



## MODULE 1: INTRODUCTION AND CULTURE OF COMPLIANCE

### LESSON 1 OF 10

## Welcome

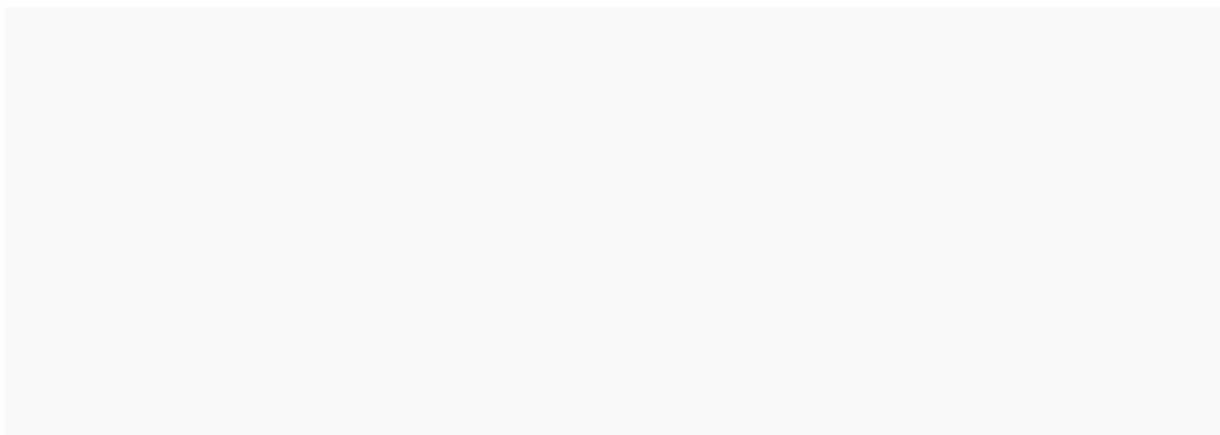
### Introduction

Module 1 introduces the legislation and regulations that govern anti-money laundering (AML) compliance in Canada. The module discusses what it means to be FINTRAC compliant and the importance of establishing a compliance program and fostering a culture of compliance within the brokerage. Learners will review the steps required to successfully establish a culture of compliance and understand the importance of doing so, in light of the recent attention on money laundering in real estate.

### Learning Objectives

By the end of this module, learners will be able to:

1. describe how and why money laundering occurs within the BC real estate sector,
2. explain the basic principles of a culture of compliance and why they are important,
3. list the steps that must be taken to create a culture of compliance, and
4. discuss why a culture of compliance is essential, in the context of AML, and what can happen without such a culture in place.



## LESSON 2 OF 10

## Introduction to Money Laundering

A good understanding of what money laundering is and how it works is essential for brokerages to achieve a positive culture of compliance. Compliance officers, REALTORS®, and staff who have a solid understanding of money laundering in Canada are more successful in identifying whether a transaction is suspicious and in fulfilling their compliance obligations. Through their vigilance, they can help protect the brokerage from many risks, including:

- ◆ non-compliance
- ◆ damage to reputation
- ◆ financial losses

Financial losses could include penalties for non-compliance or loss of business due to an injured reputation.

Realtors, compliance officers, and staff can also help a brokerage renew its commitment to protect the real estate sector from criminal activity and safeguard the greater community.

### Money Laundering Overview

Money laundering is the act of disguising the proceeds of crime to make them appear legitimate.

Money laundering allows criminals, including organized crime and drug traffickers, to benefit from their crime by enabling them to actually use the profits of their illegal activities without arousing suspicion.

Money laundering occurs in many sectors of the economy, but real estate can be especially attractive to criminals looking to “clean” the proceeds of their crime. This is partially because of the high ticket value of real estate purchases.

### MONEY LAUNDERING OFFENCES UNDER CANADIAN LAW

Money laundering offences are acts committed with the intention of concealing or converting money (or property) when a person knows or believes that these were derived from the commission of a designated offence.

Designated offences are the most serious offences in Canada's *Criminal Code* and other federal legislation. Designated offences include, but are not limited to:

- ◆ robbery
- ◆ illegal drug trafficking
- ◆ counterfeit money
- ◆ bribery
- ◆ stock manipulation
- ◆ fraud
- ◆ tax evasion
- ◆ forgery
- ◆ copyright infringement
- ◆ murder

## LESSON 3 OF 10

**Anti-Money Laundering Laws in Canada****The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)**

The PCMLTFA is Canada's anti-money laundering and anti-terrorist financing legislation. Together with several regulations made under the PCMLTFA, this legislation sets out the anti-money laundering and anti-terrorist financing obligations applicable to brokerages.

The following table identifies the key PCMLTFA regulations that enable federal legislation and are applicable to Realtors and brokerages.

<a href="#">Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations</a>	This is a key regulation where most operative requirements are set out.
<a href="#">Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations</a>	This regulation outlines suspicious transaction reporting requirements, including information that must be in a suspicious transaction report.
<a href="#">Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations</a>	This regulation sets out the administrative penalties for violating the legislation.

While compliance officers might not consult the legislation directly, the contents of the compliance program flow from the Act and these regulations.

## The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

The PCMLTFA and regulations are administered by FINTRAC, an independent agency of the Government of Canada. FINTRAC has broad powers to:

- ◆ **Conduct** compliance examinations
- ◆ **Impose** monetary penalties for violations
- ◆ **Publish** the penalties

On FINTRAC's [website](#), there are guidelines, advisories, operational briefs, alerts, and policy interpretations regarding specific aspects of the legislation as well as money-laundering and terrorist-financing trends.

FINTRAC values the contributions of managing brokers, compliance officers, staff, and Realtors who actively help reduce money laundering and terrorist financing in real estate by supporting their brokerage's compliance program.

*"As reporting entities, you have a very important role to play and without your partnership, we cannot succeed in the global fight on anti-money laundering and counter terrorist financing.*

*By ensuring compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, real estate professionals are positioning themselves to protect their businesses from money laundering risks. First and foremost, a solidly implemented and maintained compliance program is crucial and a foundational piece."*

– Murray Dugger, Vancouver Regional Director, FINTRAC

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A brokerage's compliance officer can access [guidance](#) that is tailored to brokerages and the real estate sector from FINTRAC's website.

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Compliance officers can also subscribe to FINTRAC's [mailing list](#) to stay up to date on changes.

## The Financial Action Task Force (FATF)

The FATF is an intergovernmental body in which Canada actively participates that sets key standards for combating money laundering and terrorist financing. Canada's anti-money laundering legislation largely follows FATF guidance.

