

The Canadian Anti-Money Laundering Institute Presents

**FINTRAC's New Era of Compliance
Examinations: What the Real Estate
Sector Can Expect©**



A Brief Summary of the Content

This seminar details information regarding the following:

- **Background on Real Estate, Money Laundering and Compliance**
- **Sources of Dirty Money**
- **Compliance Program Application Risks**
- **FINTRAC's NEW Compliance Examination Guidance**



Real Estate and Money Laundering: Facts and Figures

- A comprehensive study of money laundering using real estate found the following factors:
 1. **Types of Real Property Purchased with Proceeds of Crime**
 - Single Family residential --- 72%
 - Vacant Land --- 25%
 - Commercial --- 13%
 - Multi-Residential --- 13%
 - Rural Farmland --- 8%



Real Estate and Money Laundering: Facts and Figures

2. What methods of payment were used to complete the real estate purchase?

- Mortgage/Loan --- 78%
- Cash --- 77%
- Monetary Instruments --- 38%



3. Which settlement/payment methods involved cash?

- Deposit
- Down Payment
- Mortgage Payments
- Outright Purchase
- Cash + Mortgage Combination



What makes real estate attractive to criminals?

- 1. A Large Value Investment** --- i.e., large sums of money can be cleaned in a single transaction.
- 2. A Speculative Market with 'Real' Values Hard to Assess** --- plenty of room to 'match' available criminal funds with suitable properties.
- 3. Capable of Generating Additional 'Clean' Profits** --- through rental income and/or capital gain.
- 4. A Relatively Easy Investment in Which to Hide Real Ownership** --- through using gatekeepers (lawyers, accountants) and other intermediaries (both individuals and businesses)



Compliance Application Risks for Real Estate

Failure to implement an applicable legislated Compliance Regime.

Weaknesses cited by FINTRAC Examination Results include:

- No determination of third-party on client information record;
- Failure to keep prescribed records;
- Failure to identify person who conducts prescribed transaction;
- Failure to appoint a Compliance Officer;
- Failure to prepare and keep current P and P Manual, which is approved by senior officer;
- Failure to develop a Risk Assessment Program;
- Failure to put in place a written ongoing training program for employees, agents or other persons;
- Failure to undertake and document a prescribed Compliance Review.



Violations for AMPs Imposed to Date on Real Estate

PCMLTF Regulations	Violation types (legislative references)
10(1)	Failure to take reasonable measures when client information record is created to determine whether the client is acting on behalf of a third party
39(1)	Failure of a real estate broker or sales representative to keep prescribed records
59.2(1)(a)	Failure of a real estate broker or sales representative to ascertain in the prescribed manner and within the prescribed period the identity of every person who conducts a prescribed transaction
67	Failure of a person or entity that is required to ascertain the identity of a person to set out prescribed information on the appropriate records in respect of the person
71(1)(a)	Failure of a person or entity to appoint a person to be responsible for the implementation of a compliance program
71(1)(b)	Failure of a person or entity to develop and apply written compliance policies and procedures that are kept up to date and, in the case of an entity, are approved by a senior officer
71(1)(c)	Failure of a person or entity to assess and document the risk referred to in subsection 9.6(2) of the Act, taking into consideration prescribed factors
71(1)(d)	Failure of a person or entity that has employees, agents or other persons authorized to act on their behalf to develop and maintain a written ongoing compliance training program for those employees, agents or persons
71(1)(e)	Failure of a person or entity to institute and document the prescribed review



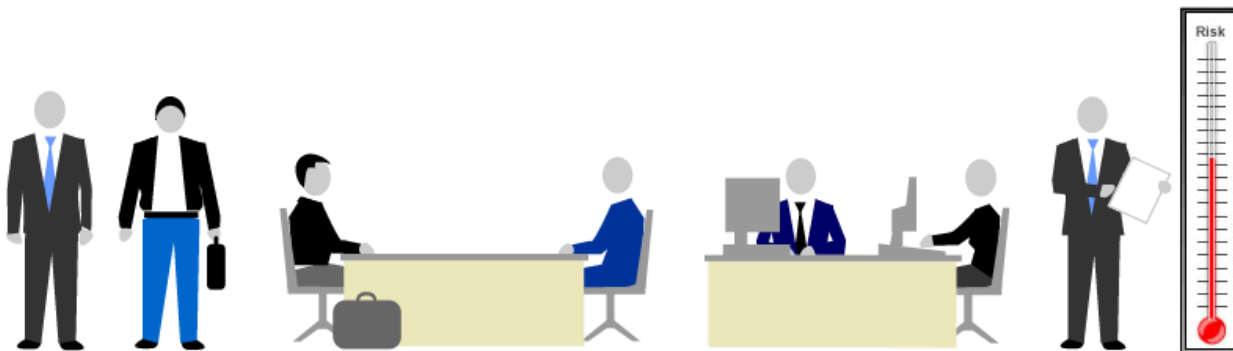
FINTRAC's NEW COMPLIANCE EXAM GUIDANCE



Compliance Program – FINTRAC Examination

During a FINTRAC examination, it is important to demonstrate that:

- the required documentation is in place, applied, and is up-to-date;
- your compliance program is designed to effectively address your business's vulnerability to ML/TF threats and mitigates those that are high risk, if applicable; and
- employees, agents (employed by you), and others authorized to act on your behalf are trained.



