

Cliff: 558735  
 Date Prepared: January 24, 2020  
 Date Decision Required: February 25, 2020

**MINISTRY OF ATTORNEY GENERAL  
 ANTI-MONEY LAUNDERING SECRETARIAT  
 BRIEFING NOTE**

**PURPOSE:** For DECISION of David Eby, QC  
 Attorney General

**ISSUE:**

Analysis of Dr. Peter German's recommendations related to casino reporting obligations to the Financial Transactions and Reports Analysis Centre of Canada (FinTRAC).

**RECOMMENDATION:**

The British Columbia Lottery Corporation (BCLC) remains as the reporting entity to FinTRAC as per the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

**SUMMARY:**

- Dr. German recommended:
  - "That the Service Providers be responsible for completing all necessary reports to FinTRAC, including STRs [Suspicious Transaction Reports]" (Recommendation #5), and;
  - "That discussions with FinTRAC take place with the purpose of designating the Service Providers as direct reports to FinTRAC" and, failing that, "that reports from Service Providers be sent in an unaltered form to FinTRAC by BCLC [British Columbia Lottery Corporation]" (Recommendations #6).
- BCLC submitted a formal request for guidance on the operationalization of recommendations 5, 6 and 7 to FinTRAC. FinTRAC's conclusion was that the proposed process, as set out in German's recommendations, is not in line with the statutory requirements of the PCMLTFA as it relates to the reporting of Suspicious Transaction Reports (STRs). (See Appendix B).

- **solicitor-client privilege**

- Compliance with standards, including anti-money laundering standards, will be a condition of registration and the regulator will be able to hold SPs accountable.

- **solicitor-client privilege**

Cliff: 558735

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**BACKGROUND:***Recommendations #5 and #6:*

- Dr. German's report makes recommendations related to the casino industry's reporting requirements to FinTRAC (See Appendix A for a description and analysis of these recommendations: 5, 6, 7, 8, 9 and 11a).
- Dr. German based his recommendations on the following concerns and observations:
  - BCLC's review of Unusual Financial Transaction (UFT) alerts could cause delays in reporting to FinTRAC;
  - Current practice shifts accountability for money laundering risks away from Service Providers (SPs);
  - BCLC's review of reports could lead to over-filtering;
  - SPs are familiar with all indicators of suspicion;
  - Further review by BCLC leaves the reporting decision to a third party not present at the time of the transaction; and
  - Trained personnel and investigators within the casino could provide support to SPs.
- As stated in German's report, FinTRAC does not oppose filtering since it eliminates STRs that do not meet the threshold, however, he also states that filtering "allows a third party, not present at the time of the transaction to determine what is or is not suspicious. With trained personnel in the casinos, this should not be necessary. It can also lead to over-filtering and a delay in reporting..."

*Conduct and Management:*

- The PCMLTFA was amended in 2017 to clarify that casino reporting entities are the entity within a province that "conducts and manages a lottery scheme".
- Under the *Gaming Control Act* (GCA), BCLC conducts and manages gambling on behalf of the government.
- The PCMLTFA requires reporting entities, like BCLC, to maintain a comprehensive compliance program, conduct ongoing monitoring of business relationships and high-risk clients and comply with all transaction reporting requirements such as STRs and Large Cash Transactions (LCTs) (see Appendix A).
- FinTRAC is the entity that collects these reports, and which oversees compliance with the PCMLTFA.

Cliff: 558735

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- Similar comparisons include the Ontario Lottery and Gaming Corporation (OLG) and the Canadian banking sector. Both receive reports similar to UTFs from SPs (in the case of OLG) and branches (in the case of banks) which are reviewed and analyzed by specialized anti-money laundering staff to determine if they meet the organization's threshold of reasonable grounds to suspect possible money laundering activity before forwarding an STR to FinTRAC.

