

## **[1 Money Laundering, Asset Forfeiture and Compliance.syn](#)**

**Money Laundering, Asset Forfeiture and Recovery, and Compliance - A Global Guide > Topics in AML > Topic 12 Canada's AML Framework: The Example of Gaming**

### **Topic 12 Canada's AML Framework: The Example of Gaming**

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## **1 Money Laundering, Asset Forfeiture and Compliance I**

### **Money Laundering, Asset Forfeiture and Recovery, and Compliance - A Global Guide > Topics in AML > Topic 12 Canada's AML Framework: The Example of Gaming**

#### **I. Introduction\***

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*Canada has a strong framework to fight ML and TF which relies on a comprehensive set of laws and regulations, as well as a range of competent authorities.*<sup>1</sup>

This paper examines the regulatory and anti-money laundering (AML) framework as it impacts gaming in Canada. The gaming industry in Canada consists of casinos, lotteries, horse racing, slots at racetracks, video lottery terminals and charitable gaming. This paper primarily focuses on the casino industry. Total gaming revenue in Canada has been estimated at \$16 billion, with casino gaming revenue estimated at roughly \$6 billion; Canadian casinos have roughly 3.4 percent of the global casino market.<sup>2</sup>

Gaming, and in particular casinos, are highly regulated enterprises. Canada is a federal parliamentary democracy, with a federal government as well as ten provinces and three territories. The federal government has constitutional responsibility for, among other things, the criminal law and anti-money laundering (AML) measures;<sup>3</sup>

provinces have jurisdiction over a number of areas, including gaming regulation. There are 39 casinos treated as reporting entities (with 110 locations) by FinTRAC, Canada's financial intelligence unit (FIU).<sup>4</sup>

In 2016, across all sectors FinTRAC reported receipt of over 27 million financial transaction reports, levied 22 administrative monetary penalties and conducted 739 compliance examinations. In respect of gaming, FinTRAC received 172,289 casino disbursement reports and conducted 14 compliance examinations in casinos.<sup>5</sup>

In 2016 and 2017, a controversy arose over administrative monetary penalties. Normally FinTRAC names the institution but in a 2016 levy of \$1.15 million the director declined to name the affected institution, a decision that was revisited when the name became public.<sup>6</sup>

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).

<sup>1</sup> Financial Action Task Force Canada Mutual Evaluation Report September 2016 at p. 4 at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf>.

<sup>2</sup> As of 2017, the gaming industry claims to employ 135,000 people in Canada ([www.canadiangaming.ca](http://www.canadiangaming.ca)). The casino numbers are in Price Waterhouse Coopers Global Gaming Outlook (2015) which can be found at [http://www.pwc.com/en\\_CA/ca/entertainment-media/publications/gaming-outlook-2011-12-en.pdf](http://www.pwc.com/en_CA/ca/entertainment-media/publications/gaming-outlook-2011-12-en.pdf); the global Canadian numbers can be found at <http://www.canadiangaming.ca/industry-facts/industry-data.html> (last viewed January 28, 2018).

<sup>3</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) S.C. 2000, c. 17 which was recently amended by the *Economic Plan 2014 Act*, No. 1.

<sup>4</sup> The federal Ministry of Finance states that casinos have revenues of \$15 billion, likely a conflation of casino and other types of gaming revenue. *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada* (2015) <http://www.fin.gc.ca/pub/mltf-rpcfai/index-eng.asp> (last viewed on January 28, 2018)

<sup>5</sup> FinTRAC Annual Report 2016: <http://www.fintrac.gc.ca/publications/ar/2016/1-eng.asp> (last viewed on January 28, 2018).

<sup>6</sup> In April 2016, the Director exercised his discretion under s. 73.22 of the PC(ML)TFA and refused to name the institution. Reporters discovered that Manulife was the institution and the Director committed to review the penalty provisions with the

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In 2017, another controversy came to light in British Columbia, on Canada's west coast, respecting reports that a casino, the River Rock Casino Resort, had accepted significant amounts of unsourced cash. A money laundering operation was alleged involving wealthy gamblers from China and Macau, who would fly to Canada to gamble. Outside of the casino in Richmond, gamblers would be handed large amounts of cash (sometimes in hockey bags), gamble and then cash out by taking a casino cheque. The cheque could either be used in Canada to invest in real estate or other assets, or it could be wired back to China to evade Chinese currency controls. The casino properly filed reports with FinTRAC but a question remained: was the AML system fit for purpose? The government appointed Dr. Peter German to study the issue and issue a report; he made interim recommendations in late 2017 and his final report is slated to be produced in March of 2018.<sup>7</sup>

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Department of Finance on February 27, 2017 (<http://www.fintrac-canafe.gc.ca/about-apropos/message-eng.asp>). It is concerning that a financial institution's name might be shielded from their regulator, OSFI.

