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## HOUSE COMMITTEE REPORT ON MONEY LAUNDERING AND TERRORIST FINANCING

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*By Nancy E. Claridge, Terrance S. Carter and Sean S. Carter\**

### A. INTRODUCTION

The House of Commons Standing Committee on Finance (the “Committee”) presented its report on November 8, 2018, entitled: “Confronting Money Laundering and Terrorist Financing: Moving Canada Forward” (the “Report”).<sup>1</sup> The Report was prepared pursuant to subsection 72(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“PCMLTFA”),<sup>2</sup> which requires that the administration and operation of the PCMLTFA be reviewed by a committee of Parliament every five years. In this regard, the Report provides thirty-two (32) recommendations for consideration by the House of Commons and the Government of Canada to improve Canada’s Anti-Money Laundering and Anti-Terrorist Financing (“AML/ATF”) Regime. This *Alert* provides a summary of the recommendations in the Report.

### B. RECOMMENDATIONS OF THE REPORT

The Report follows the outline of the discussion paper published by the Department of Finance Canada on February 7, 2018, previously reviewed in the February 2018 *Charity & NFP Law Update*,<sup>3</sup> and, as

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<sup>1</sup> House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward: Report of the Standing Committee on Finance* (November 2018) (Chair: Hon. Wayne Easter), online:

<https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf>

<sup>2</sup> SC 2000, c 17.

<sup>3</sup> Terrance S. Carter, Nancy E. Claridge and Sean S. Carter, “Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime” (February 2018), *Charity & NFP Law Update: Anti-Terrorism/Money Laundering Update*, online:

<http://www.carters.ca/pub/update/charity/18/feb18.pdf#tc3>

such, the recommendations are classified in four chapters, namely: Legislative and Regulatory Gaps; the Exchange of Information and Privacy Rights of Canadians; Strengthening Intelligence Capacity and Enforcement; and Modernizing the Regime.

## 1. Legislative and Regulatory Gaps

Recommendation 1 of the Report recommends that the Government of Canada should work with the provinces and territories to create a pan-Canadian beneficial ownership registry that would include details of individuals with “significant control” – defined as a minimum of 25% share ownership or voting rights – in all legal entities, including trusts. The registry would only be accessible by law enforcement authorities, not the public.<sup>4</sup>

Noting that identification of politically exposed persons (“PEPs”) is troublingly inconsistent across jurisdictions, Recommendations 2 and 3 suggest that clarification is required for the PCMLTFA definition of PEPs and that the Government of Canada should apply a risk-based model of compliance for PEPs.

Recommendations 4, 5 and 6 propose that the Government of Canada should adopt a model similar to that of the United Kingdom’s Office of Professional Body Anti-Money Laundering Supervision, requiring that legal professionals and other self-regulated professionals also be subject to the AML/ATF Regime. With regard to solicitor-client privilege, the Report recommends that the Government request a Reference from the Supreme Court of Canada, which decided on this topic in 2015, to require legal professionals to report on all non-litigious work they perform.

Recommendations 7 and 11 recommend that the PCMLTFA be amended so that certain businesses, such as armored cars companies and companies selling luxury items, be subject to the AML/ATF Regime. Recommendations 8 and 9 suggest that the PCMLTFA also be amended to include the obligation of real estate brokers to identify beneficial ownership.

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<sup>4</sup> Note that Bill C-86, *A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures*, 1<sup>st</sup> Sess, 42<sup>nd</sup> Parl, 2018 (third reading 29 November 2018) already includes various proposed amendments to the *Canada Business Corporations Act*, RSC 1985, c C-44, requiring corporations to maintain up-to-date information with regard to beneficial owners.

Recommendations 12 and 13 target small securities dealers and their employees, recommending that privacy laws in Canada be amended in order to permit provincial securities regulators to examine the professional record of registrants, as well as provide better AML/ATF training for regulators.

## 2. The Exchange of Information and Privacy Rights of Canadians

In considering the exchange of information between government entities and the privacy rights of Canadians, Recommendation 14 of the Report suggests that the Canadian Government should consider employing the United States Government's "third agency rule" for information sharing, which permits information sharing from one department to another under the condition that the receiving department does not release the information to any other department.

Recommendation 15 proposes that the mandate of the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") be expanded to allow for a greater focus on building actionable intelligence and a new model in which FINTRAC would go from only receiving information to also sharing information, including the release of aggregate data for statistical, academic or government purposes.

Recommendations 16 and 17 call upon the Government of Canada to establish a round table partnership with industry leaders working on technologies to track suspicious AML/ATF activities and to promote best practices, as well as to take steps towards a Joint Money Laundering Intelligence Taskforce similar to that in the United Kingdom.

Recommendation 18 suggests that the Government of Canada should consider tabling legislation that would allow information that is limited to AML/ATF subject matter to be shared between federally regulated financial institutions, provided FINTRAC is notified of such sharing, while Recommendation 19 seeks to implement changes to banking in order to establish a "low-risk threshold" exemption to ensure the most vulnerable Canadians are not denied a bank account due to lack of identification.

## 3. Strengthening Intelligence Capacity and Enforcement

In order to assist prosecutors and law enforcement agencies, Recommendation 20 suggests that amendments be proposed to the *Criminal Code* and *Privacy Act*, including stiffer penalties and the

disclosure of offenders' names, in order to facilitate AML/ATF investigations. As well, Recommendation 23 suggests that the Government of Canada should amend the PCMLTFA to enable law enforcement agencies to utilize geographic targeting orders for geographically specific high-risk sectors, similar to those used in the United States.

Recommendation 21 addresses the gaming industry and recommends that FINTRAC's mandate be expanded to ensure that casino operators and their employees are provided with appropriate training in AML/ATF legislation. Similarly, Recommendation 22 recommends that the Government of Canada establish an information sharing regime through FINTRAC and provincial gaming authorities.

Recommendation 24 suggests that the Government of Canada provide a fixed period of time for bearer instruments, such as bearer shares, bearer certificates and bearer share warrants, which were prohibited by Bill C-25, *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act*,<sup>5</sup> assented to on May 1, 2018, to be converted to registered form before they are deemed to be void.

#### 4. Modernizing the Regime

Recommendations 25, 26 and 27 deal with crypto-exchanges and crypto-wallets and propose a regulatory regime that governs licensing, properly tracks transactions, identifies ownership of crypto-wallets and regulates money service businesses.

Recommendation 28 recommends that the Government of Canada consider either prohibiting nominee shareholders or require nominee shareholders to be licensed and be subject to strict anti-money laundering obligations.

Recommendations 29, 30, 31 and 32 suggest clearer directions and enhancements for the reporting of suspicious transactions and suspicious activity to FINTRAC, including the reporting system of casinos and financial institutions.

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<sup>5</sup> 2018, c 8. The restriction on bearer shares were introduced to the *Canada Business Corporations Act*, RSC 1985, c C-44, s 29.1 and the *Canada Cooperatives Act*, SC 1998, c 1, s 142.1.

## C. CONCLUSION

While the Report acknowledges that money laundering and terrorist financing may involve funds raised from legitimate sources, such as donations from individuals, businesses or charitable organizations, the Report does not identify any specific vulnerabilities in the charitable and not-for-profit sector. However, charities and not-for-profits may fall under the Canadian AML/ATF regime in various circumstances and should, therefore, continue to monitor these developments as they make their way into legislation, regulation or public policy.



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