## Penalties for Non-Compliance

In the event of non-compliance with FINTRAC, a managing broker and brokerage can face penalties for failing to comply with Canadian anti-money laundering legislation. This could include costly and public civil penalties as well as regulatory enforcement actions. There may even be criminal prosecution for any egregious violations. The penalty depends on the severity of the violation:

- ◆ **Minor violation:** \$1 to \$1,000 per violation
  - E.g., failure to report a large cash transaction
- ◆ **Serious Violation:** \$1 to \$100,000 per violation
  - E.g., failure to appoint a person responsible for implementing an anti-money laundering compliance program
- ◆ **Very Serious Violation:** \$1 to \$100,000 per violation for an individual; \$1 to \$500,000 per violation for an entity
  - E.g., failure to file a suspicious transaction report

Exercising reasonable care and performing due diligence is the best way to avoid penalties associated with non-compliance.

## The REALTOR® Code and Canadian Law

Because the 11 real estate boards in British Columbia don't have specific jurisdiction in FINTRAC related matters, most do not deal directly with FINTRAC compliance. However, there is one noted overlap: the [REALTOR® Code](#). According to Article 18 of the Code:

CREA

***"18. Compliance with Statutory Requirements***

*The business of a REALTOR® shall be conducted in strict accordance with all statutory and regulatory requirements."*

- REALTOR® Code A.18

If a Realtor has been found to have violated a statute or regulation, their board may charge them under Article 18. A certificate of conviction or other proof of non-compliance provided by the authorizing body (such as FINTRAC) may be used as evidence by the board. The board can initiate discipline proceedings under Article 18 when the Realtor's conduct also violates the REALTOR® Code.

Under Article 21 of the Code, a Realtor can also be held accountable for activities that occur outside of providing real estate services.

CREA

***“21. Conduct Unbecoming***

*A REALTOR® shall not engage in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.*

*21.1 This Article is intended to deal with conduct that, having regard to all of the circumstances, is egregious in nature and goes beyond simple error.*

*21.2 “Conduct” in this Article is not restricted to conduct in the course of providing real estate services.”*

– REALTOR® Code A.21

Therefore, boards have the ability to hold Realtors accountable should they fail to fulfill their FINTRAC compliance obligations as set out by the PCMLTFA.

## The Real Estate Council of British Columbia (RECBC) and Canadian Law

The Real Estate Council of British Columbia (RECBC) is supportive of compliance with PCMLTFA and FINTRAC.

RECBC

*“The Real Estate Council of BC is encouraged to learn of FINTRAC’s focus on the risks of money laundering within Canada’s real estate sector. We support FINTRAC taking appropriate action against brokerages that do not comply with their federally legislated requirements under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).”*

– [RECBC](#)

Since FINTRAC is not part of the *Real Estate Services Act* (RESA), RECBC rarely deals with FINTRAC in their discipline decisions. Penalties for non-compliance with FINTRAC do not fall under RECBC’s mandate; however, RECBC has stated that they may consider non-compliance with PCMLTFA as conduct unbecoming and the licensee could be subject to disciplinary action.

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To assist managing brokers, compliance officers, and Realtors in complying with Canadian law, Council has created some [Anti-Money Laundering Guidelines](#).

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## LESSON 4 OF 10

**Money Laundering in BC Real Estate: How and Why****The “How”: Stages of Money Laundering**

## STAGE 1

◆ **Placement:**

- Placing “dirty” money (proceeds of crime) into the financial system.
- This can occur in a number of ways, including: through gambling at casinos, combining dirty money with legitimate cash business revenues, and fake invoicing.

## STAGE 2

◆ **Layering:**

- Converting the proceeds of crime into another form, often creating complex layers of financial transactions and distancing them from the underlying criminal activity.
- This can occur in a number of ways, including: changing currencies, buying expensive real estate, purchasing expensive cars, investing in legitimate businesses.

## STAGE 3

◆ **Integration:**

- Reintroducing and reintegrating the laundered proceeds into the economy to create a perception of legitimacy.
- This can occur in a number of ways, including receiving dividends and making income off of a business.

The purchase and sale of real estate is generally done at the layering stage. This is implemented by engaging in real estate transactions that disguise the true beneficial ownership and look legitimate.

*“Beneficial owners are the actual individuals who are the trustees, and known beneficiaries and settlors of a trust, or who directly or indirectly own or control 25% or more of a corporation or an entity other than a corporation or trust, such as a partnership.”*

– [FINTRAC](#)

Techniques for layering used in the sale and purchase of real estate include:

1. the use of cross-border transactions, especially tax havens that have strict banking secrecy laws;
2. the use of trusts and corporations that disguise beneficial ownership (which is what the *BC Land Owner Transparency Act*, described later, is attempting to address); and
3. borrowing funds in one jurisdiction for repayment in another.

## THE “VANCOUVER MODEL”

The **Vancouver Model** is a term coined by Professor John Langdale of Macquarie University in Australia while studying the development of Asian organized crime around the world.

1. The Vancouver Model describes an informal network of underground bankers in Greater Vancouver and Asia, Mexico, and the Middle East who move money internationally without there being an actual international transfer of funds. Specifically, under the Vancouver Model an individual outside Canada wants to transfer money into Canada. Often this individual is a Chinese citizen looking to bypass that country’s currency controls.
2. This individual will transfer funds to an account outside of Canada that is controlled by a criminal organization. The individual then travels to Vancouver, where they are provided with the name of a person associated with the criminal organization who will arrange for a delivery of cash on arrival in Vancouver. The cash is usually the proceeds of crime, often delivered in suitcases of low denomination bills, that the criminal organization wants to launder.
3. As such, there is no movement of funds cross border that can be traced, but rather a system of debits and credits between the underground bankers that allows for the person in Canada to obtain their funds without using formal banking channels to do so. Often this cash is used to buy casino chips in Vancouver, which are then cashed in for a cheque. The money can then be used in Canada to make a large value purchase, including BC real estate. It is believed a professional money launderer can receive between 3 and 5% commission on each transaction.

– Source: FATF Report: Professional Money Laundering (July 2018) and Peter M. German, *Dirty Money Report: Part 2*, March 31, 2019.

## The “Why”: Why Real Estate?

*“Real estate is readily accessible and, in the Vancouver market, tends always to increase in value over time.”*

– Peter M. German, *Dirty Money Report: Part 1*, March 31, 2018

Authored by lawyer and former member of the R.C.M.P. Peter German, *Dirty Money* is a two-part report commissioned by the BC government. It describes the state of money laundering in British Columbia by examining several industries, including real estate, casinos, luxury cars, and horse racing.