<sup>7</sup> The March 2018 report will likely be posted at: <https://news.gov.bc.ca/ministries/attorney-general> The controversy arose with news reports and press releases (See [https://archive.news.gov.bc.ca/releases/news\\_releases\\_2017-2021/2017AG0025-001642.htm](https://archive.news.gov.bc.ca/releases/news_releases_2017-2021/2017AG0025-001642.htm) and <http://www.calgaryherald.com/news/national/slot+machine+players+rake+millions+jackpots+review+shows/16401322/story.html>) which referred to an investigative report ([https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/reports/mnp\\_report-redacted.pdf](https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/reports/mnp_report-redacted.pdf)). The industry has reacted, noting that the existing AML controls work adequately ([http://www.canadiangaming.ca/images/stories/gamblingcompliance\\_-\\_canadas\\_gaming\\_industry\\_believes\\_current\\_aml\\_controls\\_work\\_-\\_2017-11-14.pdf](http://www.canadiangaming.ca/images/stories/gamblingcompliance_-_canadas_gaming_industry_believes_current_aml_controls_work_-_2017-11-14.pdf)).

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### **II. Gaming: A Criminal Prohibition**

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Canadian law starts with a broad criminal prohibition of gaming, buttressed by numerous exceptions in the Criminal Code<sup>8</sup>

(the "Code"). This approach has a long pre-colonial history. In 1541, a King Henry the VIII statute prohibited gambling for money in a public or gaming house. People could gamble, with money, in their own homes. They simply were not allowed to do so in the pub or in a commercial venue organized for gaming. The location of the betting potentially criminalized the activity.<sup>9</sup>

Canada as a colony maintained this approach under the criminal common law which was incorporated into our codified criminal law in 1892.<sup>10</sup>

The relevant part of the Code is currently entitled "Disorderly Houses, Gaming and Betting." This area of law evolved slowly in Canada with only two significant legislative changes to the Code in respect of gaming in the 20th Century:

- 1969: a bill decriminalized a number of activities including homosexuality and gaming/lottery schemes conducted and managed by government;<sup>11</sup>
- and,
- 1985: following a federal-provincial agreement on the issue, the federal government effectively vacated the regulated lottery and gaming business to the provinces.<sup>12</sup>

The Code describes a "game" as a game of chance or mixed skill and chance. The Code does not require the courts to particularly weigh between skill and chance although gaming must involve a chance of both winning and losing (where there is no risk of loss to the player, the Code prohibitions do not apply).<sup>13</sup>

Speaking broadly, there are two categories of gaming offences, those related to the actual gaming scheme (e.g. cheating at play) and those relating to the place where gaming occurs (e.g. keeping a common betting house). The latter category means that one can only operate a casino or gaming house within the parameters of a regulatory scheme.

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).

<sup>8</sup> R.S.C. 1985 c. C-46.

<sup>9</sup> Osborne, J *The Legal Status of Lottery Schemes in Canada: Changing the Rules of the Game*, a master's thesis submitted to the faculty of law at the University of British Columbia, 1989 at pp. 14–15.

<sup>10</sup> Canada became independent as a country in 1867; criminal law was codified by the *Criminal Code of Canada*, 1892, c. 29.

<sup>11</sup> [Criminal Law Amendment Act, 1969 3 S.C. 1968–69](#) c. 38, s. 13.

<sup>12</sup> *Criminal Code (Lotteries) Amendment Act*, S.C. 1985 c. 52.

<sup>13</sup> The Code s. 197(1) *R. v. Irwin, Garvin, Oliver and Cress*, 1982 CanLII 2024 (ON CA); *DiPetro v. The Queen*, [1986] 1 SCR 250.

