

**An Examination of the Effectiveness of Canada's Proceeds of Crime Anti-Money  
Laundering and Anti-Terrorist Financing Regime**

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## **Executive Summary**

The objective of this report is to assess how effective Canada's anti-money laundering / anti-terrorist financing (AML/ATF) regime has been in achieving the desired results of combatting money laundering and terrorist financing.

Since the introduction of AML/ATF legislation, Canada has made significant improvements in becoming compliant with international standards and recommendations, however, the effectiveness of this regime has not been assessed.

The FATF's methodology for assessing the effectiveness of an AML/ATF regime is based on the following high-level objective:

“Financial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security”<sup>1</sup>

This high-level objective results in three intermediate outcomes, which in turn, results eleven immediate outcomes. The assessment of effectiveness focusses on the eleven immediate outcomes.

Based on publicly available information and interviews with subject matter experts, it was determined that Canada's AML/ATF regime only achieved a low level of effectiveness in eight of the eleven outcomes. Most notable, Canada has not completed and publicly released an assessment of the ML/TF threats it faces at the national level. The effect of not

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<sup>1</sup> (Financial Action Task Force, 2013)

having a national threat assessment is a pervasive issue and affects the ability for Canada's regime to achieve the desired outcomes.

Overall, the results achieved by Canada's regime are not able to demonstrate a sufficient level of effectiveness in accordance with the FATF recommendations. Significant improvement is needed in the implementation of Canada's AML/ATF policies, procedures and legislation.

## Background

To date, Canada has spent \$790 million on its anti-money laundering and anti-terrorist financing (AML/ATF) regime since 2000<sup>2</sup>. The Government and international bodies are beginning to inquire about the outcomes achieved with these funds.

Canada's efforts to combat proceeds of crime, money laundering and terrorist financing dates back to 1988, when Canada signed the United Nations Convention against Illicit Traffic and Narcotics Drugs and Psychotropic Substances<sup>3</sup>. The purpose of this convention was to provide "comprehensive measures against drug trafficking, including provisions against money laundering and the diversion of precursor chemicals"<sup>4</sup> and also to provide "for international cooperation through, extradition of drug traffickers, controlled deliveries and transfer of proceedings"<sup>4</sup>.

Later, in 1989, the Financial Action Task Force on Money Laundering (FATF) was created<sup>5</sup>. FATF is an inter-governmental body whose objectives are to "set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system"<sup>6</sup>. Canada has been a member of FATF since its inception.

In the years that followed, Canada's efforts in combatting proceeds of crime and money laundering were bolstered by the introduction of:

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<sup>2</sup> (<http://www.fin.gc.ca/pub/rpp/2014-2015/st-ts-04-eng.asp>, n.d.)

<sup>3</sup> (Standing Senate Committee on Banking Trade and Commerce, 2013, p. 3)

<sup>4</sup> (<http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>, n.d.)

<sup>5</sup> (Standing Senate Committee on Banking Trade and Commerce, 2013, p. 5)

<sup>6</sup> (<http://www.fatf-gafi.org/pages/aboutus/>, n.d.)

- Money laundering as a criminal offence under the criminal code of Canada in 1989<sup>7</sup>. Under section 462.31 (1) of the Criminal Code of Canada “Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of
  - (a) the commission in Canada of a designated offence; or
  - (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.”
- Integrated Proceeds of Crime (IPOC) units within the Royal Canadian Mounted Police (RCMP). IPOC was created in 1997 as an initiative to integrate the “skills, knowledge, and abilities of diverse groups of experts including other police forces, the Canada Revenue Agency, the Department of Justice, Forensic Accountants and Seized Property Management personnel”<sup>8</sup>.

Over the years, the risks and threats associated with proceeds of crime and money laundering evolved in Canada and internationally, and, accordingly, Canada’s efforts in combating the laundering of proceeds of crime did as well. In 2000, the National Initiative to Combat Money Laundering (NICML) was established<sup>9</sup>. Between 2000 and 2002, in response to the increased threat of terrorism, Canada’s Proceeds of Crime (money

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<sup>7</sup> (Standing Senate Committee on Banking Trade and Commerce, 2013, p. 3)

<sup>8</sup> (<http://www.rcmp-grc.gc.ca/poc-pdc/index-eng.htm>, n.d.)

<sup>9</sup> (<http://www.fin.gc.ca/pub/rpp/2014-2015/st-ts-04-eng.asp>, n.d.)

laundrying) Act was replaced by the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)<sup>10</sup>. During this time, Canada's financial intelligence unit was established, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

FINTRAC is Canada's financial intelligence unit, created in 2000, and reports to the Minister of Finance and operates within the PCMLTFA. Its mandate is to "facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of information under its control"<sup>11</sup>.

Since the creation of FINTRAC and the PCMLTFA, a number of different measures have been introduced in an effort to strengthen Canada's AML/ATF regime including<sup>12</sup>:

- Cross Border Currency Reporting
- Public Safety Act (allowing the sharing of compliance related information)
- Reverse Onus Provisions
- Establishment of a Money Services Business Registry
- Authority to issue Administrative Monetary Penalties
- Addition of new reporting sectors
- Strengthened requirements for client identification

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<sup>10</sup> (Standing Senate Committee on Banking Trade and Commerce, 2013, p. 4)

<sup>11</sup> (<http://www.fintrac-canafe.gc.ca/fintrac-canafe/1-eng.asp>, n.d.)

<sup>12</sup> (<http://www.fintrac-canafe.gc.ca/publications/guide/Guide1/1-eng.asp>, n.d.)



## **Reviews and Evaluations:**

To date, Canada's PCMLTF efforts have been reviewed and evaluated by many different committees and parties. The following is a list of some recent reviews and evaluations of Canada's program.

- Senate Committee's second five-year parliamentary review of the PCMLTFA "Follow the Money: Is Canada Making Progress in Combatting Money Laundering and Terrorist Financing? Not Really" (report dated March 31, 2013) (the "Senate Report")
- Capra International Inc. – 10 year external evaluation of the Regime (published December 7, 2010) (the "Capra Report")
- Financial Action Task Force – Third Mutual Evaluation on Anti-Money Laundering and Combatting the Financing of Terrorism (February 29, 2008)
- Financial Action Task Force - Follow Up Reports (Various)

The Senate Report and the Capra Report examined Canada's anti-money laundering program and indicate significant room for improvement. There are similar findings and recommendations contained in each report, summarized as follows:

- Funding of regime partners – allocation of resources and sources for additional funding.
- Development of a supervisory body or interdepartmental working group to determine future steps for improvement of the regime, enhance compliance with FATF recommendations and to improve reporting of results (number of

investigations, prosecutions, convictions, amounts seized and the frequency and use of FINTRAC disclosures).

- Enhancing the flow of information between regime partners while balancing privacy concerns.

### FATF Third Mutual Evaluation

The FATF provided 40 recommendations with respect to the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation which were issued in February 2004 as well as nine special recommendations.

On February 29, 2008, the FATF released its report on the results of Canada's third round of mutual evaluations. The evaluation examined Canada's AML/CFT measures in place as of June 2007, the date of FATF's on-site visit<sup>13</sup>. While the report indicates that Canada has significantly improved its AML/CFT program since the previous mutual evaluation, the FATF identified a number of areas where Canada was non-compliant or only partially compliant. The FATF's findings and recommendations with respect to these deficiencies are included in Appendix 2.

As a result of the deficiencies noted, Canada was placed into the regular follow-up process by the FATF. The regular follow-up process is applied where a mutual evaluation indicates significant deficiencies in a country's AML/CFT system<sup>14</sup>. In order to be removed from the follow up process, Canada would be required to have "taken sufficient action to be considered for removal from the process – To have taken sufficient action in the opinion

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<sup>13</sup> (Financial Action Task Force, 2008, p. 5)

<sup>14</sup> (Financial Action Task Force, 2009, p. 12)

of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the core and key Recommendations at a level essentially equivalent to a Compliant (C) or Largely Compliant (LC)”<sup>15</sup>. In February 2014, after six follow-up reports, Canada was granted removal from the follow-up process<sup>16</sup>.

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<sup>15</sup> (Financial Action Task Force, 2014, p. 4)

<sup>16</sup> (Financial Action Task Force, 2014, p. 5)

## **Objectives and Scope**

This paper will examine the effectiveness of Canada's AML/CFT regime in achieving the eleven immediate outcomes of the FATF's methodology for assessing the effectiveness of AML/CFT systems. In particular, for each of the eleven immediate outcomes:

- Publicly available information will be examined to determine to what extent the outcome is being achieved.
- Where deficiencies are noted, recommendations for improvement will be explored.

Determinations of effectiveness will take into account only those laws and regulations which are in force at the date of this report.

### **Scope Limitations**

The scope of this paper is limited by the following:

- Analysis performed is based on publicly available information and the comments of interviewees
- Subsequent amendments, (if any), to the FATF recommendations, standards and mutual evaluation methodology
- Changes in legislation or legislative measures not yet in force but may come into force prior to the fourth round of FATF mutual evaluations.
- Interviews with the following parties/organizations were requested but could not be arranged due to availability or confidentiality:
  - Garry Clement, President and CEO, Clement Advisory Group
  - Josée Nadeau – Lead on National Threat Assessment, Department of Finance Canada

- Jacqueline Palumbo – Senior Counsel & Team Leader – International Assistance Group, Department of Justice Canada
- Gabor Horvath, President and CEO, Securefact Inc.