## Why Real Estate is Attractive to Criminals

1. **Real estate has high value. A single real estate transaction can launder a lot of money.**

According to the study by the [International Monetary Fund](#), Canada has the fifth highest house price-to-income ratio. Vancouver’s and Toronto’s hot housing markets are driving forces behind this trend.



## HOUSE PRICE-TO-INCOME RATIO AROUND THE WORLD



SOURCE: Organisation for Economic Co-operation and Development

### 2. Real estate is seen as a safe investment.

*"Real estate cannot be lost or stolen, nor can it be carried away. Purchased with common sense, paid for in full, and managed with reasonable care, it is about the safest investment in the world."*

– Franklin D. Roosevelt, 32nd U.S. president

*"Every person who invests in well-selected real estate in a growing section of a prosperous community adopts the surest and safest method of becoming independent, for real estate is the basis of wealth."*

– Theodore Roosevelt, 26th U.S. president

*"Ninety percent of all millionaires become so through owning real estate. More money has been made in real estate than in all industrial investments combined. The wise young [person] or wage earner of today invests [their] money in real estate."*

– Andrew Carnegie, billionaire

### 3. There is potential for profit over time or income from rent.

### 4. The real estate sector is seen as less heavily regulated than other industries in relation to money laundering.

Some parts of the real estate sector are not regulated in relation to anti-money laundering. While some real estate professionals, including real estate brokers and developers, are regulated under the PCMLTFA, there are other unregulated parties

in the real estate sector, such as real estate investment trusts (REITs), real estate appraisers, and private lenders.

The existence of some unregulated parties may contribute to why the real estate sector is attractive to money launderers. New, enhanced anti-money laundering regulatory requirements for real estate brokers and sales representatives (as well as for money services businesses, casinos, and other regulated entities under the PCMLTFA) will take effect June 1, 2021.

**5. There is a history of opaque ownership: the owner of a property can be a corporation, trust, or nominee and therefore hide the true identity of the purchaser.**

A nominee can be a family member, friend, or associate of the money launderer. This person is trusted to conduct transactions on the money launderer's behalf and usually will not attract attention from law enforcement.

*"The use of nominees, or straw buyers, in real estate transactions is commonplace and is exploited by beneficial owners, including criminals engaged in money laundering. Three per cent of B.C. titles (33,292 in 20 years) are held by persons whose occupation is listed as student, homemaker, or unemployed and approximately 25% of them had clear title. These tend to be expensive houses, with 88 houses over \$10 million that are apparently owned by nominees.*

– Peter M. German, *Dirty Money Report: Part 2*, March 31, 2019

HOWEVER...

#### LAND OWNER TRANSPARENCY ACT

Launching in late fall 2020, BC's [Land Owner Transparency Act](#) creates a publicly accessible registry of beneficial interests in land. This is the first such land ownership transparency registry in Canada and is part of the BC government's plan to create transparency in real estate in the province. The registry is accessible by the general public and governmental authorities. Information contained in the registry is available for search and inspection by enforcement officers under:

- ◆ the *Land Owner Transparency Act*;
- ◆ Ministry of Finance officials;
- ◆ federal and provincial tax authorities;
- ◆ the British Columbia Assessment Authority;
- ◆ federal and provincial law enforcement; and
- ◆ regulators, including: FINTRAC, the British Columbia Securities Commission, the Law Society of British Columbia, and others.

Only some of the information in the registry will be available through a public search. Law enforcement, governments, and regulators will have full access.

### *BUSINESS CORPORATIONS ACT*

The BC [Business Corporations Act](#) requires private BC companies to maintain transparency registers of beneficial owners and those with significant control of the company. The goals of the transparency registry is to end hidden ownership, combat money laundering, and address distortions in the real estate market.

## LESSON 5 OF 10

**Anti-Money Laundering Compliance in BC Real Estate****Snapshot**

The Dirty Money report notes that suspicious transaction reporting to FINTRAC by real estate brokers *"has been dismal at best."* In 2018 and 2019, FINTRAC conducted more compliance examinations in the real estate sector than any other regulated sector. FINTRAC plans to increase its outreach and examinations in the real estate sector (and casino sector) in BC going forward.

- Sources: Peter M. German, *Dirty Money* Report: Part 2, March 31, 2019 and FINTRAC Annual Report 2018-2019.

Frequent staff training as part of a robust compliance program can help Realtors better assess and identify suspicious transactions so that the appropriate reports can be filed with FINTRAC. This will be further discussed later in this program.

**Why Anti-Money Laundering Compliance in the Real Estate Sector Matters**

Money laundering is a multi billion-dollar problem with annual money laundering in Canada estimated at \$46.7 billion for 2018, according to the [Maloney Report](#). Annual money laundering activity in British Columbia is estimated at \$7.4 billion for 2018. This problem has contributed to:

- ◆ higher home prices
- ◆ increased criminal activity
- ◆ broader economic and social impacts

**HIGHER CRIME RATES**

The ability to launder money allows organized crime, terrorist organizations, arms dealers, and other criminals to strengthen and expand their operations. The proceeds of crime attract more crime and encourage criminals to locate themselves within countries or regions where money laundering can more readily take place. These crimes can include:

- ◆ human trafficking
- ◆ drug trafficking – resulting in opioid deaths
- ◆ violent crime
- ◆ fraud

Watching out for suspicious transactions and filing the appropriate report with FINTRAC can help make real estate in BC less attractive to criminals and reduce local crime.

## HIGHER HOME PRICES

### How can home prices be inflated by money laundering?

An influx of buyers looking to use real estate to launder money may decrease supply and drive up real estate prices, contributing to unaffordable housing.

For example, a person who is trying to launder money by purchasing real estate is not as concerned with the prices of property as they are with laundering funds.

As such, they are generally willing to spend more than fair market value to buy property.

Once a higher price for property has been established, it drives up the property prices for surrounding properties.

According to the [Maloney Report](#), it is estimated that house prices in BC are about 5% percent higher than they would be in the absence of all money laundering.

## BROADER SOCIAL AND ECONOMIC IMPACTS

*“The economic and political influence of criminal organizations can potentially weaken the social fabric, collective ethical standards and, ultimately, the democratic institutions of society.”*

– FINTRAC Guideline 1

Countries or regions with weak or ineffective anti-money laundering controls are attractive to those looking to move and convert funds derived from crime.

Money laundering damages the integrity and stability of the Canadian financial sector and broader economy. Money laundering can distort economic data and hinder economic growth, affecting all Canadians and discouraging foreign investment.