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### **III. Gaming: Canadian Regulation**

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Provinces have enacted legislative frameworks for gaming.<sup>14</sup>

Those frameworks have two broad areas of focus. First, there are provisions that focus on the individual: casinos must ensure that consumer funds are protected; there are advertising and responsible gaming rules; the games must be conducted fairly, without fraud or cheating; and there are age verification rules. Secondly, there are a broad series of rules governing the industry and the regulator. In a constrained public sector, regulators look to leverage resources and the interests of the industry participants to ensure system integrity. Gaming is a lucrative industry. The criminal prohibition closes the industry to competition. Unregulated competitors are shut down through the criminal law process. Regulators limit the number of gaming facilities that will be approved.<sup>15</sup>

Gaming operators are motivated to work within the regulatory framework.

A fulsome discussion of the Canadian regulatory system is beyond the scope of this paper but there are a number of techniques applied to ensure that the regulatory system accomplishes its goals:

- **Licensing:** potential gaming operators wishing to enter the regulatory system must do upfront work to obtain a license. Each system has complex rules defining the breadth and depth of the licensing system; there are investigation and verification processes; there are various criteria and standards that prospective operators must achieve. The regulator needs to keep criminality out of the system (many of the early entrants into the Las Vegas industry were said to have had mob connections). The regulator also needs assurance that the participant is likely to comply with their on-going regulatory system.
- **Verification:** once an entrant is licensed, the regulator establishes various accounting, audit and recordkeeping rules designed to provide ongoing verification of compliance.
- **Taxation:** in Canada, gaming is an important source of public revenue. Moreover, people who would object vehemently to a tax increase, might willingly insert money into a slot machine. In other words, as a form of taxation, gaming is politically acceptable.
- **Technical compliance:** many aspects of a modern gaming operation rely on technology. The regulator will set various technical rules to ensure that games are fairly conducted and that verification measures can be confirmed.
- **Financial transactions:** the gaming industry is part of the government's focus on AML measures.

Consider, for example, the regulatory and operational actors who operate and oversee gaming in British Columbia:

- **Regulator:** the Gaming Policy and Enforcement Branch regulates gaming in the province. The regulator plays a pivotal role in the licensing and verification of operators;<sup>16</sup>

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).

<sup>14</sup> See for example, the *Gaming Control Act*, 1992, S.O. 1992, c 24.

<sup>15</sup> Canada, however, shares a long border with America and cross-border competition does occur (a casino in Detroit was opened to compete with a Canadian casino in Windsor, Ontario).

<sup>16</sup> This is an "office of government" continued under the *Gaming Control Act*, SBC 2002, c 14 s. 22.

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- **Manager:** the British Columbia Lottery Corporation “conducts and manages” gaming facilities through operators. BCLC is responsible for filing reports with FinTRAC, based on what they receive from operators;<sup>17</sup>
- **Operator:** various operators and service providers enter into operational service agreements with BCLC. The Operator is the visible face of the day-to-day running of a casino.<sup>18</sup>

There is a natural tension in this system. With annual revenues of over \$3 billion, BCLC contributes an important stream of revenue to the province. Facility operators are paid, in part, on a commission against revenue. The regulator and the manager face, as any public sector entity does, challenges in managing their budgets tightly under the public purse. AML work is a cost centre against income and a drag on revenue. As with AML systems in any sector, there is a balancing between free enterprise and regulated risk mitigation.

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<sup>17</sup> BCLC is continued under Part 2 of the *Gaming Control Act*, SBC 2002, c 14.

<sup>18</sup> Under Part 8 of the the *Gaming Control Act*, SBC 2002, c 14, the regulator conducts due diligence on prospective operators.

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### **IV. Gaming: Money Laundering\***

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Money laundering is a technique used by criminals to disguise the origin of their illicit gains, converting lucre into an apparently cleansed source of money beyond the reach of both law enforcement and underworld rivals. There are money laundering vulnerabilities in the gaming sector.<sup>19</sup>

A money launderer could enter a casino and purchase chips, play notionally and then either cash out the bulk of the chips (asking the gaming operator for a cheque) or use the chips themselves as a monetary instrument to be passed on to an intermediary (or as currency for drug transactions). High denomination chips are very portable, easily carried across borders and can be fungible in the right hands. A money launderer may attempt the act of refining in a casino (sometimes called "greening up"), that is converting small denomination bills into larger denomination notes. A drug dealer might sell 40 pounds of cocaine on the street and receive back 220 pounds in \$10 bills.<sup>20</sup>

