



Financial Action Task Force
Groupe d'action financière

ANNEXES

**THIRD MUTUAL EVALUATION REPORT ON
ANTI-MONEY LAUNDERING AND
COMBATING THE FINANCING OF TERRORISM**

CANADA

29 FEBRUARY 2008

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ANNEX 1

ACRONYMS AND ABBREVIATIONS

AFU	Asset Forfeiture Unit
AG	Auditor General
AGLC	Alberta Gaming and Liquor Commission
AMF	Autorité des Marchés Financiers du Québec
AML	Anti-Money Laundering
AML/ATF	Anti-Money Laundering and Anti-Terrorist Financing
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism (also known domestically as AML/ATF)
AMP	Administrative Monetary Penalty
ATA	Anti-Terrorism Act
ATFT	Anti-Terrorist Financing Team
ATMs	Automated Teller Machines
ASC	Alberta Securities Commission
BCBS	Basel Committee on Banking Supervision
BCSC	British Columbia Securities Commission
BMPE	Black Market Peso Exchange
CA	Chartered Accountant
CAGRA	Canadian Association of Gaming Regulators
CAMLO	Chief Anti-Money Laundering Officer
CBA	Canadian Bankers Association
CBCA	Canada Business Corporations Act
CBCMIR	Cross Border Currency and Monetary Instruments Report
CBCR	Cross Border Currency Report
CBCSR	Cross Border Currency Seizure Report
CBSA	Canada Border Services Agency
CCA	Canadian Co-operative Association
CCAA	Cooperative Credit Associations Act
CDD	Customer Due Diligence
CDIC	Canada Deposit Insurance Corporation
CDS	Canada Drug Strategy
CDSA	Controlled Drugs and Substances Act
CFPOA	Corruption of Foreign Public Officials Act
CFT	Combating the Financing of Terrorism
CGAs	Certified General Accountants
CIC	Citizenship and Immigration Canada
CICA	Canadian Institute of Chartered Accountants
CICAD	Inter-American Drug Abuse Control Commission
CIDA	Canadian International Development Agency
CIP	Criminal Investigations Program
CISC	Criminal Intelligence Service Canada
CMAs	Certified Management Accountants
CQ	Compliance Questionnaire
CRA	Canada Revenue Agency
CREA	Canadian Real Estate Association

CRSIA	Charities Registration (Security Information) Act
CSA	Canadian Securities Administrators
CSIS	Canadian Security Intelligence Service
CSR	Corporate Social Responsibility
CTCB	Counter-Terrorism Capacity Building Program
CTF	Counter-Terrorist Financing
CUCC	Credit Union Central of Canada
DFAIT	Department of Foreign Affairs and International Trade
DICO	Deposit Insurance Corporation of Ontario
DNFBPs	Designated non-financial businesses and professions
DOJ	Department of Justice
DPMS	Dealers of Precious Metals and Stones
DTC	Drug Treatment Court
EBI	Investment Trade Policy Division
EFT	International Electronic Funds Transfer
EFTR	Electronic Funds Transfer Report
FAC	Foreign Affairs Canada
FINs	FINTRAC Interpretation Notices
FIU	Financial intelligence unit
FIUQ	Queries submitted by foreign FIUs
FLSC	Federation of Law Societies of Canada
FIs	Financial Institutions
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FPS	Federal Prosecution Service
FPT	Federal, Provincial and Territorial
FRAT	FINTRAC Risk Assessment Tool
FRFI	Federally Regulated Financial Institutions under OSFI (except P&C companies)
FSCO	Financial Services Commission of Ontario
F/X	Foreign Exchange/ Currency Exchange
GAAP	Generally Accepted Accounting Principles
GLI	Global Learning Initiative
GST	Goods and Services Tax
HSP	Human Security Program
HST	Harmonized Sales Tax
IAG	International Assistance Group
IBETs	Integrated Border Enforcement Teams
ICC	Interdepartmental Coordinating Committee
IDA	Investment Dealers Association of Canada
IEFTR	International Electronic Funds Transfer Report
IFIC	Investment Funds Institute of Canada
IJET	Integrated Immigration Enforcement Team
IMETs	Integrated Market Enforcement Teams
IMF	International Monetary Fund
INSETs	Integrated National Security Enforcement Teams
IPOC	Integrated Proceeds of Crime
IPS	Internet Payment System
ITA	Income Tax Act
JAC	Jewellers Association of Canada
JVC	Jewellers Vigilance Canada
KPCS	Kimberley Process Certification Scheme
KYC	Know Your Customer
LCTR	Large Cash Transaction Report
LLPs	Limited Liability Partnerships
LMDs	Limited Market Dealers

LOA	Letters of Agreement
LOU	Letter of Understanding
LVTS	Large Value Transfer System
MAI	Macro Research and Integration
MCCSR	Minimum Continuing Capital and Surplus Requirements
MCT	Minimum Capital Test
MFDA	Mutual Fund Dealers Association of Canada
ML	Money Laundering
MLACMA	Mutual Legal Assistance in Criminal Matters Act
MLATs	Mutual Legal Assistance Treaties
ML/TF	Money Laundering and Terrorist Financing
MOU	Memorandum of Understanding
MSBs	Money Service Businesses
NAGRA	North American Gaming Regulators Association
NCC	National Coordinating Committee on Organized Crime
NDO	New Development Officer
NICML	National Initiative to Combat Money Laundering
NPO	Non-Profit Organization
NSI	National Security Investigations
NSIS	National Security Investigation Sections
OAG	Office of the Auditor General
OAS	Organization of American States
OCS	CBSA's Organized Crime Section
ODPP	Office of the Director of Public Prosecutions
OECD	Organization for Economic Co-operation and Development
OLGC	Ontario Lottery and Gaming Corporation
OPP	Ontario Provincial Police
OSC	Ontario Securities Commission
OSCE	Organization for Security and Co-operation in Europe
OSFI	Office of the Superintendent of Financial Institutions
P&C	Property and Casualty
PCMLA	Proceeds of Crime (Money Laundering) Act
PCMLTFA	Proceeds of Crime (Money Laundering) and Terrorist Financing Act
PEFP	Politically Exposed Foreign Person
PEP	Politically Exposed Person
PIPEDA	Personal Information and Electronic Documents Act
POC	Proceeds of Crime
PRFI	Provincially Regulated Financial Institutions (under OSFI supervision)
PSAT	Public Security and Anti-Terrorism
PSEPC	Public Safety and Emergency Preparedness Canada
RCMP	Royal Canadian Mounted Police
REs	Reporting Entities
RIUNRST	Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism, formerly known as UNSTR
ROC	Regional Operations and Compliance
RRIF	Registered Retirement Income Funds
RRSP	Registered Retirement Saving Plan
RS	Market Regulation Services, Inc.
SITs	Special Investigative Techniques
SRA	Securities Regulatory Authority
SRO	Self Regulatory Organization
STR	Suspicious Transaction Report
TBML	Trade-Based Money Laundering
TCS	Trade Commissioner Service Operations Division
TCX	Trade Commissioner Service Renewal Division

TF	Terrorist Financing
TFI	Tactical Financial Intelligence
TPR	Terrorist Property Report
TSX	Toronto Stock Exchange
The Charter	The Canadian Charter of Rights and Freedoms
UNAQTR	United Nations Al-Qaida and Taliban Regulations
UNCAC	United Nations Convention against Corruption
UNCTOC	United Nations Convention against Transnational Organized Crime
UNODC	United Nations Office on Drugs and Crime
UNSTR	United Nations Suppression of Terrorism Regulations, currently known as RIUNRST
VIR	Voluntary Information Report
WTO	World Trade Organization

ANNEX 2

LIST OF THE BODIES MET WITH DURING THE THIRD MUTUAL EVALUATION OF CANADA

Federal authorities

Department of Finance
Department of Justice
Public Prosecution Service of Canada (PPSC)
Financial Transactions and Reports Analysis Centre (FINTRAC)
Public Safety and Emergency Preparedness Canada (PSEPC)
Canada Revenue Agency (CRA)
Canadian Security Intelligence Service (CSIS)
Royal Canadian Mounted Police (RCMP)
Canada Border Services Agency (CBSA)
Office of the Superintendent of Financial Institutions (OSFI)
Industry Canada
Department of Foreign Affairs and International Trade (DFAIT)
Office of the Privacy Commissioner of Canada

Provincial authorities/ SROs

Attorney General of Ontario
Alberta Securities Commission
Mutual Fund Dealers Association (MFDA)
Loto Québec
Casino de Montréal
Casino Rama
Ontario Provincial Police (OPP)
Autorité des Marchés Financiers, Québec (AMF)
Ontario Securities Commission (OSC)
Financial Services Commission of Ontario (FSCO)
Deposit Insurance Corporation of Ontario (DICO)
Alcohol and Gaming Commission of Ontario
Saskatchewan Liquor and Gaming Authority
Investment Dealers Association (IDA)
Certified General Accountants
Canadian Institute of Chartered Accountants (CICA)
Canadian Real Estate Association (CREA)
Law Society of Upper Canada
Federation of Law Societies of Canada
Society of Notaries Public of British Columbia
Real Estate Council of Ontario

Private sector representatives

Canadian Bankers Association

Banks (Royal Bank, Toronto Dominion Bank, Bank of Montreal, CIBC, National Bank, ING, Chase, ScotiaBank, Canadian Western Bank)

Trust companies (Equitable Trust, Home Trust, MRS Trust, Effort Trust)

Finance companies (CitiFinancial, HSBC)

Credit Unions (Credit Union Central Canada, Credit Union Central of British Columbia, Meridian Credit Union)

Desjardins

Canadian Life and Health Insurance Association

Life insurance companies (Sun Life Financial, Manulife Financial, Great-West Life, London Life, Canada Life)

MSBs (Travelex, Custom House, Western Union, Cambridge Mercantile, MoneyGram)

Securities firms (BMO Nesbitt Burns Inc., Bank of Montreal, Royal Bank of Canada, RBC Dominion Securities, CIBC, TD Waterhouse, Blackmont Capital, Jones Gable, Raymond James, Brant Securities, Genuity Capital Markets)

Institute of Chartered Accountants of Ontario

Canadian Jewellers Association

Jewellers Vigilance Canada

ANNEX 3

KEY LAWS, REGULATIONS AND OTHER MEASURES

- I. Criminal Code provisions (Section 462, Section 354 to 359 and Section 83)
- II. The Mutual Legal Assistance in Criminal Matters Act
- III. The Proceeds of Crime (Money Laundering) and Terrorist Financing Act of 10 February 2007
- IV. Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations issued of June 2007
- V. OSFI Guideline B-8 – Deterring and Detecting Money Laundering and Terrorist Financing

I. Criminal Code provisions (Section 462, Section 354 to 359 and Section 83)

1. Criminal Code provisions – Section 462

PROCEEDS OF CRIME

INTERPRETATION

Definitions

462.3 (1) In this Part,

"designated drug offence" [Repealed, 1996, c. 19, s. 68]

"designated offence"
«*infraction désignée*»

"designated offence" means

(a) any offence that may be prosecuted as an indictable offence under this or any other Act of Parliament, other than an indictable offence prescribed by regulation, or

(b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a);

"designated substance offence" [Repealed, 2001, c. 32, s. 12]

"enterprise crime offence" [Repealed, 2001, c. 32, s. 12]

"judge"
«*juge*»

"judge" means a judge as defined in section 552 or a judge of a superior court of criminal jurisdiction;

"proceeds of crime"
«*produits de la criminalité*»

"proceeds of crime" means any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of

(a) the commission in Canada of a designated offence, or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

Regulations

(2) The Governor in Council may make regulations prescribing indictable offences that are excluded from the definition "designated offence" in subsection (1).

Powers of Attorney General of Canada

(3) Despite the definition "Attorney General" in section 2, the Attorney General of Canada may

(a) exercise all the powers and perform all the duties and functions assigned to the Attorney General by or under this Act in respect of a designated offence if the alleged offence arises out of conduct that in whole or in part is in relation to an alleged contravention of an Act of Parliament or a regulation made under such an Act, other than this Act or a regulation made under this Act; and

(b) conduct proceedings and exercise all the powers and perform all the duties and functions assigned to the Attorney General by or under this Act in respect of

(i) an offence referred to in section 354 or 462.31 if the alleged offence arises out of conduct that in whole or in part is in relation to an alleged contravention of an Act of Parliament or a regulation made under such an Act, other than this Act or a regulation made under this Act, and

(ii) an offence under subsection 462.33(11) if the restraint order was made on application of the Attorney General of Canada.

Powers of Attorney General of a province

(4) Subsection (3) does not affect the authority of the Attorney General of a province to conduct proceedings in respect of a designated offence or to exercise any of the powers or perform any of the duties and functions assigned to the Attorney General by or under this Act.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1993, c. 25, s. 95, c. 37, s. 32, c. 46, s. 5; 1994, c. 44, s. 29; 1995, c. 39, s. 151; 1996, c. 19, ss. 68, 70; 1997, c. 18, s. 27, c. 23, s. 9; 1998, c. 34, ss. 9, 11; 1999, c. 5, ss. 13, 52; 2001, c. 32, s. 12, c. 41, ss. 14, 33; 2005, c. 44, s. 1.

OFFENCE

Laundering proceeds of crime

462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

(a) the commission in Canada of a designated offence; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

Punishment

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) is guilty of an offence punishable on summary conviction.

Exception

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under subsection (1) if the peace officer or person does any of the things mentioned in that subsection for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1996, c. 19, s. 70; 1997, c. 18, s. 28; 2001, c. 32, s. 13; 2005, c. 44, s. 2(F).

SEARCH, SEIZURE AND DETENTION OF PROCEEDS OF CRIME

Special search warrant

462.32 (1) Subject to subsection (3), if a judge, on application of the Attorney General, is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in any building, receptacle or place, within the province in which the judge has jurisdiction or any other province, any property in respect of which an order of forfeiture may be made under subsection 462.37(1) or (2.01) or 462.38(2), in respect of a designated offence alleged to have been committed within the province in which the judge has jurisdiction, the judge may issue a warrant authorizing a person named in the warrant or a peace officer to search the building, receptacle or place for that property and to seize that property and any other property in respect of which that person or peace officer believes, on reasonable grounds, that an order of forfeiture may be made under that subsection.