## **Methodology**

Canada's fourth round of mutual evaluations by FATF is scheduled for November 2015. This round of evaluation will follow FATF's Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems (February 2013).

The fourth round of evaluations will examine two distinct, but inter-related aspects of Canada's AML/ATF program. It will assess Technical Compliance with the FATF Recommendations and the Effectiveness of Canada's AML/ATF program. Technical compliance and effectiveness are related in that without strong compliance with the FATF recommendations, a country's AML/ATF regime cannot be effective. Effectiveness results from the application of the measures of technical compliance.

### **Technical Compliance**

The technical compliance portion of the assessment will examine the laws in place and the prescribed procedures for AML/CTF authorities as they relate to the FATF 40 recommendations.

Based on the FATF methodology, technical compliance will be rated as one of the following:

- Compliant – There are no shortcomings
- Largely Compliant – There are only minor shortcomings
- Partially Compliant – There are moderate shortcomings
- Non-Compliant – There are major shortcomings

- Not Applicable – A requirement does not apply, due to the structure, legal or institutional features of a country

In the third round of mutual evaluations, Canada was placed into the “follow-up” process. Effective February 2014, Canada has been removed from the follow-up process after making significant improvements in compliance with the October 2004 FATF recommendations.

In February 2012, the FATF published an update to its 40 recommendations and 9 special recommendations. The new FATF recommendations include 40 recommendations. The 9 special recommendations from 2004 were incorporated into the 40 recommendations. Appendix 3 includes a listing of the recommendations and where the 9 special recommendations have been included in the 2012 recommendations.

The most significant change to the FATF recommendations is the added requirement for assessing risks and applying a risk based approach. The FATF recommendations state that “Countries should identify, assess and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively”<sup>17</sup>. The recommendation goes on to say “Countries should require financial institutions and DNFBPs to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks”<sup>17</sup>.

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<sup>17</sup> (International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations, 2012, p. 11)

With respect to technical compliance, upon exiting the FATF’s follow up process, Canada was considered to be largely compliant with the FATF recommendations of 2004. As noted, the most significant change to the FATF recommendations in 2012 related to the implementation of a risk based approach. The focus on outcomes, rather than technical compliance is a relatively new concept introduced by international regulators. The question is whether the evolving AML/ATF policies, procedures and legislation are achieving the desired results. As such, this paper will focus on the Effectiveness of Canada’s AML/CTF program.

### **Effectiveness**

For the purposes of the fourth round of mutual evaluations, FATF has defined effectiveness as “The extent to which the defined outcomes are achieved”<sup>18</sup>. The framework for assessing effectiveness is based on one High-Level Objective, which translate into three Intermediate Outcomes, resulting in eleven Immediate Outcomes.

The High-Level Objective of an effective AML/CFT program is “Financial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security”<sup>19</sup>.

This high-level objective leads to the following three Intermediate Outcomes<sup>19</sup>:

1. Policy, coordination and cooperation mitigate the money laundering and financing of terrorism risks.

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<sup>18</sup> (Financial Action Task Force, 2013, p. 14)

<sup>19</sup> (Financial Action Task Force, 2013, p. 15)



2. Proceeds of crime and funds in support of terrorism are prevented from entering the financial and other sectors or are detected and reported by these sectors.
3. Money laundering threats are detected and disrupted, and criminals are sanctioned and deprived of illicit proceeds. Terrorist financing threats are deprived of resources, and those who finance terrorism are sanctioned, thereby contributing to the prevention of terrorist acts.

The Intermediate Outcomes of an effective AML/ATF program result in the following eleven Immediate Outcomes<sup>20</sup>:

1. Money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation.
2. International cooperation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets.
3. Supervisors appropriately supervise, monitor and regulate financial institutions and Designated Non-Financial Businesses and Professions (DNFBP) for compliance with AML/CFT requirements commensurate with their risks.
4. Financial institutions and DNFBPs adequately apply AML/CFT preventive measures commensurate with their risks, and report suspicious transactions.

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<sup>20</sup> (Financial Action Task Force, 2013, p. 15)

5. Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.
6. Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations.
7. Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions.
8. Proceeds and instrumentalities of crime are confiscated.
9. Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions.
10. Terrorists, terrorist organizations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO<sup>21</sup> sector.
11. Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant United Nations Security Council Resolutions (UNSCR).

For each of these eleven immediate outcomes, the following two questions are sought to be answered:

- To what extent is the outcome being achieved?<sup>22</sup>

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<sup>21</sup> Non-Profit Organization

<sup>22</sup> (Financial Action Task Force, 2013, p. 16)

- What can be done to improve effectiveness?<sup>23</sup>

Effectiveness will be rated as one of the following<sup>24</sup>:

- High level of effectiveness (H) – The immediate outcome is achieved to a very large extent. Minor improvements needed.
- Substantial level of effectiveness (S) – The immediate outcome is achieved to a large extent. Moderate improvements needed.
- Moderate level of effectiveness (M) – The immediate outcome is achieved to some extent. Major improvements needed.
- Low level of effectiveness (L) – The immediate outcome is not achieved or achieved to a negligible extent. Fundamental improvements needed.

In order to assess the effectiveness of Canada’s AML/ATF regime with respect to each of these eleven immediate outcomes, the following procedures will be performed:

- Publicly available information will be reviewed, in the context of considerations brought forth by the FATF, to evidence that the appropriate AML/ATF measures are in place and achieving their intended results;
- Quantify actual results achieved and/or compare actual results achieved to previously reported data to determine if there are signs of improvement;
- Conduct interviews with:

1. Detective Constable Dwayne King – Certified Anti-Money Laundering Specialist at Toronto Police Service

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<sup>23</sup> (Financial Action Task Force, 2013, p. 17)

<sup>24</sup> (Financial Action Task Force, 2013, p. 20)

2. Lucy Tran, Certified Anti-Money Laundering Specialist at MNP LLP
3. Matthew McGuire – National Anti-Money Laundering Practice Leader at  
MNP LLP

## Findings

**Immediate Outcome #1:** Money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation.<sup>25</sup>

**Characteristics of an Effective System<sup>25</sup>:** A country properly identifies, assesses and understands its money laundering and terrorist financing risks, and co-ordinates domestically to put in place actions to mitigate these risks. This includes the involvement of competent authorities and other relevant authorities; using a wide range of reliable information sources; using the assessment(s) of risks as a basis for developing and prioritizing AML/CFT policies and activities; and communicating and implementing those policies and activities in a coordinated way across appropriate channels. The relevant competent authorities also cooperate, and co-ordinate policies and activities to combat the financing of proliferation. Over time, this results in substantial mitigation of money laundering and terrorist financing risks.

### **Considerations for Assessing Effectiveness<sup>26</sup>:**

1. How well does the country understand its ML/TF risks?
2. How well are the ML/TF risks addressed by national AML/CFT activities?
3. To what extent are the results of the assessment(s) of risks properly used to justify exemptions and support the application of enhanced measures for higher risk scenarios, or simplified measures for lower risk scenarios?

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<sup>25</sup> (Financial Action Task Force, 2013, p. 90)

<sup>26</sup> (Financial Action Task Force, 2013, pp. 90-91)

4. To what extent are the objectives and activities of the competent authorities and SRBs consistent with the evolving national AML/CFT policies and with the ML/TF risks identified?
5. To what extent do the competent authorities and SRBs co-operate and co-ordinate the development and implementation of policies and activities to combat ML/TF and, where appropriate, the financing of proliferation of weapons of mass destruction?
6. To what extent does the country ensure that respective financial institutions, DNFBPs and other sectors affected by the application of the FATF Standards are aware of the relevant results of the national ML/TF risk assessment(s)?

**Analysis:**

Since the creation of FINTRAC and the PCMLTFA, Canada has not performed an overall national level threat assessment of its money laundering and terrorist financing risks, however, the risks in the various sectors of the country's financial system have been considered throughout the development of Canada's AML/ATF regime. Without a national threat assessment, there has been little alignment in addressing ML/TF risk across the various sectors.

In terms of ML/TF, FINTRAC defines risk to be<sup>27</sup>:

- At the national level: threats and vulnerabilities presented by ML/TF that put at risk the integrity of Canada's financial system and the safety and security of Canadians.

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<sup>27</sup> (<http://www.fintrac.gc.ca/publications/rba/rba-eng.asp>, n.d.)

- At the reporting entity level: threats and vulnerabilities that put the reporting entity at risk of being used to facilitate ML/TF.