Obviously the "bulk" of that cash can be reduced by converting, or refining, the \$10 bills into notes of a larger denomination. Alternatively, the launderer might use the \$10 bills to pay for chips, buy TITO tickets (many casinos use a ticket in, ticket out or TITO system instead of cash or tokens at slot machines), or exchange currency. Many casinos operate an accounts system, typically known as front-money accounts: money is deposited and the client can draw on the account for gaming purposes. With the advent of internationally linked casinos, it might be possible for a gambler to establish an offshore account, say in Manila, and use the money in another jurisdiction where the same casino operator has another facility.<sup>21</sup>

An AML system is only as strong as its participants; recent action by American regulators has resulted in tens of millions of dollars in fines against U.S. based casinos.<sup>22</sup>

Brick and mortar casinos are vulnerable to money laundering, although in Canada money service business and banks have a higher vulnerability.<sup>23</sup>

Casino operations are highly transactional and cash-intensive. Casinos provide a limited number of products and services with a reasonably large volume of transactions. The casino's business relationship with clientele is mostly transactional and quotidian but there are some ongoing relationships. The casino's clientele could include PEPs

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).

<sup>19</sup> See for example, the slightly dated 79 page report of the Financial Action Task Force *Vulnerabilities of Casinos and the Gaming Sector*, March 2009 at <http://www.fatf-gafi.org/media/fatf/documents/reports/Vulnerabilities%20of%20Casinos%20and%20Gaming%20Sector.pdf>. See also FinTRAC's document: <http://www.fintrac.gc.ca/publications/typologies/2009-11-01-eng.pdf>.

<sup>20</sup> Simser, J *The Significance of Money Laundering*, (2006), 9 J Money L Control 293 at 294.

<sup>21</sup> Some casinos also offer "credit" accounts, whereby the client can borrow money for gaming purposes; these appear to be quite rare in Canada. FinTRAC *Money Laundering Typologies and Trends in Canadian Casinos* (Ottawa: FinTRAC, November 2009); see also *Dept. of the Treasury National Money Laundering Risk Assessment 2015* (Washington: Treasury, 2015).

<sup>22</sup> Pierceall, K *Caesars Palace Could Face \$20 mil in Federal Fines* (Las Vegas Sun News, May 12, 2015).

<sup>23</sup> See the discussion at note 5.



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(politically exposed persons), non-residents (like tourists) and clientele in vulnerable businesses and professions. Some casinos offer clients the ability to transfer funds electronically, meaning that funds could be sent to high-risk jurisdictions. Clients can conduct gaming activity in casinos relatively anonymously, although casinos are monitored and some activities require face-to-face interaction with casino staff. Interactions between customers and casino staff can at times be brief and fleeting. Unlike bankers, there are a smaller number of opportunities for casino staff to delve into the source of funds for their customers.

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## **1 Money Laundering, Asset Forfeiture and Compliance V**

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### **V. AML Regulation in Canada**

Canada's AML framework developed at the turn of this century through a combination of criminal law enactments (like the tracing, seizure, forfeiture of proceeds of crime and the criminalization of money laundering) and an AML framework. Record keeping and reporting obligations were first imposed on financial institutions; large cash transactions as well as suspicious transactions had to be reported on to Canada's FIU, FinTRAC.<sup>24</sup>

Canada's AML regime is designed to address a commonly understood paradigm of money laundering, premised on three steps: Placement, Layering and Integration (PLI).<sup>25</sup>

Whether PLI is the right model for an AML system is a topic for another paper. Suffice it to say, that the system is particularly concerned with illicit cash. The placement stage involves the injection of illicit funds into a legitimate intermediary (a drug dealer depositing cash earnings into a bank account). AML rules create placement barriers: for example, all cash deposits exceeding \$10,000 must be reported on and the financial institution itself is required to know their own customers. Suspicious transactions, regardless of quantum, must be reported. Once money is placed, the launderer will take steps to obscure its origin, a process known as layering. The goal is to make the audit trail difficult to follow. Layering steps could include moving money between a series of accounts; it could also include the purchase and sale of assets. The ultimate goal of the launderer is the integration of their illicit funds into a place of apparently legitimate provenance. The money launderer seeks an end state where they can invest and make purchases without fear that their assets will be seized or forfeited. PLI is an imperfect model. Not all elements need to be in place. For example a victim may give a fraudster a cheque or wire money to their account, eliminating the placement step (the fraudster is likely to subsequently layer and integrate).