#### *Current Reporting Process:*

- Reports are initially provided to BCLC by SPs, which submit alerts in the form of a UFT for any transaction that is deemed unusual, including a concern that it may be related to the commission of an ML or terrorist financing (TF) offence.
- BCLC AML staff review each UFT, as well as all other related available information, and submit an STR to FinTRAC if reasonable grounds exist to suspect that a transaction is related to the commission of a ML/TF offence. This is a higher threshold than a UFT alert.
- BCLC must submit various reports<sup>1</sup> to FinTRAC within specific timeframes and in accordance with FinTRAC policy. This includes STRs which must be filed within 30 days from the date it has been determined that a transaction or series of transactions, whether attempted or completed, is related to an ML offence.<sup>2</sup>
- BCLC surpasses FinTRAC's timeline by filing STRs within 30 days of the transaction (often within a few days).

#### *FinTRAC Feedback:*

- In response to a request from BCLC for formal guidance on delegating STR reporting to SPs in accordance with Dr. German's recommendation, FinTRAC advised that:
  - "While the option exists to put in place an agreement to have a service provider report on behalf of BCLC, FINTRAC is not in a position to support the revised process as proposed by BCLC...";
  - "... before an entity reports to FinTRAC a financial transaction pursuant to section 7 of the PCMLTFA, the transaction must meet the statutory threshold for reporting. If there is a service provider agreement in place, then the service provider can submit STRs on a reporting entity's behalf";

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<sup>1</sup> Large Cash Transaction (LCTs), Suspicious Transaction Reports (STRs), and Casino Disbursement Reports (CDRs)

<sup>2</sup> As a result of upcoming changes to the PCMLTFA, reporting entities will be required to file STRs "as soon as practicable". No specific timeline has been given. The date these changes will go into force has not been announced.

Cliff: 558735

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Date Decision Required: February 25, 2020

- “This delegation however, does not make the casino service provider the reporting entity... Consequently, BCLC continues to have all the obligations under the PCMLTFA...”; and
- “... the proposed process would have a service provider submit an STR when reasonable grounds to suspect have yet to be established by BCLC, which is not in line with the statutory requirements of the PCMLTFA as it relates to the reporting of STRs.”

## **DISCUSSION:**

### *Submission of UFTs and STRs:*

- BCLC has confirmed they do not modify the information in a UFT provided by SPs.
- Further, the risk BCLC may over-filter or change information provided in UFTs prior to submission as STRs to FinTRAC is mitigated through regular audits by FinTRAC and reviews of UFTs and STRs by GPEB, the Joint Illegal Gambling Investigation Team (JIGIT) and the Gaming Intelligence Group (GIG).
- For the 12 months ending May 2019, 24% of UFTs (321/1289) submitted by SPs resulted in the submission of an STR to FinTRAC by BCLC.
- FinTRAC’s most recent audit (Mar. 2017- Feb. 2018) included no findings in relation to BCLC’s assessment and management of UFT alerts.<sup>3</sup> However, they did provide guidance to BCLC regarding their backend analytics on Enhanced Due Diligence procedures. As a result, BCLC anticipates an increase in the number of STRs reported to FinTRAC and an improvement in the quality of the submissions.
- When SPs submit UFTs to BCLC, they must immediately send the same information to the Gaming Policy and Enforcement Branch (GPEB) in accordance with the GCA. GPEB’s increased investigator capacity allows for more timely investigation of UFTs.
- It is important to note, with the addition of 12 new GPEB investigators on site and/or available 24/7, there is now a trained presence in the casinos that can provide assistance to SP staff when needed and contribute to the development and oversight of AML monitoring procedures.
- Further, GPEB now has real-time and direct access to incident and patron monitoring and tracking systems (i.e., iTrak) to inform investigations and intelligence gathering which will allow GPEB to monitor UFTs as they are submitted and cross-referenced with any STRs that may result.
- FinTRAC has confirmed with BCLC that they have no objection to reporting entities filtering through the use of UFT processes.

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<sup>3</sup> FinTRAC reviewed a sample of more than 700 STRs and 500 unsubstantiated UFTs and found only three instances where the obligation for reporting an STR was not met.