Procedure

(2) An application for a warrant under subsection (1) may be made *ex parte*, shall be made in writing and shall include a statement as to whether any previous applications have been made under subsection (1) with respect to the property that is the subject of the application.

Execution of warrant

(2.1) Subject to subsection (2.2), a warrant issued pursuant to subsection (1) may be executed anywhere in Canada.

Execution in another province

(2.2) Where a warrant is issued under subsection (1) in one province but it may be reasonably expected that it is to be executed in another province and the execution of the warrant would require entry into or on the property of any person in the other province, a judge in the other province may, on *ex parte* application, confirm the warrant, and when the warrant is so confirmed it shall have full force and effect in that other province as though it had originally been issued in that province.

Execution of warrant in other territorial jurisdictions

(3) Subsections 487(2) to (4) and section 488 apply, with such modifications as the circumstances require, to a warrant issued under this section.

Detention and record of property seized

(4) Every person who executes a warrant issued by a judge under this section shall

(a) detain or cause to be detained the property seized, taking reasonable care to ensure that the property is preserved so that it may be dealt with in accordance with the law;

(b) as soon as practicable after the execution of the warrant but within a period not exceeding seven days thereafter, prepare a report in Form 5.3, identifying the property seized and the location where the property is being detained, and cause the report to be filed with the clerk of the court; and

(c) cause a copy of the report to be provided, on request, to the person from whom the property was seized and to any other person who, in the opinion of the judge, appears to have a valid interest in the property.

Return of proceeds

(4.1) Subject to this or any other Act of Parliament, a peace officer who has seized anything under a warrant issued by a judge under this section may, with the written consent of the Attorney General, on being issued a receipt for it, return the thing seized to the person lawfully entitled to its possession, if

(a) the peace officer is satisfied that there is no dispute as to who is lawfully entitled to possession of the thing seized;

(b) the peace officer is satisfied that the continued detention of the thing seized is not required for the purpose of forfeiture; and

(c) the thing seized is returned before a report is filed with the clerk of the court under paragraph (4)(b).

Notice

(5) Before issuing a warrant under this section in relation to any property, a judge may require notice to be given to and may hear any person who, in the opinion of the judge, appears to have a valid interest in the property unless the judge is of the opinion that giving such notice before the issuance of the warrant would result in the disappearance, dissipation or reduction in value of the property or otherwise affect the property so that all or a part thereof could not be seized pursuant to the warrant.

Undertakings by Attorney General

(6) Before issuing a warrant under this section, a judge shall require the Attorney General to give such undertakings as the judge considers appropriate with respect to the payment of damages or costs, or both, in relation to the issuance and execution of the warrant.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1997, c. 18, s. 29; 2001, c. 32, s. 14; 2005, c. 44, s. 3.

Application for restraint order

462.33 (1) The Attorney General may make an application in accordance with subsection (2) for a restraint order under subsection (3) in respect of any property.

Procedure

(2) An application made under subsection (1) for a restraint order under subsection (3) in respect of any property may be made *ex parte* and shall be made in writing to a judge and be accompanied by an affidavit sworn on the information and belief of the Attorney General or any other person deposing to the following matters, namely,

- (a) the offence or matter under investigation;
- (b) the person who is believed to be in possession of the property;
- (c) the grounds for the belief that an order of forfeiture may be made under subsection 462.37(1) or (2.01) or 462.38(2) in respect of the property;
- (d) a description of the property; and
- (e) whether any previous applications have been made under this section with respect to the property.

Restraint order

(3) A judge who hears an application for a restraint order made under subsection (1) may — if the judge is satisfied that there are reasonable grounds to believe that there exists, within the province in which the judge has jurisdiction or any other province, any property in respect of which an order of forfeiture may be made under subsection 462.37(1) or (2.01) or 462.38(2), in respect of a designated offence alleged to have been committed within the province in which the judge has jurisdiction — make an order prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than in the manner that may be specified in the order.

Execution in another province

(3.01) Subsections 462.32(2.1) and (2.2) apply, with such modifications as the circumstances require, in respect of a restraint order.

Property outside Canada

(3.1) A restraint order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

Idem

(4) An order made by a judge under subsection (3) may be subject to such reasonable conditions as the judge thinks fit.

Notice

(5) Before making an order under subsection (3) in relation to any property, a judge may require notice to be given to and may hear any person who, in the opinion of the judge, appears to have a valid interest in the property unless the judge is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property or otherwise affect the property so that all or a part thereof could not be subject to an order of forfeiture under subsection 462.37(1) or (2.01) or 462.38(2).

Order in writing

(6) An order made under subsection (3) shall be made in writing.

Undertakings by Attorney General

(7) Before making an order under subsection (3), a judge shall require the Attorney General to give such undertakings as the judge considers appropriate with respect to the payment of damages or costs, or both, in relation to

- (a) the making of an order in respect of property situated within or outside Canada; and
- (b) the execution of an order in respect of property situated within Canada.

Service of order

(8) A copy of an order made by a judge under subsection (3) shall be served on the person to whom the order is addressed in such manner as the judge directs or as may be prescribed by rules of court.

Registration of order

(9) A copy of an order made under subsection (3) shall be registered against any property in accordance with the laws of the province in which the property is situated.

Continues in force

(10) An order made under subsection (3) remains in effect until

- (a) it is revoked or varied under subsection 462.34(4) or revoked under paragraph 462.43(a);
- (b) it ceases to be in force under section 462.35; or
- (c) an order of forfeiture or restoration of the property is made under subsection 462.37(1) or (2.01), 462.38(2) or 462.41(3) or any other provision of this or any other Act of Parliament.

Offence

(11) Any person on whom an order made under subsection (3) is served in accordance with this section and who, while the order is in force, acts in contravention of or fails to comply with the order is guilty of an indictable offence or an offence punishable on summary conviction.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1993, c. 37, s. 21; 1996, c. 16, s. 60; 1997, c. 18, s. 30; 2001, c. 32, s. 15; 2005, c. 44, s. 4.

Management order

462.331 (1) With respect to property seized under section 462.32 or restrained under section 462.33, other than a controlled substance within the meaning of the *Controlled Drugs and Substances Act*, on application of the Attorney General or of any other person with the written consent of the Attorney General, where a judge is of the opinion that the circumstances so require, the judge may

- (a) appoint a person to take control of and to manage or otherwise deal with all or part of the property in accordance with the directions of the judge; and
- (b) require any person having possession of that property to give possession of the property to the person appointed under paragraph (a).

Appointment of Minister of Public Works and Government Services

(2) When the Attorney General of Canada so requests, a judge appointing a person under subsection (1) shall appoint the Minister of Public Works and Government Services.

Power to manage

- (3) The power to manage or otherwise deal with property under subsection (1) includes
- (a) in the case of perishable or rapidly depreciating property, the power to make an interlocutory sale of that property; and
 - (b) in the case of property that has little or no value, the power to destroy that property.

Application for destruction order

- (4) Before a person appointed to manage property destroys property that has little or no value, he or she shall apply to a court for a destruction order.

Notice

- (5) Before making a destruction order in relation to any property, a court shall require notice in accordance with subsection (6) to be given to, and may hear, any person who, in the opinion of the court, appears to have a valid interest in the property.

Manner of giving notice

- (6) A notice shall
- (a) be given or served in the manner that the court directs or that may be specified in the rules of the court; and
 - (b) be of any duration that the court considers reasonable or that may be specified in the rules of the court.

Order

- (7) A court may order that the property be destroyed if it is satisfied that the property has little or no value, whether financial or other.

When management order ceases to have effect

- (8) A management order ceases to have effect when the property that is the subject of the management order is returned in accordance with the law to an applicant or forfeited to Her Majesty.

Application to vary conditions

- (9) The Attorney General may at any time apply to the judge to cancel or vary any condition to which a management order is subject but may not apply to vary an appointment made under subsection (2).

2001, c. 32, s. 16.

Application for review of special warrants and restraint orders

462.34 (1) Any person who has an interest in property that was seized under a warrant issued pursuant to section 462.32 or in respect of which a restraint order was made under subsection 462.33(3) may, at any time, apply to a judge

- (a) for an order under subsection (4); or
- (b) for permission to examine the property.

Notice to Attorney General

- (2) Where an application is made under paragraph (1)(a),
- (a) the application shall not, without the consent of the Attorney General, be heard by a judge unless the applicant has given to the Attorney General at least two clear days notice in writing of the application; and

(b) the judge may require notice of the application to be given to and may hear any person who, in the opinion of the judge, appears to have a valid interest in the property.

Terms of examination order

(3) A judge may, on an application made to the judge under paragraph (1)(b), order that the applicant be permitted to examine property subject to such terms as appear to the judge to be necessary or desirable to ensure that the property is safeguarded and preserved for any purpose for which it may subsequently be required.

Order of restoration of property or revocation or variation of order

(4) On an application made to a judge under paragraph (1)(a) in respect of any property and after hearing the applicant and the Attorney General and any other person to whom notice was given pursuant to paragraph (2)(b), the judge may order that the property or a part thereof be returned to the applicant or, in the case of a restraint order made under subsection 462.33(3), revoke the order, vary the order to exclude the property or any interest in the property or part thereof from the application of the order or make the order subject to such reasonable conditions as the judge thinks fit,

(a) if the applicant enters into a recognizance before the judge, with or without sureties, in such amount and with such conditions, if any, as the judge directs and, where the judge considers it appropriate, deposits with the judge such sum of money or other valuable security as the judge directs;

(b) if the conditions referred to in subsection (6) are satisfied; or

(c) for the purpose of

(i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the judge, has a valid interest in the property and of the dependants of that person,

(ii) meeting the reasonable business and legal expenses of a person referred to in subparagraph (i), or

(iii) permitting the use of the property in order to enter into a recognizance under Part XVI,

if the judge is satisfied that the applicant has no other assets or means available for the purposes set out in this paragraph and that no other person appears to be the lawful owner of or lawfully entitled to possession of the property.

Hearing

(5) For the purpose of determining the reasonableness of legal expenses referred to in subparagraph (4)(c)(ii), a judge shall hold an *in camera* hearing, without the presence of the Attorney General, and shall take into account the legal aid tariff of the province.

Expenses

(5.1) For the purpose of determining the reasonableness of expenses referred to in paragraph (4)(c), the Attorney General may

(a) at the hearing of the application, make representations as to what would constitute the reasonableness of the expenses, other than legal expenses; and

(b) before or after the hearing of the application held *in camera* pursuant to subsection (5), make representations as to what would constitute reasonable legal expenses referred to in subparagraph (4)(c)(ii).

Taxing legal fees

(5.2) The judge who made an order under paragraph (4)(c) may, and on the application of the Attorney General shall, tax the legal fees forming part of the legal expenses referred to in subparagraph (4)(c)(ii) and, in so doing, shall take into account

(a) the value of property in respect of which an order of forfeiture may be made;

(b) the complexity of the proceedings giving rise to those legal expenses;

- (c) the importance of the issues involved in those proceedings;
- (d) the duration of any hearings held in respect of those proceedings;
- (e) whether any stage of those proceedings was improper or vexatious;
- (f) any representations made by the Attorney General; and
- (g) any other relevant matter.

Conditions to be satisfied

(6) An order under paragraph (4)(b) in respect of property may be made by a judge if the judge is satisfied

(a) where the application is made by

(i) a person charged with a designated offence, or

(ii) any person who acquired title to or a right of possession of that property from a person referred to in subparagraph (i) under circumstances that give rise to a reasonable inference that the title or right was transferred from that person for the purpose of avoiding the forfeiture of the property,

that a warrant should not have been issued pursuant to section 462.32 or a restraint order under subsection 462.33(3) should not have been made in respect of that property, or

(b) in any other case, that the applicant is the lawful owner of or lawfully entitled to possession of the property and appears innocent of any complicity in a designated offence or of any collusion in relation to such an offence, and that no other person appears to be the lawful owner of or lawfully entitled to possession of the property,

and that the property will no longer be required for the purpose of any investigation or as evidence in any proceeding.

Saving provision

(7) Section 354 of this Act does not apply to a person who comes into possession of any property or thing that, pursuant to an order made under paragraph (4)(c), was returned to any person after having been seized or was excluded from the application of a restraint order made under subsection 462.33(3).

Form of recognizance

(8) A recognizance entered into pursuant to paragraph (4)(a) may be in Form 32.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1996, c. 19, ss. 69, 70; 1997, c. 18, ss. 31, 140; 2001, c. 32, s. 17.

Application of property restitution provisions

462.341 Subsection 462.34(2), paragraph 462.34(4)(c) and subsections 462.34(5), (5.1) and (5.2) apply, with any modifications that the circumstances require, to a person who has an interest in money or bank-notes that are seized under this Act or the *Controlled Drugs and Substances Act* and in respect of which proceedings may be taken under subsection 462.37(1) or (2.01) or 462.38(2).

1997, c. 18, ss. 32, 140; 1999, c. 5, s. 14; 2005, c. 44, s. 5.

Expiration of special warrants and restraint orders

462.35 (1) Subject to this section, where property has been seized under a warrant issued pursuant to section 462.32 or a restraint order has been made under section 462.33 in relation to property, the property may be detained or the order may continue in force, as the case may be, for a period not exceeding six months from the seizure or the making of the order, as the case may be.

Where proceedings instituted

(2) The property may continue to be detained, or the order may continue in force, for a period that exceeds six months if proceedings are instituted in respect of which the thing detained may be forfeited.

Where application made

(3) The property may continue to be detained or the order may continue in force for a period or periods that exceed six months if the continuation is, on application made by the Attorney General, ordered by a judge, where the judge is satisfied that the property is required, after the expiration of the period or periods, for the purpose of section 462.37 or 462.38 or any other provision of this or any other Act of Parliament respecting forfeiture or for the purpose of any investigation or as evidence in any proceeding.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1997, c. 18, s. 33.