FINTRAC has provided guidance to assist reporting entities<sup>28</sup> in applying the risk based approach recommended by the FATF, however, it specifically states “each reporting entity is responsible for its own risk assessment”<sup>29</sup>. This is a fragmented approach, leaving each reporting entity to determine, assess and mitigate its own risks with little or no integration of the risks at the national level. The problem with this is “reporting entities, they do not meaningfully assess and manage their risk of terrorist financing. At best, the topic is dealt with superficially. Neither do regulatory examinations draw attention to these weaknesses.” (McGuire, 2015)<sup>30</sup>

From a policy perspective, the competent authorities generally have a good understanding of ML/TF risks facing the country, and the FIUs are able to disseminate information for use by law enforcement quite well, however, this does not translate into tangible results through arrests, prosecution and seizures. There is a gap between policy makers and those tasked with enforcing the policies.<sup>31</sup> “The first thing we have to do is make sure we have experience prosecutors in law enforcement. That expertise will help expedite these matters,

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<sup>28</sup> Reporting entities in Canada include financial entities, life insurance, securities dealers, money services businesses, accountants, real estate, casinos, dealers in precious metals and stones and British Columbia notaries.

<sup>29</sup> (<http://www.fintrac.gc.ca/publications/rba/rba-eng.asp>, n.d.)

<sup>30</sup>

(<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=2&DocId=7930967&File=0#Int-8657471>, n.d.)

<sup>31</sup> (D. King, personal communication, June 16, 2015)

because it ensures that the product is professionally done and packaged and the prosecutors have an understanding of how to wind their way through.” (Clement, 2015)<sup>32</sup>.

In the FATF’s Third Mutual Evaluation on Anti-Money Laundering and Combatting the Financing of Terrorism, the organization found that “Canada’s approach to risk is not in line with the FATF approach as defined in the Methodology where a list of activities and operations must be covered by the AML/CFT regime unless there is a proven low risk of ML/TF. Canada has applied the opposite approach and has extended coverage of the PCMLTFA only to activities for which there is a proven ML/TF risk. Moreover, the risk assessment process carried out by Canada to reach conclusions on the exposure of certain sectors to ML/TF risks is either non-existent or very fragmented and ad-hoc”<sup>33</sup>.

In the six follow up reports since the adoption of the 2008 mutual evaluation, the FATF found that Canada had made progress toward rectifying this deficiency by developing and applying an AML/CFT risk assessment methodology to the specific sectors in question (financial leasing entities; factoring entities; finance companies) however, a conclusion could not be reached to determine if the threshold of “proven low risk” had been met.

Generally, in Canada, low risk scenarios include group and registered funds, as movement in these types of funds are highly regulated and restricted. For example, RRSP contributions and withdrawals are required to be reported to the Canada Revenue Agency.

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<sup>32</sup>

(<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=2&DocId=7930967&File=0#Int-8657610>, n.d.)

<sup>33</sup> (Financial Action Task Force, 2008, p. 10)



Since Canada has not published a national ML/TF risk assessment to date, the respective financial institutions and DNFBPs are not aware of the results.

**Conclusion on Effectiveness: L** – low level of effectiveness.

Since Canada has not yet published a national level risk assessment, its approach to identifying and mitigating ML/TF risks has been fragmented. Significant improvement can and will likely be achieved when the Department of Finance completes and releases its national threat assessment. The national threat assessment will help align the policies and activities across the various sectors considered to present ML/TF risks.

Currently, there is a knowledge gap between the policy makers and reporting entities. Without comprehensive guidance from a national perspective, reporting entities are left to rely on their own experience to assess and mitigate the ML/TF risks facing their organization.

**Recommendations:**

The completion of a national threat assessment followed by detailed guidance and training for reporting entities across the various sectors covered by the PCMLTFA will assist in identifying and in turn, mitigating the ML/TF risks faced by Canada, both at the national level and the reporting entity level.

**Immediate Outcome #2:** International cooperation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets<sup>34</sup>.

**Characteristics of an Effective System<sup>34</sup>:** The country provides constructive and timely information or assistance when requested by other countries. Competent authorities assist with requests to:

1. Locate and extradite criminals; and
2. Identify, freeze, seize, confiscate and share assets and provide information (including evidence, financial intelligence, supervisory and beneficial ownership information) related to money laundering, terrorist financing or associated predicate offences.

Competent authorities also seek international co-operation to pursue criminals and their assets. Over time, this makes the country an unattractive location for criminals (including terrorists) to operate in, maintain their illegal proceeds in, or use as a safe haven.

**Considerations for Assessing Effectiveness<sup>35</sup>:**

1. To what extent has the country provided constructive and timely mutual legal assistance and extradition across the range of international co-operation requests?  
What is the quality of such assistance provided?

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<sup>34</sup> (Financial Action Task Force, 2013, p. 93)

<sup>35</sup> (Financial Action Task Force, 2013, pp. 93-94)

2. To what extent has the country sought legal assistance for international co-operation in an appropriate and timely manner to pursue domestic ML, associated predicate offences and TF cases which have transnational elements?
3. To what extent do the different competent authorities seek other forms of international cooperation to exchange financial intelligence and supervisory, law enforcement or other information in an appropriate and timely manner with their foreign counterparts for AML/CFT purposes?
4. To what extent do the different competent authorities provide (including spontaneously) other forms of international co-operation to exchange financial intelligence and supervisory, law enforcement or other information in a constructive and timely manner with their foreign counterparts for AML/CFT purposes?
5. How well are the competent authorities providing and responding to foreign requests for cooperation in identifying and exchanging basic and beneficial ownership information of legal persons and arrangements?

**Analysis:**

Canada has in place, various mechanisms to allow for international co-operation with respect to legal assistance and extradition. These requests are administered by the Department of Justice. Canada currently has treaties with 38 countries for mutual legal assistance in criminal matters<sup>36</sup>.

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<sup>36</sup> (<http://www.treaty-accord.gc.ca/result-resultat.aspx?type=10>, n.d.)

Under Canada's various Mutual Legal Assistance Treaties (MLAT), there are generally five types of assistance available<sup>37</sup>:

- Gathering of evidence, including documents, affidavits and witness testimony
- Lending of exhibits
- Transfers of sentenced prisoners to testify or assist in an investigation or prosecution
- Search and seizure
- Enforcement of criminal fines and confiscation orders.

International Queries Sent and Received by FINTRAC<sup>38</sup>:

<b>Year</b>	<b>Received from Foreign FIUs</b>	<b>Sent to Foreign FIUs</b>
2009-2010	233	64
2010-2011	228	46
2011-2012	329	74
2012-2013	202	105
2013-2014	241	116

Requests from foreign FIUs for assistance have been relatively consistent over the past five years while requests made to foreign FIUs for assistance has steadily been increasing. Although the figures related to the number of requests does not directly indicate the level of assistance provided, it does indicate that the mechanisms in place are being used by both the authorities within Canada as well as by Canada's foreign partners.

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<sup>37</sup> (<http://www.justice.gc.ca/eng/cj-jp/empla-eej/db-gs.html#sec35>, n.d.)

<sup>38</sup> (FINTRAC Annual Report, 2014, p. 19)

### **Conclusion on Effectiveness: M – Moderate level of effectiveness**

While specific information regarding the nature of requests made by foreign FIUs and made to foreign FIUs by FINTRAC was not publicly available, Canada has the mechanisms in place to provide and request international assistance. With 38 MLATs in place and various memorandums of understanding, the process surrounding international assistance allows for co-operation where appropriate. The Department of Justice Canada provides guidance regarding making requests for assistance in the prescribed format to minimize delays in processing requests, however, the amount of paperwork involved in making an MLAT request is extensive.

### **Recommendations:**

Canada should continue to maintain, develop and establish relationships with foreign partners to increase the scope and reach of international assistance. The process for making requests should be streamlined to become as efficient as possible, in an attempt to minimize delays and increase international co-operation.

**Immediate Outcome #3:** Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements commensurate with their risks.<sup>39</sup>

**Characteristics of an Effective System<sup>39</sup>:** Supervision and monitoring address and mitigate the money laundering and terrorist financing risks in the financial and other relevant sectors by:

- Preventing criminals and their associates from holding, or being the beneficial owner of, a significant or controlling interest or a management function in financial institutions or DNFBPs; and
- Promptly identifying, remedying, and sanctioning, where appropriate, violations of AML/CFT requirements or failings in money laundering and terrorist financing risk management.

Supervisors provide financial institutions and DNFBPs with adequate feedback and guidance on compliance with AML/CFT requirements. Over time, supervision and monitoring improve the level of AML/CFT compliance, and discourage attempts by criminals to abuse the financial and DNFBP sectors, particularly in the sectors most exposed to money laundering and terrorist financing risks.

**Considerations for Assessing Effectiveness<sup>40</sup>:**

1. How well does licensing, registration or other controls implemented by supervisors or other authorities prevent criminals and their associates from holding, or being

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<sup>39</sup> (Financial Action Task Force, 2013, p. 96)

<sup>40</sup> (Financial Action Task Force, 2013, pp. 96-97)

- the beneficial owner of a significant or controlling interest or holding a management function in financial institutions or DNFBBs? How well are breaches of such licensing or registration requirements detected?
2. How well do the supervisors identify and maintain an understanding of the ML/TF risks in the financial and other sectors as a whole, between different sectors and types of institution, and of individual institutions?
  3. With a view to mitigating the risks, how well do supervisors, on a risk-sensitive basis, supervise or monitor the extent to which financial institutions and DNFBBs are complying with their AML/CFT requirements?
  4. To what extent are remedial actions and/or effective, proportionate and dissuasive sanctions applied in practice?
  5. To what extent are supervisors able to demonstrate that their actions have an effect on compliance by financial institutions and DNFBBs?
  6. How well do the supervisors promote a clear understanding by financial institutions and DNFBBs of their AML/CFT obligations and ML/TF risks?