Cliff: 558735

Date Prepared: January 24, 2020

Date Decision Required: February 25, 2020

*Delegation of STR Reporting:*

- As per FinTRAC requirements, final STRs must meet the appropriate threshold of “grounds to suspect” and must be fully compliant and on time in the first instance.
- Under the PCMLTFA, and as confirmed by FinTRAC, BCLC is legally permitted to delegate any compliance function to another entity. However, BCLC, as the legal reporting entity, would continue to be responsible and liable for meeting federal statutory requirements as they are responsible for the conduct and management of gaming in BC.
- Legal liability cannot be shifted to SPs.
- Administrative monetary penalties for failing to file an STR or filing incomplete or inaccurate STRs is up to \$500,000 per occurrence. Additionally, individuals employed by BCLC could be held criminally liable where compliance failures related to STRs occur.
- Through Operational Services Agreements (OSAs), SPs have a contractual obligation to submit UFTs to BCLC. Service Providers are also accountable to GPEB for their compliance with reporting requirements under the GCA (s.86 reporting). GPEB can investigate and penalize SPs for noncompliance.
- BCLC has access to all player transactions from all BC casinos. This allows BCLC, in compiling an STR, to include industry and jurisdiction-wide information, as well as select information provided by police, on a player and all the player’s transactions across the industry. This results in the submission of comprehensive STRs and ensures the statutory requirement (as set out by FinTRAC) that STRs be complete and accurate is met. Service Providers do not have this capacity or access to information.

*Proposed new regulatory framework:*

- **solicitor-client privilege**
- Compliance with regulations and standards, including standards respecting anti-money laundering, will be a condition of registration for SPs.
- The regulator will be able to hold service providers accountable as the regulator will have statutory authority to make decisions in respect to regulated entities, such as warnings, compliance plan requirements, additional conditions of licensing or registration, administrative monetary penalties and suspension or cancellation of registration.
- **solicitor-client privilege**

5

# solicitor-client privilege

## OPTIONS:

**Option 1 (Recommended):** The British Columbia Lottery Corporation (BCLC) remain the reporting entity to the Financial Transactions and Reports Analysis Centre of Canada (FinTRAC) and that the Province not seek amendments to the *Proceeds of Crime [Money Laundering] and Terrorist Financing Act (PCMLTFA)* at this time.

## Pros:

- Consistent with amendments to the PCMLTFA in 2017;
- Ensures quality data meeting the statutory requirement that STRs be based on “reasonable grounds to suspect”, are submitted on time, are complete and accurate;<sup>4</sup>
- BCLC continues to have both responsibility and accountability to FinTRAC for reporting;
- The submission of UFTs, which contain intelligence, will continue to be sent to GPEB and to law enforcement in the form of Section 86 reports from the SPs. GPEB can retrieve additional information from BCLC’s casino case/reporting management system (iTRAK);
- This recommendation is consistent with the rationale in support of Option #1 in a recent Decision Note related to Dr. German’s recommendation #30, which addressed his recommendation to make anti-money laundering a responsibility of the regulator [Cliff # 566979].
- SPs support this approach and no additional training and resources would be required; and
- While the Government may not request any amendments to the PCMLTFA at this time, this option will remain available to them, especially as they seek changes to other aspects of the PCMLTFA, such as broadening the entities subject to reporting to include areas such as luxury goods.

## Cons:

- Without a change in legal reporting entities, the original intent of Dr. German’s recommendations 5, 6, 7, 8, 9 and a portion of 11 is met however, does not meet the recommendations as written. A shift to a standards-based model will provide

<sup>4</sup> If at any time, there is a change to the PCMLTFA regarding the 30-day reporting timeline of STRs to FinTRAC, an impact assessment will be made and brought forward to AML DMC as a briefing note and further decision if applicable.

Cliff: 558735

Date Prepared: January 24, 2020

Date Decision Required: February 25, 2020

increased AML accountabilities for SPs, meeting the spirit of these recommendations. This will also be supported by ongoing reviews by the Gambling Intelligence Group (recommendation 12/13).

Option 2: The British Columbia Lottery Corporation (BCLC) delegate *Proceeds of Crime [Money Laundering] and Terrorist Financing Act (PCMLTFA)* reporting requirements to Service Providers (SPs) and implement a process amenable to the Financial Transactions and Reports Analysis Centre of Canada (FinTRAC), including the introduction of BCLC corporate Suspicious Transaction Reports (STRs).

