



July 31, 2023

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

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

By Email: fin.fc-cf.fin@canada.ca

Dear Sir or Madam:

The Canadian Real Estate Association (“CREA”) is one of Canada’s largest single-industry associations. Our membership includes over 160,000 real estate brokers and sales representatives, working through over 70 local real estate Boards and Associations across Canada.

CREA welcomes this opportunity to provide its views on the Department of Finance Canada’s *Reviewing Canada’s Anti-Money Laundering and Terrorist Financing Regime* consultation paper (“2023 Consultation Paper”).

CREA consents to the disclosure of these comments in their entirety.

Positive Proposals

CREA supports changes to Canada’s anti-money laundering (AML) regime that: (a) lower the compliance burden on reporting entities, including REALTORS®; (b) close loopholes or gaps in the existing regime; (c) clarify the existing regime; or (d) encourage the development of innovative solutions to tackle money laundering and terrorist financing.

To that end, CREA supports:

- The creation and maintenance of a government-funded public (?) database of politically exposed persons (PEPs), heads of international organizations (HIOs), and their family members and close associates, which is freely accessible to reporting entities. Such a database would provide a powerful and authoritative tool that reporting entities could use in verifying their clients’ identity and would be of particular assistance to smaller brokerages, who may not be able to afford commercial software solutions.



- The establishment of a registry of beneficial ownership for corporations that is easily accessible to REALTORS® and other all reporting entities subject to the PCMLTFA regulations.
- Amending the PCMLTFA to allow FINTRAC to provide short-term exemptive relief to reporting entities to allow testing of new technologies and methods to comply with AML/ATF obligations.
- Expanding the coverage of Canada’s AML/ATF regime to include for-sale-by-owner (FSBO) companies and real estate auction platforms. Such entities should be required to comply with the same AML obligations that apply to brokers and sales representatives. In CREA’s view, there is no principled basis for including one type of real estate gatekeeper from Canada’s AML/ATF regime while excluding others with respect to the same purchase and sale transactions. It would prudent upon the government to address these gaps in legislation, as these loopholes could be exploited by bad actors.

While CREA is heartened by the Government’s recognition that AML/ATF Regime needs to capture FSBO companies and real estate auction platforms, we note that the 2023 Consultation Paper is silent on whether lawyers should be subject to the law. This is an obvious gap, which has been highlighted to the Government in previous FATF examinations. Accordingly, CREA encourages the Government to continue to develop constitutionally compliant legislative and regulatory provisions that would subject legal counsel and legal firms to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“PCMLTFA”).

Problematic Proposals

In contrast, CREA does **not** support changes to Canada’s AML/ATF regime that increase the compliance burden on reporting entities already covered by the regime, including those:

- Requiring universal registration of all reporting entities.
- Requiring that REALTORS® make source of wealth/fund determinations with their clients.
- Providing FINTRAC with a “special audit” or “skill person review” regulatory power.
- Imposing new reporting obligations on REALTORS® to submit reports to FINTRAC where there are suspicions of threats to the security of Canada, economic security, proliferation financing or sanctions evasion.
- Implementing Geographic and Sectoral Targeting Orders.
- Requiring REALTORS® to identify unrepresented parties or conduct third-party determinations in real estate transactions involving unrepresented parties. As you are likely aware, under the PCMLTFA and regulations, REALTORS® already have an obligation to take *reasonable measures* to identify unrepresented parties. At the same time, REALTORS® are obligated to identify their own clients. The current legislative and regulatory framework recognizes that REALTORS® are in a better position to obtain information from individuals with whom they have a contractual and fiduciary relationship (i.e., clients) than individuals with whom they have no relationship. Mandating that REALTORS® obtain client and third-party information from unrepresented parties could have serious unintended consequences should an unrepresented client simply refuse to provide this information. In such a situation, REALTORS® would have no contractual or practical means to require that the information be provided. In such circumstances, CREA is



concerned that the proposal could place REALTORS® in an impossible situation of having to choose between fulfilling their duties to serve their own client by completing the transaction or comply with the proposed law.

Compliance costs are particularly problematic in the real estate sector when one considers that many REALTORS® operate small businesses. This is in contrast to other reporting entities covered by the Act, such as banks, who have the resources to hire dedicated AML-compliance staff. Despite the obvious differences between REALTORS® and such entities, the PCMLTFA imposes many of the same obligations across different sectors.

The Department of Finance has, in the past, noted the importance of minimizing the compliance burden and cost associated with the measures required to detect and deter money laundering and terrorist financing activities. Nevertheless, the burden on REALTORS® to comply with the PCMLTFA and regulations continues to rise. Most recently, in 2021, REALTORS® become subject to onerous new beneficial ownership and PEP/HIO obligations. REALTORS® are still learning how best to apply these new requirements. Now is not the time to impose additional burdens on the sector.

Additionally, CREA does not support proposals to amend the PCMLTFA to permit FINTRAC to share FINTRAC compliance information with other regulators. Doing so risks blurring FINTRAC's role and could discourage full and frank participation by reporting entities in FINTRAC compliance examinations out of fear that information may be communicated to another government body. That, in turn, could inhibit reporting entities' ability to improve their compliance programs and address anti-money laundering risks.

Finally, CREA has concerns with proposals to require reporting entities to collect personal information not normally obtained in the course of business, such as the gender of beneficial owners. The 2023 Consultation Paper characterizes this as a "technical" proposal, but many experts consider gender identity to be a core aspect of self-identity. This proposal is likely to be perceived as highly intrusive and could raise privacy concerns. As a result, CREA does not support this proposal.