**Analysis:**

Canada's Money Services Business (MSB) Registry is administered by FINTRAC. The registration process requires the applicant to supply FINTRAC with identification and other business information. This registration must be renewed every two years. In order to prevent criminals from holding controlling interest in an MSB, individuals convicted under the PCMLTFA, Controlled Drugs and Substances Act and the Criminal Code are not

permitted to own or control an MSB. To date, 77 applications have been denied or revoked by FINTRAC<sup>41</sup>.

In its 2013-2014 fiscal year, FINTRAC conducted 1,126 compliance examinations and since 2004, has completed 6,082 examinations<sup>41</sup>.

FINTRAC employs a number of methods to enforce compliance including<sup>42</sup>:

- Observation letters
- Reporting entity validations
- Reports monitoring
- Compliance meetings
- Compliance assessment reports
- Examinations
- Follow-up examinations
- Administrative monetary penalties
- Non-compliance disclosures to law enforcement

With respect to Administrative Monetary Penalties (AMP), FINTRAC issued 16 penalties in its fiscal year ending March 31, 2014<sup>41</sup>. Since then, an additional 3 penalties have been imposed<sup>43</sup>. A total of 60 penalties, amounting to \$2,010,795 have been issued by FINTRAC since December 2008<sup>43</sup>.

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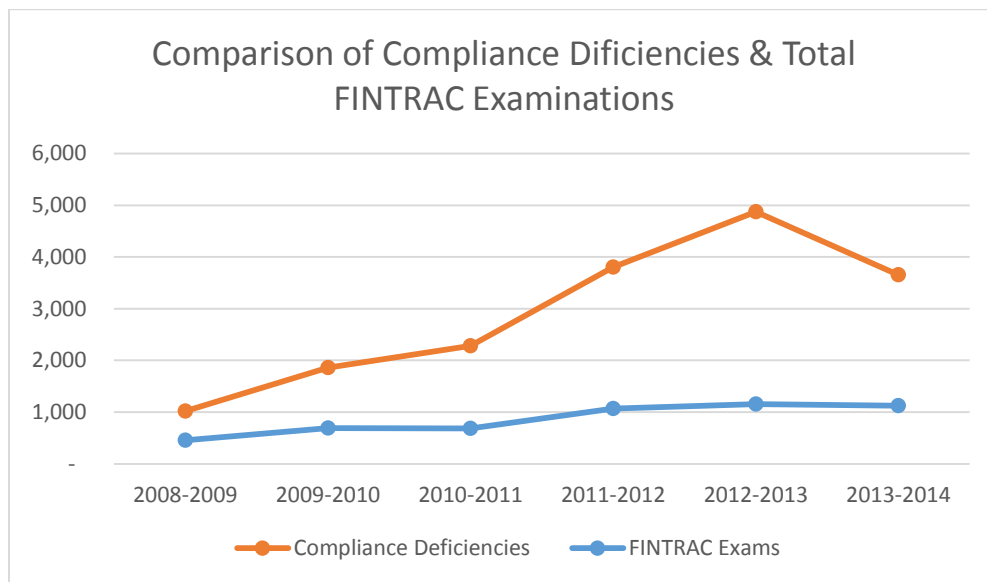
<sup>41</sup> (FINTRAC Annual Report, 2014, p. 10)

<sup>42</sup> (FINTRAC Annual Report, 2014, p. 9)

<sup>43</sup> (<http://www.fintrac-canafe.gc.ca/pen/4-eng.asp>, n.d.)



Since FINTRAC’s 2009 fiscal year, the total number of compliance deficiencies have been increasing compared to the total number of FINTRAC examinations leading up to and including fiscal 2013. The 2014 fiscal year shows a significant decline in the number of compliance deficiencies compared to the total number of FINTRAC examinations. This data does not indicate that FINTRAC’s compliance efforts are having a significant impact on the level of compliance by reporting entities. The following chart and table illustrate the number of compliance deficiencies identified based on the total number of FINTRAC examinations<sup>44</sup>.



<b>Fiscal Year</b>	<b>Avg. Deficiencies per Examination</b>
2008-2009	2.24
2009-2010	2.69
2010-2011	3.33
2011-2012	3.56
2012-2013	4.21
2013-2014	3.25

<sup>44</sup> (Access to Information and Privacy Request Number: A-2014-00060 (FINTRAC))

Without a national threat assessment, it would be difficult for the supervisors to promote a clear understanding of the ML/TF risks facing financial institutions and DNFBPs. FINTRAC however, has released Typologies and Trends Reports on its website which outline money laundering methods, techniques and trends as it relates to various sectors and reporting entities. These reports date back to May 2009, and since then, only eight reports have been issued<sup>45</sup>.

These typology and trends reports are based on reviews and analysis of the cases which FINTRAC disclosed to enforcement agencies by identifying trends in money laundering for the specific sector which the report addresses. The reports do not specifically discuss risks within each sector but provide reporting entities with examples of common money laundering schemes and typical methods employed by money launderers, in order to assist in an entities assessment of its own risks.

#### **Conclusion on Effectiveness: M – Moderate level of effectiveness**

While Canada's AML/ATF regime has mechanisms in place for the competent authorities to supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements, there is little evidence that these mechanisms have a positive effect on compliance within the various reporting entity sectors.

Penalties have been assessed along with public notifications of non-compliance, however, the data available does not show that these methods are proportionate or have a dissuasive effect overall.

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<sup>45</sup> (<http://www.fintrac-canafe.gc.ca/publications/typologies/1-eng.asp>, n.d.)

**Recommendations:**

In addition to assessing monetary penalties and issuing public notices for non-compliance, the compliance examination process should be taken a step further by including education and training for the entity which has been assessed the penalty. The monetary penalty will serve as a deterrent/dissuasive action while the training and education portion will ensure the reporting entity fully understands the deficiency and how to appropriately address it going forward.

**Immediate Outcome #4:** Financial institutions and DNFBPs adequately apply AML/CFT preventive measures commensurate with their risks, and report suspicious transactions.<sup>46</sup>

**Characteristics of an Effective System<sup>46</sup>:** Financial institutions and DNFBPs understand the nature and level of their money laundering and terrorist financing risks; develop and apply AML/CFT policies (including group-wide policies), internal controls, and programs to adequately mitigate those risks; apply appropriate CDD measures to identify and verify the identity of their customers (including the beneficial owners) and conduct ongoing monitoring; adequately detect and report suspicious transactions; and comply with other AML/CFT requirements. This ultimately leads to a reduction in money laundering and terrorist financing activity within these entities.

**Considerations for Assessing Effectiveness<sup>47</sup>:**

1. How well do financial institutions and DNFBPs understand their ML/TF risks and AML/CFT obligations?
2. How well do financial institutions and DNFBPs apply mitigating measures commensurate with their risks?
3. How well do financial institutions and DNFBPs apply the Customer Due Diligence (CDD) and record-keeping measures (including beneficial ownership information and ongoing monitoring)? To what extent is business refused when CDD is incomplete?
4. How well do financial institutions and DNFBPs apply the enhanced or specific measures for: (a) Politically Exposed Persons, (b) correspondent banking, (c) new

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<sup>46</sup> (Financial Action Task Force, 2013, p. 99)

<sup>47</sup> (Financial Action Task Force, 2013, pp. 99-100)

- technologies, (d) wire transfers rules, (e) targeted financial sanctions relating to TF, and (f) higher-risk countries identified by the FATF?
5. To what extent do financial institutions and DNFBPs meet their reporting obligations on the suspected proceeds of crime and funds in support of terrorism? What are the practical measures to prevent tipping-off?
  6. How well do financial institutions and DNFBPs apply internal controls and procedures (including at financial group level) to ensure compliance with AML/CFT requirements? To what extent are there legal or regulatory requirements (e.g., financial secrecy) impeding its implementation?

**Analysis:**

Financial institutions and DNFBPs are responsible for assessing their ML/TF risks by applying a risk based approach (RBA). FINTRAC provides guidance on the application of the risk based approach and the expectations of each reporting entity. This approach is dependent on the individuals performing the risk assessment. Possible deficiencies can arise if the risk assessment is not conducted properly. The RBA guidance states that consideration should be given to the products and services offered by a reporting entity as well as the geography in which they transact. If the risk of offering a specific product, service or dealing in a specific geographic location is not identified appropriately, it could lead to improper or insufficient mitigating procedures with respect to monitoring, customer due diligence or enhanced due diligence.