**Pros:**

- Government adopts Dr. German's recommendations 5, 6, 7, 8, 9 and a portion of 11.
- Following further consultation, FinTRAC confirmed that it is possible for SPs to submit STRs directly.

**Cons:**

- FinTRAC advised the process as suggested by Dr. German and proposed to them by BCLC, is not compliant with the PCMLTFA; BCLC would remain legally liable for FinTRAC reporting but without any input into the content of the STRs submitted by SPs or in the decision by SPs as to whether or not to report suspicious transactions. BCLC would need to submit a subsequent 'corporate' STR to include further due diligence;
- An inability to ensure STRs meet the complete and accurate requirement and are filed within the regulatory timeframe;
- BCLC or BCLC employees may be found to be out of compliance with the PCMLTFA and may be subjected to administrative, financial or criminal sanctions;
- SPs would not have access to the private information systems or information sharing agreements (ISA) that BCLC has when generating an STR.
- Results in less information reported to GPEB, JIGIT and the GIG because SPs would be following a higher threshold for reporting than that required in UFT alerts;
- FINTRAC has advised that it is up to the reporting entity to determine the ideal process and further consultation with FinTRAC can confirm compliance;
- Inconsistent with best practice across the country and lack of process to model;
- SPs have expressed concerns about the additional resources required, training, lack of access to information and privacy concerns;

Cliff: 558735  
Date Prepared: January 24, 2020  
Date Decision Required: February 25, 2020

- Further cost analysis needs to be conducted to understand any impact to SPs, BCLC and/or government; and
- The risks identified in, and which gave rise to, recommendations 5 and 6 have been reduced by the implementation of other recommendations such as: the Source of Fund (SOF) interim recommendation; the robust transaction analysis team (GIG); the provision of iTRAK terminals in GPEB offices; and GPEB presence in casinos.

**OTHER ENTITIES IMPACTED/CONSULTED:**

- BCLC
- Service Providers – initial discussions with BC Gaming Industry Association
- FinTRAC



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Richard J. M. Fyfe, QC  
Deputy Attorney General

**DATE:**

February 13, 2020  
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**OPTION \_\_\_ APPROVED**

**DATE:**

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David Eby, QC  
Attorney General

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**Prepared by:**  
Candace Woywada  
Senior Policy Analyst  
██████████

**Approved by:**  
Megan Harris o/b of AML DMC  
Executive Director  
██████████

**Attachments:**

- Appendix A: German Recommendations: 5,6,7,8,9,11a
- Appendix B: FinTRAC response letter dated May 28, 2019



Cliff: 558735

Date Prepared: January 24, 2020

Date Decision Required: February 25, 2020

**APPENDIX A: German Recommendations: 5, 6, 7, 8, 9, 11a**

<b>German Recommendations</b>		
<b>Recommendation</b>	<b>Description</b>	<b>Preferred option implications</b>
R5	That the Service Providers be responsible for completing all necessary reports to FinTRAC, including STRs.	<p>GPEB's implementation of a Standards-Based Regulatory model will promote Service Provider's accountability for complying with AML initiatives. It is advised that R5 not be adopted, as originally intended, at this time.</p> <p>Recommend status quo because, in current practice, Service Providers are obliged to report all unusual/suspicious financial transactions to BCLC and GPEB. BCLC investigates and, where suspicion is deemed reasonable grounds to suspect, completes and sends STRs to FinTRAC. BCLC's investigation of UFTs adds value to STR reports.</p> <p>The Joint Illegal Gaming Investigative Team (JIGIT) has access to the information in all UFT reports so an immediate investigative response is possible, if necessary. BCLC also sends copies of STRs to JIGIT and the Combined Forces Special Enforcement Unit of BC.</p>
R6	That discussions with FinTRAC take place with the purpose of designating the Service Providers as direct reports to FinTRAC, failing which that reports from Service Providers be sent in an unaltered form to FinTRAC by BCLC.	<p>It is advised that R6 not be adopted, at this time.</p> <p>Recommend status quo because the decision to designate Service Providers as reporting entities under the PCMLTFA is a decision of the Government of Canada. Having Service Providers designated as reporting entities in BC requires the Attorney General to make a compelling case to their federal counterpart to amend the PCMLTFA. This would be challenging given the 2017 change to the PCMLTFA to clarify that private Service Providers are not reporting entities.</p> <p>Currently, BCLC may be subject to compliance efforts including administrative monetary penalties up to and including \$500,000 per violation if STRs were inadequate or late, regardless of who generated the STR.</p>

