AML 101 for Dealers in Precious Metals and Stones (DPMSs)

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For
Canadian Jewellers Association (CJA)

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About Us

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Hefty Disclaimers

- We are not lawyers and nothing that we say should be interpreted as legal advice.
- We do not represent any government or government agency. Nothing that we say should be interpreted as an official government statement or position.
- If you have questions about a particular situation or company that involve people's names or confidential information, come and chat us up after the presentation instead of asking in a public forum.
- Information should be free. If you want to use any aspect of this presentation, we'll send you a copy. We'd love to be credited for our work, but when we're not we probably won't notice and we definitely won't send an army of lawyers.

PART 1:
AML & CTF

THE BASICS

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What is Money Laundering?

- The process of taking money obtained by committing a crime and disguising the source to make it appear legitimate.
- Under the Criminal Code of Canada, it is illegal to launder money or to knowingly assist in laundering money.
- Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and Regulations, you must take steps to be sure that your business is not used to launder money and if you suspect that money laundering may be taking place, you must report it.

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How is Money Laundered? An Example

Placement: Illicit funds (often in cash) enter the financial system.

E.g., A criminal uses cash or virtual currency to purchase a gold bar.

Layering: Funds are moved between accounts in order to make the trail difficult to follow. The illicit funds may be mixed with funds from other legitimate sources.

E.g., The gold bar may be transferred to a custodian in the name of a nominee to separate the ownership from the criminal. Eventually, the gold is sold, and the nominee is paid by cheque or wire.

Integration: Funds that appear to be legitimate are used to purchase goods, services, investments and real estate.

E.g., The nominee purchases property, automobiles, boats, etc. that appear to be legitimate and ultimately benefit the criminal.

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What is Terrorist Financing?

- Terrorism involves attempts to influence or intimidate a government or the public at large through violent or illegal means or means that are intended to induce fear or panic.
- Terrorist financing is any act or omission that helps to fund terrorism.

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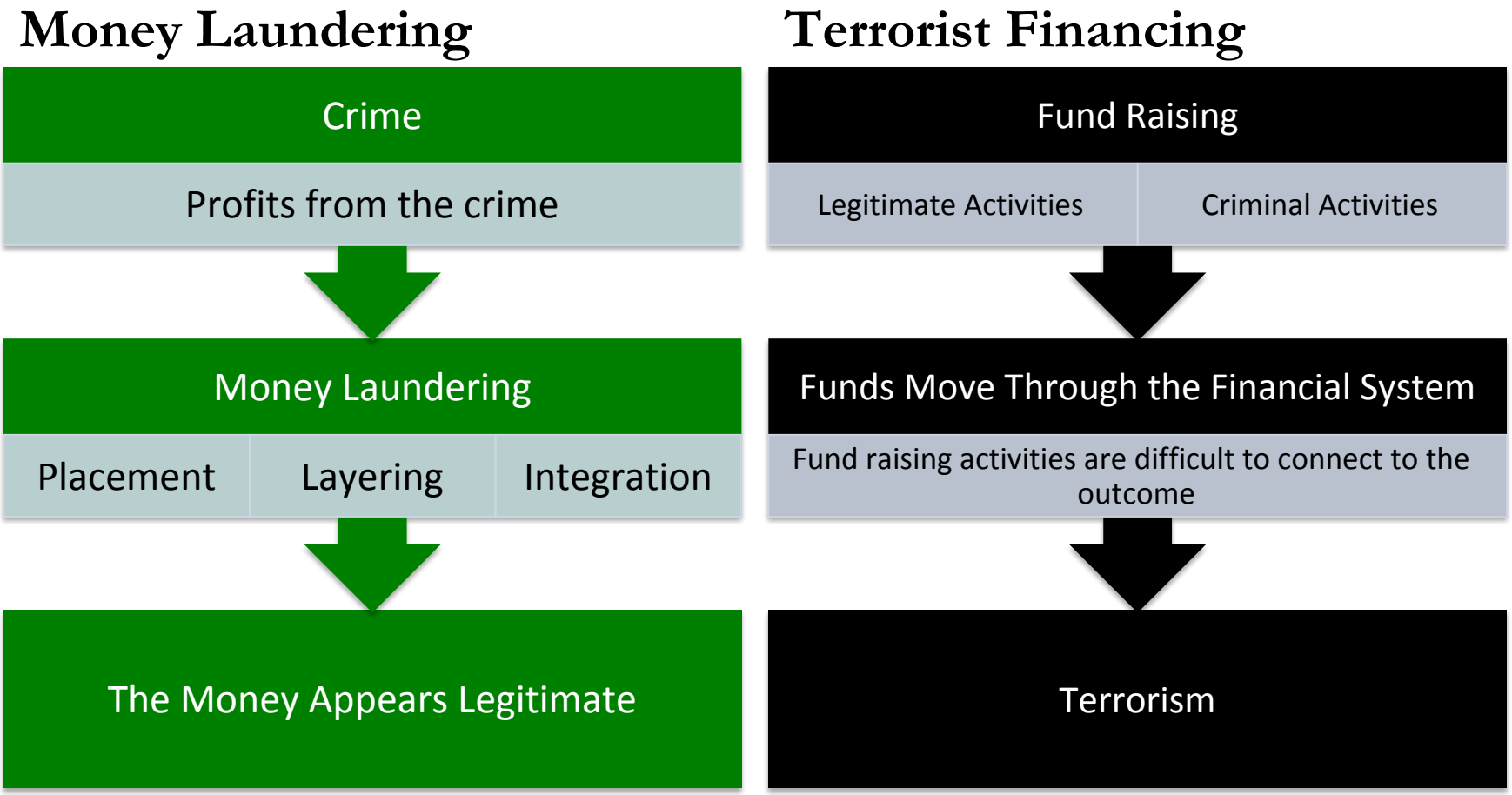
What's the Difference?



