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September 22, 2023

Ms. Erin Hunt
Director General
Financial Crimes and Security Division
Financial Sector Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa ON K1A 0G5

Email: fcs-scf@fin.gc.ca

Dear Ms. Hunt:

RE: Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime

CPA Canada is pleased to respond to the June 6, 2023, Consultation Paper *Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime* (the "Consultation Paper"). On behalf of the profession, CPA Canada contributes in the public interest to anti-money laundering/ anti-terrorist financing (AML/ATF) policy and regulatory consultations with the federal government including through CPA Canada's representation on Canada's Advisory Committee on Money Laundering and Terrorist Financing (ACMLTF) and its working groups.

We commend the Government of Canada's efforts in developing the Consultation Paper and for seeking feedback from stakeholders and the public on the broad array of potential policy measures and issues included for consideration. CPA Canada welcomes the opportunity to provide input on some of the issues raised in the Consultation Paper related to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCMLTFA") and Canada's AML/ATF Regime (the "Regime").

In preparing our response, we did consult with a small number of the CPA profession's provincial self-regulatory bodies; however, we found the consultation period timeline was challenging and that it did not allow for robust outreach with other stakeholders on the breadth of issues presented. We have, therefore, limited our response and recommend that any future consultations be extended to a minimum ninety-day period, in the public interest.

About Canada's CPA Profession

Canada's accounting profession is regulated by provincial and territorial CPA bodies and is comprised of more than 220,000 members, both at home and abroad, who are subject to respective provincial and territorial CPA Acts, codes of conduct, by-laws and regulations. CPA Canada, a member of the International Federation of Accountants and the Global Accounting Alliance, represents the profession nationally and internationally, and supports the setting of accounting, auditing and assurance standards for business, not-for-profit organizations, and government. The provincial and territorial CPA regulatory bodies and CPA Canada collaborate through the profession's Public Trust Committee to recommend policies and strategies to uphold the public's confidence and trust in the profession.

Professional accountants, specifically those with a Canadian CPA designation, and accounting firms providing accounting services to the public and including at least one CPA as a partner, employee or administrator have obligations as reporting entities when carrying out transactions covered by the federal legislation and regulations governing Canada's AML/ATF Regime.

Overall Response

Overall, we found the Consultation Paper to be both interesting and thought-provoking when considering the Regime today and in the future. We are aware that gaps exist in the effectiveness of Canada's Regime and that ongoing strengthening is required to address evolving risks. In principle, we support many of the potential policy measures and issues identified but note that the prioritization of those that will contribute the most to Regime effectiveness is preferred over many changes that can only deliver incremental improvements over a prolonged period.

The Consultation Paper does not include information concerning the costs and measurable benefits of proposals to assist in evaluating options and the relative impact to the Regime. We would, for example, be concerned if new design elements or the imposition of additional requirements and expectations on Canadian businesses that are burdensome bring only limited potential benefits to the Regime, and especially if other areas of possible greater risk or opportunity for improvement are not addressed or prioritized.

Considering the general context provided above, we have commented on recommendations and improvements that should be considered to enhance the operating effectiveness of the AML/ATF Regime and where our insights might provide the greatest value including:

- Support for improved enforcement and the Canada Financial Crimes Agency as a centralized and dedicated agency, with full oversight over financial crime in Canada to facilitate aligned and timely investigations, enforcement, and prosecutions
- A national framework for the reporting by and protection of whistleblowers with a potential reward system, instead of the current incomplete patchwork quilt of provisions at the federal, provincial and territorial government levels
- Advancing and utilizing technology, such as encryption and anonymization along with other tools to facilitate enhanced information sharing that minimize fragmentation and duplication by Regime participants, while respecting the privacy rights of Canadians
- Continued support for increased corporate ownership transparency via improved access to beneficial ownership information, while maintaining the ease of doing business in Canada and valuing the privacy rights of Canadians
- Support for the creation of information sharing partnerships with multi-sector public and private organizations, and more communication and engagement with stakeholders to achieve important public interest objectives

Detailed Response

Part I – Overview and Government Efforts to Combat Money Laundering and Terrorist Financing

Chapter 3 – Federal, Provincial, and Territorial Collaboration

How can different orders of government better collaborate and prioritize AML/ATF issues related to beneficial ownership, the legal profession, and civil forfeiture?

Are there other areas or issues related to money laundering and terrorist financing that could benefit from greater federal, provincial, and territorial engagement?

As a multijurisdictional country, there are inherent benefits in collaboration and in the collective efforts of all working together being more effective against national and transnational crime. As case after case demonstrates, criminals looking to launder proceeds of crime or finance terrorism do not stop at provincial, territorial or national borders and society is harmed regardless of jurisdiction. We are supportive of collaborative efforts by all jurisdictions in Canada and in working with international partners to enhance the fight against AML/ATF issues.

Specifically, CPA Canada supports the federal government's work to create a pan-Canadian beneficial ownership registry and continues to recommend the development of a national whistleblower framework.

Transparent beneficial ownership information is a key factor in fighting money laundering and other financial crimes. We commend the federal government's continued efforts and commitment to advancing a pan-Canadian approach to corporate beneficial ownership transparency through a federal publicly accessible beneficial ownership registry that is scalable, allowing access to the beneficial ownership data held by provinces and territories that agree to participate. We encourage the federal government to continue its engagement with the provinces and territories in this regard and encourage all parties to consider the consistency of information and requirements as critical for the efficiency and effectiveness of beneficial ownership information.

