



Certified General  
Accountants  
Comptables généraux  
accrédités

**The Certified General Accountants Association of Canada (CGA-Canada)  
Response to the Department of Finance Consultation**

*Enhancing Canada's Anti-Money Laundering and  
Anti-Terrorist Financing Regime*

**September 30, 2005**

## **1. INTRODUCTION**

The Certified General Accountants Association of Canada (CGA-Canada) appreciates the opportunity to provide its views on the proposed changes to Canada's anti-money laundering (AML) and anti-terrorist financing (ATF) regime. We trust that this submission will assist the Department of Finance as it prepares for the upcoming parliamentary review as required under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*. In particular, we will address in this submission the proposals relevant to accountants and accounting firms as they relate to our members.

CGA-Canada is a national self-regulating association of approximately 62,000 Certified General Accountants and students. CGA-Canada works towards preserving public trust in financial reporting, conducts research and develops policy, contributes to standards development, educates and develops accounting professionals.

## **2. RECORD KEEPING AND CLIENT IDENTIFICATION**

The issue of privacy represents a double-edged sword. For our society to function proficiently, privacy is an essential condition where individual freedoms are not subservient to the demands of Government. On the other hand, individuals must be prepared to forgo some of their freedoms when they entrust certain responsibilities to the Government. As is the case with many new statutes and government policies, the government should find the correct balance between a citizen's right to privacy and the government's right to access certain information.

In order to further combat illicit activities like money laundering and terrorist financing, the federal government is proposing that individuals yield some of their rights to privacy to the federal government. In and of itself, the notion is justifiable and in some cases even desirable. Where difficulties arise is in the extent and rationalization of that invasion of privacy. We caution the Department of Finance with respect to the extent of the enhancements it feels are necessary to improve anti-money laundering and anti-

terrorist financing regimes already in existence and the resulting administrative cost to small and medium-sized businesses.

We are reminded of the findings of our Auditor General, whose learned conclusion was that Canada has a comprehensive strategy against money laundering, and terrorist financing which is in broad conformity with international standards<sup>1</sup> as well as the experience Canada has enjoyed as a model for ML/TF detection and deterrence to many other countries.<sup>2</sup> Surely this is indicative of the solid example that our present regime already employs.

CGA-Canada believes that a balance between improvements to the existing system and the encroachment upon our profession must be sought. As an association of professional accountants, CGA-Canada recognizes that we have a role to play in assisting Canada's law enforcement agencies in their efforts to combat illicit activities such as money laundering and terrorist financing. Currently, Part 1 Regulations call for professional accountants that serve as financial intermediaries to implement a compliance regime, report and record *suspicious transactions and terrorist property*, and report and record *prescribed financial transactions*. Part 2 Regulations require every cross-border transfer of currency or monetary instruments of \$10,000 or more to be reported to the Canada Border Services Agency in accordance with Section 12 of the *Act*.

Indeed, we support the mandatory reporting system and its application to transactions over the given threshold of \$10,000 or more in cash. We also support, in principle, a system that requires our members reporting when there are reasonable grounds to suspect that financial transactions may be characterized as money laundering. Nevertheless, CGA-Canada does foresee difficulties with some of the proposals outlined in Chapter 1 of the Consultation Paper.

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<sup>1</sup> 2004 Report of the Auditor General of Canada

<sup>2</sup> EKOS Research Associates Inc., Year Five Evaluation of the National Initiatives to Combat Money Laundering and Interim Evaluation of Measures to Combat Terrorist Financing

## **2.1 Client – Accountant Relationship**

CGAs, like other professionals, enjoy a privileged relationship with their clients. Although not formally recognized by the courts as an inherent right, clients expect their communications with their accountants as well as their files to remain within the boundaries of the professional relationship.

Indeed, the CGA Code of Ethical Principles and Rules of Conduct (CEPROC) embody this principle. According to the professional Code, CGAs are obligated to safeguard the interests of their clients and/or employers, and to keep all information obtained in the pursuit of their duties, confidential. While we have amended the CGA Code to allow CGAs to comply with the Act and regulations, it is CGA-Canada's contention that access to the professional's files should be limited as much as possible and any access granted should relate only to the respective file that triggered the search. All else must remain confidential and should not be subject to arbitrary examination by FINTRAC.

This is even more apparent now given the government's proposal to lower the standard for disclosure by FINTRAC to other law enforcement agencies and government agency such as the Canada Revenue Agency, the Canadian Security Establishment, and the Department of Citizenship and Immigration. In fact, FINTRAC employees trained to recognize and analyze the criminal offence of money laundering or terrorist financing might also be expected to look for tax evasion and disclose this information to the Canada Revenue Agency.

According to proposal 6.18, the Canada Revenue Agency will be able to use this disclosure to seek a production order to obtain additional information from FINTRAC. We caution the Department to be sensitive in its deliberations to ensure that an appropriate balance is maintained between the mandates of FINTRAC along with privacy considerations and the Charters concerns of its constituents. Strict control and accountability should be demanded of the Canada Revenue Agency in its ability to seek a

production order and a limitation to those circumstances where it feels tax evasion is the result of criminal activity under PCMLTFA. No other justification should be permitted.

Proposal 1.3 requires accountants and accounting firms to verify the identity of the client by referring to a government-issued identity document. On its face, this proposal seems reasonable but it is our view that this may interfere with the client-accountant relationship.