Money laundering encourages criminal activity. When the proceeds of crime can easily be laundered, this provides an incentive to commit crimes. The underlying crimes may be harmful to individuals and society at large, e.g. sale of illegal drugs and overdose deaths.

Large criminal organizations may engage in corrupt practices, such as bribery of our public officials or of professionals.

Money launderers may also seek to evade taxes. Less revenue from taxes affects the ability of governments to provide services to citizens.

Money laundering may also distort prices of assets in the economy, including the price of real estate. Since criminals make investment decisions based on how best to launder their money, rather than based on the profit maximization motive of legitimate investors, the price of assets that are attractive for money laundering rise in comparison to less attractive assets.

If left unchecked, money laundering can also impact the broader financial sector and contribute to changes in interest rates and exchange rates, and to inflation.

- Sources: FINTRAC Guideline 1 and IMF Factsheet: IMF and the Fight Against Money Laundering and the Financing of Terrorism (March 8, 2018).

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In contrast, a strong and effective anti-money laundering regime can strengthen a country's economy.

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Real estate professionals combatting money laundering in real estate are part of a Canada-wide anti-money laundering regime that contributes to society as a whole.

## LESSON 6 OF 10

## Combatting Money Laundering by Fostering a Culture of Compliance

### What Is a Culture of Compliance?

A culture is made up of assumptions and behaviours.

Therefore, a compliance culture is a pattern of assumptions about compliance issues that an organization adopts and considers valid. These assumptions guide behaviour that reflects the group's ways of thinking and feelings about compliance. A culture of compliance is applicable to all regulatory requirements.

In the context of anti-money laundering (AML), a strong compliance culture is one where the value of AML compliance is demonstrated throughout the brokerage, by managing brokers and compliance officers, through the implementation of various controls and measures to seriously address the risk of money laundering.

### Why Is a Compliance Culture Important?

The culture of an organization is a critical determinant of its compliance with applicable regulations and laws.

*“Regardless of its size and business model, a financial institution with a poor culture of compliance is likely to have shortcomings in its ...AML program.”*

– FinCen (US AML regulator) Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance

AML regulators in the United States, United Kingdom, and Australia have identified cultural factors as important to achieving compliance. A study of enforcement actions for anti-money laundering and sanctions violations in the United States and United Kingdom showed that a weak culture of compliance and senior management oversight are common threads associated with poor compliance.

– Source: *Building a Strong AML Culture*, KPMG New Zealand (April 2016)

*“An organization's culture can influence the effectiveness of its risk management, potentially leading to excessive risk-taking and negative financial and reputational outcomes.”*

– Jamey Hubbs, Canada's Office of the Superintendent of Financial Institutions, remarks at the 2020 RBC Capital Markets Canadian Bank CEO Conference (January 7, 2020)

Without a strong culture of anti-money laundering compliance, an organization cannot live up to its anti-money laundering requirements and it risks penalties for non-compliance and/or facilitating criminals' attempts to launder the proceeds of their crimes.

While there is the risk of penalty for non-compliance with FINTRAC, it need not be the primary motivating factor for compliance. A positive compliance culture based on reducing crime and contributing to the greater social good can be more effective than one based on fear of penalty.

## Why Is a Culture of Compliance Important in Real Estate?

*“Canadian businesses [including brokerages] play a significant role in the global fight against money laundering and terrorist activity financing.”*

– 2017–18 Annual Report of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

With the information that FINTRAC receives from businesses across Canada, it produces actionable financial intelligence relevant to investigating and prosecuting money laundering and terrorist-activity financing. From 2018 to 2019, FINTRAC provided over 2,276 disclosures of actionable financial intelligence in support of investigations by police, law enforcement, and national securities agencies.

Brokerages, managing brokers, compliance officers, staff, and Realtors are uniquely positioned to be able to assess aspects of the transaction that other entities involved may not be aware of. While the actual flow of funds for the purchase of real estate may involve financial entities, it is the brokerage and the Realtors in that brokerage that have a relationship with the consumers throughout the transaction.

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Culture is an important determinant of whether a brokerage will fulfill its compliance obligations and reduce organizational risk. A culture of compliance helps a brokerage protect itself from the compliance, reputational, economic, and financial risks of money laundering.

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By combatting money laundering in BC real estate and meeting their regulatory obligations, brokerages also contribute to strengthening BC's society and economy as a whole.

## LESSON 7 OF 10

## Steps to Establish a Culture of Compliance

1. Set the “Tone from the Top”
2. Give AML Compliance Sufficient Stature
3. Allocate Appropriate Resources
4. Share Information
5. Make Compliance a Part of “Business as Usual”
6. Instill a Sense of Compliance Purpose
7. Conduct Independent Testing

### 1. Set the “Tone from the Top”

Leaders within an organization who demonstrate support for AML compliance will be a positive driving force behind successfully fulfilling those obligations.

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Leaders lead by example, learn from past experiences, adapt, and encourage responsibility for compliance across the organization.

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In the context of a brokerage, it is important that the highest levels of management show a commitment to compliance with AML policies and procedures and set an expectation of regulatory compliance. Managing brokers and brokerage leadership can employ the following strategies to be successful in fostering compliance:

- ◆ give adequate time and attention to compliance issues during meetings with their teams,
- ◆ take advantage of opportunities to highlight and discuss the brokerage’s commitment to anti-money laundering compliance,
- ◆ praise real estate professionals and other staff when they succeed in fulfilling their compliance obligations,
- ◆ create a performance goal around the culture of compliance, and
- ◆ make compliance obligations a part of performance reviews for staff.

### 2. Give AML Compliance Sufficient Stature

Compliance functions must have stature and influence within an organization that is relatively equal with business lines. Compliance efforts must not be compromised by the organization’s revenue interests. In the brokerage context, compliance efforts and requirements should be given sufficient recognition.

To engage the entire office in the process, consider things such as a recognition program or providing an “idea box” for compliance tips and recognizing the people who give the best monthly tips.

Brokerage leaders can demonstrate how important compliance is by showcasing it at the brokerage level.

### 3. Allocate Appropriate Resources

AML efforts must receive the necessary human and technological resources to effectively achieve compliance goals. The brokerage is responsible for ensuring that the compliance officer has the tools and resources it needs to exercise its functions and stay on top of current issues with respect to AML compliance. Aside from this being good compliance practice, it is something that FINTRAC will examine in its examination of a brokerage’s AML program.

This is also an area in which managing brokers and other leaders within a brokerage can demonstrate their commitment to AML compliance.