Forwarding to clerk where accused to stand trial

462.36 Where a judge issues a warrant under section 462.32 or makes a restraint order under section 462.33 in respect of any property, the clerk of the court shall, when an accused is ordered to stand trial for a designated offence, cause to be forwarded to the clerk of the court to which the accused has been ordered to stand trial a copy of the report filed pursuant to paragraph 462.32(4)(b) or of the restraint order in respect of the property.

R.S., 1985, c. 42 (4th Supp.), s. 2; 2001, c. 32, s. 18.

FORFEITURE OF PROCEEDS OF CRIME

Order of forfeiture of property on conviction

462.37 (1) Subject to this section and sections 462.39 to 462.41, where an offender is convicted, or discharged under section 730, of a designated offence and the court imposing sentence on the offender, on application of the Attorney General, is satisfied, on a balance of probabilities, that any property is proceeds of crime and that the designated offence was committed in relation to that property, the court shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.

Proceeds of crime derived from other offences

(2) Where the evidence does not establish to the satisfaction of the court that the designated offence of which the offender is convicted, or discharged under section 730, was committed in relation to property in respect of which an order of forfeiture would otherwise be made under subsection (1) but the court is satisfied, beyond a reasonable doubt, that that property is proceeds of crime, the court may make an order of forfeiture under subsection (1) in relation to that property.

Order of forfeiture — particular circumstances

(2.01) A court imposing sentence on an offender convicted of an offence described in subsection (2.02) shall, on application of the Attorney General and subject to this section and sections 462.4 and 462.41, order that any property of the offender that is identified by the Attorney General in the application be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law if the court is satisfied, on a balance of probabilities, that

(a) within 10 years before the proceedings were commenced in respect of the offence for which the offender is being sentenced, the offender engaged in a pattern of criminal activity for the purpose of directly or indirectly receiving a material benefit, including a financial benefit; or

(b) the income of the offender from sources unrelated to designated offences cannot reasonably account for the value of all the property of the offender.

Offences

(2.02) The offences are the following:

(a) a criminal organization offence punishable by five or more years of imprisonment; and

(b) an offence under section 5, 6 or 7 of the *Controlled Drugs and Substances Act* — or a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to an offence under those sections — prosecuted by indictment.

Offender may establish that property is not proceeds of crime

(2.03) A court shall not make an order of forfeiture under subsection (2.01) in respect of any property that the offender establishes, on a balance of probabilities, is not proceeds of crime.

Pattern of criminal activity

(2.04) In determining whether the offender has engaged in a pattern of criminal activity described in paragraph (2.01)(a), the court shall consider

(a) the circumstances of the offence for which the offender is being sentenced;

(b) any act or omission — other than an act or omission that constitutes the offence for which the offender is being sentenced — that the court is satisfied, on a balance of probabilities, was committed by the offender and constitutes an offence punishable by indictment under any Act of Parliament;

(c) any act or omission that the court is satisfied, on a balance of probabilities, was committed by the offender and is an offence in the place where it was committed and, if committed in Canada, would constitute an offence punishable by indictment under any Act of Parliament; and

(d) any other factor that the court considers relevant.

Conditions — pattern of criminal activity

(2.05) A court shall not determine that an offender has engaged in a pattern of criminal activity unless the court is satisfied, on a balance of probabilities, that the offender committed, within the period referred to in paragraph (2.01)(a),

(a) acts or omissions — other than an act or omission that constitutes the offence for which the offender is being sentenced — that constitute at least two serious offences or one criminal organization offence;

(b) acts or omissions that are offences in the place where they were committed and, if committed in Canada, would constitute at least two serious offences or one criminal organization offence; or

(c) an act or omission described in paragraph (a) that constitutes a serious offence and an act or omission described in paragraph (b) that, if committed in Canada, would constitute a serious offence.

Application under subsection (1) not prevented

(2.06) Nothing in subsection (2.01) shall be interpreted as preventing the Attorney General from making an application under subsection (1) in respect of any property.

Exception

(2.07) A court may, if it considers it in the interests of justice, decline to make an order of forfeiture against any property that would otherwise be subject to forfeiture under subsection (2.01). The court shall give reasons for its decision.

Property outside Canada

(2.1) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

Fine instead of forfeiture

(3) If a court is satisfied that an order of forfeiture under subsection (1) or (2.01) should be made in respect of any property of an offender but that the property or any part of or interest in the property cannot be made subject to an order, the court may, instead of ordering the property or any part of or interest in the property to be forfeited, order

the offender to pay a fine in an amount equal to the value of the property or the part of or interest in the property. In particular, a court may order the offender to pay a fine if the property or any part of or interest in the property

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party;
- (c) is located outside Canada;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty.

Imprisonment in default of payment of fine

(4) Where a court orders an offender to pay a fine pursuant to subsection (3), the court shall

- (a) impose, in default of payment of that fine, a term of imprisonment
 - (i) not exceeding six months, where the amount of the fine does not exceed ten thousand dollars,
 - (ii) of not less than six months and not exceeding twelve months, where the amount of the fine exceeds ten thousand dollars but does not exceed twenty thousand dollars,
 - (iii) of not less than twelve months and not exceeding eighteen months, where the amount of the fine exceeds twenty thousand dollars but does not exceed fifty thousand dollars,
 - (iv) of not less than eighteen months and not exceeding two years, where the amount of the fine exceeds fifty thousand dollars but does not exceed one hundred thousand dollars,
 - (v) of not less than two years and not exceeding three years, where the amount of the fine exceeds one hundred thousand dollars but does not exceed two hundred and fifty thousand dollars,
 - (vi) of not less than three years and not exceeding five years, where the amount of the fine exceeds two hundred and fifty thousand dollars but does not exceed one million dollars, or
 - (vii) of not less than five years and not exceeding ten years, where the amount of the fine exceeds one million dollars; and
- (b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other term of imprisonment imposed on the offender or that the offender is then serving.

Fine option program not available to offender

(5) Section 736 does not apply to an offender against whom a fine is imposed pursuant to subsection (3).

R.S., 1985, c. 42 (4th Supp.), s. 2; 1992, c. 1, s. 60(F); 1995, c. 22, s. 10; 1999, c. 5, s. 15(F); 2001, c. 32, s. 19; 2005, c. 44, s. 6.

Definition of "order"

462.371 (1) In this section, "order" means an order made under section 462.37 or 462.38.

Execution

(2) An order may be executed anywhere in Canada.

Filing of order from another province

(3) Where the Attorney General of a province in which property that is the subject of an order made in another province is situated receives a certified copy of the order and files it with the superior court of criminal jurisdiction of the province in which the property is situated, the order shall be entered as a judgment of that court.

Attorney General of Canada

(4) Where the Attorney General of Canada receives a certified copy of an order made in a province in respect of property situated in another province and files the order with the superior court of criminal jurisdiction of the province in which the property is situated, the order shall be entered as a judgment of that court.

Effect of registered order

(5) An order has, from the date it is filed in a court of a province under subsection (3) or (4), the same effect as if it had been an order originally made by that court.

Notice

(6) Where an order has been filed in a court under subsection (3) or (4), it shall not be executed before notice in accordance with subsection 462.41(2) is given to every person who, in the opinion of the court, appears to have a valid interest in the property.

Application of section 462.42

(7) Section 462.42 applies, with such modifications as the circumstances require, in respect of a person who claims an interest in property that is the subject of an order filed under subsection (3) or (4).

Application under section 462.42 to be made in one province

(8) No person may make an application under section 462.42 in relation to property that is the subject of an order filed under subsection (3) or (4) if that person has previously made an application in respect of the same property in another province.

Finding in one court binding

(9) The finding by a court of a province in relation to property that is the subject of an order filed under subsection (3) or (4) as to whether or not an applicant referred to in subsection 462.42(4) is affected by the forfeiture referred to in that subsection or declaring the nature and extent of the interest of the applicant under that subsection is binding on the superior court of criminal jurisdiction of the province where the order is entered as a judgment.

1997, c. 18, s. 34.

Application for forfeiture

462.38 (1) Where an information has been laid in respect of a designated offence, the Attorney General may make an application to a judge for an order of forfeiture under subsection (2) in respect of any property.

Order of forfeiture of property

(2) Subject to sections 462.39 to 462.41, where an application is made to a judge under subsection (1), the judge shall, if the judge is satisfied that

- (a) any property is, beyond a reasonable doubt, proceeds of crime,
- (b) proceedings in respect of a designated offence committed in relation to that property were commenced, and
- (c) the accused charged with the offence referred to in paragraph (b) has died or absconded,

order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.

Property outside Canada

(2.1) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

Person deemed absconded

(3) For the purposes of this section, a person shall be deemed to have absconded in connection with a designated offence if

- (a) an information has been laid alleging the commission of the offence by the person,
- (b) a warrant for the arrest of the person or a summons in respect of an organization has been issued in relation to that information, and

(c) reasonable attempts to arrest the person pursuant to the warrant or to serve the summons have been unsuccessful during the period of six months commencing on the day the warrant or summons was issued, or, in the case of a person who is not or never was in Canada, the person cannot be brought within that period to the jurisdiction in which the warrant or summons was issued,

and the person shall be deemed to have so absconded on the last day of that period of six months.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1997, c. 18, s. 35; 2001, c. 32, s. 20; 2003, c. 21, s. 7.

Inference

462.39 For the purpose of subsection 462.37(1) or 462.38(2), the court may infer that property was obtained or derived as a result of the commission of a designated offence where evidence establishes that the value, after the commission of that offence, of all the property of the person alleged to have committed the offence exceeds the value of all the property of that person before the commission of that offence and the court is satisfied that the income of that person from sources unrelated to designated offences committed by that person cannot reasonably account for such an increase in value.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1996, c. 19, s. 70; 2001, c. 32, s. 21.

Voidable transfers

462.4 A court may,

(a) prior to ordering property to be forfeited under subsection 462.37(1) or (2.01) or 462.38(2), and

(b) in the case of property in respect of which a restraint order was made under section 462.33, where the order was served in accordance with subsection 462.33(8),

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the order under section 462.33, unless the conveyance or transfer was for valuable consideration to a person acting in good faith.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1997, c. 18, s. 36(E); 2005, c. 44, s. 7.

Notice

462.41 (1) Before making an order under subsection 462.37(1) or (2.01) or 462.38(2) in relation to any property, a court shall require notice in accordance with subsection (2) to be given to and may hear any person who, in the opinion of the court, appears to have a valid interest in the property.

Service, duration and contents of notice

(2) A notice given under subsection (1) shall

(a) be given or served in such manner as the court directs or as may be prescribed by the rules of the court;

(b) be of such duration as the court considers reasonable or as may be prescribed by the rules of the court; and

(c) set out the designated offence charged and a description of the property.

Order of restoration of property

(3) Where a court is satisfied that any person, other than

(a) a person who is charged with, or was convicted of, a designated offence, or

(b) a person who acquired title to or a right of possession of that property from a person referred to in paragraph (a) under circumstances that give rise to a reasonable inference that the title or right was transferred for the purpose of avoiding the forfeiture of the property,

is the lawful owner or is lawfully entitled to possession of any property or any part thereof that would otherwise be forfeited pursuant to subsection 462.37(1) or (2.01) or 462.38(2) and that the person appears innocent of any

complicity in an offence referred to in paragraph (a) or of any collusion in relation to such an offence, the court may order that the property or part thereof be returned to that person.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1996, c. 19, s. 70; 1997, c. 18, ss. 37, 140; 2001, c. 32, s. 22; 2005, c. 44, s. 8.

Application by person claiming interest for relief from forfeiture

462.42 (1) Any person who claims an interest in property that is forfeited to Her Majesty under subsection 462.37(1) or (2.01) or 462.38(2) may, within thirty days after the forfeiture, apply by notice in writing to a judge for an order under subsection (4) unless the person is

(a) a person who is charged with, or was convicted of, a designated offence that resulted in the forfeiture; or

(b) a person who acquired title to or a right of possession of the property from a person referred to in paragraph (a) under circumstances that give rise to a reasonable inference that the title or right was transferred from that person for the purpose of avoiding the forfeiture of the property.

Fixing day for hearing

(2) The judge to whom an application is made under subsection (1) shall fix a day not less than thirty days after the date of filing of the application for the hearing thereof.

Notice

(3) An applicant shall serve a notice of the application made under subsection (1) and of the hearing thereof on the Attorney General at least fifteen days before the day fixed for the hearing.

Order declaring interest not subject to forfeiture

(4) Where, on the hearing of an application made under subsection (1), the judge is satisfied that the applicant is not a person referred to in paragraph (1)(a) or (b) and appears innocent of any complicity in any designated offence that resulted in the forfeiture or of any collusion in relation to any such offence, the judge may make an order declaring that the interest of the applicant is not affected by the forfeiture and declaring the nature and extent of the interest.

Appeal from order under subsection (4)

(5) An applicant or the Attorney General may appeal to the court of appeal from an order under subsection (4) and the provisions of Part XXI with respect to procedure on appeals apply, with such modifications as the circumstances require, to appeals under this subsection.

Return of property

(6) The Attorney General shall, on application made to the Attorney General by any person who has obtained an order under subsection (4) and where the periods with respect to the taking of appeals from that order have expired and any appeal from that order taken under subsection (5) has been determined,

(a) direct that the property or the part thereof to which the interest of the applicant relates be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1996, c. 19, s. 70; 1997, c. 18, ss. 38, 140; 2001, c. 32, s. 23; 2005, c. 44, s. 9.