As discussed in more detail below (Chapter 5.2) and in CPA Canada's testimony and submissions at the Commission of Inquiry into Money Laundering in British Columbia (the "Cullen Commission"), we continue to advocate for a national framework for the reporting by and protection of whistleblowers, instead of the current incomplete patchwork quilt of provisions at the federal, provincial and territorial government levels. Whistleblowing provisions currently exist in various statutes governed by discrete legislative frameworks, including the PCMLTFA, environmental legislation and securities legislation. Substantial gaps and fundamental disconnects need to be remedied including where, for example, federal indemnity is of no value when being sued civilly in a provincial or territorial jurisdiction for whistleblowing.

How can different levels of government work together better to address money laundering and terrorist financing?

Due to the unique regulatory and legislative environment in the province of Québec, l'Ordre des CPA du Québec (OCPAQ) has raised specific additional considerations on this issue.

Regulation of professions falls under the exclusive jurisdiction of the provinces. Québec's professional system is unique in Canada. It regulates 46 professional orders that integrate more than 55 professions. For nearly 50 years now, professional orders have been subject to the supervision of l'Office des professions and to the rules set out in the *Professional Code*[1]. Their principal function is to ensure the protection of the public.

The protection of the public encompasses the broader notion of the protection of society's collective interest, thus, the fight against money laundering. Professional orders can and must play an important

[1] See: https://www.legisquebec.gouv.qc.ca/en/document/cs/c-26

role in preventing and detecting irregularities. Members that do not abide by the regulations of the profession are more at risk to be instrumented by ill-intended clients.

The federal government must work in collaboration with the various professional orders of the business professions and not only with the Law Societies and the provincial Bar. The federal government should work closely with l'Office des professions. As an example, legislative amendments to the *Professional Code* could make it possible to better define the lifting of professional secrecy in the context of the fight against money laundering and to reserve the use of the title "accountant" in Québec.

Part II – Operational Effectiveness

Chapter 4 – Criminal Justice Measures to Combat Money Laundering and Terrorist Financing

In respect of matters raised in Chapter 4, we offer our comments and views from CPA Canada's vantage point as a participant on the Department of Finance's private-public sector ACMLTF and its working groups, and our engagement with the federal government in efforts to strengthen Canada's AML Regime. We are supportive of efforts to improve Regime effectiveness related to prosecutions and deterrence measures – a critical issue and identified gap. Prosecution of money laundering in Canada was identified as an area for improvement in Canada's 2016 evaluation by the FATF and in the Cullen Commission, as evidenced by the decline in investigations, charges, prosecutions, convictions and asset forfeitures between 2010 and 2020, and only one federal conviction or guilty plea for a PCMLTFA offence between 2014 and 2020[2].

We are also aware that Canada's reputation regarding its AML/ATF efforts could stand improvement as evaluated by others. For example, although a U.S. State Department report noted that Canada has made progress in addressing money laundering deficiencies, Canada was identified as a "Major Money Laundering Jurisdiction" in 2021[3]. Noted deficiencies included limited oversight of the domestic non-profit sector, gaps in customer due diligence (CDD) responsibilities for designated non-financial

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[2] Government of Canada. *Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime: Report on Performance Measurement Framework* (March 2023). Available at: https://www.canada.ca/en/department-finance/programs/financial-sector-policy/canadas-anti-money-laundering-and-anti-terrorist-financing-regime-report-performance-measurement-framework-released-march-2023.html

[3] United States Department of State Bureau of International Narcotics and Law Enforcement Affairs. *International Narcotics Control Strategy Report Volume II Money Laundering* (March 2022), pages 68-70. Available at: https://www.state.gov/wp-content/uploads/2022/03/22-00768-INCSR-2022-Vol-2.pdf

businesses and professions (DNFBPs), a lack of beneficial ownership transparency for trusts and similar legal mechanisms, and information sharing constraints with Regime participants. As well, the Basel AML Index, which measures a jurisdiction's risk and vulnerability to money laundering and terrorist financing (ML/TF) and its capacities to counter it, ranked Canada 101 out of 128 countries on a highest to lowest scale of ML/TF risk in 2022[4] indicating that there is room for improvement.

4.1 – Investigation and Prosecution of the Offence of Laundering Proceeds of Crime

Should the offence of laundering proceeds of crime be amended to better address third-party money laundering, such as by altering the nexus required between the predicate offence and the laundering activity?

CPA Canada is generally supportive of enhancements to the AML/ATF Regime that would better address third-party money laundering. If reducing the pressure on the nexus between the predicate offence and money laundering will support effective investigative efforts that lead to prosecutions and convictions, an informed analysis should be carried out respecting the benefits on which to evaluate this proposal versus its cost, and consideration should be made of the impact of any unintended consequences.

The use of third-party money launderers by criminals, corrupt corporations and other parties to outsource the laundering of their proceeds of crime highlights the importance of greater beneficial ownership transparency as a fundamental element to enhancing the AML/ATF Regime. We note that progress being made to increase corporate transparency should also help in this regard making Canada a less attractive destination for illegal activities including the efforts of third-party money launderers.

In prior submissions, we have encouraged more outreach by FINTRAC and government departments to increase the understanding of Canada's AML/ATF evolving risks and the overall Regime. Consistent with our expressed view, we also agree that more specific efforts to enhance education, awareness and reporting to authorities regarding third-party money laundering would be beneficial for at-risk groups and sectors with the objective of better addressing this issue.