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What is a DPMS?

You are considered to be a dealer in precious metals and stones (DPMS) because you buy or sell precious metals, precious stones, or jewellery.

As a DPMS, you must comply with Canadian laws.

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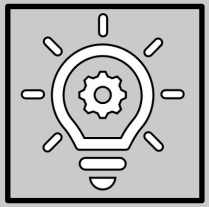
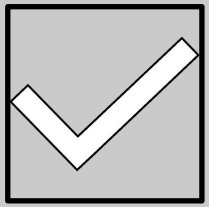
Are You a DPMS?

- I sell watches to retailers. Some, not very many, contain precious metals and sometimes diamonds.
- I sell watches to retailers none of which contain any precious metals or gemstones.
- I do not accept cash but do sell jewellery and watches.
- I am a traveling salesperson representing a watch company. I also have a small line of jewellery that I wholesale for and sell to retailers.
- I am a traveling salesperson representing a couple of jewellery manufacturers/suppliers. I am paid commission from these companies.

What is FINTRAC?



The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is Canada's financial intelligence unit and our regulator for AML and CTF.



You submit reports to FINTRAC, and they have the right to examine you to test your compliance with Canadian requirements.

All FINTRAC correspondences and inquiries should be passed immediately to the Compliance Officer.

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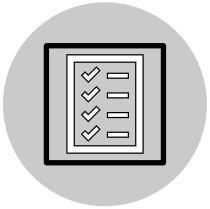
What Happens if You Don't Comply?

FINTRAC may levy administrative monetary penalties (AMPs) and disclose cases of non-compliance.

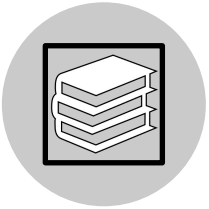
Criminal penalties and AMPs may include the following:

- Failure to report suspicious transactions: up to $2 million and/or 5 years imprisonment.
- Failure to report a large cash transaction or an electronic funds transfer: up to $500,000 for the first offence, $1 million for subsequent offences.
- Failure to meet record keeping requirements: up to $500,000 and/or 5 years imprisonment.
- Failure to provide assistance or provide information during compliance examination: up to $500,000 and/or 5 years imprisonment.
- Disclosing the fact that a suspicious transaction report (STR) was filed, or disclosing the contents of such a report, with the intent to prejudice a criminal investigation: up to 2 years imprisonment.