Residual disposal of property seized or dealt with pursuant to special warrants or restraint orders

462.43 (1) Where property has been seized under a warrant issued pursuant to section 462.32, a restraint order has been made under section 462.33 in relation to any property or a recognizance has been entered into pursuant to paragraph 462.34(4)(a) in relation to any property and a judge, on application made to the judge by the Attorney General or any person having an interest in the property or on the judge's own motion, after notice given to the Attorney General and any other person having an interest in the property, is satisfied that the property will no longer be required for the purpose of section 462.37, 462.38 or any other provision of this or any other Act of Parliament respecting forfeiture or for the purpose of any investigation or as evidence in any proceeding, the judge

(a) in the case of a restraint order, shall revoke the order;

(b) in the case of a recognizance, shall cancel the recognizance; and

(c) in the case of property seized under a warrant issued pursuant to section 462.32 or property under the control of a person appointed pursuant to paragraph 462.331(1)(a),

(i) if possession of it by the person from whom it was taken is lawful, shall order that it be returned to that person,

(ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, shall order that it be returned to the lawful owner or the person who is lawfully entitled to its possession, or

(iii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known, may order that it be forfeited to Her Majesty, to be disposed of as the Attorney General directs, or otherwise dealt with in accordance with the law.

Property outside Canada

(2) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

R.S., 1985, c. 42 (4th Supp.), s. 2; 2001, c. 32, s. 24; 2004, c. 12, s. 7.

Appeals from certain orders

462.44 Any person who considers that they are aggrieved by an order made under subsection 462.38(2) or 462.41(3) or section 462.43 may appeal from the order as if the order were an appeal against conviction or against a judgment or verdict of acquittal, as the case may be, under Part XXI, and that Part applies, with such modifications as the circumstances require, to such an appeal.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1997, c. 18, s. 39.

Suspension of forfeiture pending appeal

462.45 Despite anything in this Part, the operation of an order of forfeiture or restoration of property under subsection 462.34(4), 462.37(1) or (2.01), 462.38(2) or 462.41(3) or section 462.43 is suspended pending

(a) any application made in respect of the property under any of those provisions or any other provision of this or any other Act of Parliament that provides for the restoration or forfeiture of such property,

(b) any appeal taken from an order of forfeiture or restoration in respect of the property, or

(c) any other proceeding in which the right of seizure of the property is questioned,

and property shall not be disposed of within thirty days after an order of forfeiture is made under any of those provisions.

R.S., 1985, c. 42 (4th Supp.), s. 2; 2005, c. 44, s. 10.

Copies of documents returned or forfeited

462.46 (1) If any document is returned or ordered to be returned, forfeited or otherwise dealt with under subsection 462.34(3) or (4), 462.37(1) or (2.01), 462.38(2) or 462.41(3) or section 462.43, the Attorney General may, before returning the document or complying with the order, cause a copy of the document to be made and retained.

Probative force

(2) Every copy made under subsection (1) shall, if certified as a true copy by the Attorney General, be admissible in evidence and, in the absence of evidence to the contrary, shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

R.S., 1985, c. 42 (4th Supp.), s. 2; 2005, c. 44, s. 11.

DISCLOSURE PROVISIONS

No civil or criminal liability incurred by informants

462.47 For greater certainty but subject to section 241 of the *Income Tax Act*, a person is justified in disclosing to a peace officer or the Attorney General any facts on the basis of which that person reasonably suspects that any property is proceeds of crime or that any person has committed or is about to commit a designated offence.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1996, c. 19, s. 70; 2001, c. 32, ss. 25, 82; 2002, c. 13, s. 16(F); 2004, c. 12, s. 8(F).

Definition of "designated substance offence"

462.48 (1) In this section, "designated substance offence" means

- (a) an offence under Part I of the *Controlled Drugs and Substances Act*, except subsection 4(1) of that Act; or
- (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a).

Disclosure of income tax information

(1.1) The Attorney General may make an application in accordance with subsection (2) for an order for disclosure of information under subsection (3), for the purposes of an investigation in relation to

- (a) a designated substance offence;
- (b) an offence against section 354 or 462.31 where the offence is alleged to have been committed in relation to any property, thing or proceeds obtained or derived directly or indirectly as a result of
 - (i) the commission in Canada of a designated substance offence, or
 - (ii) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated substance offence;
- (c) an offence against section 467.11, 467.12 or 467.13 or a conspiracy or an attempt to commit, or being an accessory after the fact in relation to, such an offence; or
- (d) a terrorism offence.

Application

(2) An application under subsection (1.1) shall be made *ex parte* in writing to a judge and be accompanied by an affidavit sworn on the information and belief of the Attorney General or a person specially designated by the Attorney General for that purpose deposing to the following matters, namely,

- (a) the offence or matter under investigation;
- (b) the person in relation to whom the information or documents referred to in paragraph (c) are required;
- (c) the type of information or book, record, writing, return or other document obtained by or on behalf of the Minister of National Revenue for the purposes of the *Income Tax Act* to which access is sought or that is proposed to be examined or communicated; and
- (d) the facts relied on to justify the belief, on reasonable grounds, that the person referred to in paragraph (b) has committed or benefited from the commission of an offence referred to in paragraph (1.1)(a), (b) or (c) and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to the investigation for the purposes of which the application is made.

Order for disclosure of information

(3) Where the judge to whom an application under subsection (1.1) is made is satisfied

- (a) of the matters referred to in paragraph (2)(d), and

(b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents to which the application relates, having regard to the benefit likely to accrue to the investigation if the access is obtained,

the judge may, subject to any conditions that the judge considers advisable in the public interest, order the Commissioner of Revenue or any person specially designated in writing by the Commissioner for the purposes of this section

(c) to allow a police officer named in the order access to all such information and documents and to examine them, or

(d) where the judge considers it necessary in the circumstances, to produce all such information and documents to the police officer and allow the police officer to remove the information and documents,

within such period after the expiration of seven clear days following the service of the order pursuant to subsection (4) as the judge may specify.

Service of order

(4) A copy of an order made by a judge under subsection (3) shall be served on the person to whom the order is addressed in such manner as the judge directs or as may be prescribed by rules of court.

Extension of period for compliance with order

(5) A judge who makes an order under subsection (3) may, on application of the Minister of National Revenue, extend the period within which the order is to be complied with.

Objection to disclosure of information

(6) The Minister of National Revenue or any person specially designated in writing by that Minister for the purposes of this section may object to the disclosure of any information or document in respect of which an order under subsection (3) has been made by certifying orally or in writing that the information or document should not be disclosed on the ground that

(a) the Minister of National Revenue is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement respecting taxation to which the Government of Canada is a signatory;

(b) a privilege is attached by law to the information or document;

(c) the information or document has been placed in a sealed package pursuant to law or an order of a court of competent jurisdiction; or

(d) disclosure of the information or document would not, for any other reason, be in the public interest.

Determination of objection

(7) Where an objection to the disclosure of information or a document is made under subsection (6), the objection may be determined, on application, in accordance with subsection (8), by the Chief Justice of the Federal Court, or by such other judge of that Court as the Chief Justice may designate to hear such applications.

Judge may examine information

(8) A judge who is to determine an objection pursuant to subsection (7) may, if the judge considers it necessary to determine the objection, examine the information or document in relation to which the objection is made and shall grant the objection and order that disclosure of the information or document be refused where the judge is satisfied of any of the grounds mentioned in subsection (6).

Limitation period

(9) An application under subsection (7) shall be made within ten days after the objection is made or within such greater or lesser period as the Chief Justice of the Federal Court, or such other judge of that Court as the Chief Justice may designate to hear such applications, considers appropriate.

Appeal to Federal Court of Appeal

(10) An appeal lies from a determination under subsection (7) to the Federal Court of Appeal.

Limitation period for appeal

(11) An appeal under subsection (10) shall be brought within ten days from the date of the determination appealed from or within such further time as the Federal Court of Appeal considers appropriate in the circumstances.

Special rules for hearings

(12) An application under subsection (7) or an appeal brought in respect of that application shall

(a) be heard *in camera*; and

(b) on the request of the person objecting to the disclosure of information, be heard and determined in the National Capital Region described in the schedule to the *National Capital Act*.

Ex parte representations

(13) During the hearing of an application under subsection (7) or an appeal brought in respect of that application, the person who made the objection in respect of which the application was made or the appeal was brought shall, on the request of that person, be given the opportunity to make representations *ex parte*.

Copies

(14) When any information or document is examined or provided under subsection (3), the person by whom it is examined or to whom it is provided or any officer of the Canada Revenue Agency may make, or cause to be made, one or more copies of it, and any copy purporting to be certified by the Minister of National Revenue or an authorized person to be a copy made under this subsection is evidence of the nature and content of the original information or document and has the same probative force as the original information or document would have had if it had been proved in the ordinary way.

Further disclosure

(15) No person to whom information or documents have been disclosed or provided pursuant to this subsection or pursuant to an order made under subsection (3) shall further disclose the information or documents except for the purposes of the investigation in relation to which the order was made.

Form

(16) An order made under subsection (3) may be in Form 47.

Definition of "police officer"

(17) In this section, "police officer" means any officer, constable or other person employed for the preservation and maintenance of the public peace.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1994, c. 13, s. 7; 1996, c. 19, s. 70; 1997, c. 23, s. 10; 1999, c. 17, s. 120; 2001, c. 32, s. 26, c. 41, ss. 15, 133; 2005, c. 38, ss. 138, 140.

SPECIFIC RULES OF FORFEITURE

Specific forfeiture provisions unaffected by this Part

462.49 (1) This Part does not affect the operation of any other provision of this or any other Act of Parliament respecting the forfeiture of property.

Priority for restitution to victims of crime

(2) The property of an offender may be used to satisfy the operation of a provision of this or any other Act of Parliament respecting the forfeiture of property only to the extent that it is not required to satisfy the operation of any other provision of this or any other Act of Parliament respecting restitution to or compensation of persons affected by the commission of offences.

R.S., 1985, c. 42 (4th Supp.), s. 2.

REGULATIONS

Regulations

462.5 The Attorney General may make regulations governing the manner of disposing of or otherwise dealing with, in accordance with the law, property forfeited under this Part.

R.S., 1985, c. 42 (4th Supp.), s. 2.

2. Criminal Code provisions (Sections 354 to 359)

HAVING IN POSSESSION

Possession of property obtained by crime

354. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

(a) the commission in Canada of an offence punishable by indictment; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

Obliterated vehicle identification number

(2) In proceedings in respect of an offence under subsection (1), evidence that a person has in his possession a motor vehicle the vehicle identification number of which has been wholly or partially removed or obliterated or a part of a motor vehicle being a part bearing a vehicle identification number that has been wholly or partially removed or obliterated is, in the absence of any evidence to the contrary, proof that the motor vehicle or part, as the case may be, was obtained, and that such person had the motor vehicle or part, as the case may be, in his possession knowing that it was obtained,

(a) by the commission in Canada of an offence punishable by indictment; or

(b) by an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

Definition of "vehicle identification number"

(3) For the purposes of subsection (2), "vehicle identification number" means any number or other mark placed on a motor vehicle for the purpose of distinguishing the motor vehicle from other similar motor vehicles.

Exception

(4) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person possesses property or a thing or the proceeds of property or a thing mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

R.S., 1985, c. C-46, s. 354; 1997, c. 18, s. 23.

Punishment

355. Every one who commits an offence under section 354

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

R.S., 1985, c. C-46, s. 355; R.S., 1985, c. 27 (1st Supp.), s. 49; 1994, c. 44, s. 21.

Theft from mail

356. (1) Every one who

(a) steals

- (i) any thing sent by post, after it is deposited at a post office and before it is delivered,
- (ii) a bag, sack or other container or covering in which mail is conveyed, whether or not it contains mail, or
- (iii) a key suited to a lock adopted for use in the Canada Post Corporation, or

(b) has in his possession anything in respect of which he knows that an offence has been committed under paragraph (a),

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Allegation of value not necessary

(2) In proceedings for an offence under this section it is not necessary to allege in the indictment or to prove on the trial that anything in respect of which the offence was committed had any value.

R.S., c. C-34, s. 314; 1980-81-82-83, c. 54, s. 56.

Bringing into Canada property obtained by crime

357. Every one who brings into or has in Canada anything that he has obtained outside Canada by an act that, if it had been committed in Canada, would have been the offence of theft or an offence under section 342 or 354 is guilty of an indictable offence and liable to a term of imprisonment not exceeding ten years.

R.S., 1985, c. C-46, s. 357; R.S., 1985, c. 27 (1st Supp.), s. 50.

Having in possession when complete

358. For the purposes of sections 342 and 354 and paragraph 356(1)(b), the offence of having in possession is complete when a person has, alone or jointly with another person, possession of or control over anything mentioned in those sections or when he aids in concealing or disposing of it, as the case may be.

R.S., 1985, c. C-46, s. 358; R.S., 1985, c. 27 (1st Supp.), s. 50.

Evidence

359. (1) Where an accused is charged with an offence under section 342 or 354 or paragraph 356(1)(b), evidence is admissible at any stage of the proceedings to show that property other than the property that is the subject-matter of the proceedings

(a) was found in the possession of the accused, and

(b) was stolen within twelve months before the proceedings were commenced,

and that evidence may be considered for the purpose of proving that the accused knew that the property that forms the subject-matter of the proceedings was stolen property.

Notice to accused

(2) Subsection (1) does not apply unless

(a) at least three days notice in writing is given to the accused that in the proceedings it is intended to prove that property other than the property that is the subject-matter of the proceedings was found in his possession; and

(b) the notice sets out the nature or description of the property and describes the person from whom it is alleged to have been stolen.

3. Criminal Code provisions (Section 83)

TERRORISM

INTERPRETATION

Definitions

83.01 (1) The following definitions apply in this Part. "Canadian"
«*Canadien* »

"Canadian" means a Canadian citizen, a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* or a body corporate incorporated and continued under the laws of Canada or a province.

"entity"
«*entité* »

"entity" means a person, group, trust, partnership or fund or an unincorporated association or organization.

"listed entity"
«*entité inscrite* »

"listed entity" means an entity on a list established by the Governor in Council under section 83.05.