Terrorist financing is a different type of activity in several important respects. In a classic money laundering case, the source of funds is criminal in origin. This is not necessarily true for terrorist financing: the sources could have a legitimate provenance (money legitimately earned or intended as a charitable donation) or it could be unlawful or a combination of the two. In classic money laundering, the object of the activity is to place property with an unlawful provenance into the legitimate financial system, layer the assets to obscure its origins and most importantly integrate the money into the apparently legitimate holdings of the principal. Terrorist financing places assets in the hands of a third party for use in acts of terrorism. Canada's system to counter terrorism financing (CTF), as we shall see, is slightly different from our AML system. CTF tends to focus on the actor, prohibiting any transactions with them.

Canada's AML regime is designed to discourage launderers from entering the system at all and if they do, ensuring that any assets in the system can be traced in support of law enforcement efforts. Canadian AML law places substantial record keeping, reporting, client identification and monitoring obligations on the sectors of the Canadian

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).

<sup>24</sup> The PCMLTFA (note 4 above) was amended to include anti-terrorist financing measures by the *Anti-terrorism Act*, S.C. 2001, c. 41.

<sup>25</sup> See for example FATF's FAQ: <http://www.fatf-gafi.org/pages/faq/moneylaundering/> (last viewed January 21, 2018).

economy vulnerable to money laundering. Portions of the gaming industry are included in those areas regulated under the Act and there are provisions specific to casinos.<sup>26</sup>

Canada's law creates the notion of reporting entities. Reporting entities respecting gaming generally applies only to casino gaming and some video lottery terminal operations. In Canada, the relevant casino operations are licensed by a province either at a land based facility or over the internet; the rules also apply to provincially authorized facilities with 50 or more video lottery terminals.<sup>27</sup>

Reporting entities in Canada must implement a program of policies and procedures to ensure compliance with AML rules which include:

- a formally appointed compliance officer to oversee the AML compliance regime;
- written and up-to-date AML policies and procedures approved by a senior officer;
- a documented AML risk assessment factoring account clients, business relationships, products, delivery methods, geographic location and any other relevant factors;
- a written, continuing, AML compliance education program for all employees and any person acting on behalf of the entity; and,
- a compliance audit or review to test the effectiveness of the compliance plan at least once every two years.

In addition to having to complete an audit every two years, the results of that audit must be provided to a senior officer of the casino along with any updates to policies and procedures along with the status of those updates.<sup>28</sup>

FinTRAC has issued a guidance document for casinos and applicable gaming operations.<sup>29</sup>

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<sup>26</sup> In Canada, lotteries are considered part of the industry, but aren't vulnerable to traditional money laundering. That said, criminals have been known to buy or extort winning lottery tickets from victims and claimed the prize as their own legitimate source of wealth. Charitable bingo and horse racing are not subject to the full Canadian AML regime. See FinTRAC: <http://www.fintrac.gc.ca/re-ed/casinos-eng.asp> (last viewed January 28, 2018).

<sup>27</sup> Section 5 of the PCMLTFA sets out those entities (commonly referred to as "reporting entities") to which the act applies. Gaming is addressed in paragraphs 5(k) through 5(k.3).

<sup>28</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation*, SOR/2002-184.

<sup>29</sup> FinTRAC, Compliance Programs Requirements (formerly Guideline 4) <http://www.fintrac.gc.ca/guidance-directives/compliance-conformite/Guide4/4-eng.asp> (last viewed January 21, 2018)

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### **VI. Compliance Programs\***

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Canada's AML system is designed to harness the business knowledge of reporting entities through a risk-based approach to compliance. Regulated entities should not merely "tick the box" and declare compliance but rather apply their business knowledge to compliance. That said, there are structural rules to ensure this happens. Gaming operators must have an AML compliance program and conduct risk assessments, all of which comprise policies and procedures designed to provide an enterprise-wide analysis with the purpose of identifying potential threats and vulnerabilities to which they are exposed through their products, services and customers. The institution must take reasonable measures to identify and mitigate such risks. Where a high risk is identified, special mitigation measures must be developed (e.g. customer identification, record keeping and monitoring of financial transactions).<sup>30</sup>

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).

<sup>30</sup> PCMLTFA s. 9.6(3).