AMPS



FINTRAC RELEASED AN ASSESSMENT MANUAL AND POLICY IN 2019



MANDATORY PUBLICATION OF ALL AMPS

7 AMPS ISSUED IN 2021, OF WHICH ONE WAS A DPMS. IMPOSED AMP WAS $206,910 FOR FIVE VIOLATIONS.

Minor violation	$1 to $1,000 per violation
Serious violation	$1 to $100,000 per violation
Very serious violation	$1 to $100,000 per violation for an individual $1 to $500,000 per violation for an entity

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DPMS Sector Penalties

Most recent: A DPMS was imposed an administrative monetary penalty of **$66,000** for committing **two violations**.

1. Failure to develop and apply written compliance policies and procedures.
2. Failure to assess and document the risk of a money laundering or terrorist financing.

A DPMS was imposed an administrative monetary penalty of **$222,750** for committing **four violations**.

1. Failure to report suspicious transactions.
2. Failure to develop and apply written compliance policies and procedures.
3. Failure to assess and document the risk of a money laundering or terrorist financing.
4. Failure to develop and maintain a written ongoing compliance training

The DPMS appealed the decision to the Federal Court where the court upheld most of the findings with fourth violation dismissed on technical grounds. This resulted in a $24,750 reduction.

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PART 2: AML & CTF

OBLIGATIONS

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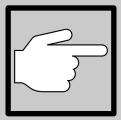
AML & CTF Laws and Regulations

Proceeds of Crime (Money Laundering) and Terrorist Financing Act & 5 enacted regulations

Additional guidance is issued by FINTRAC

Criminal Code of Canada



Ministerial Directives

Sanctions

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Ministerial Directives & Sanctions

- Currently, there are three Ministerial Directives (MD) with the newest one issued on February 24, 2024 related to Russia.
- Under the MD, a DPMS must treat every financial transaction originating from or bound for Russia, regardless of its amount, as a high-risk
- Related to the most recent MD, under Special Economic Measures (Russia) Regulations, it is prohibited to import Russian diamonds equal or greater than 1 carat (processed or produced).

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Your Responsibilities Under Canadian Law

Compliance Program

- Compliance Officer
- Policy and Procedures
- Risk Assessment
- AML Compliance Effectiveness Review
- Training

Operations

- Reporting
- Recordkeeping
- Identifying Customers
- Customer Risk
- Transaction Monitoring

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Keeping Your Program Up To Date

What is it?	When do updates happen?
Compliance Officer Appointment	Only when there is a change of Compliance Officer.
Policy and Procedures	At least once a year*
Risk Assessment	At least once a year*
Training	At least once a year*
Effectiveness Review	At least every two years.

*Updates are required more often if there are changes to the law or your business model. If there are no major changes, you keep a record stating that the documents were reviewed with no major changes made.