"terrorist activity"
«*activité terroriste* »

"terrorist activity" means

(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

(i) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on December 16, 1970,

(ii) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on September 23, 1971,

(iii) the offences referred to in subsection 7(3) that implement the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, adopted by the General Assembly of the United Nations on December 14, 1973,

(iv) the offences referred to in subsection 7(3.1) that implement the *International Convention against the Taking of Hostages*, adopted by the General Assembly of the United Nations on December 17, 1979,

(v) the offences referred to in subsection 7(3.4) or (3.6) that implement the *Convention on the Physical Protection of Nuclear Material*, done at Vienna and New York on March 3, 1980,

(vi) the offences referred to in subsection 7(2) that implement the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, supplementary to the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on February 24, 1988,

(vii) the offences referred to in subsection 7(2.1) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, done at Rome on March 10, 1988,

(viii) the offences referred to in subsection 7(2.1) or (2.2) that implement the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, done at Rome on March 10, 1988,

(ix) the offences referred to in subsection 7(3.72) that implement the *International Convention for the Suppression of Terrorist Bombings*, adopted by the General Assembly of the United Nations on December 15, 1997, and

(x) the offences referred to in subsection 7(3.73) that implement the *International Convention for the Suppression of the Financing of Terrorism*, adopted by the General Assembly of the United Nations on December 9, 1999, or

(b) an act or omission, in or outside Canada,

(i) that is committed

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(ii) that intentionally

(A) causes death or serious bodily harm to a person by the use of violence,

(B) endangers a person's life,

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

"terrorist group"
«groupe terroriste »

"terrorist group" means

(a) an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity, or

(b) a listed entity,

and includes an association of such entities.

For greater certainty

(1.1) For greater certainty, the expression of a political, religious or ideological thought, belief or opinion does not come within paragraph (b) of the definition "terrorist activity" in subsection (1) unless it constitutes an act or omission that satisfies the criteria of that paragraph.

Facilitation

(2) For the purposes of this Part, facilitation shall be construed in accordance with subsection 83.19(2).

2001, c. 41, ss. 4, 126.

FINANCING OF TERRORISM

Providing or collecting property for certain activities

83.02 Every one who, directly or indirectly, wilfully and without lawful justification or excuse, provides or collects property intending that it be used or knowing that it will be used, in whole or in part, in order to carry out

(a) an act or omission that constitutes an offence referred to in subparagraphs (a)(i) to (ix) of the definition of “terrorist activity” in subsection 83.01(1), or

(b) any other act or omission intended to cause death or serious bodily harm to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of that act or omission, by its nature or context, is to intimidate the public, or to compel a government or an international organization to do or refrain from doing any act,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

2001, c. 41, s. 4.

Providing, making available, etc., property or services for terrorist purposes

83.03 Every one who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services

(a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or

(b) knowing that, in whole or part, they will be used by or will benefit a terrorist group,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

2001, c. 41, s. 4.

Using or possessing property for terrorist purposes

83.04 Every one who

(a) uses property, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity, or

(b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

2001, c. 41, s. 4.

LIST OF ENTITIES

Establishment of list

83.05 (1) The Governor in Council may, by regulation, establish a list on which the Governor in Council may place any entity if, on the recommendation of the Minister of Public Safety and Emergency Preparedness, the Governor in Council is satisfied that there are reasonable grounds to believe that

(a) the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity;
or

(b) the entity is knowingly acting on behalf of, at the direction of or in association with an entity referred to in paragraph (a).

Recommendation

(1.1) The Minister may make a recommendation referred to in subsection (1) only if he or she has reasonable grounds to believe that the entity to which the recommendation relates is an entity referred to in paragraph (1)(a) or (b).

Application to Minister

(2) On application in writing by a listed entity, the Minister shall decide whether there are reasonable grounds to recommend to the Governor in Council that the applicant no longer be a listed entity.

Deeming

(3) If the Minister does not make a decision on the application referred to in subsection (2) within 60 days after receipt of the application, he or she is deemed to have decided to recommend that the applicant remain a listed entity.

Notice of the decision to the applicant

(4) The Minister shall give notice without delay to the applicant of any decision taken or deemed to have been taken respecting the application referred to in subsection (2).

Judicial review

(5) Within 60 days after the receipt of the notice of the decision referred to in subsection (4), the applicant may apply to a judge for judicial review of the decision.

Reference

(6) When an application is made under subsection (5), the judge shall, without delay

(a) examine, in private, any security or criminal intelligence reports considered in listing the applicant and hear any other evidence or information that may be presented by or on behalf of the Minister and may, at his or her request, hear all or part of that evidence or information in the absence of the applicant and any counsel representing the applicant, if the judge is of the opinion that the disclosure of the information would injure national security or endanger the safety of any person;

(b) provide the applicant with a statement summarizing the information available to the judge so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information the disclosure of which would, in the judge's opinion, injure national security or endanger the safety of any person;

(c) provide the applicant with a reasonable opportunity to be heard; and

(d) determine whether the decision is reasonable on the basis of the information available to the judge and, if found not to be reasonable, order that the applicant no longer be a listed entity.

Evidence

(6.1) The judge may receive into evidence anything that, in the opinion of the judge, is reliable and appropriate, even if it would not otherwise be admissible under Canadian law, and may base his or her decision on that evidence.

Publication

(7) The Minister shall cause to be published, without delay, in the *Canada Gazette* notice of a final order of a court that the applicant no longer be a listed entity.

New application

(8) A listed entity may not make another application under subsection (2), except if there has been a material change in its circumstances since the time when the entity made its last application or if the Minister has completed the review under subsection (9).

Review of list

(9) Two years after the establishment of the list referred to in subsection (1), and every two years after that, the Minister shall review the list to determine whether there are still reasonable grounds, as set out in subsection (1), for an entity to be a listed entity and make a recommendation to the Governor in Council as to whether the entity should remain a listed entity. The review does not affect the validity of the list.

Completion of review

(10) The Minister shall complete the review as soon as possible and in any event, no later than 120 days after its commencement. After completing the review, he or she shall cause to be published, without delay, in the *Canada Gazette* notice that the review has been completed.

Definition of "judge"

(11) In this section, "judge" means the Chief Justice of the Federal Court or a judge of that Court designated by the Chief Justice.

2001, c. 41, ss. 4, 143; 2005, c. 10, ss. 18, 34.

Admission of foreign information obtained in confidence

83.06 (1) For the purposes of subsection 83.05(6), in private and in the absence of the applicant or any counsel representing it,

(a) the Minister of Public Safety and Emergency Preparedness may make an application to the judge for the admission of information obtained in confidence from a government, an institution or an agency of a foreign state, from an international organization of states or from an institution or an agency of an international organization of states; and

(b) the judge shall examine the information and provide counsel representing the Minister with a reasonable opportunity to be heard as to whether the information is relevant but should not be disclosed to the applicant or any counsel representing it because the disclosure would injure national security or endanger the safety of any person.

Return of information

(2) The information shall be returned to counsel representing the Minister and shall not be considered by the judge in making the determination under paragraph 83.05(6)(d), if

(a) the judge determines that the information is not relevant;

(b) the judge determines that the information is relevant but should be summarized in the statement to be provided under paragraph 83.05(6)(b); or

(c) the Minister withdraws the application.

Use of information

(3) If the judge decides that the information is relevant but that its disclosure would injure national security or endanger the safety of persons, the information shall not be disclosed in the statement mentioned in paragraph 83.05(6)(b), but the judge may base the determination under paragraph 83.05(6)(d) on it.

2001, c. 41, s. 4; 2005, c. 10, s. 19.

Mistaken identity

83.07 (1) An entity claiming not to be a listed entity may apply to the Minister of Public Safety and Emergency Preparedness for a certificate stating that it is not a listed entity.

Issuance of certificate

(2) The Minister shall, within 15 days after receiving the application, issue a certificate if he or she is satisfied that the applicant is not a listed entity.

2001, c. 41, s. 4; 2005, c. 10, s. 20.

FREEZING OF PROPERTY

Freezing of property

83.08 (1) No person in Canada and no Canadian outside Canada shall knowingly

(a) deal directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist group;

(b) enter into or facilitate, directly or indirectly, any transaction in respect of property referred to in paragraph (a); or

(c) provide any financial or other related services in respect of property referred to in paragraph (a) to, for the benefit of or at the direction of a terrorist group.

No civil liability

(2) A person who acts reasonably in taking, or omitting to take, measures to comply with subsection (1) shall not be liable in any civil action arising from having taken or omitted to take the measures, if the person took all reasonable steps to satisfy themselves that the relevant property was owned or controlled by or on behalf of a terrorist group.

2001, c. 41, s. 4.

Exemptions

83.09 (1) The Minister of Public Safety and Emergency Preparedness, or a person designated by him or her, may authorize any person in Canada or any Canadian outside Canada to carry out a specified activity or transaction that is prohibited by section 83.08, or a class of such activities or transactions.

Ministerial authorization

(2) The Minister, or a person designated by him or her, may make the authorization subject to any terms and conditions that are required in their opinion and may amend, suspend, revoke or reinstate it.

Existing equities maintained

(3) All secured and unsecured rights and interests in the frozen property that are held by persons, other than terrorist groups or their agents, are entitled to the same ranking that they would have been entitled to had the property not been frozen.

Third party involvement

(4) If a person has obtained an authorization under subsection (1), any other person involved in carrying out the activity or transaction, or class of activities or transactions, to which the authorization relates is not subject to sections 83.08, 83.1 and 83.11 if the terms or conditions of the authorization that are imposed under subsection (2), if any, are met.

2001, c. 41, s. 4; 2005, c. 10, s. 21.

Disclosure

83.1 (1) Every person in Canada and every Canadian outside Canada shall disclose forthwith to the Commissioner of the Royal Canadian Mounted Police and to the Director of the Canadian Security Intelligence Service

(a) 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

(b) information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

Immunity

(2) No criminal or civil proceedings lie against a person for disclosure made in good faith under subsection (1).

2001, c. 41, s. 4.

Audit

83.11 (1) The following entities must determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a listed entity:

(a) authorized foreign banks within the meaning of section 2 of the *Bank Act* in respect of their business in Canada, or banks to which that Act applies;

(b) cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;

(c) foreign companies within the meaning of subsection 2(1) of the *Insurance Companies Act* in respect of their insurance business in Canada;

(c.1) companies, provincial companies and societies within the meaning of subsection 2(1) of the *Insurance Companies Act*;

(c.2) fraternal benefit societies regulated by a provincial Act in respect of their insurance activities, and insurance companies and other entities engaged in the business of insuring risks that are regulated by a provincial Act;

(d) companies to which the *Trust and Loan Companies Act* applies;

(e) trust companies regulated by a provincial Act;

(f) loan companies regulated by a provincial Act; and

(g) entities authorized under provincial legislation to engage in the business of dealing in securities, or to provide portfolio management or investment counselling services.

Monthly report

(2) Subject to the regulations, every entity referred to in paragraphs (1)(a) to (g) must report, within the period specified by regulation or, if no period is specified, monthly, to the principal agency or body that supervises or regulates it under federal or provincial law either

(a) that it is not in possession or control of any property referred to in subsection (1), or

(b) that it is in possession or control of such property, in which case it must also report the number of persons, contracts or accounts involved and the total value of the property.

Immunity

(3) No criminal or civil proceedings lie against a person for making a report in good faith under subsection (2).

Regulations

(4) The Governor in Council may make regulations

(a) excluding any entity or class of entities from the requirement to make a report referred to in subsection (2), and specifying the conditions of exclusion; and

(b) specifying a period for the purposes of subsection (2).

2001, c. 41, s. 4.

Offences — freezing of property, disclosure or audit

83.12 (1) Every one who contravenes any of sections 83.08, 83.1 and 83.11 is guilty of an offence and liable

(a) on summary conviction, to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or to both; or

(b) on conviction on indictment, to imprisonment for a term of not more than 10 years.

No contravention

(2) No person contravenes section 83.1 if they make the disclosure referred to in that section only to the Commissioner of the Royal Canadian Mounted Police or the Director of the Canadian Security Intelligence Service.

2001, c. 41, s. 4.

SEIZURE AND RESTRAINT OF PROPERTY

Seizure and restraint of assets

83.13 (1) Where a judge of the Federal Court, on an *ex parte* application by the Attorney General, after examining the application in private, is satisfied that there are reasonable grounds to believe that there is in any building, receptacle or place any property in respect of which an order of forfeiture may be made under subsection 83.14(5), the judge may issue

(a) if the property is situated in Canada, a warrant authorizing a person named therein or a peace officer to search the building, receptacle or place for that property and to seize that property and any other property in respect of which that person or peace officer believes, on reasonable grounds, that an order of forfeiture may be made under that subsection; or

(b) if the property is situated in or outside Canada, a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in, that property other than as may be specified in the order.

Contents of application

(1.1) An affidavit in support of an application under subsection (1) may be sworn on information and belief, and, notwithstanding the *Federal Court Rules, 1998*, no adverse inference shall be drawn from a failure to provide evidence of persons having personal knowledge of material facts.

Appointment of manager

(2) On an application under subsection (1), at the request of the Attorney General, if a judge is of the opinion that the circumstances so require, the judge may

(a) appoint a person to take control of, and to manage or otherwise deal with, all or part of the property in accordance with the directions of the judge; and

(b) require any person having possession of that property to give possession of the property to the person appointed under paragraph (a).

Appointment of Minister of Public Works and Government Services

(3) When the Attorney General of Canada so requests, a judge appointing a person under subsection (2) shall appoint the Minister of Public Works and Government Services.

Power to manage

(4) The power to manage or otherwise deal with property under subsection (2) includes

(a) in the case of perishable or rapidly depreciating property, the power to sell that property; and

(b) in the case of property that has little or no value, the power to destroy that property.

Application for destruction order

(5) Before a person appointed under subsection (2) destroys property referred to in paragraph (4)(b), he or she shall apply to a judge of the Federal Court for a destruction order.