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[4] Basel Institute on Governance, 2022. *Basel AML Index 2022: 11th Public Ed. Ranking money laundering and terrorist financing risks around the world*. Available at: https://index.baselgovernance.org/api/uploads/221004_Basel_AML_Index_2022_72cc668efb.pdf

4.2 – Offences for other Economically-Motivated Crime

Would additional offences in the Criminal Code effectively contribute to combating fraud, notably through "phishing" or "spoofing"?

The increased prevalence and sophistication of fraudulent schemes and cybercriminals due to rapidly evolving technology poses a serious harm to society and businesses. More recently, the COVID-19 pandemic increased ML/TF and cybercrime activities due to vulnerabilities created through the global disruption resulting in enhanced opportunities for those with illicit objectives.

According to a recently released Statistics Canada survey, 1 out of 6 Canadians self-reported being victim to fraud[5]. During 2014 – 2019, Canadians reported $16 billion in fraud and 2021 and 2022 were "historic" years for the number of reported losses to fraud according to the RCMP[6]. Elsewhere, in the United Kingdom, for example, fraud was estimated to account for 40 per cent of all crime committed in 2022 and is noted as a long-standing threat to public services[7]. From a global perspective, in a 2022 study on occupational fraud, 675 or 36 per cent of all reported cases were in the United States and Canada resulting in losses of over $3.6 billion[8].

With concern for the societal experiences noted above, CPA Canada is generally supportive of the consideration of adding additional offences in the *Criminal Code* to effectively contribute to combatting significant fraud risks; we also recommend that the inclusion of specific additional offences should consider future relevance and applicability in drafting the legislative response to address new and evolving fraudulent schemes that will continue to arise.

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[5] Statistics Canada. Self-reported fraud in Canada, 2019. Available at: https://www150.statcan.gc.ca/n1/pub/89-652-x/89-652-x2023001-eng.htm

[6] O'Neill, Natasha. CTVNews.ca. *Canadians reported $16B in fraud losses in five years*: report (July 25, 2023). Available at: https://www.ctvnews.ca/business/canadians-reported-16b-in-fraud-losses-in-five-years-report-1.6493554

[7] Gov.UK Cabinet Office. Corporate report National Fraud Initiative Report: December 2022 (Updated 16 January 2023). Available at: https://www.gov.uk/government/publications/national-fraud-initiative-reports/national-fraud-initiative-report-december-2022-html

[8] Association of Certified Fraud Examiners (ACFE). *Occupation Fraud 2022: A Report to the Nations.* Available at: https://legacy.acfe.com/report-to-the-nations/2022/

4.3 – Sentencing for Laundering Proceeds of Crime

Should the government consider sentencing reforms for the offence of laundering proceeds of crime?

For Canada to be seen as tough on the crime of money laundering – both domestically and internationally, penalties for laundering proceeds of crime must be substantive and serve as effective deterrents; but also, the prosecutions that lead to convictions (or agreements for settlement) need to be timely.

To allow for a more informed analysis of approaches to sentencing relating to the laundering of proceeds of crime, the government should explore and routinely consider international comparisons and best practices, along with the impact of any unintended consequences of proposed sentencing reforms. We also note that the frequency of levying charges for money laundering varies jurisdictionally. In considering international comparisons and best practices for sentencing, we also recommend that charging provisions, prevalence of use and charging best practices also be routinely considered by Canada.

4.8 – Criminal Forfeiture

Should the scope of the rebuttable presumption provision in the Criminal Code be expanded to include a number of additional profit-oriented offences, such as laundering proceeds of crime and major fraud or extortion on the basis that these offences are increasingly associated with a criminal lifestyle, and to recognize the serious societal harms they represent in their own right? Should other offences be contemplated?

CPA Canada is generally supportive of the consideration of expanding the scope of the rebuttable presumption provision in the *Criminal Code* to include additional profit-oriented offences, such as laundering proceeds of crime. To allow for an informed analysis of the benefits on which to evaluate this proposal versus its cost, the impact of any unintended consequences, such as the *Charter* implications, will need to be considered.

Chapter 5 – Canada Financial Crimes Agency

5.1 – The Mandate and Structure of the Canada Financial Crimes Agency (CFCA)

The success and effectiveness of Canada's new, dedicated lead enforcement agency will be dependent on the agency having the capacity and ability to resource the agency quickly and

adequately with the expertise necessary to focus on delivering on its mandate. The CFCA should be structured as a dedicated and centralized agency that has full oversight of financial crime in Canada – from investigation to prosecution, and it should also have specific matters where it leads on investigations. As well, determining how the CFCA will enhance prosecutorial efforts, rather than simply introducing a coordination function, and without extending process timelines will be critical to Regime effectiveness. Providing input on policy and Regime adjustments to improve effectiveness and deterrence will also be key to the agency's ongoing success.

We believe that some of the most important determinations to be made about the CFCA are regarding the types of crimes that it will focus on and the development of a qualitative and quantitative threshold for the crimes that it will assign resources to. These decisions will have many impacts on the operation of the CFCA and its financial needs. We think that multi-disciplinary skillsets will be required in establishing the organization and that national and/or international secondments may be helpful in assembling talent and experience in the near term.

We encourage continuing the exploration of international comparatives to learn from the experiences of other jurisdictions and to progress as quickly as possible to increase money laundering charges, prosecutions, convictions, and asset forfeitures. The Consultation Paper acknowledges that enforcement and prosecutions are challenges, and that improvement is required to protect Canada and in considering the next FATF Mutual Evaluation wherein Regime effectiveness will be at the forefront.