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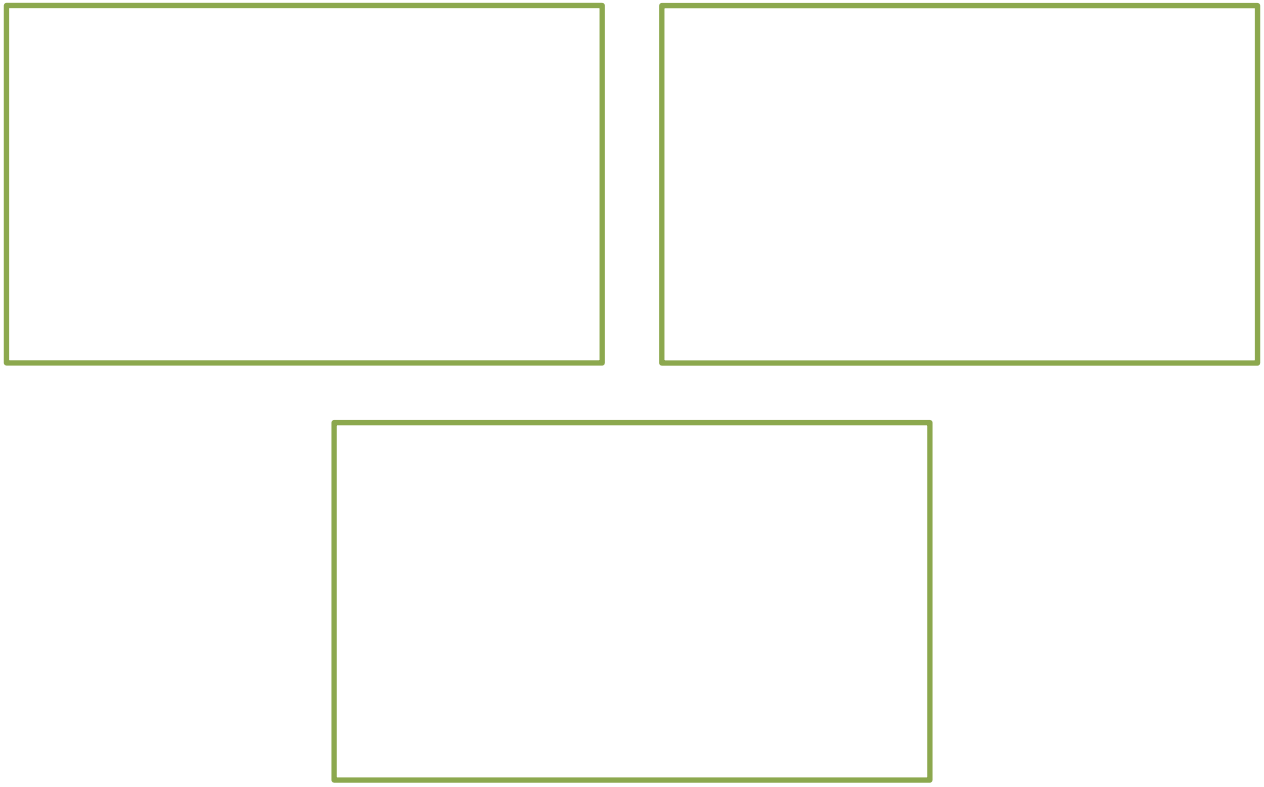
Recordkeeping & Reporting



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FINTRAC Reporting

- Certain types of transactions must be reported to FINTRAC.
- Some transaction types require you to collect additional information about the customer or the transaction.
- All of these transactions require you to identify the customer (in accordance with accepted methods under Canadian law).

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FINTRAC Reporting Timelines

Report Type	Timing	Reported To
Large Cash Transaction Report (LCTR)	15 calendar days from the transaction date.	FINTRAC
Large Virtual Currency Transaction Report (LVCTR)	5 working days after the day on which the person or entity transfers or receives the amount.	FINTRAC
Suspicious Transaction Report (STR)	As soon as practicable after completing the measures that enabled a determination that there are reasonable grounds to suspect money laundering and/or terrorist financing.	FINTRAC
Attempted Suspicious Transaction Report (ASTR)	As soon as practicable after completing the measures that enabled a determination that there are reasonable grounds to suspect money laundering and/or terrorist financing.	FINTRAC
Terrorist Property Report (TPR)	Immediately.	FINTRAC, RCMP, CSIS

Special Note:
FINTRAC Cyber Incident & Outage

- In March 2024, FINTRAC experienced a cyber incident, and some systems, including the online reporting portal, remain offline.
- There are application programming interfaces (APIs) available for reporting some types of transactions.
- Contact FINTRAC if high priority suspicious transaction reports (terrorism, national security, child sexual abuse, etc.) need to be reported during the outage.
- Reporting that is not completed by API should be completed once FINTRAC's systems are back online:
  - Reasonable approach to late reporting due to the outage
  - Keep complete records

Large Cash Transactions

- Large Cash Transactions are any cash transactions valued at $10,000 or more, either in a single transaction or several transactions within 24 hours.
- Customers must be identified before they can complete a large cash transaction.
- It's ok to tell a customer that you must report large cash transactions.

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Large Virtual Currency Transactions

- Similar to Large Cash Transactions, Large Virtual Currency Transactions are any transactions where you receive virtual currency valued at $10,000 or more, either in a single transaction or several transactions within 24 hours.
- Customers must be identified before they can complete a large virtual currency transaction.
- It's ok to tell a customer that you must report a large virtual currency transaction.