Notice

(6) Before making a destruction order in relation to any property, a judge shall require notice in accordance with subsection (7) to be given to, and may hear, any person who, in the opinion of the judge, appears to have a valid interest in the property.

Manner of giving notice

(7) A notice under subsection (6) shall be given in the manner that the judge directs or as provided in the rules of the Federal Court.

Order

(8) A judge may order that property be destroyed if he or she is satisfied that the property has little or no financial or other value.

When management order ceases to have effect

(9) A management order ceases to have effect when the property that is the subject of the management order is returned to an applicant in accordance with the law or forfeited to Her Majesty.

Application to vary

(10) The Attorney General may at any time apply to a judge of the Federal Court to cancel or vary an order or warrant made under this section, other than an appointment made under subsection (3).

Procedure

(11) Subsections 462.32(4) and (6), sections 462.34 to 462.35 and 462.4, subsections 487(3) and (4) and section 488 apply, with such modifications as the circumstances require, to a warrant issued under paragraph (1)(a).

Procedure

(12) Subsections 462.33(4) and (6) to (11) and sections 462.34 to 462.35 and 462.4 apply, with such modifications as the circumstances require, to an order issued under paragraph (1)(b).

2001, c. 41, s. 4.

FORFEITURE OF PROPERTY

Application for order of forfeiture

83.14 (1) The Attorney General may make an application to a judge of the Federal Court for an order of forfeiture in respect of

- (a) property owned or controlled by or on behalf of a terrorist group; or
- (b) property that has been or will be used, in whole or in part, to facilitate or carry out a terrorist activity.

Contents of application

(2) An affidavit in support of an application by the Attorney General under subsection (1) may be sworn on information and belief, and, notwithstanding the *Federal Court Rules, 1998*, no adverse inference shall be drawn from a failure to provide evidence of persons having personal knowledge of material facts.

Respondents

(3) The Attorney General is required to name as a respondent to an application under subsection (1) only those persons who are known to own or control the property that is the subject of the application.

Notice

(4) The Attorney General shall give notice of an application under subsection (1) to named respondents in such a manner as the judge directs or as provided in the rules of the Federal Court.

Granting of forfeiture order

(5) If a judge is satisfied on a balance of probabilities that property is property referred to in paragraph (1)(a) or (b), the judge shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.

Use of proceeds

(5.1) Any proceeds that arise from the disposal of property under subsection (5) may be used to compensate victims of terrorist activities and to fund anti-terrorist initiatives in accordance with any regulations made by the Governor in Council under subsection (5.2).

Regulations

(5.2) The Governor in Council may make regulations for the purposes of specifying how the proceeds referred to in subsection (5.1) are to be distributed.

Order refusing forfeiture

(6) Where a judge refuses an application under subsection (1) in respect of any property, the judge shall make an order that describes the property and declares that it is not property referred to in that subsection.

Notice

(7) On an application under subsection (1), a judge may require notice to be given to any person who, in the opinion of the Court, appears to have an interest in the property, and any such person shall be entitled to be added as a respondent to the application.

Third party interests

(8) If a judge is satisfied that a person referred to in subsection (7) has an interest in property that is subject to an application, has exercised reasonable care to ensure that the property would not be used to facilitate or carry out a terrorist activity, and is not a member of a terrorist group, the judge shall order that the interest is not affected by the forfeiture. Such an order shall declare the nature and extent of the interest in question.

Dwelling-house

(9) Where all or part of property that is the subject of an application under subsection (1) is a dwelling-house, the judge shall also consider

(a) the impact of an order of forfeiture on any member of the immediate family of the person who owns or controls the dwelling-house, if the dwelling-house was the member's principal residence at the time the dwelling-house was ordered restrained or at the time the forfeiture application was made and continues to be the member's principal residence; and

(b) whether the member appears innocent of any complicity or collusion in the terrorist activity.

Motion to vary or set aside

(10) A person who claims an interest in property that was forfeited and who did not receive notice under subsection (7) may bring a motion to the Federal Court to vary or set aside an order made under subsection (5) not later than 60 days after the day on which the forfeiture order was made.

No extension of time

(11) The Court may not extend the period set out in subsection (10).

2001, c. 41, s. 4.

Disposition of property

83.15 Subsection 462.42(6) and sections 462.43 and 462.46 apply, with such modifications as the circumstances require, to property subject to a warrant or restraint order issued under subsection 83.13(1) or ordered forfeited under subsection 83.14(5).

2001, c. 41, s. 4.

Interim preservation rights

83.16 (1) Pending any appeal of an order made under section 83.14, property restrained under an order issued under section 83.13 shall continue to be restrained, property seized under a warrant issued under that section shall continue to be detained, and any person appointed to manage, control or otherwise deal with that property under that section shall continue in that capacity.

Appeal of refusal to grant order

(2) Section 462.34 applies, with such modifications as the circumstances require, to an appeal taken in respect of a refusal to grant an order under subsection 83.14(5).

2001, c. 41, s. 4.

Other forfeiture provisions unaffected

83.17 (1) This Part does not affect the operation of any other provision of this or any other Act of Parliament respecting the forfeiture of property.

Priority for restitution to victims of crime

(2) Property is subject to forfeiture under subsection 83.14(5) only to the extent that it is not required to satisfy the operation of any other provision of this or any other Act of Parliament respecting restitution to, or compensation of, persons affected by the commission of offences.

2001, c. 41, s. 4.

PARTICIPATING, FACILITATING, INSTRUCTING AND HARBOURING

Participation in activity of terrorist group

83.18 (1) Every one who knowingly participates in or contributes to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Prosecution

(2) An offence may be committed under subsection (1) whether or not

- (a) a terrorist group actually facilitates or carries out a terrorist activity;
- (b) the participation or contribution of the accused actually enhances the ability of a terrorist group to facilitate or carry out a terrorist activity; or
- (c) the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group.

Meaning of participating or contributing

(3) Participating in or contributing to an activity of a terrorist group includes

- (a) providing, receiving or recruiting a person to receive training;
- (b) providing or offering to provide a skill or an expertise for the benefit of, at the direction of or in association with a terrorist group;
- (c) recruiting a person in order to facilitate or commit
 - (i) a terrorism offence, or
 - (ii) an act or omission outside Canada that, if committed in Canada, would be a terrorism offence;
- (d) entering or remaining in any country for the benefit of, at the direction of or in association with a terrorist group; and
- (e) making oneself, in response to instructions from any of the persons who constitute a terrorist group, available to facilitate or commit
 - (i) a terrorism offence, or
 - (ii) an act or omission outside Canada that, if committed in Canada, would be a terrorism offence.

Factors

(4) In determining whether an accused participates in or contributes to any activity of a terrorist group, the court may consider, among other factors, whether the accused

- (a) uses a name, word, symbol or other representation that identifies, or is associated with, the terrorist group;
- (b) frequently associates with any of the persons who constitute the terrorist group;
- (c) receives any benefit from the terrorist group; or
- (d) repeatedly engages in activities at the instruction of any of the persons who constitute the terrorist group.

2001, c. 41, s. 4.

Facilitating terrorist activity

83.19 (1) Every one who knowingly facilitates a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Facilitation

(2) For the purposes of this Part, a terrorist activity is facilitated whether or not

- (a) the facilitator knows that a particular terrorist activity is facilitated;
- (b) any particular terrorist activity was foreseen or planned at the time it was facilitated; or
- (c) any terrorist activity was actually carried out.

2001, c. 41, s. 4.

Commission of offence for terrorist group

83.2 Every one who commits an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of or in association with a terrorist group is guilty of an indictable offence and liable to imprisonment for life.

2001, c. 41, s. 4.

Instructing to carry out activity for terrorist group

83.21 (1) Every person who knowingly instructs, directly or indirectly, any person to carry out any activity for the benefit of, at the direction of or in association with a terrorist group, for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity, is guilty of an indictable offence and liable to imprisonment for life.

Prosecution

(2) An offence may be committed under subsection (1) whether or not

- (a) the activity that the accused instructs to be carried out is actually carried out;
- (b) the accused instructs a particular person to carry out the activity referred to in paragraph (a);
- (c) the accused knows the identity of the person whom the accused instructs to carry out the activity referred to in paragraph (a);
- (d) the person whom the accused instructs to carry out the activity referred to in paragraph (a) knows that it is to be carried out for the benefit of, at the direction of or in association with a terrorist group;
- (e) a terrorist group actually facilitates or carries out a terrorist activity;
- (f) the activity referred to in paragraph (a) actually enhances the ability of a terrorist group to facilitate or carry out a terrorist activity; or
- (g) the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group.

2001, c. 41, s. 4.

Instructing to carry out terrorist activity

83.22 (1) Every person who knowingly instructs, directly or indirectly, any person to carry out a terrorist activity is guilty of an indictable offence and liable to imprisonment for life.

Prosecution

(2) An offence may be committed under subsection (1) whether or not

- (a) the terrorist activity is actually carried out;
- (b) the accused instructs a particular person to carry out the terrorist activity;
- (c) the accused knows the identity of the person whom the accused instructs to carry out the terrorist activity;
or
- (d) the person whom the accused instructs to carry out the terrorist activity knows that it is a terrorist activity.

2001, c. 41, s. 4.

Harbouring or concealing

83.23 Every one who knowingly harbours or conceals any person whom he or she knows to be a person who has carried out or is likely to carry out a terrorist activity, for the purpose of enabling the person to facilitate or carry out any terrorist activity, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

2001, c. 41, s. 4.

HOAX REGARDING TERRORIST ACTIVITY

Hoax — terrorist activity

83.231 (1) Every one commits an offence who, without lawful excuse and with intent to cause any person to fear death, bodily harm, substantial damage to property or serious interference with the lawful use or operation of property,

- (a) conveys or causes or procures to be conveyed information that, in all the circumstances, is likely to cause a reasonable apprehension that terrorist activity is occurring or will occur, without believing the information to be true; or
- (b) commits an act that, in all the circumstances, is likely to cause a reasonable apprehension that terrorist activity is occurring or will occur, without believing that such activity is occurring or will occur.

Punishment

(2) Every one who commits an offence under subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.

Causing bodily harm

(3) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Causing death

(4) Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for life.

2004, c. 15, s. 32.

PROCEEDINGS AND AGGRAVATED PUNISHMENT

Attorney General's consent

83.24 Proceedings in respect of a terrorism offence or an offence under section 83.12 shall not be commenced without the consent of the Attorney General.

2001, c. 41, s. 4.

Jurisdiction

83.25 (1) Where a person is alleged to have committed a terrorism offence or an offence under section 83.12, proceedings in respect of that offence may, whether or not that person is in Canada, be commenced at the instance of the Government of Canada and conducted by the Attorney General of Canada or counsel acting on his or her behalf in any territorial division in Canada, if the offence is alleged to have occurred outside the province in which the proceedings are commenced, whether or not proceedings have previously been commenced elsewhere in Canada.

Trial and punishment

(2) An accused may be tried and punished in respect of an offence referred to in subsection (1) in the same manner as if the offence had been committed in the territorial division where the proceeding is conducted.

2001, c. 41, s. 4.

Sentences to be served consecutively

83.26 A sentence, other than one of life imprisonment, imposed on a person for an offence under any of sections 83.02 to 83.04 and 83.18 to 83.23 shall be served consecutively to

(a) any other punishment imposed on the person, other than a sentence of life imprisonment, for an offence arising out of the same event or series of events; and

(b) any other sentence, other than one of life imprisonment, to which the person is subject at the time the sentence is imposed on the person for an offence under any of those sections.

2001, c. 41, s. 4.

Punishment for terrorist activity

83.27 (1) Notwithstanding anything in this Act, a person convicted of an indictable offence, other than an offence for which a sentence of imprisonment for life is imposed as a minimum punishment, where the act or omission constituting the offence also constitutes a terrorist activity, is liable to imprisonment for life.

Offender must be notified

(2) Subsection (1) does not apply unless the prosecutor satisfies the court that the offender, before making a plea, was notified that the application of that subsection would be sought.

2001, c. 41, s. 4.

II. Mutual Legal Assistance in Criminal Matters Act

An Act to provide for the implementation of treaties for mutual legal assistance in criminal matters and to amend the Criminal Code, the Crown Liability Act and the Immigration Act

NOTE

[1988, c. 37, assented to 28th July, 1988]

SHORT TITLE

Short title

1. This Act may be cited as the *Mutual Legal Assistance in Criminal Matters Act*.

INTERPRETATION

Definitions

2. (1) In this Act, "agreement"
«*accord*»

"agreement" means a treaty, convention or other international agreement that is in force, to which Canada is a party and that contains a provision respecting mutual legal assistance in criminal matters;

"competent authority"
«*autorité compétente*»

"competent authority" means the Attorney General of Canada, the attorney general of a province or any person or authority with responsibility in Canada for the investigation or prosecution of offences;

"data"
«*données*»

"data" means representations, in any form, of information or concepts;

"foreign state" [Repealed, 1999, c. 18, s. 97]

"International Criminal Court"
«*Cour pénale internationale*»

"International Criminal Court" means the International Criminal Court as defined in subsection 2(1) of the *Crimes Against Humanity and War Crimes Act*;

"judge"
«*juge*»

"judge" means

- (a) in Ontario, a judge of the Superior Court of Justice,
- (a.1) in Prince Edward Island, a judge of the trial division of the Supreme Court,
- (b) in Quebec, a judge of the Superior Court,
- (c) in New Brunswick, Manitoba, Alberta and Saskatchewan, a judge of the Court of Queen's Bench, and

(d) in Nova Scotia, British Columbia, Newfoundland, Yukon and the Northwest Territories, a judge of the Supreme Court, and in Nunavut, a judge of the Nunavut Court of Justice;

"Minister"
«*ministre*»

"Minister" means the Minister of Justice;

"offence"
«*infraction*»

"offence" means an offence within the meaning of the relevant agreement;

"record"
«*document*»

"record" means any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device;

"request"
«*demande*»

"request" means a request for assistance presented pursuant to an agreement;

"state or entity"
«*État ou entité*»

"state or entity" means

(a) a state, a province, state or political subdivision of the state, or a colony, dependency, possession, protectorate, condominium, trust territory or any territory falling under the jurisdiction of the state, that is a party to an agreement with Canada, or

(b) an international criminal court or tribunal, the name of which appears in the schedule.