Cliff: 558735

Date Prepared: January 24, 2020

Date Decision Required: February 25, 2020

		BCLC continues to generate STRs from information provided by Service Providers and obtained by additional investigation.
R7	That BCLC provide Corporate STRs if its files contain relevant information not contained within an STR from a Service Provider.	<p>R7 is dependent on the adoption of recommendations 5 and 6.</p> <p>BCLC already uses all relevant information at its disposal when generating STRs and may generate STRs even if no UFT is submitted by a Service Provider. This includes information provided by Service Providers as well as corporate-level data. To report directly to FinTRAC, Service Providers, at considerable cost, would have to duplicate some customer due diligence and intelligence functions now provided by BCLC to provide the information needed to complete an initial STR.</p>
R8	That Service Providers develop the necessary capacity to assess risk and perform due diligence on suspicious transactions.	<p>R8 is dependent on the adoption of recommendations 5 and 6. However, as BC shifts to a Standards-Based Regulatory model for gambling, Service Providers will be responsible for meeting desired outcomes established by GPEB. In this regard, Service Providers may need to develop new internal processes to meet GPEB's AML standards.</p> <p>BCLC performs due diligence on patrons who engage in unusual financial transactions or otherwise merit enhanced risk assessment. BCLC has information sharing agreements with law enforcement agencies; Service Providers, as private companies, may not be able to obtain such agreements. Requiring Service Providers to develop due diligence capacity would entail significant duplication and inefficiency. Service Providers have expressed concerns around this proposed responsibility because of its cost and liability.</p>
R9	That Service Providers copy STRs to BCLC, the Regulator (and the DPU), and the RCMP.	<p>R9 is dependent on the adoption of recommendations 5 and 6.</p> <p>Currently, Service Providers send GPEB a report under GCA s. 86(2) after witnessing an unusual financial transaction. GPEB has virtual access to Service Providers' UFT reports to BCLC. BCLC forwards</p>

Cliff: 558735

Date Prepared: January 24, 2020

Date Decision Required: February 25, 2020

		STRs to JIGIT (which has RCMP and GPEB representation), and GIG will be reviewing these in their weekly meetings.
R11a	That UFT and SCT reports be eliminated.	R11a is dependent on the adoption of recommendations 5 and 6.  Service Providers will continue to send UFT reports to BCLC for review. The threshold for Service Providers to file a UFT is significantly lower than the threshold for BCLC to file an STR to FINTRAC. This ensures BCLC and GPEB are notified of any potentially suspicious activity.

Cliff: 558735

Date Prepared: January 24, 2020

Date Decision Required: February 25, 2020

**Appendix B: FinTRAC response letter dated May 28, 2019**Financial Transactions and  
Reports Analysis Centre  
of CanadaCentre d'analyse des opérations  
et déclarations financières  
du Canada1185 West Georgia Street, Suite 1120, Vancouver, British Columbia V6E 4E6  
1185, rue West Georgia, bureau 1120, Vancouver (Columbia-Britannique) V6E4E6

May 28, 2019

Rob Kroeker  
 Chief Compliance Officer and Vice President  
 Legal, Compliance, Security  
 BCLC  
 2940 Virtual Way  
 Vancouver BC V5M 0A6

**Re: BCLC's letter dated April 9, 2019**

Mr. Kroeker,

I am writing further to your letter of April 9, 2019, wherein you have sought formal guidance on the operationalization of the following three recommendations from the report of Mr. Peter M. German, dated March 31, 2018.

- 1) "That the service providers be responsible for completing all necessary reports to FinTRAC, including STRs" (recommendation 5);
- 2) "That discussions with FinTRAC take place with the purpose of designating the Service Providers as direct reports to FinTRAC, failing which that reports from Service Providers be sent in an unaltered form to FinTRAC by BCLC" (recommendation 6); and
- 3) That BCLC provide Corporate STRs if its files contain relevant information not contained within an STR from a Service Provider" (recommendation 7).