24 Hour Rule

The 24-hour rule is the requirement to aggregate multiple transactions when they total CAD 10,000 or more within a consecutive 24-hour window and the transactions are:

- conducted by the same person or entity;
- conducted on behalf of the same person or entity; or
- for the same beneficiary (person or entity).

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Third Parties

- Is someone else instructing the customer to complete a transaction?
- Is the customer completing a transaction on someone else's behalf?

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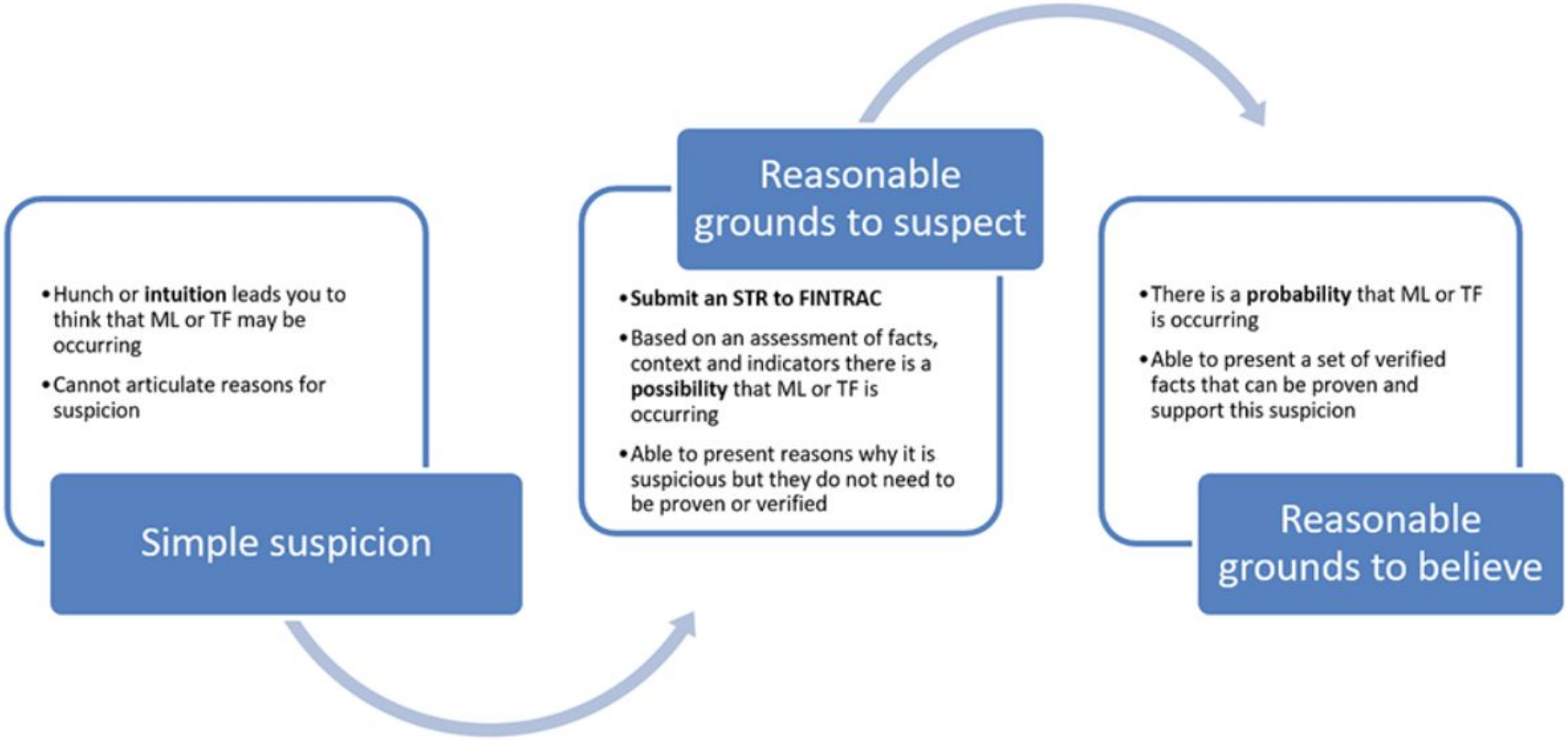
Unusual Transactions

- If you have reasonable grounds to suspect that a transaction is related to money laundering or terrorist financing, you must identify the customer, and let the Compliance Officer know about the transaction and why you think it was suspicious.
- There is no minimum dollar value.
- The transaction may or may not involve cash.
- Even if the transaction is not completed, you must report it to the Compliance Officer.
- Do not tell the customer that you are suspicious, simply state that it is company policy to request this information.