5.2 – Core Elements of Effective Financial Crime Enforcement

What tools or programs (e.g., legal authorities, organizational policies, technological solutions, whistleblower programs) should be provided to the CFCA to ensure it obtains the information required to conduct effective financial crime enforcement?

CPA Canada commends the Department of Finance for including in the *Budget Implementation Act, 2023,* proposed amendments to the PCMLTFA to protect employees who disclose to FINTRAC, as well as amendments to the *Canada Business Corporations Act* (CBCA) in Bill C-42 to enact a new provision to protect whistleblowers; however, these are only further additions to the "patchwork quilt", and substantial gaps and inconsistencies remain nationally. We are supportive of a proposal to use whistleblower programs as a tool for the CFCA to ensure it obtains the information required to conduct effective financial crime enforcement. Further, we recommend that, whistleblowing programs must have a much broader application in Canada in addition to being a tool for the CFCA. A national whistleblower reporting and protection framework is needed to encourage public interest disclosures, fight money laundering and financial crimes, and to strengthen Canada's AML Regime.

CPA Canada has been advocating for a national whistleblower regime, including whistleblower protection, for several years in various submissions made to the federal government and before the Cullen Commission. While the federal government has taken steps on many fronts, there are additional strategic improvements which would strengthen the effectiveness of Canada's AML Regime and we firmly believe that a national whistleblower reporting and protection framework is needed.

In comparison to other jurisdictions, Canada has yet to adequately focus on the valuable role of whistleblowing reporting and protection in the fight against financial crimes and for the escalation of other public interest disclosures. Specific to the federal AML/ATF Regime, a fundamental disconnect must be addressed where federal indemnity is of no value when being civilly sued, provincially or territorially, for whistleblowing. Additionally, rewards for speaking out must be contemplated so all members of the public, including private sector employees, have protection for a path forward while doing the right thing.

Major jurisdictions, such as the U.S. (*Bank Secrecy Act*[9]), the European Union[10] and the U.K. (*Public Disclosure Act* (PIDA)[11]), have whistleblower protection laws that support their AML regimes and beyond, yet Canada's framework falls short. This gap undermines the effectiveness of the federal, provincial, and territorial efforts necessary to combat the laundering of proceeds of crime.

Given the aspirations of the G20 to implement comprehensive and effective provisions for whistleblowers in the public and private sectors[12], CPA Canada is unclear as to how Canada can advance or improve its current position without a national framework that protects whistleblowers and provides rewards to those who identify and escalate public interest concerns, including money laundering.

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[9] The *Bank Secrecy Act*, BSA Statute 31 U.S.C. 5323, Whistleblower incentives and protections. Available at: https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act

[10] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937

[11] *Public Interest Disclosure Act* 1998. Available at: https://www.legislation.gov.uk/ukpga/1998/23/contents

[12] OECD G20 Anti-Corruption Action Plan, Protection of Whistleblowers, *Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation* (2011). Available at: https://www.oecd.org/g20/topics/anti-corruption/48972967.pdf

Confidentiality and Professional Secrecy

As noted above, Canada has no single legislative infrastructure for public interest disclosure and whistleblowing, a problem that makes it difficult to implement the International Ethics Standard Board for Accountants (IESBA) standard on non-compliance with laws and regulations (NOCLAR). NOCLAR sets out a framework for the response of professional accountants to known or suspected NOCLAR, including whether the known or suspected NOCLAR should be disclosed to an appropriate authority.

A national whistleblowing framework would be an important mechanism for those professionals who may suspect money laundering activities in circumstances that, for example, do not meet the requirements for a suspicious transaction report, and in situations where a CPA is not able to resolve the issue within an organization according to professional standards. Accordingly, CPAs with suspicions may provide information to law enforcement, prosecutors, or regulators and be protected for any breach of confidentiality, making this is an important consideration for the potential adoption of the NOCLAR international standard in the Canadian CPA profession.

Due to the unique regulatory and legislative environment in the province of Québec, OCPAQ has raised specific additional considerations concerning professional secrecy and Québec's professional system and legal regime.

CPAs in Québec are bound by professional secrecy. Section 9 of *Québec's Charter of Human Rights and Freedoms*[13] applies, without distinction, to all Québec professionals:

> **9.** *Every person has a right to non-disclosure of confidential information.*
> *No person bound to professional secrecy by law and no priest or other minister of religion may, even in judicial proceedings, disclose confidential information revealed to him by reason of his position or profession, unless he is authorized to do so by the person who confided such information to him or by an express provision of law.*
>
> *The tribunal must, ex officio, ensure that professional secrecy is respected.*

Professional secrecy has two components:

1) the professional's duty of discretion, which implies the right to confidentiality of information transmitted between a client and the professional he consults; and

[13] See: https://www.legisquebec.gouv.qc.ca/en/document/cs/C-12

2) the privileged nature of the communication subject to professional secrecy, which protects the client against disclosure of that communication, including in legal proceedings.

The Québec *Charter* provides that courts have an obligation to protect professional secrecy. Article 2858 of the *Civil Code of Québec*[14] provides that the courts must dismiss out of hand any evidence that violates the right to professional secrecy.

Furthermore, section 60.4 of the *Professional Code*[15] reiterates that "*every professional must preserve the secrecy of all confidential information that becomes known to him in the practice of his profession.*" The CPA will only be released of its obligation in specifically listed circumstances, namely

- With the authorization of his client;
- Where so ordered or expressly authorized by law;
- To prevent an act of violence, including suicide, where he has reasonable cause to believe that there is a serious risk of death or serious bodily injury threatening a person or an identifiable group of persons and where the nature of the threat generates a sense of urgency.