## **1 Money Laundering, Asset Forfeiture and Compliance VII**

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### **VII. Reporting\***

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Reporting is the backbone of any AML system. The fact of reporting deters undesirable transactions. Reported information can be used by law enforcement to pursue tainted assets as well as their owners. Reported information can later be used by investigators to link actors to substantive offences, to “follow the money” as it were. Gaming enterprises must report on financial transactions, generally meaning money or financial instruments traded for assets of the gaming enterprise (like casino chips). Financial transactions that must be reported on include large cash transactions, casino disbursement transactions, suspicious and attempted suspicious transactions, and electronic funds transfers (EFTs). Large cash transactions generally involve \$10,000 or more. An entity must report on single transactions over the threshold; two or more transactions within a 24 hour period and totaling \$10,000 or more are deemed to be a “single transaction” where the entity knows the transactions were conducted by or on the behalf of the same person or entity. Suspicious transactions do not have a minimum threshold; the AML system relies on the judgement of the reporting entity to report on financial transactions made or attempted in where there are reasonable grounds to suspect that the transaction is related to the commission or attempted commission of a money laundering offence or a terrorist financing offence. The FIU has issued guidelines that require reporting entities to consider what is reasonable in the course of normal business practices in the industry. Context is important: what is usual in terms of transactions for that customer? What does the entity know about customer's business, source of wealth, financial history and background? Every AML system relies, to one degree or another, on the KYC or know your client principle.

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).

## **1 Money Laundering, Asset Forfeiture and Compliance VIII**

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### **VIII. Indicators of Suspicious Transactions in Gaming**

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The FinTRAC guidance suggests, as possible indicators of suspicious transactions, that entities consider customers who:

- admit to or make statements about criminal activity (not all criminals are masterminds);
- are accompanied and watched by other patrons (casinos tend to be carefully monitored environments);
- only vaguely understand what they are transacting on (e.g. not knowing the amounts involved);
- have an unusual curiosity about internal systems, controls and policies;
- do not disclose when acting on behalf of a third party;
- engage in activity that is unusual for his or her circumstances;
- provide false information;
- structure transactions to avoid reporting requirements or attempt to avoid the filing of a report for cash by breaking up the transaction;
- have an unusual level of knowledge in relation to suspicious transaction reporting;
- refine money (change small bills for large ones);
- present money packaged or wrapped in an unusual manner (money couriers often bundle or wrap money differently than a bank);
- conduct transactions in rounded-off large amounts;
- on casino transactions ask for payment in casino cheques made out to third parties or without a specified payee;
- with acquaintances, bet against each other in even-money games (e.g. a poker game where most are intentionally losing to one of the party who, after the house rake, will hope to receive a casino cheque);
- requests cheques that are not for gaming winnings;
- inquire about opening an account with the casino and the ability to transfer the funds to other locations when they do not know the customer as a regular, frequent or large volume player;
- purchase large volume of chips with cash, then participates in limited gambling activity with the intention of creating a perception of significant gambling and then cashing the chips for a casino cheque;
- put money into slot machines and claim accumulated credits as a jackpot win;
- use multiple names; and,
- request the transfer of winnings to the bank account of a third party or an at-risk country (a drug source country or one with weak AML controls).

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).

## 1 Money Laundering, Asset Forfeiture and Compliance VIII

More than just a guidance, this long list reveals the FIU's perspective on vulnerabilities in the gaming sector.<sup>31</sup>

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<sup>31</sup> FinTRAC, Guideline 2: Suspicious Transactions <http://www.fintrac.gc.ca/guidance-directives/transaction-operation/Guide2/2-eng.asp> (last viewed January 21, 2018).

## **1 Money Laundering, Asset Forfeiture and Compliance IX**

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### **IX. Filings are Confidential\***

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Once a suspicious transaction report has been submitted the reporting entity is expressly prohibited from disclosing the fact that the report has been made, or its contents. Obviously the "tipping off" provisions are designed to ensure that an existing or prospective criminal investigation is not prejudiced or compromised. Curiously, this can place casino employees in a difficult position. They must attempt to collect the information necessary to complete the report but face the prospect of a customer asking why. Generally employees are guided to note that the government routinely requires the casino to collect customer information but not to divulge anything further (e.g. any grounds that to the employee indicated that the circumstances were considered suspicious or any of the details that would be provided in the report).