These leaders can ensure that there is adequate budget allocated to training and to provide support for Realtors and staff to stay informed on new developments and current issues in anti-money laundering compliance and new money-laundering typologies and trends.

### 4. Share Information

It is best practice for compliance-related information to be shared across the brokerage, subject to confidentiality requirements. Compliance-related information could include:

- ◆ production orders
- ◆ fraud alerts

For example, a brokerage may receive a production order to provide law enforcement with documents that the brokerage may have in respect of a client. A brokerage may also receive a fraud alert from the RCMP or FINTRAC in respect of a client.

Important issues deserve special attention. Sharing helps everyone stay informed.

### 5. Make Compliance a Part of “Business as Usual”

It is best practice to integrate compliance measures into existing business processes, for example, as part of client onboarding.

Compliance policies viewed and communicated as an important part of doing business and not simply a burden will be received and implemented more readily by Realtors and staff.

AML compliance is a benefit for all involved. It reduces risks, protects all legitimate parties to a transaction, and supports the community as a whole. When part of business as usual, it can function seamlessly with daily operations.

## 6. Instill a Sense of Compliance Purpose

Individuals who understand the value of their compliance work, and how the results of their individual efforts are relied on and leveraged by FINTRAC to investigate possible crime, are more invested in the compliance process.

Compliance officers and Realtors can feel like partners with FINTRAC and law enforcement in detecting possible criminal activity.

*“One of the most valuable and unique report types submitted to FINTRAC is the STR. ..., STRs allow for an expansion on the descriptive details surrounding a transaction that is derived from your assessment of what you are seeing through your business interactions and activities.*

*Additional information, such as nicknames, secondary names, beneficial ownership information, IP addresses, additional account numbers, email addresses, virtual currency transaction addresses and their details, details of purchases or e-transfers, locations, relationships, and background information are all additional details that FINTRAC uses in its analysis and production of financial intelligence disclosures [to Canadian law enforcement].”*

– FINTRAC Guideline: What is a Suspicious Transaction Report

The purpose and value behind anti-money laundering compliance activities needs to be communicated to Realtors and staff during training and should continue to be underscored whenever compliance issues are discussed.

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The purpose of compliance is not just to meet regulatory requirements, but also to reduce business risks, minimize financial costs, and contribute to social responsibilities.

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## 7. Conduct Independent Testing

AML programs must be tested by an individual who is objective and has sufficient knowledge to make an assessment of the program’s effectiveness. This person should be unbiased and without conflicting business interests. The role of an auditor will be discussed further later in this program.

– Sources: *A Risk-Based Framework for Assessing a Compliance Culture*, Francisco Daniel Zepeda Lazarus (August 2015);  
*Building a Strong AML Culture*, KPMG New Zealand (April 2016)

The brokerage owner or the managing broker (when not also the compliance officer) may want to select the independent party to ensure impartiality.

## LESSON 8 OF 10

## Principles of a Compliance Culture

### Attitude

A positive attitude creates a positive compliance environment.

A brokerage can cultivate a positive attitude towards compliance by being proactive when dealing with AML issues, viewing AML compliance as equally important as financial goals, and avoiding presenting AML compliance as a “necessary evil.”

### Communication

Open communication encourages AML compliance.

Open communication from leadership regarding AML sets a precedence in the brokerage. The prompt communication of AML information to all relevant individuals and groups within the brokerage ensures that all parties stay up to date.

### Accountability

Accountability ensures AML compliance is taken seriously.

Brokerages can establish accountability by taking violations of AML policies and procedures seriously and establishing consequences. Good compliance behaviour can be incentivized and rewarded. Incident reporting can be used to track accountability and address any misconduct.

### Engagement

An engaged leadership promotes engagement throughout the brokerage.

Leaders in the brokerage who are engaged in and paying attention to AML issues are an example for others in the brokerage. Providing feedback to those with compliance functions is an excellent way to remain engaged while overseeing compliance from a high level.

### Education and training

Education and training are key to remaining up to date and compliant.

Ensuring internal policies and training materials are up to date will help ensure that the knowledge of brokerage representatives remains current with compliance requirements. Getting Realtors and staff involved in compliance awareness makes them an active participant in their own training and the training of others.

– Source: *A Risk-Based Framework for Assessing a Compliance Culture*,  
Francisco Daniel Zepeda Lazarus

Shifting attitudes may be one of the biggest challenges for compliance officers and managing brokers, as practice is largely based on meeting regulatory requirements. Finding compelling reasons or stories to help shift those attitudes towards compliance can help the brokerage’s compliance program succeed.

## LESSON 9 OF 10

**Case Studies and Key Takeaways**

While these case studies are not drawn from the real estate sector, the challenges these companies faced in creating a strong culture of compliance are the same types of challenges that may be faced in a brokerage setting.

**1 HSBC bank fined close to US\$2 billion for AML compliance failures**

In 2012, UK-based HSBC agreed to pay US\$1.9 billion for violations of U.S. AML and sanctions laws and to address the systemic issues that led to its failure to comply with the laws. The investigation of HSBC and its U.S. subsidiary HBUS found that as a result of AML failures, at least US\$881 million in drug trafficking proceeds were laundered through HBUS.

*“HSBC is being held accountable for stunning failures of oversight – and worse – that led the bank to permit narcotics traffickers and others to launder hundreds of millions of dollars through HSBC subsidiaries, and to facilitate hundreds of millions more in transactions with sanctioned countries ... The record of dysfunction that prevailed at HSBC for many years was astonishing.”*

– Lanny A. Breuer, Assistant Attorney General,  
U.S. Justice Department, Criminal Division

*“This financial institution is being held accountable for turning a blind eye to money laundering that was occurring right before their very eyes.”*

– John Morton, Director of U.S. Immigration and Customs Enforcement

A weak culture of compliance significantly contributed to HSBC’s lack of AML compliance. The investigation into HSBC revealed inadequate and unqualified AML staffing that did not have the resources or support from leadership to do their job properly. The following are some of the deficiencies noted in the United States Senate report.

- ◆ **Shortstaffed**

The anti-money laundering compliance function at HSBC was severely understaffed. As a result, the bank was not capable of adequately monitoring for suspicious transactions. HSBC affiliate’s compliance department was also understaffed and under-resourced.

- ◆ **Turnover**

There was a high turnover rate within the compliance department. Several people in senior AML and compliance roles left after 1-2 years on the job.

- ◆ **Lack of expertise**

AML expertise was not developed or maintained in-house. HSBC and its affiliates relied on consultants to fill gaps in AML compliance knowledge.