The obligation to respect professional secrecy is also reiterated in section 48 of the *Code of ethics of chartered professional accountants*[16]. Preserving the confidentiality of the exchanges between a professional and his client aims to ensure the relationship of trust, in order to ensure the transparency of communications, essential to the quality of the professional act.

Québec is the only Canadian jurisdiction to apply this dual protection to all professionals and to confer quasi-constitutional status on the duty of confidentiality to which all professionals are bound. Other Canadian jurisdictions recognize the duty of confidentiality of certain professionals, but few have recognized immunity from disclosure before judicial proceedings for professionals other than lawyers.

Québec's professional system is a coherent system whose legal framework is structured so that every professional order fulfills its primary mission, the protection of the public.

These particularities call for a precise framework for disclosure measures applicable to CPAs and professionals practising in Québec. Immunity from disclosure is generally not adapted to whistleblowers

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[14] See: https://www.legisquebec.gouv.qc.ca/en/document/cs/ccq-1991/20140501#se:2858

[15] See: https://www.legisquebec.gouv.qc.ca/en/document/cs/c-26

[16] See: https://www.legisquebec.gouv.qc.ca/en/document/cr/C-48.1, r. 6

who are regulated by a professional order. Legislation, at both provincial, territorial and federal levels, fails to state that obligation to disclose applies, *notwithstanding the professional secrecy provided for in the Professional Code and the Charter of Rights and Freedoms* (the "*Charter*"). When legislation waives professional secrecy, it must establish a framework that allows for minimal impairment of professional secrecy and that provides guidelines, such as measures to be taken before concluding that it is necessary to override professional secrecy, the extent to what may be disclosed, to whom the denunciation must be made, and guarantees to maintain the confidentiality of the disclosed information for any other purposes.

It should be noted that OCPAQ is currently a plaintiff in a case over the validity of the section 17.0.1 of the Act respecting the regulation of the financial sector[17]. On October 18, 2021[18], the Superior Court granted OCPAQ's application for judicial review and declared section 17.0.1 inapplicable to members of the Ordre des CPA du Québec. The case has been appealed and a decision from the Québec Court of Appeal is expected this fall.

Chapter 6 – Information Sharing

CPA Canada supports more effective and enhanced information sharing that balances the public interest with protecting the privacy rights of Canadians under the *Charter* and complying with privacy legislation in Canada. Improvements to the Regime are required to facilitate greater information sharing between public and private sector Regime participants within Canada and enhancements to international co-operation and information-sharing to better understand the sources of funds coming into Canada.

As referenced in the Consultation Paper, we concur with the importance of a close relationship between the private and public sector as a critical element of a well-functioning AML/ATF Regime. In this regard, we commend the Government of Canada and the parties that participate in the public-private sector ACMLTF and its subcommittees for efforts in sharing relevant information toward strengthening Canada's Regime.

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[17] See: https://www.canlii.org/en/qc/laws/stat/cqlr-c-e-6.1/latest/cqlr-c-e-6.1.html

[18] See: https://www.canlii.org/fr/qc/qccs/doc/2021/2021qccs4327/2021qccs4327.html?searchUrlHash=AAAAAQA4T3JkcmUgZGVzIGNvbXB0YWJsZXMgcHJvZmVzc2lvbm5lbHMgYWdyw6nDqXMgZHUgUXXDqWJlYyAAAAAAAQ&resultIndex=15

6.1 – Private-to-Private Information Sharing

Are there specific tools, mechanisms, or models from other jurisdictions that could be incorporated into Canadian legislation to support greater information sharing?

We encourage the government to utilize technology and other tools, including emerging technologies such as encryption-based tools to facilitate greater information sharing and allow for data analytics that will render the data more valuable to the Regime's core operational partners[19] and reporting entities, thereby minimizing fragmentation and duplication by Regime participants, while balancing the regulatory burden and Canadians' privacy protections. The technological solution(s) must allow for the interaction with and contributions by Regime participants and the security elements to prevent misuse and unintended effects.

Greater information sharing will enhance the efficiency and effectiveness of the Regime by enabling law enforcement and the Regime's core operational partners to have timely access to information necessary for domestic and international investigations, and enabling Canada to cooperate with other countries, pursuant to its agreements, in the deterrence, identification and prosecution of ML/TF.

Although data privacy concerns are one of the primary obstacles to more widespread adoption of information-sharing platforms, countries with information-sharing platforms include the U.S., U.K., The Netherlands and Estonia. One such example is the Transactie Monitoring Nederland (TMNL) platform – a joint venture of the five largest Dutch banks[20]. The platform allows participating banks to pool encrypted (anonymized) transactional data about business customers to detect money laundering activity and fraud, while the privacy-enhancing technology generates alerts for potentially unusual transaction patterns that could indicate money laundering or terrorist financing, which are sent to relevant banks for further investigation. In its first two years of operations, the platform generated approximately 2,000 alerts.[21]

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[19] As noted in the Consultation Paper, the Regime's core operational partners are FINTRAC, the RCMP, CBSA, CSIS and the CRA.