FINTRAC Assessment Manual (2019)

PART 1
EXAMINATION FRAMEWORK



PART 2
EXAMINATION PHASES



PART 3
ASSESSMENT METHODS

PURPOSE of 2019 MANUAL

- Strengthen your compliance program
- Understand how FINTRAC assesses compliance
- Prepare for an examination and clarify expectations



FINTRAC Compliance Examination Approach

PART 1 EXAMINATION FRAMEWORK

- Risk-based examination
- Assessment methods
- Assessment approach to evaluating findings

FINTRAC will focus the examinations on:

- Areas of higher risk and of greatest value to the businesses' compliance program. This means that focus is applied where the business may be more at risk of being used for money laundering or terrorist activity financing, and on areas where there is a greater risk of not meeting legal requirements (risk of non-compliance).
- FINTRAC will include in their examination plans the areas you have identified as posing a higher risk to your business as well as gaps you have identified in your compliance program, where appropriate.



FINTRAC Compliance Examination Approach

PART 2 EXAMINATION PHASES

Phase 1- PLANNING & SCOPING

- Roles and responsibilities during the examination
- Determine the scope and type of examination (desk-review or on-site)
- Examination notification letter
- Review of material you send to FINTRAC

Phase 2- EXAMINATION & ASSESSMENT

- Scheduling scope, focus of attention
- Applying the assessment methods as described in Part 3 (see next slide)
- Conducting interviews
- Exit interview

Phase 3- DEVELOPING CONCLUSIONS & FINALIZING THE EXAMINATION

- Assessing FINTRAC findings
- Examination findings letter
- Follow-up activities
- Penalties for non-compliance



FINTRAC Compliance Examination Approach

PART 3 ASSESSMENT METHODS

- **Compliance program requirements (required five elements);**
- **Client identification and other know your client requirements;**
- **Financial transactions reporting requirements;**
- **Record keeping requirements; and**
- **Ministerial directives.**



Some Examples of the Detail Assessed in the Examination Process



Appointment of a Compliance Officer

To conduct this assessment, the FINTRAC examiner may:

- Review documents that show you have formally appointed a compliance officer.
- Review your compliance officer's job description, documents that describe their authority, and an organizational chart.
- Review your policies and procedures to confirm that they give the compliance officer enough guidance to meet the legal requirements.
- Look at the compliance officer's background and experience, as well as the training you have given them to verify that you have made sure that the officer has enough knowledge of your: - business's functions and structure; - sector's money laundering and terrorist activity financing risks and vulnerabilities, as well as related trends and typologies; and - sector's requirements under the PCMLTFA and associated Regulations.
- Interview employees to confirm that the compliance officer has direct access to the individuals who make important decisions about compliance issues or who control the company.



Policies and Procedures

To conduct this assessment, the FINTRAC examiner may:

- Review your policies and procedures to confirm that they are written, up-to-date and approved by a senior official.
- Review your policies and procedures to confirm that they provide enough guidance for your employees or agents.
- Interview your employees and agents to assess their knowledge of your policies and procedures.



Risk Assessment

To conduct this assessment, the FINTRAC examiner may:

- Verify that you have assessed and documented the risks to your business related to money laundering and terrorist activity financing and that you have identified measures to mitigate these risks, and applied special measures for any high risks.
- Verify that you have assessed risks adequately by looking at the areas you have identified as posing a high-risk and the assessment's written rationale. FINTRAC may review a sample of client records and records of transactions in order to determine whether your risk assessment is reasonable and consistent with your business's risk profile, and policies and procedures.
- Verify whether you document and apply special measures to elements you have determined pose a high risk. Special measures include taking enhanced measures to identify clients and to mitigate risks such as keeping client identification information up-to-date and conducting ongoing monitoring for the purpose of detecting suspicious transactions, as well as any other enhanced measures you identify.



Risk Assessment

To conduct this assessment, the FINTRAC examiner may:

- Verify that the controls you have in place are consistent with your identified risk levels (rankings) and adequately mitigate your business risks.
- Verify that your compliance program is in line with and informed by the results of your risk assessment. For example, FINTRAC will confirm that your policies and procedures, ongoing training documentation and two-year review documentation adequately address the areas you have assessed as posing a higher risk and that they provide adequate guidance to your employees or agents
- Verify how you use publicly available information to inform your compliance program.
- Interview the employees and agents responsible for your risk assessment to assess their knowledge of the requirements associated with conducting a risk assessment.