Based on these recommendations, British Columbia Lottery Corporation (BCLC) is proposing to revise its suspicious transaction report (STR) process. Under this proposed process, casino service provider staff would monitor players, and where one or more elements of a transaction appears suspicious, complete an STR in BCLC's systems and transmit that STR to FINTRAC at the time of the transaction. BCLC's anti-money laundering unit would then review all of the STRs submitted on its behalf to determine whether the circumstances meet the statutory threshold for suspicion. To this end, BCLC would review the totality of a player's transactions, interactions with other customers, available video footage, and play history across the province.

Cliff: 558735  
 Date Prepared: January 24, 2020  
 Date Decision Required: February 25, 2020

Where the statutory threshold for suspicion is met, BCLC would submit a supplemental STR incorporating the additional results of its analysis. However, where BCLC forms the belief that the circumstances *did not* meet the statutory threshold for suspicion, BCLC proposes to also submit a supplemental STR to outline the results of its analysis and reasons for its belief that the casino service provider should not have submitted an STR.

While the option exists to put in place an agreement to have a service provider report on behalf of BCLC, FINTRAC is not in a position to support the revised process as proposed by BCLC for the following reasons.

Pursuant to section 7 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA), every person or entity referred to in section 5 shall, in accordance with the regulations, report to FINTRAC every financial transaction that occurs or that is attempted in the course of their activities and in respect of which there are reasonable grounds to suspect that

- (a) the transaction is related to the commission or the attempted commission of a money laundering offence; or
- (b) the transaction is related to the commission or the attempted commission of a terrorist activity financing offence.

Furthermore, pursuant to subsection 54(1) of the PCMLTFA, FINTRAC shall receive, among other things, reports made under section 7 of the PCMLTFA, and other information voluntarily provided to the Centre about suspicions of money laundering or the financing of terrorist activities. The safeguarding of personal information is critical to FINTRAC and clear principles for the protection of privacy are set out in its governing legislation, including strict limitations on the information that can be received, clear requirements for maintaining and disposing of records, and strict limitations on the disclosure of information. These principles are reinforced by the Centre's own operational policies and security measures.

Therefore, before an entity reports to FINTRAC a financial transaction pursuant to section 7 of the PCMLTFA, the transaction must meet the above statutory threshold for reporting. If there is a service provider agreement in place, then the service provider can submit STRs on a reporting entity's behalf. For example, as proposed by BCLC, a process may be put in place whereby casino service provider staff are delegated to monitor transactions and report to FINTRAC on behalf of BCLC.

This delegation however, does not make the casino service provider the reporting entity pursuant to paragraphs 5(k) to (k.3) of the PCMLTFA. As you know, pursuant to these paragraphs, the government of a province, or an organization, or the board of a fair or of an exhibition that conducts prescribed activities in accordance with subsection 207(1) of the Criminal Code is subject to Parts 1 and 1.1 of the PCMLTFA.

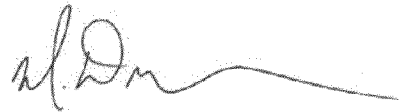
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Cliff: 558735  
Date Prepared: January 24, 2020  
Date Decision Required: February 25, 2020

Consequently, BCLC continues to have all of the obligations under the PCMLTFA and its associated Regulations, including monitoring transactions and reporting STRs to FINTRAC, and is ultimately responsible for meeting its obligations. BCLC cannot delegate its legal responsibility to the service provider. Further, should a casino service provider not submit an STR, where BCLC would have had reasonable grounds to suspect the commission or attempted commission of a money laundering or terrorist financing offence, BCLC retains the ultimate responsibility and it would be BCLC that is found to be in non-compliance with the PCMLTFA and its associated Regulations.

In summary, the proposed process would have a service provider submit an STR when reasonable grounds to suspect have yet to be established by BCLC, which is not in line with the statutory requirements of the PCMLTFA as it relates to the reporting of STRs.

Sincerely,



Murray Dugger  
Regional Director  
FINTRAC

cc: Anna Fitzgerald  
Executive Director  
GPEB