

AML Enforcement in Canada: Budget 2019 Targets Financial Crime and Trade-Based Money Laundering

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The 2019 federal budget introduced several proposed changes to Canada's Anti-Money Laundering (AML) regime to make it easier to investigate suspected money-laundering, share information among government entities, pursue enforcement action and publicize violations and penalties for wrongdoing.

Canada has in recent years become associated with terms such as "snow-washing" and the "Vancouver model" of money laundering. The budget initiatives aim to enhance Canada's ability to address sophisticated financial crimes and counter a growing perception of Canada as a safe-haven for laundering proceeds of illegal activity.

These changes stem from recommendations made by the House of Commons Committee on Finance in its recent review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* which was completed in November, 2018.¹ The committee highlighted significant legislative gaps and organizational deficiencies in Canada's AML and trade fraud and trade-based money laundering regimes.

The budget proposes amendments to the money-laundering provisions of the *Criminal Code*, increases funding for AML investigative and enforcement capacity by the Royal Canadian Mounted Police (RCMP) and the Financial Transaction and Reports Analysis Centre of Canada (FINTRAC) and establishes two new organizations to tackle AML and trade based fraud and money laundering; the Anti-Money Laundering Action, Coordination and Enforcement (ACE) Team and the Trade Fraud and Trade-Based Money Laundering Centre of Expertise.

The ACE Team will operate as a pilot program for five years and serve as an inter-agency forum for law enforcement and intelligence agencies. It is not clear at this time whether the ACE Team will have investigative powers or whether it will be an information sharing initiative.

The Trade Fraud and Trade-Based Money Laundering Center of Expertise will "strengthen capacity" at the Canada Border Services Agency (CBSA) and FINTRAC in their efforts to tackle trade based fraud and money laundering, which aims at disguising criminal proceeds through international trade channels to legitimize illicit origins. The Trade Fraud Centre may model itself on the Trade Transparency Unit established by U.S. Immigration and Customs Enforcement, which compares domestic and corresponding international trade data to detect and investigate anomalies that may be the result of trade based fraud and money laundering.

The budget highlights the following areas for increased scrutiny from these new organizations:

- Virtual currencies (aka crypto currencies)
- Foreign money service businesses, targeting the point of exchange from crypto currency to fiat currency

- Pre-paid products, like gift cards or pre-paid credit cards
- Customer identification
- Real estate (focusing on British Columbia), and
- Casinos (focusing on British Columbia).

While the real estate and casino focus may be on British Columbia in light of public attention and provincial government initiatives in that province, the underlying concerns are relevant to other parts of the country and have attracted scrutiny in Ontario and elsewhere.

In addition to new spending and the creation of new organizations, the budget proposed legislative changes to make it easier to pursue money laundering offences, allow FINTRAC to disclose more information to other government entities, and make it easier to publically disclose violations and penalties related to wrongdoing.

The proposed legislative changes include:

- Amending the *Criminal Code* to add an alternative of recklessness to the offence of money laundering. This lowers the prosecutorial threshold and criminalizes the moving of money or property while being aware there is a risk that the activity involved could be money laundering. Existing law requires prosecutors to prove that an accused acted with intent to launder property and that they knew or believed to be proceeds crime, or that they were wilfully blind to the risk.
- Amending the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to:
 - Add Revenu Quebec and the Competition Bureau as disclosure recipients of FINTRAC's financial intelligence
 - Expand the discretion of the director of FINTRAC to make public information related to administrative monetary penalties
 - Exclude the identity of a reporting entity, nature of the violation(s), and amount of penalty from confidentiality orders so that this information will be public, and
 - Broaden the definition of "designated information" under the act, potentially increase the scope of potential information that FINTRAC may disclose to certain police, intelligence, and certain other government organizations.
- Amending the *Seized Property Management Act* to broaden access to specialized asset management services at Public Services and Procurement Canada.

Money-laundering is inherently tied to systemic criminal activity that creates risk for legitimate businesses. Anti-corruption, economic sanctions, counterfeiting, diversion of export controlled technologies and financial fraud pose significant risk to financial institutions, industrial companies and the services sector alike. Financial institutions worldwide have been enhancing their due diligence and know-your-client (KYC) efforts in these areas for many years. Other sectors have not yet caught up, though global enforcement activity has brought greater attention notably to anti-corruption, sanctions and export control matters, among others, signalling the importance of adequate KYC and due diligence.

BLG integrates leading nation-wide experience and capabilities in its international trade, financial services and white-collar practices to assist clients in all sectors mitigate risk, investigate and remediate outstanding concerns in these fields.

¹ *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, see recommendations 17, 20-23, and 25-27. BLG partner Milos Barutciski testified before the Commons Committee.

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