The Stages of Suspicion



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What Indicators Should I look for in Customer Behaviour?

- There is no single indicator that "works every time".
- Trust your instincts.
- If in doubt, file a report with the Compliance Officer.

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What Indicators Should I Look for in Transactions?

- Unusual given what you know about the customer.
- The transaction doesn't make sense.
- Purchases using cash in amounts just under reporting thresholds.

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Unusual Transactions

- You don't have to know that a transaction is related to criminal activity to file a report with the Compliance Officer. The standard is met if you think that the transaction is unusual.
- You must file a report if:
  - A customer changes their transaction to avoid being identified (such as breaking a large cash transaction into smaller transactions).
  - A customer refuses to be identified.
  - You believe that a customer may have provided false or misleading information about their identity.
  - A customer makes several payments in cash or using prepaid cards then requests a refund using a different payment method.
  - A customer tells you that they are paying for an item with the proceeds of crime.

Terrorist Property

- If you or your company are in possession of any property (funds or physical goods) that may belong to a terrorist or terrorist group, you must notify the Compliance Officer immediately.
- Like suspicious transactions, you should not let the customer know that you are doing this, but you should identify the customer if possible.
- Where a TPR is filed and STR must also be submitted.

Sending Reports to the Compliance Officer

- Reports should be sent to the Compliance Officer on the same day that the incidents occur.
- There are specific timelines to report transactions to FINTRAC, and any delays could result in your being out of compliance with the law.
- If you aren't sure what forms to use or how to file a report, ask your manager or Compliance Officer.

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Remember – You are protected!

- As long as you are making a report to the Compliance Officer "in good faith", you are protected under the law in Canada.

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PART 3: AML & CTF

IDENTIFICATION

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Identifying Customers

- When you identify customers, all of the information about the customer must be recorded.
- If the customer is a company, you must identify the signing authority.

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Government-Issued Photo Identification

- The identification document that is used must:
  - Be authentic;
  - Be issued by a provincial, territorial or federal government in Canada or an equivalent foreign government;
  - Be valid (not expired);
  - Include a unique identifier number (such as a driver's license number);
  - Include the name of the individual being identified; and
  - Include a photo of the individual that we are identifying (and we must match the photo to the person).

Provincial Health Cards

- Although some health cards meet the standards, there are laws in most provinces and territories that prevent these types of cards from being used as identification documents.

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Other Identification Method

Dual Process Method

- Two different reliable sources are used to confirm two of these three:
  - Name & address;
  - Name & date of birth;
  - Account with a Canadian financial institution.
- The dual process method involves referring to information from reliable and independent sources.
- Information must be valid and the most recent.

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Organizations

If your customer is an organization, you need to collect information about the organization, including proof that the organization exists, and information about the people that own or control 25% or more of the organization (beneficial owners).

You also need to ask whether the organization is a non-profit, a registered Canadian charity or solicits donations from the public.

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When Identification Fails

- The reason must be documented, and compliance must be notified.
  - In the case of entities, if beneficial ownership cannot be confirmed, the senior-most executive is identified, and the entity is considered to be high-risk.
- No large cash transactions can be performed (no exceptions, including trade shows).

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Business Relationships

- You have a "business relationship" with any customer that has conducted two or more "activities" that require identification within a five (5) year period.
- The same transaction may account for two or more "activities" (e.g., a large cash transaction report and a suspicious transaction report).

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PEPs & HIOs

- Politically Exposed Foreign Persons (PEFPs) are automatically considered high-risk because they have access to public funds and may be tempted by bribes or corruption.
- Domestic Politically Exposed Persons (PEPs) may be considered high-risk – the reporting entity must make this determination.
- PEPs and Heads of International Organizations (HIOs) include the people that have held certain positions, as well as their immediate family members and close associates.

