

**Anti-Money Laundering  
Compliance Issues**

4th Annual Continuing Professional Development Event  
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GARDINER ROBERTS

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**Introduction**

- Overview
- Compliance regime for reporting entities
- Cost of non-compliance
- Lawyers' obligations
- Impact on business community at large
- New developments

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**Overview**

- What is money laundering?
- What is terrorist financing?

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**Canadian Legislative Framework**

- *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*
- *United Nations Suppression of Terrorism Regulations*
- *Criminal Code*

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**Financial Transaction and Reports Analysis Centre of Canada (FINTRAC)**

- **MANDATE:** Facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities while ensuring the protection of personal information under its control

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**International Legislative Framework**

- Financial Action Task Force comprised of 34 member jurisdictions and 2 regional organizations representing most major financial centres in all parts of the globe
- In addition, 2 observer jurisdictions and a number of associate members and observer organizations

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 **Overview**

**FATF Members**

Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, India, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland Turkey, United Kingdom and United States (European Commission and Gulf Co-operation Council)

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 **Compliance Regime**

**Reporting Entities**

- Financial entities (banks, credit unions, caisses populaires, trust companies)
- Life insurance companies, brokers and agents
- Securities dealers (investment dealers, mutual fund dealers, exempt market dealers, portfolio managers)
- Real estate brokers, sales representatives and developers

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 **Compliance Regime**

**Reporting Entities (cont'd.)**

- Casinos
- Agents of the Crown
- Money services businesses
- Accountants and accounting firms
- Dealers in precious metals and stones
- British Columbia notaries

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### Compliance Regime

**Five key elements:**

- Appointment of a compliance officer
- Written policies and procedures
- Assessment and documentation of risk and implementation of risk mitigation measures
- Ongoing compliance training
- Bi-annual review

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### Cost of Non-Compliance

**Criminal Charges**

- Failure to report a suspicious transaction or failure to make a terrorist property report – up to 5 years imprisonment and/or \$2,000,000 fine
- Failure to report a large cash transaction – \$500,000 for 1st offence and \$1,000,000 for each subsequent offence
- Failure to meet record keeping requirements – up to 5 years imprisonment and/or \$500,000 fine

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### Cost of Non-Compliance

**Criminal Charges (cont'd.)**

- Failure to provide assistance or provide information during a compliance examination – up to 5 years imprisonment and/or \$500,000 fine
- Disclosing the fact that a suspicious transaction report was made with intent to prejudice a criminal investigation – up to 2 years imprisonment

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## Cost of Non-Compliance

### Administrative Monetary Penalties

- Failure to implement any of the 5 elements of a compliance regime – penalty of up to \$100,000 per element
- Failure by entity to report to senior management within 30 days after compliance program review – penalty of up to \$100,000
- Failure to ascertain the identity of clients, keep records, monitor financial transactions and take mitigating measures in high risk situations – penalty of up to \$100,000

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## Cost of Non-Compliance

### Administrative Monetary Penalties (cont'd.)

- Minor violations – from \$1 to \$1,000 per violation
- Serious violations – from \$1 to \$100,000 per violation
- Very serious violations – from \$1 to \$100,000 per violation for an individual and from \$1 to \$500,000 per violation for an entity

14

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## Cost of Non-Compliance

### Public Notice

- Commission of a very serious violation; or
- Base penalty of \$250,000 or greater
- Repeat significant non-compliance

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### Lawyers' Obligation

- *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 S.C.R. 401
- Part III of By-Law 7.1 – Client Identification and Verification
- Part III of By-Law 9 – Cash Transactions

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### Impact on Business Community

- Exposure to AML compliance regime through interaction with reporting entities
- Can cause delays when dealing with reporting entities both in Canada and internationally

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### New Developments

- Expanded definition of “politically exposed domestic person”
- Additional components to be considered in risk assessments
- Shift toward more principle-based regulation

