactions;
11. The circumstances in which accountants to have to report suspicious transactions under the legislation are too limited;
12. The Suspicious Transaction Reporting requirement does not yet cover attempted transactions;
13. The relatively low numbers of STRs sent by real estate agents/sales representatives and

accountants raise significant concerns in relation to the effectiveness of the reporting system in these sectors;

14. There is no explicit requirement to: (1) keep up to date internal procedures, (2) have policies to monitor for and detect unusual and suspicious transactions and (3) ensure that the AML/CFT compliance officer has timely access to customer identification data and other CDD information, transactions records and other relevant information;
15. There is no mandatory requirement of an independent audit function to test AML/CTF regime requirement;
16. There are no requirements concerning screening procedures when hiring employees;
17. There is no general enforceable requirement for accountants to give special attention to transactions or business relationships connected with persons from or in countries that do not or insufficiently apply FATF recommendations but only through guidance or advisories sent on a case by case basis.
18. There are no effective measures in place whereby accountants are advised of countries that have specific weaknesses in their AML/CTF systems;
19. Limited staff resources deprive FINTRAC of closely and efficiently monitoring DNFBPs' compliance with the PCMLTFA requirements, especially in sectors/provinces where the primary regulators or SROs are insufficiently involved in AML/CFT compliance supervision.
20. The sanction regime available to FINTRAC is currently inadequate. Provincial regulators may have administrative sanctions at their disposal. Still, there is no evidence that these are dissuasive, effective and proportionate since no data or statistics regarding sanctions taken by these regulators on the ground of AML/CFT non-compliance issues have been made available to the assessment team.
21. There is no requirement to ensure adequate transparency. For instance, there is no obligation that information on the beneficial ownership of shares in legal persons is required to be collected by either the corporate registry, within corporate records held by legal persons or by lawyers, accountants or TCSPs.