Foreign PEPs or PEFPs

Anyone who holds or has held any of the following offices or positions in or on behalf of a foreign state:

- Head of state or head of government;
- Member of the executive council of government or member of a legislature;
- Deputy minister or equivalent rank;
- Ambassador, or attaché or counsellor of an ambassador;
- Military officer with a rank of general or above;
- President of a state-owned company or a state-owned bank;
- Head of a government agency;
- Judge of a supreme court, constitutional court or other court of last resort;
- Leader or president of a political party represented in a legislature; or
- Holder of any other prescribed office or position.

Domestic PEPs

Anyone that holds or has held one of the offices or positions on behalf of the federal government or a provincial government, within the last five (5) years:

- Governor General, lieutenant governor or head of government;
- Member of the Senate or House of Commons or member of a legislature;
- Deputy minister or equivalent rank;
- Ambassador, or attaché or counsellor of an ambassador;
- Military officer with a rank of general or above;
- President of a corporation that is wholly owned directly by Her Majesty in right of Canada or a province;
- Head of a government agency;
- Judge of an appellate court in a province, the Federal Court of Appeal or the Supreme Court of Canada;
- Leader or president of a political party represented in a legislature; or
- Holder of any other prescribed office or position.

Head of an International Organization (HIO)

The head of an international organization is a person who is either:

- the head of an international organization established by the governments of states; or
- the head of an institution established by an international organization.

When you refer to the head of an international organization or the head of an institution established by an international organization, you are referring to the primary person who leads that organization, for example, a president or CEO.

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PART 4: AML & CTF

ADDITIONAL CONSIDERATIONS & UPCOMING CHANGES

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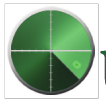
Upcoming Change: Beneficial Ownership Registry

- Current search tool (beta): https://beta.canadasbusinessregistries.ca/search
- Federally registered businesses will have beneficial owners listed.
- An address for service may be added (in addition to the home address) and this is what is displayed publicly - please use this feature for your own security!
- As reporting entities, DPMS will have obligations to report discrepancies.

Parliamentary Review & FATF

- Canadian AML legislation is reviewed every five years
- Canada undergoes mutual evaluations from the Financial Action Task Force (FATF) regularly
- Both of these exercises tend to lead to updates – stay tuned!
- Remember to keep your AML program up to date in the meantime.
- For those using the compliance kit tools, the most recent regulatory updates are included when you make updates using the setup wizard.



Contact

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Questions?

Appendix: FINTRAC's Cyber Incident & Outage

Financial Transactions and Reports Analysis Centre of Canada

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is Canada's financial intelligence unit and anti-money laundering and anti-terrorist financing supervisor. Its mandate is to 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.

Public Statements: Cyber incident

- FINTRAC Statement – March 22, 2024
- FINTRAC Statement – March 11, 2024
- FINTRAC Statement – March 3, 2024

Fraud alert

Many scams and fraudulent activities attempt to imitate government services in order to gain access to your personal and financial information. FINTRAC and FINTRAC personnel have occasionally been misrepresented in scams and fraud attempts.

FINTRAC's systems are temporarily unavailable.

We apologize for any inconvenience this may cause.

- "Businesses must continue to identify and document all reportable transactions and be prepared to file them once systems are back online. No enforcement actions (e.g., administrative monetary penalties) will result from late reporting until further reporting instructions are provided by FINTRAC."
- If your organization has identified a priority suspicious transaction report (STR), please send an email to STR-DOD@fintrac-canafe.gc.ca or call the Call Centre at 1-866-346-8722 (toll free) for additional information on how to submit this report to FINTRAC

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Reference Links

- AML Compliance Material and FAQs: https://www.outliercanada.com/canadian-jewellers-association/
- Case study: Perth Mint: https://www.abc.net.au/news/2023-03-06/tainted-gold:-inside-perth-mints-billion-dollar/102060270
- FINTRAC's landing page for DPMS: https://fintrac-canafe.canada.ca/re-ed/dpms-eng
- FINTRAC's Online Reporting Portal: https://fintrac-canafe.canada.ca/reporting-declaration/Info/f2r-eng

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