"treaty" [Repealed, 1999, c. 18, s. 97]

(2) [Repealed, 1999, c. 18, s. 97]

R.S., 1985, c. 30 (4th Supp.), s. 2; 1992, c. 51, s. 58; 1998, c. 30, s. 14; 1999, c. 3, s. 80, c. 18, s. 97; 2000, c. 24, s. 56; 2002, c. 7, s. 209(E).

Inconsistency of Acts

3. (1) In the event of any inconsistency between the provisions of this Act and the provisions of another Act of Parliament, other than the provisions of an Act prohibiting the disclosure of information or prohibiting its disclosure except under certain conditions, the provisions of this Act prevail to the extent of the inconsistency.

Preservation of informal arrangements

(2) Nothing in this Act or an agreement shall be construed so as to abrogate or derogate from an arrangement or practice respecting cooperation between a Canadian competent authority and a foreign or international authority or organization.

R.S., 1985, c. 30 (4th Supp.), s. 3; 1999, c. 18, s. 98.

SCHEDULE

Designation

4. (1) The names of international criminal courts and tribunals that appear in the schedule are designated as states or entities for the purpose of this Act.

Amendments to schedule

(2) The Minister of Foreign Affairs may, with the agreement of the Minister, by order, add to or delete from the schedule the names of international criminal courts and tribunals.

R.S., 1985, c. 30 (4th Supp.), s. 4; 1999, c. 18, s. 99.

PUBLICATION OF AGREEMENTS

Publication in *Canada Gazette*

5. (1) Unless the agreement has been published under subsection (2), an agreement — or the provisions respecting mutual legal assistance in criminal matters contained in a convention or other international agreement — must be published in the *Canada Gazette* no later than 60 days after it comes into force.

Publication in *Canada Treaty Series*

(2) An agreement — or the provisions respecting mutual legal assistance in criminal matters contained in a convention or other international agreement — may be published in the *Canada Treaty Series* and, if so published, the publication must be no later than 60 days after it comes into force.

Judicial notice

(3) Agreements and provisions published in the *Canada Gazette* or the *Canada Treaty Series* are to be judicially noticed.

R.S., 1985, c. 30 (4th Supp.), s. 5; 1999, c. 18, s. 99.

ADMINISTRATIVE ARRANGEMENTS

Administrative arrangements

6. (1) If there is no agreement between Canada and a state or entity, or the state's or entity's name does not appear in the schedule, the Minister of Foreign Affairs may, with the agreement of the Minister, enter into an administrative arrangement with the state or entity providing for legal assistance with respect to an investigation specified in the arrangement relating to an act that, if committed in Canada, would be an indictable offence.

Administrative arrangements

(2) If an agreement expressly states that legal assistance may be provided with respect to acts that do not constitute an offence within the meaning of the agreement, the Minister of Foreign Affairs may, in exceptional circumstances and with the agreement of the Minister, enter into an administrative arrangement with the state or entity concerned, providing for legal assistance with respect to an investigation specified in the arrangement relating to an act that, if committed in Canada, would be a contravention of an Act of Parliament or of the legislature of a province.

Nature of administrative arrangement

(3) An administrative arrangement entered into under subsection (1) or (2) may be implemented by the Minister, pursuant to this Act, in the same manner as an agreement.

Idem

(4) An administrative arrangement entered into under subsection (1) or (2) has force and effect only for such period not exceeding six months as is specified therein and with respect to the type of legal assistance that is specified therein.

No scheduling or publication required

(5) Sections 4 and 5 do not apply in respect of an administrative arrangement entered into under subsection (1) or (2).

Proof

(6) In any legal or other proceeding, an administrative arrangement entered into under subsection (1) or (2) and purporting to be signed by the Minister of Foreign Affairs or by a person designated by the Minister of Foreign Affairs is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and proof that it is what it purports to be.

R.S., 1985, c. 30 (4th Supp.), s. 6; 1995, c. 5, s. 25; 1999, c. 18, s. 100.

FUNCTIONS OF THE MINISTER

Functions of Minister

7. (1) The Minister is responsible for the implementation of every agreement and the administration of this Act.

Agreement and Act to apply

(2) When a request is presented to the Minister by a state or entity or a Canadian competent authority, the Minister shall deal with the request in accordance with the relevant agreement and this Act.

R.S., 1985, c. 30 (4th Supp.), s. 7; 1999, c. 18, s. 101.

PART I

FOREIGN INVESTIGATIONS OR OTHER PROCEEDINGS IN RESPECT OF OFFENCES

Implementation

Limitation — requests under agreements

8. (1) If a request for mutual legal assistance is made under an agreement, the Minister may not give effect to the request by means of the provisions of this Part unless the agreement provides for mutual legal assistance with respect to the subject-matter of the request.

Request by state or entity in schedule

(2) If a request for mutual legal assistance is made by a state or entity whose name appears in the schedule, the Minister may give effect by means of the provisions of this Part to a request with respect to any subject-matter.

R.S., 1985, c. 30 (4th Supp.), s. 8; 1999, c. 18, s. 101.

Fines

Standing and jurisdiction

9. (1) When the Minister approves a request of a state or entity to enforce the payment of a fine imposed in respect of an offence by a court of criminal jurisdiction of the state or entity, a court in Canada has jurisdiction to enforce the payment of the fine, and the fine is recoverable in civil proceedings instituted by the state or entity, as if the fine had been imposed by a court in Canada.

Limitation period

(2) No proceedings under subsection (1) shall be instituted more than five years after the fine was imposed.

Definition of "fine"

(3) For the purposes of this section, "fine" includes any pecuniary penalty determined by a court of criminal jurisdiction of a state or entity to represent the value of any property, benefit or advantage, irrespective of its location, obtained or derived directly or indirectly as a result of the commission of an offence.

R.S., 1985, c. 30 (4th Supp.), s. 9; 1999, c. 18, s. 102.

International Criminal Court

Orders for restraint or seizure

9.1 (1) When a request is presented to the Minister by the International Criminal Court for the enforcement of an order for the restraint or seizure of proceeds of crime, the Minister may authorize the Attorney General of Canada to make arrangements for the enforcement of the order.

Filing of order

(2) On receipt of an authorization, the Attorney General of Canada may file a copy of the order with the superior court of criminal jurisdiction of the province in which property that is the subject of the order is believed to be located.

Enforcement

(3) On being filed, the order may be enforced as if it were a warrant issued under subsection 462.32(1) of the *Criminal Code* or an order made under subsection 462.33(3) of that Act.

2000, c. 24, s. 57.

Orders of reparation or forfeiture or imposing fines

9.2 (1) When a request is presented to the Minister by the International Criminal Court for the enforcement of an order of reparation or forfeiture, or an order imposing a fine, the Minister may authorize the Attorney General of Canada to make arrangements for the enforcement of the order.

Enforcement

(2) On receipt of an authorization, the Attorney General of Canada may file a copy of the order with the superior court of criminal jurisdiction of

(a) the province in which property that is the subject of the order is believed to be located; or

(b) the province in which some or all of the property available to satisfy the order is believed to be located.

On being filed, the order shall be entered as a judgment of that court.

Requirement

(3) Before filing an order referred to in subsection (1), the Attorney General of Canada must be satisfied that

- (a) a person has been convicted of an offence within the jurisdiction of the International Criminal Court; and
- (b) the conviction and the order are not subject to further appeal.

Effect of registered order

(4) An order has, from the date it is filed under subsection (2), the same effect as if it had been

- (a) in the case of an order of reparation, an order under section 738 of the *Criminal Code*;
- (b) in the case of an order of forfeiture, an order under subsection 462.37(1) or 462.38(2) of that Act; and
- (c) in the case of an order imposing a fine, a fine imposed under section 734 of that Act.

Payment into Crimes Against Humanity Fund

(5) Subject to any orders made under subsection (8), proceeds from the enforcement of orders filed under this section shall be paid into the Crimes Against Humanity Fund established under section 30 of the *Crimes Against Humanity and War Crimes Act*.

Filing of amendments

(6) When an order is filed under subsection (2), a copy of any amendments made to the order may be filed in the same way as the order, and the amendments do not, for the purpose of this Act, have effect until they are registered.

Notice

(7) When an order has been filed under subsection (2), it shall not be executed before notice in accordance with subsection 462.41(2) of the *Criminal Code* has been given to every person who, in the opinion of the court, appears to have a valid interest in the property.

Application of *Criminal Code*

(8) Subsection 462.41(3) and section 462.42 of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of a person who claims an interest in the property.

2000, c. 24, s. 57.

Foreign Orders for Restraint, Seizure and Forfeiture of Property in Canada

Orders for restraint or seizure

9.3 (1) When a written request is presented to the Minister by a state or entity, other than the International Criminal Court referred to in section 9.1, for the enforcement of an order for the restraint or seizure of property situated in Canada issued by a court of criminal jurisdiction of the state or entity, the Minister may authorize the Attorney General of Canada or an attorney general of a province to make arrangements for the enforcement of the order.

Filing of order

(2) On receipt of an authorization, the Attorney General of Canada or an attorney general of a province may file a copy of the order with the superior court of criminal jurisdiction of the province in which the property that is the subject of the order is believed to be located. On being filed, the order shall be entered as a judgment of that court and may be executed anywhere in Canada.

Conditions

(3) Before filing an order, the Attorney General of Canada or an attorney general of a province must be satisfied that

(a) the person has been charged with an offence within the jurisdiction of the state or entity; and

(b) the offence would be an indictable offence if it were committed in Canada.

Effect of registered order

(4) On being filed,

(a) an order for the seizure of proceeds of crime may be enforced as if it were a warrant issued under subsection 462.32(1) of the *Criminal Code*;

(b) an order for the restraint of proceeds of crime may be enforced as if it were an order made under subsection 462.33(3) of the *Criminal Code*;

(c) an order for the seizure of offence-related property may be enforced as if it were a warrant issued under subsection 487(1) of the *Criminal Code* or subsection 11(1) of the *Controlled Drugs and Substances Act*, as the case may be; and

(d) an order for the restraint of offence-related property may be enforced as if it were an order made under subsection 490.8(3) of the *Criminal Code* or subsection 14(3) of the *Controlled Drugs and Substances Act*, as the case may be.

Filing of amendments

(5) When an order is filed under subsection (2), a copy of any amendments made to the order may be filed in the same way as the order, and the amendments do not, for the purpose of this Act, have effect until they are registered.

2001, c. 32, s. 65.

Orders of forfeiture

9.4 (1) When a written request is presented to the Minister by a state or entity, other than the International Criminal Court referred to in section 9.1, for the enforcement of an order of forfeiture of property situated in Canada issued by a court of criminal jurisdiction of the state or entity, the Minister may authorize the Attorney General of Canada or an attorney general of a province to make arrangements for the enforcement of the order.

Grounds for refusal of request

(2) The Minister shall refuse the request if he or she

(a) has reasonable grounds to believe that the request has been made for the purpose of punishing a person by reason of their race, sex, sexual orientation, religion, nationality, ethnic origin, language, colour, age, mental or physical disability or political opinion;

(b) is of the opinion that enforcement of the order would prejudice an ongoing proceeding or investigation;

(c) is of the opinion that enforcement of the order would impose an excessive burden on the resources of federal, provincial or territorial authorities;

(d) is of the opinion that enforcement of the order might prejudice Canada's security, national interest or sovereignty; or

(e) is of the opinion that refusal of the request is in the public interest.

Filing of order

(3) On receipt of an authorization, the Attorney General of Canada or an attorney general of a province may file a copy of the order with the superior court of criminal jurisdiction of the province in which all or part of the property that is the subject of the order is believed to be located. On being filed, the order shall be entered as a judgment of that court and may be executed anywhere in Canada.

Deemed filing

(4) An order that is filed under subsection (3) by an attorney general of a province is deemed to be filed by the Attorney General of Canada.

Conditions

(5) Before filing an order, the Attorney General of Canada or an attorney general of a province must be satisfied that

(a) the person has been convicted of an offence within the jurisdiction of the state or entity;

(b) the offence would be an indictable offence if it were committed in Canada; and

(c) the conviction and the order are not subject to further appeal.

Effect of registered order

(6) From the date it is filed under subsection (3), subject to subsection (4),

(a) an order of forfeiture of proceeds of crime has the same effect as if it were an order under subsection 462.37(1) or 462.38(2) of the *Criminal Code*; and

(b) an order for the forfeiture of offence-related property has the same effect as if it were an order under subsection 490.1(1) or 490.2(2) of the *Criminal Code* or subsection 16(1) or 17(2) of the *Controlled Drugs and Substances Act*, as the case may be.

Filing of amendments

(7) When an order is filed under subsection (3), a copy of any amendments made to the order may be filed in the same way as the order, and the amendments do not, for the purpose of this Act, have effect until they are registered.

Notice

(8) When an order has been filed under subsection (3),

(a) an order of forfeiture of proceeds of crime shall not be executed before notice in accordance with subsection 462.41(2) of the *Criminal Code* has been given to any person who, in the opinion of the court, appears to have a valid interest in the property; and

(b) an order of forfeiture of offence-related property shall not be executed before

(i) notice in accordance with subsection 490.41(2) of the *Criminal Code* or section 19.1(2) of the *Controlled Drugs and Substances Act* has been given to any person who resides in a dwelling-house that is offence-related property and who is a member of the immediate family of the person charged with or convicted of the offence in relation to which property would be forfeited, and

(ii) notice in accordance with subsection 490.4(2) of the *Criminal Code* or subsection 19(2) of the *Controlled Drugs and Substances Act* has been given to any person who, in the opinion of the court, appears to have a valid interest in the property.