[20] See: https://tmnl.nl/en/about-tmnl/tmnl-in-brief/

[21] Tokar, Dylan, The Wall Street Journal. *Banks Start Using Information-Sharing Tools to Detect Financial Crime* (July 25, 2022). Available at: https://www.wsj.com/articles/banks-s.art-using-information-sharing-tools-to-detect-financial-crime-11658741402

6.2 – Public-to-Private Information Sharing

We commend the ongoing commitment and efforts on creating public-private partnerships in Canada's AML/ATF Regime to combat new and re-emerging methods of ML/TF (e.g., Project Protect). We encourage the government to continue supporting and exploring such opportunities for information sharing partnerships with multi-sector public and private organizations. We also encourage more communication and engagement efforts with stakeholders to achieve important public interest objectives, such as FINTRAC's strategic intelligence Operational Alerts[22] and others highlighted in the Consultation Paper in Canada, the U.K. and Australia.

We also note the Cullen Commission Recommendation 80 for CPA Canada to acquire and maintain insights into members' compliance with the PCMLTFA by following up with FINTRAC on an ongoing basis and advise that this recommendation for information sharing is under consideration.

Due to the unique regulatory and legislative environment in the province of Québec, OCPAQ has raised additional specific considerations regarding information sharing with FINTRAC.

Intelligence and information sharing between FINTRAC and regulators is important but may contravene with professional secrecy as previously noted. It is recommended that intelligence and information sharing be provided for through a collaborative agreement as it exists between OCPAQ and the Canadian Public Accountability Board (CPAB)[23]. Such an agreement between FINTRAC and OCPAQ, however, would require an amendment to the Québec CPA Act.

Part III – PCMLTFA Legislative and Regulatory Framework

Chapter 7 – Scope and Obligations of AML/ATF Framework

7.1 – Review Existing Reporting Entities

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[22] See: https://fintrac-canafe.canada.ca/intel/sintel-eng

[23] C-48.1, r. 15.2 - Cooperation agreement between the Ordre des comptables professionnels agréés du Québec and the Canadian Public Accountability Board:
https://www.legisquebec.gouv.qc.ca/fr/document/rc/C-48.1,%20r.%2015.2%20/

Accountants

In the Department of Finance 2015 and updated 2023 Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada (NIRA), a different definition of accountant is used. Accounting firms and accounting services provided by regulated accountants and non-regulated individuals as well as their knowledge and skills were considered for the assessment. Alternatively, for the purposes of the PCMLTFA and its regulations, "Accountants" means a CPA. An accounting firm means an entity that is in the business of providing accounting services to public that has at least one accountant who is a partner, an employee or an administrator.

As noted in the 2015 and updated 2023 NIRA, accountants have been assessed as having a medium vulnerability risk rating. The updated NIRA highlighted that the accounting sector has a large number of practitioners across Canada that have specialized knowledge and expertise that may be vulnerable to being exploited wittingly or unwittingly for illicit purposes; however, even though the client profile of accountants would include high net worth clients, politically exposed persons (PEPs) and vulnerable businesses (e.g., cash-intensive ones), it is believed that accountants are domestically focussed; thereby, minimizing their exposure to high-risk jurisdictions. In addition, the NIRA noted that accountants operate in a direct and face-to-face setting with their clients thereby minimizing anonymity.

At the Cullen Commission, CPA Canada's testimony highlighted two important roles that CPAs and the CPA profession play respecting the AML/ATF Regime. One role is sculpted under the legislation of the PCMLTFA and its regulations regarding reporting entities. CPAs and accounting firms are reporting entities under Canada's PCMLTFA, with specific regulatory requirements when they engage in certain activities (i.e., triggering activities). The second more expansive role that the CPA profession plays is through its work contributing to the security of the financial system in Canada at large and the capital system.

Should the definition of "accountant" be expanded to include uncertified accountants who perform the triggering activities under the PCMLTFA?

Currently, accountants who are not formally certified under a professional body (i.e., unregulated accountants) are not subject to the obligations under the PCMLTFA and associated Regulations. Findings from the Cullen Commission highlighted the potential risks of unregulated accountants, who may be performing triggering activities on behalf of a client. Apart from certain restricted services, unregulated accountants in Canada may undertake many of the same accounting activities as CPAs. CPAs are subject to many requirements through respective provincial and territorial CPA Acts, related bylaws and regulations, codes of ethics in addition to obligations in Canada's AML/ATF Regime when

applicable and unregulated accountants are not. Lack of regulatory compliance oversight and enforcement of unregulated accountants poses a public interest risk in the marketplace.

In comparison, non-designated accountants without a professional oversight/ supervisory body in the United Kingdom are scoped into the AML/ATF Regime reporting to government. Under money laundering regulations, accountancy service providers are required to register with HM Revenue & Customs (the "HMRC") as a reporting entity[24] if the services they provide are recording, reviewing, analyzing, calculating and reporting on financial information for other people.

With a NIRA-assessed medium vulnerability risk rating, uncertified/non-designated/unregulated accountants have no risk mitigating requirements under the PCMLTFA or otherwise. Accordingly, in the public interest, CPA Canada is supportive of an extension of the PCMLTFA and its Regulations to include uncertified/non-designated/unregulated accountants who perform triggering activities.

Due to the unique regulatory and legislative environment in the province of Québec, OCPAQ has raised additional specific considerations on this issue.

OCPAQ is also of the opinion that "the accountant title"[25] should be reserved for members of OCPAQ in Québec only. It made the recommendation to the Government of Québec in 2020 in Chapter 5.1 of the Report on the Implementation of the CPA Act[26].

Should AML/ATF obligations be applied to certified and uncertified accountants when they prepare for and provide advice about triggering activities?