- ◆ **Lack of experience**

The Chief Compliance Officer of HBUS was fired after she raised the issue of inadequate AML resources with the bank's leadership. The person hired to replace the Chief Compliance Officer had no professional experience and little familiarity with U.S. AML laws.

- ◆ **Lack of support**

Before resigning, one AML director wrote to senior leadership that "he did not have the authority or support from senior compliance managers needed to do his job."

- ◆ **Rejected reports**

A 2005 AML program review by an HSBC affiliate internal audit group identified many compliance and anti-money laundering problems at the bank. Leaders at the HSBC affiliate rejected and contested the findings of this report.

- ◆ **Disregarded evidence**

HBUS disregarded evidence of possible links to terrorist financing when doing business. Evidence suggests this was done to preserve HBUS revenues attributable to these customers.

*"Avoiding the money laundering risks involved in these activities requires an effective AML program, with written standards, knowledgeable and adequate staff, the infrastructure needed to monitor account and wire transfer activity for suspicious transactions, effective AML training, and a **compliance culture** that values obtaining accurate client information."*

– U.S. Senate Report

Source: U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History, Majority And Minority Staff Report, Permanent Subcommittee On Investigations United States Senate

There were people in HBUS who tried to do the right thing but were not successful because the environment/culture did not support their efforts. A strong culture of compliance not only benefits the brokerage but also supports the staff and Realtors who work within that brokerage. With adequate support, Realtors, staff, and compliance officers can help their brokerage reduce the risks associated with money laundering.

## 2. Poor Culture of Compliance at Australian Bank Westpac Alleged to have Contributed to AML Compliance Failures

In 2019, Australia's AML regulator, AUSTRAC, alleged that Australian Westpac Bank contravened Australia's AML legislation on 23 million occasions in relation to Westpac's correspondent banking relationships with financial institutions outside of Australia.

Specifically, the alleged contraventions included the failure to:

- ◆ **Assess and monitor**  
Westpac failed to appropriately assess and monitor money laundering and terrorist financing risks associated with correspondent banking relationships and the movement of money into and out of Australia.
- ◆ **Do due diligence**  
Westpac failed to carry out customer due diligence on customers sending money to countries known for child exploitation risk.
- ◆ **Report and keep records**  
Westpac failed to report, pass on information, and keep records about international funds transfers.
- ◆ **Commit resources**  
Westpac failed to properly resource anti-money laundering and counter terrorist financing functions or invest in appropriate information technology to meet its compliance obligations.
- ◆ **Remediate**  
Westpac failed to remediate known compliance issues in a timely manner.
- ◆ **Prioritize**  
Senior management at Westpac failed to prioritize the resolution of international funds transfer reporting issues, despite being aware of longstanding non-compliance.

*"[Westpac's] contraventions are the result of systemic failures in its control environment, indifferences by senior management and inadequate oversight by the Board."*

– AUSTRAC

AUSTRAC's statement of claim describes an allegedly poor **culture of compliance** at Westpac, which ultimately led to the bank's compliance failures. According to AUSTRAC, the contraventions occurred because Westpac adopted an "ad hoc" approach to money laundering and terrorist financing risk management and compliance.

– Source: Chief Executive Officer of the Australian Transaction Reports and Analysis Centre v Westpac Banking Corporation, Concise Statement of Claim, Federal Court of Australia, November 20, 2019.

## Key Takeaways

The findings and conclusion of the U.S. Senate report on the HSBC case and AUSTRAC's claims against Westpac Bank provide lessons for entities in all sectors affected by money laundering risk, including the real estate sector. In particular, these case studies demonstrate the money-laundering risks associated with:

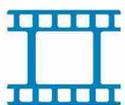
- ◆ a lack of engagement by senior management in considering the risks of money laundering and terrorist financing,
- ◆ a lack of support for AML compliance from senior leadership,
- ◆ understaffed and under-resourced AML and compliance functions,
- ◆ a lack of AML expertise in senior compliance officials,
- ◆ a lack of communication across different parts of an entity (including a brokerage), and
- ◆ a focus on revenue generation at the expense of meeting AML compliance obligations.

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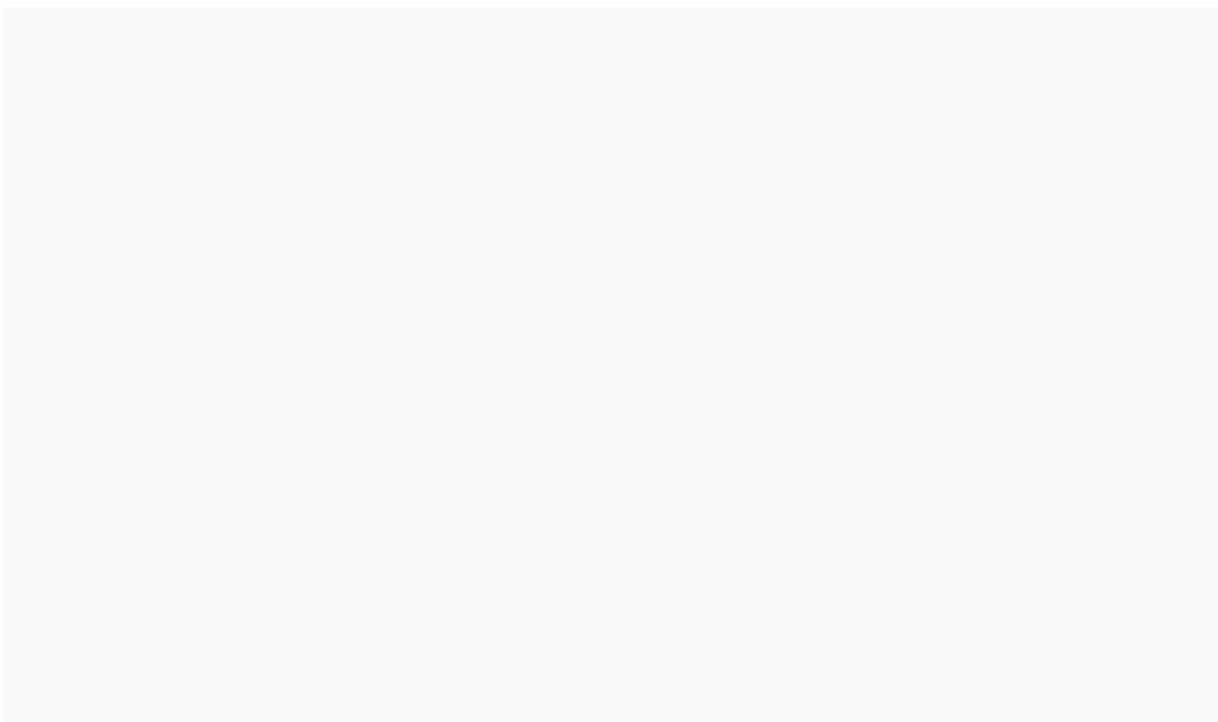
These case studies also demonstrate the reputational damage and possible fines that an organization, including a real estate brokerage, may suffer as a result of a weak culture of compliance.