The proposal asks accountants to “take reasonable measures to obtain the name, address and principal business or occupation of any third party on whose behalf a transaction is carried out and beneficial owners of any entity involved, as well as their relationship to the originator of the transaction”. It is CGA-Canada’s contention that these probing questions may meet with some client resistance and deter or discourage clients from fully disclosing relevant information to their accountants and damaging the client – accountant relationship.

It is further proposed that accountants and accounting firms will need to take ‘reasonable measures’ to obtain the identity of the client. We believe that the term ‘reasonable measures’ should be clearly defined in either the revised regulations or in a new interpretation guideline. CGAs are trained to be experts in their field; our members cannot be expected nor held liable to properly assess and make determinations regarding false or fraudulent identity documents.

Ideally, the government would develop extensive guidance, parameters in consultation with industry partners, for small and medium size entities to communicate expectations in the determination of what might be considered ‘appropriate measures’. CGA-Canada believes that our members have an important role to play in reporting suspicious transactions to the government but our members do not have the training or the expertise of law enforcement agencies and therefore should not be subjected to an idealistic or untenable standard.

Consistent with proposal 1.3, proposal 1.10 seems, in principle, acceptable. As it stands currently however, there is no specific direction provided by the government to our members regarding what constitutes “reasonable measures” and this could vary from one situation to another. We suggest that the government clearly define what “reasonable measures” would embody in the application of the standard(s) so that our members could more effectively comply. Moreover, in all probability, obtaining the required information may also be problematic for our members. Indeed, problems may arise in the verification element of the proposal especially since the government is proposing that our members determine whether their clients are acting on behalf of a third party.

## **2.2 Impact on Business**

Records management can be very costly especially for small and medium size institutions and firms. The significant cost to implement a retention and record keeping system will either be passed on to our clients in terms of higher fees or be absorbed by our members. Consequently, CGA-Canada believes that any record keeping regime imposed by the government must be manageable, and consistent with the usual requirements and expectations associated with the usual maintenance of such business records. In fact, CGA-Canada believes the extent and form of record should align with the traditional requirements of accounting, record-keeping and retention commonly accepted in commercial activity so as to minimize duplication and cost.

We request that government be particularly mindful of the additional costs to organizations as a result of the internal administrative requirements. While we support the government’s efforts we also must represent the interests of our membership, and understand that incremental changes in administration translate into added costs for our practitioners and their firms.

To this end, we note the change proposed at 6.13, providing documents to compliance officers and the new requirement for requested documents to be produced at a site determined by FINTRAC. We appreciate the rationale in those instances where a search

warrant has been executed on a reporting entity which operates in a dwelling house, and the party's ability to deny FINTRAC access to the premises, but we must emphasize CGA-Canada's expectation that these requests would be reasonable and that appropriate oversight be maintained when such demands are placed upon a practitioners.

### **3. CLOSING THE GAPS**

Currently, professional accountants are required to report all suspicious transactions that are related to the commission of a money laundering offence or related to the commission of a terrorist activity financing offence. The Government is also considering adding suspicious attempted transaction to the list of offences. This change will have far-reaching impact in Canada.

#### **3.1 Suspicious Attempted Transactions**

In proposal 2.1, the Government proposes to bolster obligation even further and require our members to not only report suspicious transactions but to also report suspicious attempted transactions. Currently, accountants are called upon to exercise considerable judgment in recognizing whether a transaction is in fact money laundering or terrorist financing. With the introduction of this proposal, accountants will need to be more vigilant yet. This is a significant change in policy. Accountants should not be expected to become detectives as they attempt to ascertain or rationalize the intentions of their clients' actions and/or questions. CGA-Canada would contend that this proposal goes beyond the necessary professional good judgment required of our members.

This increased burden on accountants will have a significant impact on client - accountant relationships and the transparency with which information is shared and collected. Importantly, such a proviso can serve only to further undermine the intended spirit of the act and its provisions. We are mindful of maintaining a professional relationship between practitioner and client without introducing unnecessary skepticism or suspicion what should otherwise be a professional relationship, not an investigation.

Without benefit of a review of the guidelines referred to in the consultation paper, it is difficult for CGA-Canada to comment further on this facet of the enhanced regime. CGA-Canada would nevertheless strongly recommend that the guidelines provide specific criteria for determining those characteristics and circumstances that might lead a professional accountant to conclude that a client is attempting to launder money or to finance terrorist activities. We have provided considerable advice to our practitioners on suspicious transactions and would be pleased to share this with the Department in the development of these criteria for other organizations.

#### **4. COORDINATING AML / AFT EFFORTS**

In proposal 5.1, the Government proposes that an AML/AFT advisory committee be established. This advisory committee is intended to draw input from private and public stakeholders across Canada. Members of this advisory committee should include individuals who are directly affected by Canada's anti-money laundering (AML) and anti-terrorist financing (ATF) regime like professional accountants.

CGA-Canada strongly supports this initiative and would welcome the opportunity to participate.

#### **5. CONCLUSION**

The task of reviewing Canada's anti-money laundering (AML) and anti-terrorist financing (ATF) regime is significant. CGA-Canada believes that a balanced approach will go a long way in safeguarding the interest of all Canadians. CGA-Canada looks forward to working with the Department of Finance and would welcome the opportunity to meet with you to discuss our comments further.