CPA Canada does not support expanding AML/ATF obligations to preparing for and providing advice about triggering activities under the PCMLTFA. In the Cullen Commission, CPA Canada testified that the nature and extent of money laundering risks can be answered by the scope of the Act – the risks arise when an accountant is acting as an intermediary in the financial system, which is reflected in the scoping of triggering activities. These triggering activities reflect how the PCMLTFA has been

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[24] Gov.UK, Guidance – Money laundering supervision for accountancy service providers. Available at: https://www.gov.uk/guidance/money-laundering-regulations-accountancy-service-provider-registration

[25] As per Chapter IV, Division III, *Professions with Reserved Titles*, of the Government of Québec's Professional Code. See: https://www.legisquebec.gouv.qc.ca/fr/document/lc/C-26

[26] See: https://cpaquebec.ca/-/media/docs/salle-de-presse/memoires/2020-05-11-rapport-opq_officiel_fr.pdf

intentionally sculpted to target the risk posed by the direct involvement of a CPA or accounting firm in a transaction that interfaces with the financial system.

When directing the transaction or providing instructions to carry out financial transactions, the CPA or accounting firm is interacting with the financial system and is scoped into the Regime, unlike when they are only preparing for and providing advice and are not directly involved in the transaction itself. This is consistent with the sculpted legislative intent, which we support.

We believe that including preparing for and providing advice about triggering activities under the AML/ATF obligations would be contrary to the intent of the legislation, which is focused on interactions with the financial system where money laundering occurs. The Regime has been sculpted in a way to consider the risk posed by the involvement of a professional accountant in a transaction that interfaces with the financial system, but not preparing for and the provision of advice and we agree with this legislative and regulatory intent.

Due to the unique regulatory and legislative environment in the province of Québec, OCPAQ has raised additional specific considerations on this issue.

The scope of what is covered when referring to the provision of advice as described in the Consultation Paper is questioned, given the CPA's advisory role towards their client and regarding the topic of professional secrecy.

AML/ATF obligations include reporting. However, if these obligations were applicable to all types of advice, there is a risk of creating an unintended result by distancing taxpayers from seeking professionals' advice. CPAs, just as lawyers and legal advisors, are consulted for their knowledge and expertise. As such, they play a vital role in the Canadian and Québec tax systems by helping taxpayers to comply with regulations and legislation. If AML/ATF obligations were to focus too broadly on the provision of advisory services, there is a risk that taxpayers, out of fear of reporting, are discouraged from seeking the services of regulated professionals who can properly assist them to comply with tax legislation.

Furthermore, the issue of minimal impairment of the client's right to professional secrecy will arise if there is not a circumscribed and precise framework for mandatory disclosure measures as we mentioned earlier.

Should the scope of triggering activities be expanded to include other services provided by accountants, and if so, which ones?

As previously noted, Canada's AML Regime is designed to focus on interaction with the financial system, CPAs' reporting obligations are triggered in specific circumstances. CPA Canada thereby believes that the AML/ATF Regime has been appropriately tailored to capture money laundering risks in the accounting sector vis-à-vis financial intermediaries who are also reporting entities under the legislation – the risks arise when an accountant is acting as an intermediary in the financial system, which is reflected in the triggering activities. Expanding the scope of triggering activities to include other services provided by accountants would not be consistent with the intentional requirements for accountants and accounting firms that are focused on the relative risks of when financial intermediation takes place or instructions are given resulting in a financial transaction.

The exclusion of certain accounting activities from triggering activities aligns with the goal of targeting activities that involve financial intermediation and where adequate regulation exists. For example, auditing and assurance activities are heavily regulated, being subject to the requirements of the provincial and territorial CPA regulatory bodies and, depending on the circumstances, the Canadian Public Accountability Board (CPAB) and Public Company Accounting Oversight Board of the United States. Further, the Canadian Auditing Standards (CAS) apply and address non-compliance with laws and regulations.

Instances where a professional accountant, who is authorized by law to carry on the business of, or to monitor the business or financial affairs of, an insolvent or bankrupt person or entity, or is authorized to act under a security agreement, are not subject to the PCMLTFA or associated Regulations. As noted in the Cullen Commission, "given the extensive court supervision and highly regulated nature of insolvency proceedings, there is a very low risk of these activities being misused for money laundering purposes"[27].

7.3 – Expanding Regime Scope to Other New Sectors
Company Service Providers

Should the government expand the coverage of the AML/ATF framework to include company service providers as reporting entities?

[27] *Commission of Inquiry into Money Laundering in British Columbia Final Report* (June 2022), page 1288. Available at: https://cullencommission.ca/files/reports/CullenCommission-FinalReport-Full.pdf

CPA Canada is supportive of the government considering the expansion of the coverage of the AML/ATF framework to include businesses that provide company services to the public as reporting entities.

We believe that this sector is more common in the United Kingdom, and that it may represent an evolving risk for Canada.

7.4 – Streamlining Regulatory Requirements
End Period for Business Relationships

Should the concept of "business relationship" in the PCMLTFA and its Regulations be clarified to specify when it is considered to have ended?

To relieve some reporting entities of their obligation for ongoing monitoring of a business relationship that no longer exists, CPA Canada is supportive of the government providing greater clarity and simplicity in the PCMLTFA and its Regulations on when a business relationship is considered to have ended.

Chapter 8 – Regulatory Compliance Framework

8.1 – Modernizing Compliance Tools

Compliance Program Review

Should the government amend the PCMLTFA to allow FINTRAC, in circumstances of urgent or significant non-compliance, to direct reporting entities to undertake a review of their compliance program by an independent external or internal reviewer and share the results to FINTRAC?