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## Introduction to Actions



Refer to online content to view video.

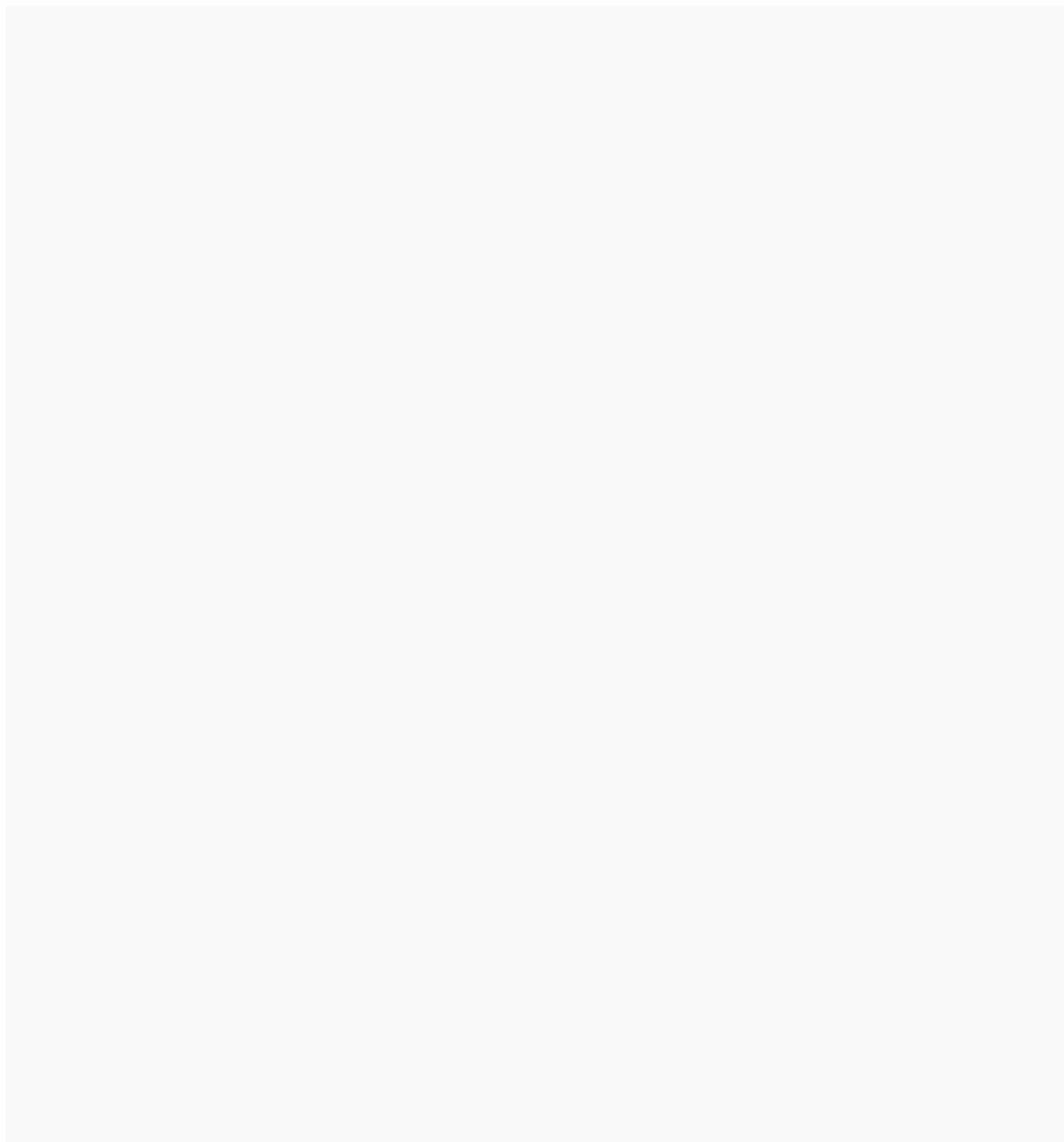


## LESSON 10 OF 10

**Actions**

Learners are encouraged to download and use the fillable PDF document on the following pages to stay up to date and prepared for changes related to anti-money laundering compliance. The document provides an opportunity to identify areas in which the brokerage is doing well and areas that need improvement. It is also rich in resources that brokerages can benefit from.

This document does not need to be submitted as part of the Mastering Compliance program.



## MODULE 1: ACTIONS

### 1. Culture of Compliance

In Lesson 6 of the module, we discussed 7 Steps to a Culture of Compliance; these include:

1. Set the tone from the top
2. Give AML Compliance sufficient stature
3. Allocate appropriate resources
4. Share information
5. Make compliance a part of “business as usual”
6. Instill a sense of compliance purpose
7. Conduct independent testing

Considering these 7 steps:

- i. In which areas is your brokerage doing well?

- ii. Which areas does your brokerage need to work on?

- iii. Identify 1 area you will commit to working on through the duration of this program.

### 2. Setting the Tone

Over the next couple of weeks, find an opportunity, either in a meeting or in one-on-one discussions, to highlight one or two people for satisfying or exceeding compliance requirements or doing something positive to contribute to the brokerage’s compliance requirements. Be specific about the actions they took and why they are being recognized by acknowledging how and why their efforts are appreciated.

### 3. Education and Training

As mentioned in Lesson 2, while non-compliance with FINTRAC is federal and does not fall under RECBC's mandate, Council has created some [Anti-Money Laundering Guidelines](#) to assist managing brokers, compliance officers, and Realtors in complying with Canadian law. They have also created a mandatory continuing education course in understanding AML and FINTRAC for all licensees.