Financial institutions and DNFBCs are expected to apply mitigating controls appropriate to the identified risks, specific to the entity. FINTRAC's expectation for risk-reduction measures and key controls include<sup>48</sup>:

- Keeping client identification and beneficial ownership information up to date.
- Establishing and conducting the appropriate level of ongoing monitoring for business relationships (periodically for low risk relationships; more frequent for high risk relationships).
- Implement and document mitigating controls for situations where the risk of ML/TF is high.
- Apply the controls and procedures consistently.

Financial institutions and DNFBCs generally have the appropriate measures in place to meet their reporting requirements as well as requirements related to customer due diligence, politically exposed persons, correspondent banking and wire transfers, however, the actual implementation of these measures is not well evidenced. With respect to customer identification and performing enhanced due diligence when required, the information is not easily obtainable. For example, determining beneficial ownership is a difficult task to perform due to the lack of publicly available information.

The volume of reports submitted to FINTRAC are increasing year over year, as reported in its 2013-2014 annual report, but information on the quality and content of these reports is not available.

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<sup>48</sup> (<http://www.fintrac.gc.ca/publications/rba/rba-eng.asp>, n.d.)

**Conclusion on Effectiveness: L – low level of effectiveness**

As noted previously, Canada has not performed and publicly released a national threat assessment. The identification and mitigation of risks is left up to the individual entities with little knowledge transfer from the national level. Most reporting entities have policies and procedures in place to address the requirements of the PCMLTFA, on paper, but achieving the results and actually implementing those procedures is much more challenging.

**Recommendations:**

Reporting entities could benefit from feedback from FINTRAC regarding the suspicious transaction reports that are submitted by the reporting entity. Individual reporting entities are currently left to determine their risks, address them and provide suspicious transaction data on their own. In order to obtain reports with more accurate and useful content, direction is needed from the national level.

**Immediate Outcome #5:** Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.<sup>49</sup>

**Characteristics of an Effective System<sup>49</sup>:**

Measures are in place to:

- Prevent legal persons and arrangements from being used for criminal purposes;
- Make legal persons and arrangements sufficiently transparent; and
- Ensure that accurate and up-to-date basic and beneficial ownership information is available on a timely basis.

Basic information is available publicly, and beneficial ownership information is available to competent authorities. Persons who breach these measures are subject to effective, proportionate and dissuasive sanctions. This results in legal persons and arrangements being unattractive for criminals to misuse for money laundering and terrorist financing.

**Considerations for Assessing Effectiveness<sup>50</sup>:**

1. To what extent is the information on the creation and types of legal persons and arrangements in the country available publicly?
2. How well do the relevant competent authorities identify, assess and understand the vulnerabilities, and the extent to which legal persons created in the country can be, or are being misused for ML/TF?

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<sup>49</sup> (Financial Action Task Force, 2013, p. 102)

<sup>50</sup> (Financial Action Task Force, 2013, pp. 102-103)



3. How well has the country implemented measures to prevent the misuse of legal persons and arrangements for ML/TF purposes?
4. To what extent can relevant competent authorities obtain adequate, accurate and current basic and beneficial ownership information on all types of legal persons created in the country, in a timely manner?
5. To what extent can relevant competent authorities obtain adequate, accurate and current beneficial ownership information on legal arrangements, in a timely manner?
6. To what extent are effective, proportionate and dissuasive sanctions applied against persons who do not comply with the information requirements?

**Analysis:**

Generally in Canada, corporate ownership information is not publicly available. Individual provinces maintain corporate registry information, however, the information available varies from one province to the next. In Ontario for example, publicly available corporate profile reports do not indicate share ownership information. Those records are typically kept in the files of the corporation's legal counsel, which are protected by solicitor-client privilege and are not publicly available. Corporate share ownership information is reported on corporate tax returns filed with CRA, but again, these records are not publicly available.<sup>51</sup>

Canada's AML/ATF regime has mechanisms in place to reduce the risk of the misuse of legal persons and arrangements for ML/TF purposes, such as the requirement to confirm

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<sup>51</sup> (L. Tran, personal communication, June 17, 2015)

the accuracy of ownership information provided. These mechanisms are applied based on risk, therefore, in low risk scenarios, confirmation of ownership could be as simple as obtaining an attestation of the customer's identity. In higher risk scenarios, increased due diligence is required.<sup>52</sup>

The issue with respect to increased due diligence is the fact that beneficial ownership information is not easy to obtain. Generally, there are no public records available so the financial institutions and DNFBPs are relying on information provided by the customer.

From an investigative standpoint, it is not easy for the relevant competent authorities to obtain adequate, accurate and current beneficial ownership on legal entities or assets. There is no legal test to determine beneficial ownership with respect to control, influence or use of an asset. Determination of beneficial ownership must be done through investigation and is an "intensive investigative process just to bridge the gap"<sup>53</sup> between beneficial and legal ownership.

#### **Conclusion on Effectiveness: L – Low level of effectiveness**

The effectiveness of Canada's AML/ATF regime with respect to beneficial ownership needs significant improvement. From a legislative perspective, the requirements of the PCMLTFA are adequate to address the associated ML/TF risks, however the problem is with what is actually done in practice.

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<sup>52</sup> (L. Tran, personal communication, June 17, 2015)

<sup>53</sup> (D. King, personal communication, June 16, 2015)

A lack of publicly available information makes it difficult for reporting entities to accurately ascertain beneficial ownership in a timely manner while proving beneficial ownership through exercise of control or use is difficult.

**Recommendations:**

The maintenance of corporate registry information should be aligned across the country. Each province should apply the same standards and require the same information to be made available. Also, ownership information for corporations should be publicly available to assist in ascertaining beneficial ownership.

**Immediate Outcome #6:** Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations.<sup>54</sup>

**Characteristics of an Effective System<sup>54</sup>:**

A wide variety of financial intelligence and other relevant information is collected and used by competent authorities to investigate money laundering, associated predicate offences and terrorist financing. This delivers reliable, accurate, and up-to-date information; and the competent authorities have the resources and skills to use the information to conduct their analysis and financial investigations, to identify and trace the assets, and to develop operational analysis.

**Considerations for Assessing Effectiveness<sup>55</sup>:**

1. To what extent are financial intelligence and other relevant information accessed and used in investigations to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF?
2. To what extent are the competent authorities receiving or requesting reports (e.g., STRs, reports on currency and bearer negotiable instruments) that contain relevant and accurate information that assists them to perform their duties?
3. To what extent is FIU analysis and dissemination supporting the operational needs of competent authorities?

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<sup>54</sup> (Financial Action Task Force, 2013, p. 105)

<sup>55</sup> (Financial Action Task Force, 2013, pp. 105-106)

4. To what extent do the FIU and other competent authorities co-operate and exchange information and financial intelligence? How securely do the FIU and competent authorities protect the confidentiality of the information they exchange or use?

**Analysis:**

The total number of disclosures made to law enforcement agencies has been steadily increasing since 2009. FINTRAC reported 1,143 disclosures to law enforcement in its fiscal year ended March 31, 2014.

Fiscal Year	Case Disclosures to Law Enforcement <sup>56</sup>				% Change
	ML	TF	ML and TF	Total	
2009-2010	470	73	36	579	-
2010-2011	626	103	48	777	34.2%
2011-2012	637	116	43	796	2.4%
2012-2013	719	157	43	919	15.5%
2013-2014	845	234	64	1,143	24.4%

In each of the last three fiscal years, FINTRAC has received approximately 18M – 20M reports from reporting entities, including Large Cash Transaction Reports, Electronic Funds Transfer Reports, Suspicious Transaction Reports, Cross-Border Currency Reports/Cross-Border Seizure Reports, and Casino Disbursement Reports.

Fiscal Year	Financial Transaction Reports Received <sup>57</sup>
2011-2012	18,528,922
2012-2013	19,744,923
2013-2014	19,750,453

<sup>56</sup> (FINTRAC Annual Report, 2014, p. 16)

<sup>57</sup> (FINTRAC Annual Report, 2014, pp. 5-6)

This data does not indicate the relevance of the content or the accuracy of the information contained in the reports. Currently, reports filed with FINTRAC must be submitted electronically through its “F2R” system. The system will identify deficiencies related to missing required information, however, it does not assess the content of the report. If a submitted report is deficient, the reporting entity will only be notified during a compliance examination and may result in significant penalties.<sup>58</sup>

In addition to the volume of disclosures made to law enforcement agencies, FINTRAC has been involved in a number of investigations/cases which have resulted in money laundering charges laid as well as the confiscation/seizure of proceeds and instruments of crime (money, drugs, weapons, etc.).

Since March 2014, FINTRAC’s analysis and information provided to law enforcement have assisted in at least 14 cases, resulting in numerous arrests and seizures. A total of 144 (Appendix 4) individuals have been arrested and/or have had charges laid against them. Amounts seized in these cases exceed \$8.7M (Appendix 4) including various assets, equipment, weapons, drugs and cash/currency.

The RCMP is by far the main recipient of disclosures from FINTRAC, followed by CSIS. FINTRAC’s 2013-2014 annual report contains many examples of cases where its disclosures of financial intelligence have been used in investigations by various regime partners. The following table summarizes the number of disclosures made to regime partners over the last five fiscal years.