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).



## **1 Money Laundering, Asset Forfeiture and Compliance X**

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### **X. Large Casino Disbursement Reports**

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Casinos must submit a large casino disbursement report respecting the payments of \$10,000 or more (or a series of transactions over a 24 consecutive hour period that total \$10,000 or more) where an employee or senior officer of the casino knows that the disbursements are received by, or on behalf of, the same person. These reports apply not only to cash, but also most forms of payments out including the redemption of chips, withdrawals from gaming accounts, payment of winnings, the cashing of cheques or other negotiable instruments, as well as the reimbursement to customers for travel and entertainment expenses (commonly referred to as "comps").<sup>32</sup>

#### **A. EFTs**

Casinos must report on international incoming and outgoing electronic funds transfers (EFTs) of \$10,000 or more in the course of a single transaction, where the transaction is at a customer's request. The obligation to report an EFT does not apply where a casino sends the transfer to a person or entity in Canada even if the final recipient is outside of Canada; presumably the financial institution's reporting to the FIU will capture these. For circumstances where it might not, the casino must report where a customer, forwards funds in the amount of \$10,000 or more in the course of a single transaction to another casino, a financial entity, or a money services business in Canada with instructions to transfer the funds outside of Canada (this reporting obligation is obviated if the casino also provides the requesting customer's name and address). Similarly, the reporting obligation on the part of a casino with respect to EFTs does not apply to funds received from an entity or person in Canada even if the initial sender is outside Canada. However, the obligation will apply if a casino, at the request of a customer receives funds in the amount of \$10,000 or more in the course of a single transaction from another casino, a financial entity or a money services business in Canada where the initial sender is outside of Canada, unless the transfer contains the name and address of the customer.<sup>33</sup>

#### **B. Terrorist Financing**

The Canadian legal system approaches terrorist financing differently than money laundering. There is a broad criminal prohibition on dealing with terrorist assets which is not limited to specified reporting entities. The *Criminal Code* and associated regulations<sup>34</sup>

impose restrictions and reporting obligations related to terrorist property on persons in Canada and Canadians outside of Canada. The legislative scheme prohibits anyone from dealing directly or indirectly with the property of a listed person or terrorist group, or from entering into or facilitating transactions related to terrorist property.

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).

<sup>32</sup> *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation*, SOR/2002-184, s. 42.

<sup>33</sup> *Ibid*, s. 40.

<sup>34</sup> *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* SOR/2001-360; *United Nations Al-Qaida and Taliban Regulations* SOR/99-444; *Regulations Establishing a List of Entities*, SOR/2002-284 which needs to be reviewed every two years, see for example SI/2015-24.

The Office of the Superintendent of Financial Institutions maintains and publishes the lists of Listed Persons and Terrorist Groups which can be found at their website.<sup>35</sup>

Every person in Canada (not just casinos or financial institutions) and every Canadian outside of Canada is required to make an immediate disclosure to the Commissioner of the Royal Canadian Mounted Police and to the Director of the Canadian Security Intelligence Service of:

- the existence of property in their possession or control that they know is owned or controlled by, or on behalf of, a terrorist group; and,
- information about transactions or proposed transactions involving the property.

The AML system additionally requires a reporting entity to make an additional disclosure to the FinTRAC.

### **C. Customer Identification**

The AML regulatory system is designed to thwart the goals and objectives of a money launderer. The system imposes customer identification rules on regulated entities. There are two purposes: one, barriers are created for bad actors (prohibit anonymous deposits into the financial system); two, the collection of information supports investigations and prosecutions related to these offences. Regulated entities are required within the AML system to identify risks and take the appropriate steps to mitigate that risk. The identification of persons involved in or attempting money laundering or terrorist financing is crucial to these efforts. The rules, policies and procedures related to customer identification are commonly and collectively referred to as KYC (Know Your Customer) or “customer due diligence” (CDD) requirements. With important exceptions, a casino will have the obligation to identify a customer anytime it conducts a transaction where it is required to create and keep a record, which includes those circumstances where it must submit a report to the FinTRAC.