As of the end of August 2020, 60% of licensees in the province had completed this mandatory course. Ensuring the Realtors in your office have completed this course can be added to your Training Program documentation, which we will touch on in greater detail in Module 7. In the meantime, you can get a head start on ensuring this is up to date now by working through the following:

- i. Include Council's mandatory AML course in your documentation of your training plan
- ii. Follow up with the Realtors in your office either by email or in your next brokerage meeting to see if they have completed this mandatory course
- iii. Log this completion list in your training program documentation along with completion certificates

Use this link to encourage all Realtors to register for the course:

[recbc.ca/professionals/licensing/continuing-education/anti-money-laundering-real-estate](https://recbc.ca/professionals/licensing/continuing-education/anti-money-laundering-real-estate)

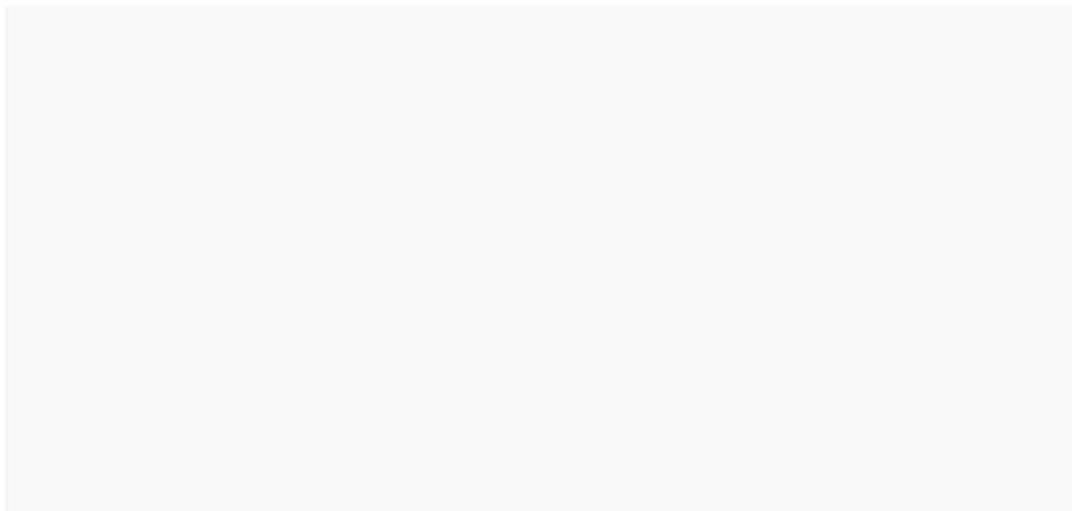
### 4. Elevator Pitch

In the coming months, as the Cullen Commission continues its work, the media will likely be shining increased attention on money laundering and real estate. Realtors, clients and your community may be asking you for your thoughts.

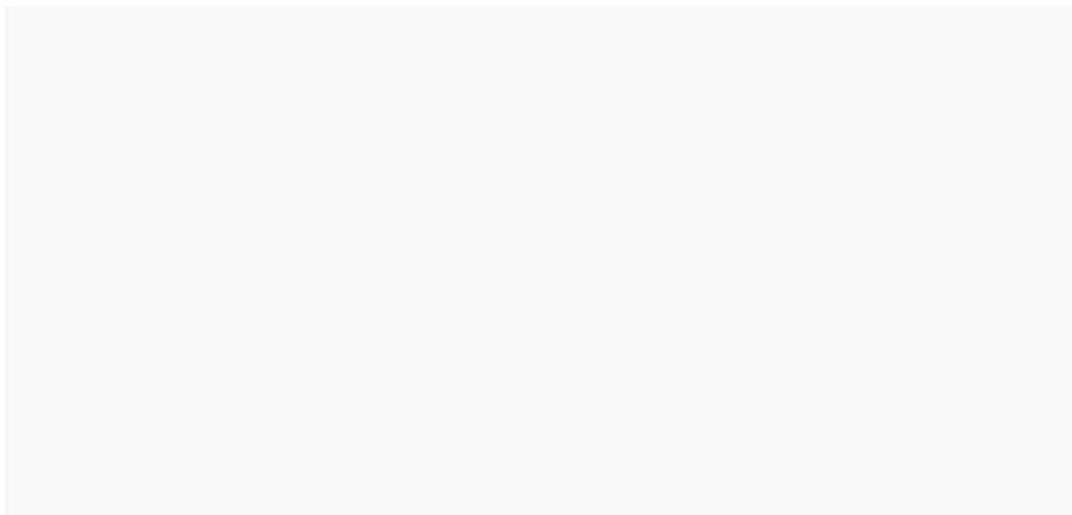
How is money laundering impacting BC Real Estate and why is FINTRAC Compliance important?

Draft a 2-minute elevator speech you would give in response to:

- i. Another industry professional



## ii. A client



## 5. Keeping Up to Date

A common challenge compliance officers have is staying on top of FINTRAC requirements and being aware of changes or areas where attention is needed.

FINTRAC has a number of channels they use to keep compliance officers across multiple industries, and real estate specifically, up to date. Take a moment to go to the following locations and connect with the resources useful to you and your brokerage:

- i. **FINTRAC mailing list** – sign up and receive updates from FINTRAC to your inbox. Stay up to date on FINTRAC information by subscribing to the FINTRAC Mailing List. By subscribing, you will receive email reports on FINTRAC’s activities and notification of new publications and guidelines. You will also be notified of changes made to reporting mechanisms and reporting requirements.  
[fintrac-canafe.gc.ca/contact-contactez/list-liste-eng](https://fintrac-canafe.gc.ca/contact-contactez/list-liste-eng)
- ii. **FINTRAC’s Operational Briefs** – Operational Briefs are intended to provide clarification and guidance on issues that impact the ability of reporting entities to maintain a strong compliance regime. More specifically, these products are focused on risk and vulnerabilities associated with exploitation for money laundering and terrorist activity financing, and on meeting reporting obligations with respect to suspicious transaction reports. They are industry specific and can provide you with insight into how the requirements are implemented and are impacting the real estate industry. You can review online or download a copy here: [fintrac-canafe.gc.ca/intel/operation/real-eng](https://fintrac-canafe.gc.ca/intel/operation/real-eng)

## 6. Additional Reading

Two reports that are often referenced in the news and used to inform government in exploring policy decisions are Peter German's *Dirty Money* Report – Part 2 and Combatting Money Laundering in BC Real Estate – Expert Panel on Money Laundering in BC Real Estate.

You can find a copy of these reports online here:

[news.gov.bc.ca/files/Dirty\\_Money\\_Report\\_Part\\_2.pdf](https://news.gov.bc.ca/files/Dirty_Money_Report_Part_2.pdf)

[cullencommission.ca/files/Combatting\\_Money\\_Laundering\\_Report.pdf](https://cullencommission.ca/files/Combatting_Money_Laundering_Report.pdf)