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<sup>58</sup> (L. Tran, personal communication, June 17, 2015)

Recipient	Fiscal Year				
	2009-2010 <sup>59</sup>	2010-2011 <sup>59</sup>	2011-2012 <sup>59</sup>	2012-2013 <sup>60</sup>	2013-2014 <sup>61</sup>
RCMP	617	883	914	580	703
CSIS	78	120	107	164	243
Municipal Police	136	143	153	182	207
Foreign FIUs	128	149	146	131	163
CRA	125	136	136	149	153
CBSA	42	82	89	96	139
Provincial Police	119	162	167	144	135
<b>TOTAL</b> <sup>62</sup>	1,245	1,675	1,712	1,446	1,743

As part of FINTRAC’s mandate, it is entrusted to protect the privacy of Canadians with respect to the information it receives, disseminates and shares with other authorities. There are policies and security measures in place, which include<sup>63</sup>:

- Disclosures allowed only to prescribed police, law enforcement and security agencies
- Limitations and thresholds on disclosed information
- Fines and penalties, including imprisonment for FINTRAC employees in violation of privacy policies
- Required high-level security clearance for employees
- Limited access to information, on a “need-to-know” basis

FINTRAC is also subject to a biannual review from the Office of the Privacy Commissioner of Canada.

<sup>59</sup> (FINTRAC Annual Report, 2012, p. 10)

<sup>60</sup> (FINTRAC Annual Report, 2013, p. 14)

<sup>61</sup> (FINTRAC Annual Report, 2014, p. 17)

<sup>62</sup> Total disclosures exceed the figures presented in the table of Case Disclosures to Law Enforcement above because the same disclosure may be provided to multiple regime partners where appropriate.

<sup>63</sup> (FINTRAC Annual Report, 2014, p. 4)

### **Conclusion on Effectiveness: S – Substantial level of effectiveness**

There is substantial evidence indicating that the financial intelligence provided by FINTRAC has been and continues to be useful to law enforcement agencies in their investigations of ML/TF. The use of intelligence supplied by FINTRAC has resulted in numerous arrests and charges laid as well as the seizure of millions of dollars of currency, assets and contraband.

### **Recommendations:**

FINTRAC could benefit from an increase in resources related to the reports it receives from reporting entities. In the last fiscal year, FINTRAC received almost 20 million reports. While the F2R system can identify deficiencies in the reports submitted, it cannot assess the quality of information supplied. With more resources available to review incoming reports, the quality and accuracy of reports received can be increased over time through review and outreach to reporting entities, more frequently than only when a compliance review is conducted.



**Immediate Outcome #7:** Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions.<sup>64</sup>

**Characteristics of an Effective System<sup>64</sup>:**

Money laundering activities, and in particular major proceeds-generating offences, are investigated; offenders are successfully prosecuted; and the courts apply effective, proportionate and dissuasive sanctions to those convicted. This includes pursuing parallel financial investigations and cases where the associated predicate offences occur outside the country, and investigating and prosecuting stand-alone money laundering offences. The component parts of the systems (investigation, prosecution, conviction, and sanctions) are functioning coherently to mitigate the money laundering risks. Ultimately, the prospect of detection, conviction, and punishment dissuades potential criminals from carrying out proceeds generating crimes and money laundering.

**Considerations for Assessing Effectiveness<sup>64</sup>:**

1. How well, and in what circumstances are potential cases of ML identified and investigated (including through parallel financial investigations)?
2. To what extent are the types of ML activity being investigated and prosecuted consistent with the country's threats and risk profile and national AML/CFT policies?
3. To what extent are different types of ML cases prosecuted (e.g., foreign predicate offence, third-party laundering, stand-alone offence etc.) and offenders convicted?

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<sup>64</sup> (Financial Action Task Force, 2013, p. 108)

4. To what extent are the sanctions applied against natural or legal persons convicted of ML offences effective, proportionate and dissuasive?
5. To what extent do countries apply other criminal justice measures in cases where a ML investigation has been pursued but where it is not possible, for justifiable reasons, to secure a ML conviction? Such alternative measures should not diminish the importance of, or be a substitute for, prosecutions and convictions for ML offences.

**Analysis:**

In 2010, the RCMP reported to the Senate Committee on Banking, Trade and Commerce that it had received 93 disclosures from FINTRAC which resulted in 92 criminal investigations. Of those 92 investigations, 69 were concluded without charges being laid.<sup>65</sup>

The Senate report goes on to state that in 2011, 46 individuals were charged with money laundering, of which only four were convicted, while eight plead guilty. In that same year, there were 6,733 charges for possession of proceeds of crime, of which 61 were convicted and 578 plead guilty.<sup>65</sup>

With respect to terrorist financing, to date, there have only been three convictions in Canada.<sup>66</sup>

Under the Criminal Code of Canada, money laundering is an offence under section 462.31 which states<sup>67</sup>:

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<sup>65</sup> (Standing Senate Committee on Banking Trade and Commerce, 2013, p. 10)

<sup>66</sup> (<http://globalnews.ca/news/2049755/why-so-few-terror-financing-charges-and-convictions-good-luck-finding-out/>, 2015)

<sup>67</sup> (<http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec462.31subsec1>, n.d.)

“462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of:

(a) the commission in Canada of a designated offence; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

*Punishment*

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) is guilty of an offence punishable on summary conviction.”

A search of the Canadian Legal Information Institute website returned two recent cases involving a conviction for money laundering:

- R. v. Dawson-Jarvis, 2013 ONSC 6317 – the accused was sentenced to three years of incarceration for money laundering<sup>68</sup>.

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<sup>68</sup> (<http://www.canlii.org/en/on/onsc/doc/2013/2013onsc6317/2013onsc6317.html>, n.d.)

- R. v. DiQuinzio, 2014 BCCA 125 – the accused was sentenced to sixteen months imprisonment for money laundering<sup>69</sup>.

In both cases, the punishment for the money laundering conviction was significantly less than the punishment associated with the related designated offences (robbery, extortion, conspiracy to traffic in cocaine).

While the courts can issue prison terms for as much as ten years, these cases do not demonstrate that the sanctions applied against individuals convicted of money laundering are proportionate, effective and dissuasive.

### **Conclusion on Effectiveness: L – Low level of Effectiveness**

In Canada, there are very few convictions related to money laundering charges, and in those cases, the penalties and fines are not significant to the point where they are considered effective and dissuasive.

### **Recommendations:**

Money laundering convictions should be a point of emphasis in Canada. In order for penalties and punishment related to ML convictions to be effective and have a deterrent effect, the maximum penalties should be increased and a minimum penalty of fines and imprisonment should be mandated.

In an effort to secure more money laundering convictions, consideration should be made to include a money laundering charge with every designated offence involving proceeds of crime or terrorist financing.

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<sup>69</sup> (<http://www.canlii.org/en/bc/bcca/doc/2014/2014bccca125/2014bccca125.html>, n.d.)

**Immediate Outcome #8:** Proceeds and instrumentalities of crime are confiscated.<sup>70</sup>

**Characteristics of an Effective System<sup>70</sup>:**

Criminals are deprived (through timely use of provisional and confiscation measures) of the proceeds and instrumentalities of their crimes (both domestic and foreign) or of property of an equivalent value. Confiscation includes proceeds recovered through criminal, civil or administrative processes; confiscation arising from false cross-border disclosures or declarations; and restitution to victims (through court proceedings). The country manages seized or confiscated assets, and repatriates or shares confiscated assets with other countries. Ultimately, this makes crime unprofitable and reduces both predicate crimes and money laundering.

**Considerations for Assessing Effectiveness<sup>70</sup>:**

1. To what extent is confiscation of criminal proceeds, instrumentalities and property of equivalent value pursued as a policy objective?
2. How well are the competent authorities confiscating (including repatriation, sharing and restitution) the proceeds and instrumentalities of crime, and property of an equivalent value, involving domestic and foreign predicate offences and proceeds which have been moved to other countries?
3. To what extent is confiscation regarding falsely / not declared or disclosed cross-border movements of currency and bearer negotiable instruments being addressed and applied as an effective, proportionate and dissuasive sanction by border / custom or other relevant authorities?

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<sup>70</sup> (Financial Action Task Force, 2013, p. 110)

4. How well do the confiscation results reflect the assessments(s) of ML/TF risks and national AML/CFT policies and priorities?

**Analysis:**

The pursuit of confiscation of criminal proceeds as a policy objective is “a secondary consideration at best and not even a consideration in majority of investigations” (King, 2015)<sup>71</sup>. The reason for this is that there is no immediate tangible return in the eyes of society. The average citizen does not have an understanding of money laundering and its effect on society. Criminal activity is generally profit motivated, and in order to have a deterrent effect, the means in which criminals and criminal organizations generate profit must be taken away. “The fight against money laundering and terrorist financing is really a battle against crime, and lawmakers across the world have decided that the best way to go about this is to encourage criminals to abandon their craft by taking away the financial incentive and by making it too hazardous to conduct their activities.” (McGuire, 2015)<sup>72</sup>

With respect to the confiscation of criminal proceeds that have been moved to foreign jurisdictions, confiscation in these situations are not pursued very often due to the intensive process of completing MLAT requests.