### **D. Exceptions to Confirming Identity**

Generally, where a gaming entity has previously confirmed the identity of customer it is not required to do so again where the customer is recognized by staff, unless there are doubts about the information previously collected. Casinos foster relationships with frequent customers, providing comps and frequent player cards. In the specific case of a suspicious or attempted suspicious transaction, a casino is not required to confirm the identity of the customer if the casino believes ascertaining the identification information would result in the customer becoming aware the report is being made. Identity does not have to be confirmed in the case of suspicious transactions where the identity of the customer has been previously ascertained.<sup>36</sup>

### **E. Record-Keeping**

Gaming entities must collect and maintain a series of records related to various aspects of the AML regime.<sup>37</sup>

The purpose of this requirement is twofold. One, the records support the FinTRAC’s intelligence gathering mission to produce actionable intelligence for law enforcement and taxation agencies. Secondly, the records support the FinTRAC’s role as a regulator; records can later be audited or reviewed to determine whether a reporting entity has complied with their AML obligations. The records generally relate to large cash transactions, suspicious transactions, large cash disbursements, extensions of credit, foreign exchange, funds remitted/transmitted, and casino accounts. If a casino has reasonable grounds to suspect that an individual is acting on behalf of a third party, an account is being used by a third party, or a disbursement is being received on behalf of a third party the casino must document the grounds for its suspicion and what the customer has indicated about whether or not a third party is involved.

### **F. Non-Compliance**

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<sup>35</sup> See: <http://www.osfi-bsif.gc.ca/eng/fi-if/amlc-clrpc/atf-fat/Pages/default.aspx> (last viewed January 22, 2018).

<sup>36</sup> Regs—s. 63 and 53.1.

<sup>37</sup> Act s. 6, detailed requirements are set out in the regulations.

## 1 Money Laundering, Asset Forfeiture and Compliance X

FinTRAC has a number of options to ensure compliance. There are criminal penalties: failing to report suspicious activities can, on conviction, lead to fines of up to \$2 million and up to 5 years of imprisonment. Failures involving large cash transaction or EFTs can lead to fines of up to \$500,000 for the first offence and \$1 million for subsequent offences. Failure to meet record keeping requirements can generate fines of up to \$500,000 and/or 5 years imprisonment. Failure to provide assistance or provide information during compliance examination, will generate fines of up to \$500,000 and/or 5 years imprisonment. Finally for tipping, that is disclosing the fact that a suspicious transaction report was made, or disclosing the contents of such a report, with the intent to prejudice a criminal investigation, there are penalties of up to 2 years imprisonment.<sup>38</sup>

Since the end of 2006, FinTRAC has been levying administrative monetary penalties, known in Canada as AMPs and at the time of writing, has imposed \$3.5 million in fines through 79 different AMPs. The Supreme Court of Canada recently upheld the constitutionality of AMPs in a taxation case.<sup>39</sup>

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<sup>38</sup> PCMLTFA ss. 74-82. Note there are warrant provisions to aid in enforcement: s. 62. The regulations cited in note 21 above propose changes to what FinTRAC can levy an AMP for.

<sup>39</sup> See <http://www.fintrac.gc.ca/pen/4-eng.asp#s1> and the case *Guindon v. Canada*, 2015 SCC 41 (CanLII).

## **1 Money Laundering, Asset Forfeiture and Compliance XI**

***Money Laundering, Asset Forfeiture and Recovery, and Compliance - A Global Guide > Topics in AML > Topic 12 Canada's AML Framework: The Example of Gaming***

### **XI. Conclusion\***

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This paper is an introduction to the regulatory and AML framework as it applies to gaming, and in particular casinos, in Canada. Gaming is a highly regulated industry. Gaming revenue is prized as a source of government revenue. The regulatory system functions to allow gaming while mitigating risk: the regulation ensures revenue integrity without being overly oppressive (which could drive customers into underground and illegal gaming venues). Weak regulation would place Canada at risk of criticism from, among others, the Financial Action Task Force. Casinos are regulated by individual provinces under different models. In British Columbia, the regulatory system includes a regulator, a manager and an operator. Gaming regulation operates in the shadow of a broader criminal prohibition on gaming. In Canada, gaming is illegal unless it isn't, making the navigation of the rules a little tricky at times. Gaming regulation operates in tandem with Canada's AML regulatory scheme, which itself operates in the shadow of criminal prohibitions on money laundering. Casinos must have compliance programs, comply with reporting obligations and customer identification rules.

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\* Jeffrey Simser, [jeffrey.simser@lhins.on.ca](mailto:jeffrey.simser@lhins.on.ca).