Should there be any specific criteria for FINTRAC to use this provision?

Directing reporting entities to undertake an independent external or internal review of their compliance program in circumstances of urgent or significant non-compliance could pose an undue regulatory burden upon reporting entities, particularly for small and very small businesses. To allow for an informed analysis of the risk basis on which to evaluate this proposal versus its cost, we would need to understand more about the urgent or significant non-compliance concerns that FINTRAC may have which would necessitate such actions.

We are perplexed as to why FINTRAC, as the regulator with specialized knowledge and experience with the issue of concern, wouldn't carry out such reviews in scenarios of urgent and significant non-compliance. We believe that such reviews would be consistent with FINTRAC's regulator mandate and furthermore, that independent external or internal reviewers likely cannot apply the specialized knowledge and experience that FINTRAC possesses; and therefore, FINTRAC is, in our view, in the best position to conduct such compliance reviews of reporting entities.

Due to the unique regulatory and legislative environment in the province of Québec, OCPAQ has raised specific additional considerations on this issue.

In Québec, an examination of the compliance of a CPA member's activities and files requires access to information that is protected by professional secrecy. The power to access these files is vested solely in professional orders and more specifically, in the persons designated in section 192[28] of the *Professional Code.*

8.2 – Effective Oversight and Reporting Framework

Universal Registration for All Reporting Entities

Should the government amend the PCMLTFA to introduce registration requirements for all reporting entities?

What other enforceable ways could FINTRAC obtain a more accurate picture of the reporting entity population?

Requiring all non-money services businesses (MSBs) reporting entities to register with FINTRAC and provide certain relevant information about their businesses would be a significant effort. Specific to the accounting sector, the value of having insight into this sector is not clear and we believe the costs of this proposed additional regulatory burden on accountants and accounting firms who do not perform triggering activities outweigh the benefits.

Instead, we believe that the government should consider other ways to obtain this sectoral information to the extent needed, such as working with the provinces regarding their business registration processes and via provincial and territorial business registries.

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[28] See: https://www.legisquebec.gouv.qc.ca/en/document/cs/c-26/20170530?langCont=en#se:192

8.3 – Additional Preventive and Risk Mitigation Measures

Source of Wealth/Funds Determinations

Should the government amend the PCMLTFA and/or its Regulations to require all reporting entities to take reasonable measures to establish the source of wealth of an individual when conducting a financial transaction or transfer of a certain threshold?

To allow for an informed analysis of the risk basis on which to evaluate this proposal versus its cost, we would need to consult members with detailed proposals in order to comment and provide feedback on the impact of this potential additional regulatory requirement.

Annex 1 – Technical Proposal

Additional beneficial ownership information

Require reporting entities to collect dates of birth and gender of beneficial owners: would reporting entities have challenges collecting this information?

Beneficial ownership information is considered a key element in fighting money laundering and other financial crimes. For financial institutions and other professional services providers, such as lawyers and accountants, access to timely and accurate beneficial ownership information provides a valuable resource for conducting initial and ongoing customer due diligence.

In the *Canada Business Corporations Act* (CBCA)[29], an "individual with significant control" is defined, and includes people who own, control or direct a significant number of shares of a corporation as well as people who have significant influence over the corporation without owning any shares. In instances where the individual does not own shares of the corporation (e.g., a debtholder with loan covenants on the corporation's debt), collecting personal information of beneficial owners may be challenging for reporting entities that may require looking through complex structures, shareholdings, debt covenants and relationships. As well, any consideration to collect additional personal information would need to consider the *Charter* implications.

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[29] The *Canada Business Corporations Act*. R.S., 1985, c. C-44, s. 1 1994, c. 24, s. 2.1(1). Available at: https://laws-lois.justice.gc.ca/eng/acts/C-44/

Due to the unique regulatory and legislative environment in the province of Québec, OCPAQ has noted the following considerations on this issue:

In Québec, since March 31, 2023, the *Act respecting the legal publicity of enterprises*[30] has required entities subject to this Act to declare the ultimate beneficiaries and to collect certain information to identify them. This obligation is not specifically assigned to reporting entities, although they can help companies comply with their obligations.

Article 33 of the Act specifies the data and information that must be contained in the registration declaration:

> **33.** *The registration declaration must state*
> *(...) (2.1) the names, domiciles and dates of birth of the ultimate beneficiaries and any other name used by the ultimate beneficiaries in Québec and by which they are identified as well as, according to the terms determined by regulation of the Government, the type of control exercised by each ultimate beneficiary or the percentage of shares or units each one holds or of which each one is a beneficiary;*
> *(2.2) the date on which an ultimate beneficiary became one, and that on which the ultimate beneficiary ceased to be one;*

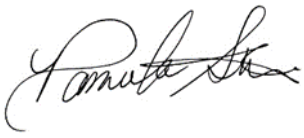
[30] See: https://www.legisquebec.gouv.qc.ca/en/document/cs/p-44.1

Closing Comments

We recognize the real threat posed by money laundering, terrorist financing and other forms of illegal and unethical conduct such as corruption to Canada's national reputation, economy, and society. The CPA profession plays a variety of important roles regarding the integrity of the financial system and markets. We reiterate our ongoing commitment to engaging in these important issues that affect all Canadians.

We welcome any questions concerning our response and look forward to participating in the continuing review and development of the Regime.

Sincerely,



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