Canadian Border Services continues to seize currency related to false or non-disclosure at Canada’s borders. In 2013-2014, CBSA conducted 1,398 outbound currency seizures totaling \$13,248,858.15<sup>73</sup>. In the previous year, 2012–2013, CBSA performed 1,109

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<sup>71</sup> (D. King, personal communication, June 16, 2015)

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(<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=2&DocId=7930967&File=0#Int-8657471>, n.d.)

<sup>73</sup> (<http://www.tbs-sct.gc.ca/hidb-bdih/plan-eng.aspx?Org=0&Hi=26&Pl=516>, n.d.)

seizures under the PCMLTFA, totaling \$28 million. Of this total, \$9.0 million was forfeited to the Crown and penalties were assessed in the amount of \$498,250.<sup>74</sup>

**Conclusion on Effectiveness: L – low level of effectiveness**

Canada has policies and mechanisms in place to allow for the confiscation of proceeds of crime, however, the enforcement of these policies have not been as effective as they could be. The CBSA continues to confiscate currency at Canada's borders which is a positive indication for the enforcement of confiscation policies and mechanisms, however, domestically, asset forfeiture and seizures are infrequent and a secondary consideration.

**Recommendations:**

To be more effective, law enforcement should make asset seizure/confiscation a higher priority. Not only will this have a deterrent effect on criminal enterprises, the proceeds generated from the sale of assets and the actual funds confiscated could be used to secure additional resources, pay restitution to victims and fund new initiatives.

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<sup>74</sup> (<http://www.tbs-sct.gc.ca/hidb-bdih/plan-eng.aspx?Org=0&Hi=26&Pl=540>, n.d.)

**Immediate Outcome #9:** Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions.<sup>75</sup>

**Characteristics of an Effective System<sup>75</sup>:**

Terrorist financing activities are investigated; offenders are successfully prosecuted; and courts apply effective, proportionate and dissuasive sanctions to those convicted. When appropriate, terrorist financing is pursued as a distinct criminal activity and financial investigations are conducted to support counter terrorism investigations, with good co-ordination between relevant authorities. The components of the system (investigation, prosecution, conviction and sanctions) are functioning coherently to mitigate the terrorist financing risks. Ultimately, the prospect of detection, conviction and punishment deters terrorist financing activities.

**Considerations for Assessing Effectiveness<sup>76</sup>:**

1. To what extent are the different types of TF activity (e.g., collection, movement and use of funds) prosecuted and offenders convicted? Is this consistent with the country's TF risk profile?
2. How well are cases of TF identified, and investigated? To what extent do the investigations identify the specific role played by the terrorist financier?

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<sup>75</sup> (Financial Action Task Force, 2013, p. 112)

<sup>76</sup> (Financial Action Task Force, 2013, pp. 112-113)



3. To what extent is the investigation of TF integrated with, and used to support, national counter-terrorism strategies and investigations (e.g., identification and designation of terrorists, terrorist organizations and terrorist support networks)?
4. To what extent are the sanctions or measures applied against natural and legal persons convicted of TF offences effective, proportionate and dissuasive?
5. To what extent is the objective of the outcome achieved by employing other criminal justice, regulatory or other measures to disrupt TF activities where it is not practicable to secure a TF conviction?

**Analysis:**

According to Canada's Finance Minister Joe Oliver, over the last two years, the number of suspected cases flagged for national security agencies has doubled<sup>77</sup>. Since 2009, there have only been 3 convictions related to terrorist financing in Canada, from a total of 683 suspected cases<sup>77</sup>. Terrorist financing is a very real risk for Canada, yet, less than 0.5% of cases have resulted in prosecution. The extent to which cases are prosecuted is not consistent with the country's TF risks.

The Integrated Terrorisms Assessment Centre (ITAC) was created as a part of Canada's National Security Policy in 2004. Its mandate is to address terrorist threats to Canadians and Canadian interests<sup>78</sup>. The execution of ITAC's mandate involves cooperation and integration with a number of key partners, including but not limited to<sup>79</sup>:

- CBSA

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<sup>77</sup> (<http://globalnews.ca/news/2049755/why-so-few-terror-financing-charges-and-convictions-good-luck-finding-out/>, 2015)

<sup>78</sup> (<http://www.itac.gc.ca/bt/index-en.php>, n.d.)

<sup>79</sup> (<http://www.itac.gc.ca/prtnrs/index-en.php>, n.d.)

- CRA
- CSIS
- FINTRAC
- RCMP

In addition to the work of ITAC and its partners, the Government of Canada maintains a list of terrorist entities including an overview of each organization and the various names under which they operate<sup>80</sup>.

**Conclusion on Effectiveness: L – Low level of effectiveness**

With almost no TF convictions in Canada, the regime's effectiveness in achieving Immediate Outcome #9 is low. With only 3 convictions to date, regardless of the sentences imposed, the sanctions or measures applied against natural and legal persons convicted of TF offences are not effective, proportionate or dissuasive.

**Recommendations:**

Canada needs to put a greater emphasis on pursuing potential cases of terrorist financing and ensuring those charged with terrorist financing are prosecuted to the fullest extent of the law. In order for prosecutions of TF to be dissuasive and effective, penalties should be significant and include both fines and imprisonment. To achieve a higher conviction rate, as noted for Immediate Outcome #1, experienced prosecutors are needed to ensure that convictions are attained.

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<sup>80</sup> (<http://www.itac.gc.ca/thrt/index-en.php>, n.d.)

**Immediate Outcome #10:** Terrorists, terrorist organizations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.<sup>81</sup>

**Characteristics of an Effective System<sup>81</sup>:**

Terrorists, terrorist organizations and terrorist support networks are identified and deprived of the resources and means to finance or support terrorist activities and organizations. This includes proper implementation of targeted financial sanctions against persons and entities designated by the United Nations Security Council and under applicable national or regional sanctions regimes. The country also has a good understanding of the terrorist financing risks and takes appropriate and proportionate actions to mitigate those risks, including measures that prevent the raising and moving of funds through entities or methods which are at greatest risk of being misused by terrorists. Ultimately, this reduces terrorist financing flows, which would prevent terrorist acts.

**Considerations for Assessing Effectiveness<sup>81</sup>:**

1. How well is the country implementing targeted financial sanctions pursuant to (i) UNSCR1267 and its successor resolutions, and (ii) UNSCR1373 (at the supra-national or national level, whether on the country's own motion or after examination, to give effect to the request of another country)?
2. To what extent, without disrupting legitimate NPO activities, has the country implemented a targeted approach, conducted outreach, and exercised oversight in dealing with NPOs that are at risk from the threat of terrorist abuse?

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<sup>81</sup> (Financial Action Task Force, 2013, p. 114)

3. To what extent are terrorists, terrorist organizations and terrorist financiers deprived (whether through criminal, civil or administrative processes) of assets and instrumentalities related to TF activities?
4. To what extent are the above measures consistent with the overall TF risk profile?

**Analysis:**

The United Nations Security Council Resolution 1267 relates to Al-Qaida and Taliban regulations and was established and adopted on October 15 1999<sup>82</sup>. Canada adopted the regulations on November 10, 1999<sup>83</sup>.

The United Nations Security Council Resolution 1373 relates to the Suppression of Terrorism and was established and adopted on September 28, 2001 by the United Nations<sup>84</sup>. Canada adopted the regulations on October 2, 2010<sup>84</sup>.

FINTRAC has provided guidance on the use of non-profit organizations for terrorist activity. Examples include Guidelines on suspicious transactions affecting NPOs<sup>85</sup> as well as trends and typologies reports<sup>86</sup>.

Another example of FINTRAC's outreach to NPO's relates to the terror attack that occurred in Ottawa in October 2014. Soon after the attack occurred, FINTRAC sent correspondence to its reporting entities, recommending to identify and report suspicious transactions without delay<sup>87</sup>. While the message was not received positively by all

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<sup>82</sup> (<http://www.un.org/sc/committees/1267/resolutions.shtml>, n.d.)

<sup>83</sup> (<http://laws.justice.gc.ca/eng/regulations/SOR-99-444/FullText.html>, n.d.)

<sup>84</sup> (<http://laws.justice.gc.ca/eng/regulations/SOR-2001-360/page-1.html>, n.d.)

<sup>85</sup> (<http://www.fintrac-canafe.gc.ca/publications/guide/Guide2/2-eng.asp>, n.d.)

<sup>86</sup> (<http://www.fintrac-canafe.gc.ca/publications/typologies/2012-04-cc3-eng.asp>, n.d.)

<sup>87</sup> (<http://news.nationalpost.com/news/canada/real-estate-group-peeved-over-email-asking-for-suspicious-records-just-hours-after-gunman-stormed-parliament>, 2015)

recipients, it did serve as a real world example of the importance of timely reporting in the fight against terrorism.

As discussed in assessing the effectiveness related to Immediate Outcome #9, there have only been three convictions for terrorist financing in Canada since 2009.