Proposals Requiring More Information

CREA has questions regarding other proposals in the 2023 Consultation Paper, which, in CREA's view, are not sufficiently articulated.

First, the paper proposes amending "the PCMLTFA to specify the knowledge and competencies required of a qualified compliance officer". This is a highly granular proposal that seems better suited to FINTRAC guidance. Indeed, FINTRAC's *Compliance program* requirements guidance already does set out compliance officer competencies, to a certain



extent.¹ Most significantly, CREA is concerned that attempting to define competencies in legislation or even regulation would create a one-sized-fits-all requirement that does not reflect the realities of different sectors, and is difficult to change, once in force. The Government should more clearly articulate what competencies it has in mind, what problem it is intending to solve, and why this problem cannot be resolved via guidance, before implementing this proposal.

Second, the paper proposes amending the PCMLTFA to grant FINTRAC the authority to levy administrative penalties against directors, officers, and agents within an entity in certain cases of violations of the PCMLTFA. If implemented, this would be significant change to the existing structure of Canada's AML/ATF framework, yet the paper does not provide any supporting evidence or statistics that justifies such a change or what circumstances would justify an AMP. CREA believes further information should be provided before implementing such a radical solution.

Third, the 2023 Consultation Paper proposes specifying in the PCMLTFA and regulations the date at which a business relationship has deemed to have ended. While CREA is not necessarily opposed to this proposal, *per se*, further clarification is needed as to what end date is contemplated. Based on past FINTRAC guidance to CREA, CREA understands that a business relationship with a client ends in the real estate sector if it has been five years since the client conducted an activity requiring them to be identified. If the Government is contemplating an alternative end date, CREA requests more information as to the reasons for the change in order to avoid causing confusion in the sector.

Solutions that do not Require Legislative or Regulatory Changes

CREA recognizes that the purpose of the 2023 Consultation Paper is to consult on potential policy measures to strengthen Canada's AML/ATF Regime. However, as part of this review we encourage the Government and FINTRAC to consider implementing solutions that do not require any regulatory or legislative changes. For example:

- FINTRAC could track, at a granular level, where reporting entities are struggling to meet reporting obligations and produce updated sector-specific guidance and tools based on the information that is obtained. By tracking information, year-over-year, FINTRAC could determine which FINTRAC compliance activities are producing measurable improvements to reporting outcomes and allocate resources accordingly. Indeed, producing better statistics is something that has been noted in previous parliamentary reviews but has yet to be realized.²

¹ *Compliance program requirements*, FINTRAC, online: <https://fintrac-canafe.canada.ca/guidance-directives/compliance-conformite/Guide4/4-eng#s2>

² *Follow the Money: Is Canada Making Progress in Combatting Money Laundering and Terrorist Financing? Not Really*, Report of the Standing Senate Committee on Banking, Trade and Commerce, March 2013, pages 15-16: "FINTRAC should provide reporting entities with feedback and information that educates them about the importance of their contributions and that enhances their role. FINTRAC is well-placed to provide reporting entities



- FINTRAC could produce simplified methods of assisting REALTORS® in fulfilling their suspicious transaction reporting (STR) obligations. For example, FINTRAC could reformulate its existing STR guidance as an electronic checklist or mobile application that assists REALTORS® in understanding when the threshold for filing an STR has been reached. As noted by the Commission of Inquiry into Money Laundering in British Columbia (also known as the Cullen Commission), such technological aids can assist REALTORS® in identifying transactions that should be the subject of an STR.³
- FINTRAC could create electronic aids and tools to assist REALTORS® and other reporting entities in fulfilling their compliance program responsibilities. For example, with relatively little effort, FINTRAC could create a searchable online tool that allows reporting entities to determine if a client occupation is described in sufficient detail. As noted by the Cullen Commission, electronic anti-money laundering tools “would go a long way to streamlining and simplifying the anti-money laundering obligations of managing brokers.”⁴

Again, none of the above examples require legislative or regulatory changes. However, if implemented by FINTRAC they could have an immediate impact on reducing the risk of money laundering and terrorist financing in the real estate sector in Canada.

CREA and its members stand ready to continue to play a constructive role in Canada’s anti-money laundering and anti-terrorist financing regime. We will continue to work with FINTRAC to improve guidance and create conditions conducive to compliance. That said, and in light of the costs of compliance and regulatory overburden, REALTORS® ask that the obligations placed on them by Canada’s AML/ATF regime be realistic, clear, and practical.

with a range of support including sector specific feedback to enhance effectiveness and achieve better “results.” For these reasons, the Committee recommends that: 10. the Financial Transactions and Reports Analysis Centre of Canada provide entities required to report under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act with: - on a quarterly basis and specific to each entity, feedback on the usefulness of its reports; on a quarterly basis and specific to each sector, information about trends in money laundering and terrorist financing activities; and tools, resources and other ongoing support designed to enhance the training of employees of reporting entities in relation to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and its obligations.”

³ “Industry, ideally with assistance from FINTRAC, or even led by FINTRAC, would do well to focus on developing technological aids for realtors, such as a mobile application for meeting anti-money laundering obligations and particularly the submission of STRs... The information submitted by the licensee can be made available to the compliance officer, allowing another level of oversight and an opportunity to identify transactions that should be the subject of an STR.”, Cullen Commission, page 836.

⁴ Cullen Commission, page 840.