Ongoing Compliance Training Program

To conduct this assessment, the FINTRAC examiner may:

- Review your policies and procedures to confirm that they provide enough guidance to your employees or agents to develop, implement and maintain an ongoing training program.
- Interview your employees and agents to confirm that they understand the requirements as they relate to their positions, understand and follow the policies and procedures, and have received adequate ongoing training.



Two-Year Effectiveness Review

To conduct this assessment, the FINTRAC examiner may:

- Review your policies and procedures to determine whether they give enough guidance to your employees or agents to conduct a two-year effectiveness review.
- Look at the scope of the review (what the review covered) and methodology (how the review was conducted):
 - When looking at the scope, for example, we assess whether your policies and procedures, risk assessment and ongoing compliance training program have been reviewed and cover the current legal requirements and your current operations. We also confirm that the review covers and tests all the requirements applicable to your sector; and
 - When looking at the methodology, for example, we verify whether the review was carried out by an internal or external auditor, or by you if you do not have an auditor; whether it was conducted within the required timelines; and whether the testing methods and methodology used were adequate and reasonable.



Two-Year Effectiveness Review

To conduct this assessment, the FINTRAC examiner may:

- **Verify that a written report was provided to a senior officer within 30 days of the review, and that the report included the findings of the review, updates made to the policies and procedures within the reporting period of the review, and the status of the implementation of these updates.**
- **Verify that the findings of the review are being actioned.**
- **Interview the person who conducted the review to learn about its scope and methodology.**



Business Relationship and Ongoing Monitoring

To conduct this assessment, the FINTRAC examiner may:

- **Verify that you used the results of your risk assessment to determine how often you monitor your clients, or which transactions you will monitor more often or more closely. FINTRAC focus on situations where you may not be adequately monitoring a client or transactions that you consider to pose a high-risk or to be suspicious.**
- **Verify that you monitor your high-risk business relationships more frequently to identify suspicious transactions, and apply special measures to mitigate risks.**
- **Review business relationships that you have ranked as posing a low or medium risk to determine whether this ranking is appropriate. FINTRAC will compare your low-risk and medium-risk clients to your high-risk clients in light of the criteria you have established to identify high-risk situations.**
- **Review your ongoing monitoring of low and medium risk business relationships to ensure they are adequately monitored.**
- **Verify that you identify and address inconsistencies between a client's actual and expected transactional activity. Transactional activity inconsistency is a common indicator of money laundering and terrorist activity financing.**



Use of *Market Values and Local Market Conditions* to Watch for Unusual Transactions

To conduct this assessment, the FINTRAC examiner may:

- Verify that you detect purchase or sale transactions that are noticeably below or above the expected market value, based on local market conditions, to determine whether the transaction is suspicious. Real estate values and market conditions vary across Canada based on location, the economic cycle and other factors.
- FINTRAC may assess whether you are aware of these market conditions and that you identify transactions that are well outside their expected or average market value



Record-Keeping Requirements

To conduct this assessment, the FINTRAC examiner may:

- Review your policies and procedures to confirm that they give enough guidance to your employees or agents to meet the record keeping requirements.
- Review your client records and records of transactions to confirm that you put these policies and procedures into practice.
- Verify that you keep records as required by the PCMLTFA and associated Regulations when reviewing your client records and records of transactions.
- Verify that you keep the information that is required (for example, name, address, date of transaction, etc.) for each type of record. The information that you are required to keep is determined by the type of record that needs to be kept.
- Verify that your records are kept in a format that can be produced within 30 calendar days of a request, and confirm that you keep the records for five years, or as long as required by the PCMLTFA and associated Regulations.
- Interview your employees and agents to assess their knowledge of record keeping requirements.



Ministerial Directives

To conduct this assessment, the FINTRAC examiner may:

- Review your policies and procedures to confirm that they give enough guidance to your employees or agents to meet the ministerial directive requirements.
- Verify that your policies and procedures clarify what ministerial directives are and where they can be found.
- FINTRAC may also look to see whether your policies and procedures indicate how often you should check for new, updated or amended directives; who should be informed when a directive is applicable to your business; and what steps to take to make sure the directive is being followed.
- Review your client records and records of transactions to confirm that you put the policies and procedures into practice.
- Verify that you have taken action when directives are applicable through FINTRAC's review of your client records and records of transactions.
- Interview your employees and agents to assess their knowledge of the requirements relating to ministerial directives.
- Verify that your business, including foreign branches and subsidiaries (if applicable), follows the directives.



Contact Information

**Chris Walker, M. Criminology, CAMLI-PA
President, ABCsolutions Inc.**

E-mail: cwalker@moneylaundering.ca

Phone: 613 283 3773

This presentation is the property of the Canadian Anti-Money Laundering Institute. Distribution or reproduction in part or in whole is prohibited without the expressed permission of CAMLI.

www.CAMLI.org