**Conclusion on Effectiveness: L – Low level of effectiveness**

While Canada has the mechanisms in place to prevent terrorists and terrorist organizations from raising, moving and using funds, and from abusing the NPO sector, there is little evidence to suggest that these mechanisms are effective. Terrorist financing is a very real threat to Canada, yet there have only been three convictions since 2009 even though there have been many more cases of suspected terrorist financing and charges laid in relation.

**Recommendations:**

Improvements to achieve greater effectiveness starts with knowledge, education and experience. FINTRAC's outreach programs to bring attention to the use of the NPO sector for terrorist financing is a good start, but that transfer of knowledge needs to have a broader reach and shared with all sectors.

**Immediate Outcome #11:** Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant United Nations Security Council Resolutions (UNSCR).<sup>88</sup>

**Characteristics of an Effective System<sup>88</sup>:**

Persons and entities designated by the United Nations Security Council Resolutions (UNSCRs) on proliferation of weapons of mass destruction (WMD) are identified, deprived of resources, and prevented from raising, moving, and using funds or other assets for the financing of proliferation. Targeted financial sanctions are fully and properly implemented without delay; monitored for compliance and there is adequate co-operation and co-ordination between the relevant authorities to prevent sanctions from being evaded, and to develop and implement policies and activities to combat the financing of proliferation of WMD.

**Considerations for Assessing Effectiveness<sup>88</sup>:**

1. How well is the country implementing, without delay, targeted financial sanctions concerning the UNSCRs relating to the combating of financing of proliferation?
2. To what extent are the funds or other assets of designated persons and entities (and those acting on their behalf or at their direction) identified and such persons and entities prevented from operating or from executing financial transactions related to proliferation?

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<sup>88</sup> (Financial Action Task Force, 2013, p. 117)

3. To what extent do financial institutions and DNFBPs comply with, and understand their obligations regarding targeted financial sanctions relating to financing of proliferation?
4. How well are relevant competent authorities monitoring and ensuring compliance by financial institutions and DNFBPs with their obligations regarding targeted financial sanctions relating to financing of proliferation?

**Analysis:**

A search of the Canadian Legal Information Institute (CanLii.org) returned two regulations specifically related to United Nations Resolutions dealing with the proliferation of weapons of mass destruction.

- Implementing the United Nations Resolution on the Democratic People’s Republic of Korea SOR/2006-287<sup>89</sup>, (United Nations Act) – Adopted by United Nations Security Council (UNSC) on October 14, 2006 and implemented by Canada on November 9, 2006.
- Regulations Implementing the United Nations Resolutions on Iran, SOR/2007-44<sup>90</sup> – Adopted by UNSC on December 23, 2006 and implemented by Canada on February 22, 2007.

Foreign Affairs, Trade and Development Canada deals with the economic sanctions imposed by Canada. Sanctions are imposed on specific countries and include the following<sup>91</sup>:

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<sup>89</sup> (<http://www.canlii.org/en/ca/laws/regu/sor-2006-287/latest/sor-2006-287.html>, n.d.)

<sup>90</sup> (<http://www.canlii.org/en/ca/laws/regu/sor-2007-44/latest/sor-2007-44.html>, n.d.)

<sup>91</sup> (<http://www.international.gc.ca/sanctions/index.aspx?lang=eng>, n.d.)

- Arms Embargo
- Asset Freeze
- Export/Import Restrictions
- Financial Prohibitions
- Technical Assistance Prohibition

Canada imposes economic sanctions through the United Nations Act, the Special Economic Measures Act and the Export and Import Permits Act<sup>92</sup>.

A search of the Canadian Legal Information Institute (CanLii.org) indicates only one instance where an individual was convicted for offences related to the proliferation of nuclear weapons. The conviction specifically related to a violation of the UN Act resulted in a sentence of 39 months<sup>93</sup>.

With respect to financial institutions and DNFBPs extent of understanding of their risks related to proliferation and terrorist financing, the following was presented to the House of Commons Standing Committee on Finance on April 23, 2015 by Matthew McGuire:

“In terms of assessing and managing risk, reporting entities are universally required to assess and manage their risk of terrorist financing. To do that, they have to understand the threats they face and the significance of the realization of those threats. In our experience with reporting entities, they do not meaningfully assess and manage their risk of terrorist financing. At best, the topic is dealt with superficially. Neither do regulatory examinations draw attention to these weaknesses. An understanding of these threats comes from experience and knowledge transfer. Reporting entities understandably have very little

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<sup>92</sup> (<http://www.international.gc.ca/sanctions/legislation-lois.aspx?lang=eng>, n.d.)

<sup>93</sup> (<http://www.canlii.org/en/on/onca/doc/2011/2011onca287/2011onca287.html>, n.d.)



experience and, therefore, they depend on knowledge transfer. The financial action task force calls on us as a country to provide a threat assessment in order to be able to inform our assessment of risks and the tools we design. Without that information, it is nearly impossible to design the tools we need for this fight.”(McGuire, 2015)<sup>94</sup>

Again, the issue stems from a lack of knowledge and experience. Without a national risk assessment and the sharing of that knowledge, financial institutions and DNFBPs realistically cannot effectively understand and mitigate their risks associated with TF and proliferation.

#### **Conclusion on Effectiveness: L – Low level of effectiveness**

While Canada has implemented the mechanisms and policies to address the threat of proliferation of weapons of mass destruction in line with UN resolutions, there is very little evidence to suggest that the implementation of these measures has been effective.

Prevention of terrorist financing and proliferation starts at the reporting entity level. Reporting entities need the appropriate tools and knowledge to identify potential for misuse of the financial system for the purposes of proliferation, however, they generally lack the experience.

#### **Recommendations:**

As suggested by Matthew McGuire to the Standing Committee on Finance, a national threat assessment needs to be completed and that information should be shared with

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(<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=2&DocId=7930967&File=0#Int-8657471>, n.d.)

reporting entities to assist in identifying potential for illicit activities related to proliferation and to developing mitigating tools that are efficient and effective.

## **Conclusion**

Overall, the effectiveness of Canada's AML/ATF regime is low. The focus on effectiveness is a relatively new concept introduced by the FATF. In previous reviews and assessments of Canada's regime, the focus has been on technical compliance and until recently, the regime had significant deficiencies.

After exiting the FATF's follow-up process, Canada was poised to be largely compliant with international standards and recommendations related to technical compliance, however, technical compliance doesn't always translate into effectiveness.

From an effectiveness standpoint, Canada's largest hurdle is the assessment of risks on a national level. Until a national threat assessment is completed, efforts to address ML/TF risks will continue to be fragmented as individual reporting entities are required to assess their own risks without consistent knowledge transfer from a national perspective. The lack of a national threat assessment available to the public and reporting entities is a pervasive issue affecting all areas of an effectiveness assessment.

Canada's financial intelligence unit, FINTRAC, shows positive signs in achieving effectiveness with respect to international cooperation, supervision and compliance, and providing financial intelligence to its regime partners.

Canada's AML/ATF regime continues to struggle with the issues surrounding beneficial ownership and the related risks of ML/TF. Changes in legislation may be required before Canada can effectively implement measures to address these risks. With very little available public information on corporate ownership, the identification and application of

sanctions against individuals using corporate entities for ML/TF will be difficult to implement.

Overall, significant improvement is required in the implementation of Canada's AML/ATF policies and procedures to ensure that they are effective and achieve the desired results.

## **Impact on the Forensic Accountant**

All anti-money laundering / anti-terrorist financing measures are designed with the intent to create a hostile environment for criminals and criminal organizations, to take away their means and ability to generate profits, and to allow for financial crimes to be investigated. Therefore, it is important that the investigative and forensic accountant understands the requirements of AML/ATF legislation and the mechanisms in place designed to meet the objectives of the legislation.

In order to investigate organized crime, proceeds of crime, money laundering and terrorist financing, the IFA needs to be aware of the information available, and the legislative tools/ financial controls in place that are designed to mitigate the ML/TF risks facing not only Canada, but the global financial system.

Technology is constantly evolving, and with new technology comes new risks. For example, virtual currencies present an entirely new set of risks and potential methods for money launderers to achieve their goals. Policy makers need to stay ahead of the curve and implement procedures and recommendations to address these new risks before they can be exploited for nefarious activity.

Forensic accountants, as experts in investigating financial crimes, can play an important role in the development of policies and mechanisms to hinder criminal activity through the use of emerging technology.

AML/ATF policies need to address these emerging risks and ensure that the information made available by the AML/ATF measures is sufficient to allow for the investigation of financial crimes.

## **Documents Reviewed and Relied Upon**

The documents reviewed and relied upon in preparing this report are included in the references section below.

## Appendices

Appendix 1: List of Acronyms

Appendix 2: Summary of Deficiencies from the FATF's 3<sup>rd</sup> Mutual Evaluation of Canada<sup>95</sup>

Appendix 3: Summary of Changes to the FATF Recommendations<sup>96</sup>

Appendix 4: Arrests and Seizures from Recent FINTRAC Assisted Investigations

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<sup>95</sup> (Financial Action Task Force, 2008)

<sup>96</sup> (International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations, 2012)

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