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## Resources

- Financial Transactions and Reports Analysis Centre of Canada website:  
<http://www.fintrac.gc.ca/>
- pwc *Know Your Customer: Quick Reference Guide (January 2015)* (Canada information set out on pages 326-332):  
<http://www.pwc.com/gx/en/financial-services/publications/assets/pwc-anti-money-laundering-2015.pdf>

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# THE GLOBE AND MAIL

LOUISE ARBOUR

## My children and I are caught in a useless bureaucratic nightmare

LOUISE ARBOUR

Contributed to The Globe and Mail

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*Former justice of the Supreme Court of Canada, former international war-crimes prosecutor, former UN human rights commissioner.*

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When he retires from his post, the Governor-General of Canada will have his bank accounts subjected to heightened scrutiny. So will his parents, his spouse and his children, for the next 20 years. So, too, will the Chief Justice of Canada, all Supreme Court and appellate court judges, ambassadors, counsellors, deputy ministers, generals, past and present, and all their family members. They should expect calls from their bankers asking questions about the sources of deposits and other transactions. And if one of their children happens to have a joint account with a third party, all that would have to be explained to the bankers who are required by law to exercise such vigilance.

Why is this happening? Because all of these people have been designated as “politically exposed domestic persons” (PEDP) under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

[<http://www.blakes.com/English/Resources/TrendsInsights/Pages/details.aspx?AnnouncementID=75>].

Why should they be subjected to this intrusive procedure for 20 years after they leave office? No idea. And why should their children also be under this regime for 20 years? Equally puzzling.

In fact, I can think of an answer. It’s because all this was put in place with no one having any idea it was happening. This is hardly surprising given that it was buried in the massive omnibus budget bill of 2014 known as Bill C-31. Equally troubling, most people wouldn’t care anyway.

We have witnessed such an unprecedented erosion of our privacy rights in this country in the name of the war on terror, the war on crime and other fear-mongering political initiatives, that this Orwellian scheme managed to sneak by with little or no public attention, as far as I can tell.

The only reason it came to my attention is that starting some three years ago, two different banks asked two of my children these types of questions, threatening to close their bank accounts if they did not respond. Under my advice, one of them did not respond within the required time (about a week), as I wanted to look into it more closely; the bank did close her account and only reopened it after she answered the questions (needless to say, she was not all that impressed with my

advice).

At that time, there was no such thing as PEDP. Both banks took the position that they had to question my children because I was a politically exposed foreign person (PEFP). They were wrong. I was not, and had never been “a judge in a foreign country” or anything else falling under the definition of a PEFP. It was while in the process of wanting to clear that up that I came across the newly enacted provisions dealing with “politically exposed domestic persons” and realized that the future had caught up with me. I am now covered by the law, and so will my children be when the regulations get cabinet approval.

Compared with the plight of Syrian refugees, this is not catastrophic. It’s just another one of the ridiculous, expensive, useless procedures that slowly erode rights while giving the false impression of enhancing security. It feeds into the perception that people who have nothing to hide should not be concerned about such things (such as Bill C-51, the anti-terrorism law passed in May).

We don’t wear clothes simply because we have something to hide; or lower the blinds in our bedrooms, or close our office doors while on the phone, or seal our letters, or use passwords on our computers. We hide certain things not because they are illegal, or bad, but because they are private.

I have no idea why we should want to keep an eye on the bank books of Supreme Court judges for 20 years after they retire. Maybe it’s just a price to pay for the privilege of holding office. But their children, and their children’s spouses, didn’t sign up for any of that. They should be left alone by their bankers, who I am sure would be relieved to be awakened from this useless bureaucratic nightmare.

Meanwhile, it is difficult to figure out how exactly this grand scheme is to be implemented. If it is taken seriously, it will surely require lots of resources to monitor thousands of domestic “politically exposed persons” for decades, and the cost will likely be passed on to all of us.

But we’ve long been told that our security has no price. Especially when it’s worth nothing, as is the case here.

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