Application of *Criminal Code*

(9) Subsection 462.41(3) and section 462.42 of the *Criminal Code* apply, with any modifications that the circumstances require, to a person who claims an interest in proceeds of crime, and subsections 490.4(3) and 490.41(3) and section 490.5 of the *Criminal Code* and subsections 19(3) and 20(4) of the *Controlled Drugs and Substances Act* apply, with any modifications that the circumstances require, to a person who claims an interest in offence-related property.

Presumption

(10) A person who is convicted of an offence in relation to which an order of forfeiture is issued by a court of criminal jurisdiction of a state or entity is deemed to be a person referred to in paragraph 462.41(3)(a) or 462.42(1)(a) of the *Criminal Code*.

Seized Property Management Act applies

(11) The provisions of the *Seized Property Management Act* apply in respect of all property forfeited under this section.

2001, c. 32, s. 65.

Search and Seizure

Application of *Criminal Code*

10. The *Criminal Code* applies, with any modifications that the circumstances require, in respect of a search or a seizure under this Act, except to the extent that the *Criminal Code* is inconsistent with this Act.

R.S., 1985, c. 30 (4th Supp.), s. 10; 2000, c. 24, s. 58.

Approval of request for investigative measures

11. (1) When the Minister approves a request of a state or entity to have a search or a seizure, or the use of any device or investigative technique or other procedure or the doing of any other thing to be described in a warrant, carried out regarding an offence, the Minister shall provide a competent authority with any documents or information necessary to apply for a search warrant or other warrant.

Application for warrant

(2) The competent authority who is provided with the documents or information shall apply *ex parte* for a search warrant or other warrant to a judge of the province in which the competent authority believes that evidence may be found.

R.S., 1985, c. 30 (4th Supp.), s. 11; 1999, c. 18, s. 103; 2000, c. 24, s. 59.

Issuance of search warrant

12. (1) A judge of a province to whom an application is made under subsection 11(2) may issue a search warrant authorizing a peace officer named therein to execute it anywhere in the province, where the judge is satisfied by statements under oath that there are reasonable grounds to believe that

- (a) an offence has been committed;
- (b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in a building, receptacle or place in the province; and
- (c) it would not, in the circumstances, be appropriate to make an order under subsection 18(1).

Conditions

(2) A judge who issues a search warrant under subsection (1) may subject the execution of the warrant to any conditions that the judge considers desirable, including conditions relating to the time or manner of its execution.

Hearing re execution

(3) A judge who issues a search warrant under subsection (1) shall fix a time and place for a hearing to consider the execution of the warrant as well as the report of the peace officer concerning its execution.

Contents of warrant

(4) A search warrant issued under subsection (1) may be in Form 5 in Part XXVIII of the *Criminal Code*, varied to suit the case, and must

- (a) set out the time and place for the hearing mentioned in subsection (3);
- (b) state that, at that hearing, an order will be sought for the sending to the state or entity of the records or things seized in execution of the warrant; and
- (c) state that every person from whom a record or thing is seized in execution of the warrant and any person who claims to have an interest in a record or thing so seized has the right to make representations at the hearing before any order is made concerning the record or thing.

Execution

(5) A peace officer who executes a search warrant issued under subsection (1) shall, before entering the place or premises to be searched or as soon as practicable thereafter, give a copy of the warrant to any person who is present and appears to be in charge of the place or premises.

Affixing a copy

(6) A peace officer who, in any unoccupied place or premises, executes a search warrant issued under subsection (1) shall, on entering the place or premises or as soon as practicable thereafter, cause a copy of the warrant to be affixed in a prominent place within the place or premises.

R.S., 1985, c. 30 (4th Supp.), s. 12; 1999, c. 18, s. 104; 2000, c. 24, s. 60.

Seizure of other things

13. A peace officer who executes a warrant issued under section 12 may in addition seize any thing that he believes on reasonable grounds will afford evidence of, has been obtained by or used in or is intended to be used in, the commission of an offence against an Act of Parliament, and sections 489.1 to 492 of the *Criminal Code* apply in respect of any thing seized pursuant to this section.

Other warrants

13.1 (1) A judge of the province to whom an application is made under subsection 11(2) may, in a manner provided for by the *Criminal Code*, issue a warrant, other than a warrant referred to in section 12, to use any device or other investigative technique or do anything described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property.

Criminal Code applies

(2) A warrant issued under subsection (1) may be obtained, issued and executed in the manner prescribed by the *Criminal Code*, with any modifications that the circumstances may require.

Exception

(3) Despite subsection (2), subsections 12(3) and (4) and sections 14 to 16 apply in respect of a warrant issued under subsection (1), and any sections of the *Criminal Code* inconsistent with those provisions do not apply.

2000, c. 24, s. 61.

Report

14. (1) A peace officer who executes a warrant issued under section 12 shall, at least five days before the time of the hearing to consider its execution, file with the court of which the judge who issued the warrant is a member a written report concerning the execution of the warrant and including a general description of the records or things seized, other than a thing seized under section 13.

Copy to Minister

(2) The peace officer shall send a copy of the report to the Minister forthwith after its filing.

Sending abroad

15. (1) At the hearing to consider the execution of a warrant issued under section 12, after having considered any representations of the Minister, the competent authority, the person from whom a record or thing was seized

in execution of the warrant and any person who claims to have an interest in the record or thing so seized, the judge who issued the warrant or another judge of the same court may

(a) where the judge is not satisfied that the warrant was executed according to its terms and conditions or where the judge is satisfied that an order should not be made under paragraph (b), order that a record or thing seized in execution of the warrant be returned to

(i) the person from whom it was seized, if possession of it by that person is lawful, or

(ii) the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful; or

(b) in any other case, order that a record or thing seized in execution of the warrant be sent to the state or entity mentioned in subsection 11(1) and include in the order any terms and conditions that the judge considers desirable, including terms and conditions

(i) necessary to give effect to the request mentioned in that subsection,

(ii) with respect to the preservation and return to Canada of any record or thing seized, and

(iii) with respect to the protection of the interests of third parties.

Requiring record, etc., at hearing

(2) At the hearing mentioned in subsection (1), the judge may require that a record or thing seized in execution of the warrant be brought before him.

R.S., 1985, c. 30 (4th Supp.), s. 15; 1999, c. 18, s. 105.

Terms and conditions

16. No record or thing seized that has been ordered under section 15 to be sent to the state or entity mentioned in subsection 11(1) shall be so sent until the Minister is satisfied that the state or entity has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

R.S., 1985, c. 30 (4th Supp.), s. 16; 1999, c. 18, s. 106.

Evidence for Use Abroad

Approval of request to obtain evidence

17. (1) When the Minister approves a request of a state or entity to obtain, by means of an order of a judge, evidence regarding an offence, the Minister shall provide a competent authority with any documents or information necessary to apply for the order.

Application for order

(2) The competent authority who is provided with the documents or information shall apply *ex parte* for an order for the gathering of evidence to a judge of the province in which the competent authority believes part or all of the evidence may be found.

R.S., 1985, c. 30 (4th Supp.), s. 17; 1999, c. 18, s. 107; 2000, c. 24, s. 62.

Evidence-gathering order

18. (1) A judge to whom an application is made under subsection 17(2) may make an order for the gathering of evidence, where he is satisfied that there are reasonable grounds to believe that

(a) an offence has been committed; and

(b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in Canada.

Provisions of order

(2) An order made under subsection (1) must provide for the manner in which the evidence is to be obtained in order to give effect to the request mentioned in subsection 17(1) and may

(a) order the examination, on oath or otherwise, of a person named therein, order the person to attend at the place fixed by the person designated under paragraph (c) for the examination and to remain in attendance until he is excused by the person so designated, order the person so named, where appropriate, to make a copy of a record or to make a record from data and to bring the copy or record with him, and order the person so named to bring with him any record or thing in his possession or control, in order to produce them to the person before whom the examination takes place;

(b) order a person named therein to make a copy of a record or to make a record from data and to produce the copy or record to the person designated under paragraph (c), order the person to produce any record or thing in his possession or control to the person so designated and provide, where appropriate, for any affidavit or certificate that, pursuant to the request, is to accompany any copy, record or thing so produced;

(c) designate a person before whom the examination referred to in paragraph (a) is to take place or to whom the copies, records, things, affidavits and certificates mentioned in paragraph (b) are to be produced; and

(d) order a person named in it to answer any question and to produce any record or thing to the person designated under paragraph (c) in accordance with the laws of evidence and procedure in the state or entity that presented the request.

Designation of judge

(3) For greater certainty, under paragraph (2)(c), a judge who makes an order under subsection (1) may designate himself or herself — either alone or with another person, including another judge — or may designate another person, including another judge.

Order effective throughout Canada

(4) An order made under subsection (1) may be executed anywhere in Canada.

Terms and conditions of order

(5) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named therein and of third parties.

Variation

(6) The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

Refusal to comply

(7) A person named in an order made under subsection (1) may refuse to answer any question or to produce a record or thing to the person designated under paragraph (2)(c) if

- (a) answering the question or producing the record or thing would disclose information that is protected by the Canadian law of non-disclosure of information or privilege;
- (b) requiring the person to answer the question or to produce the record or thing would constitute a breach of a privilege recognized by a law in force in the state or entity that presented the request; or
- (c) answering the question or producing the record or thing would constitute the commission by the person of an offence against a law in force in the state or entity that presented the request.

Execution of order to be completed

(8) If a person refuses to answer a question or to produce a record or thing, the person designated under paragraph (2)(c)

- (a) may, if he or she is a judge of a Canadian or foreign court, make immediate rulings on any objections or issues within his or her jurisdiction; or
- (b) shall, in any other case, continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

Statement of reasons for refusal

(9) A person named in an order made under subsection (1) who, under subsection (7), refuses to answer one or more questions or to produce certain records or things shall, within seven days, give to the person designated under paragraph (2)(c), unless that person has already ruled on the objection under paragraph (8)(a), a detailed statement in writing of the reasons on which the person bases the refusal to answer each question that the person refuses to answer or to produce each record or thing that the person refuses to produce.

Expenses

(10) A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

R.S., 1985, c. 30 (4th Supp.), s. 18; 1999, c. 18, s. 108; 2000, c. 24, s. 63; 2001, c. 32, s. 66.

Report

19. (1) A person designated pursuant to paragraph 18(2)(c) in an order made under subsection 18(1) shall make a report to the judge who made the order or another judge of the same court, accompanied by

- (a) a transcript of every examination held pursuant to the order;
- (b) a general description of every record or thing produced to the person pursuant to the order and, if the judge so requires, a record or thing itself; and
- (c) a copy of every statement given under subsection 18(9) of the reasons for a refusal to answer any question or to produce any record or thing.

Copy to Minister

(2) The person designated pursuant to paragraph 18(2)(c) shall send a copy of the report to the Minister forthwith after it is made.

Refusals

(3) If any reasons contained in a statement given under subsection 18(9) are based on the Canadian law of non-disclosure of information or privilege, a judge to whom a report is made shall determine whether those reasons are well-founded, and, if the judge determines that they are, that determination shall be mentioned in any order that the judge makes under section 20, but if the judge determines that they are not, the judge shall order that the person named in the order made under subsection 18(1) answer the questions or produce the records or things.

Refusals based on foreign law

(4) A copy of every statement given under subsection 18(9) that contains reasons that purport to be based on a law that applies to the state or entity shall be appended to any order that the judge makes under section 20.

R.S., 1985, c. 30 (4th Supp.), s. 19; 1999, c. 18, s. 109; 2000, c. 24, s. 64.

Sending abroad

20. (1) A judge to whom a report is made under subsection 19(1) may order that there be sent to the state or entity the report and any record or thing produced, as well as a copy of the order accompanied by a copy of any statement given under subsection 18(9) that contains reasons that purport to be based on a law that applies to the state or entity, as well as any determination of the judge made under subsection 19(3) that the reasons contained in a statement given under subsection 18(9) are well-founded.

Terms and conditions

(2) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, after having considered any representations of the Minister, the competent authority, the person who produced any record or thing to the person designated under paragraph 18(2)(c) and any person who claims to have an interest in any record or thing so produced, including terms and conditions

(a) necessary to give effect to the request mentioned in subsection 17(1);

(b) with respect to the preservation and return to Canada of any record or thing so produced; and

(c) with respect to the protection of the interests of third parties.

Further execution

(3) The execution of an order made under subsection 18(1) that was not completely executed because of a refusal, by reason of a law that applies to the state or entity, to answer one or more questions or to produce certain records or things to the person designated under paragraph 18(2)(c) may be continued, unless a ruling has already been made on the objection under paragraph 18(8)(a), if a court of the state or entity or a person designated by the state or entity determines that the reasons are not well-founded and the state or entity so advises the Minister.

Leave of judge required

(4) No person named in an order made under subsection 18(1) whose reasons for refusing to answer a question or to produce a record or thing are determined, in accordance with subsection (3), not to be well-founded, or whose objection has been ruled against under paragraph 18(8)(a), shall, during the continued execution of the

order or ruling, refuse to answer that question or to produce that record or thing to the person designated under paragraph 18(2)(c), except with the permission of the judge who made the order or ruling or another judge of the same court.

R.S., 1985, c. 30 (4th Supp.), s. 20; 1999, c. 18, s. 110; 2000, c. 24, s. 65.

Terms and conditions

21. No record or thing that has been ordered under section 20 to be sent to the state or entity mentioned in subsection 17(1) shall be so sent until the Minister is satisfied that the state or entity has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

R.S., 1985, c. 30 (4th Supp.), s. 21; 1999, c. 18, s. 111.

Contempt of court

22. (1) A person named in an order made under subsection 18(1) commits a contempt of court if the person refuses to answer a question or to produce a record or thing to the person designated under paragraph 18(2)(c) after a judge has ruled against the objection under paragraph 18(8)(a).

Contempt of court

(2) If no ruling has been made under paragraph 18(8)(a), a person named in an order made under subsection 18(1) commits a contempt of court if the person refuses to answer a question or to produce a record or thing to the person designated under paragraph 18(2)(c)

(a) without giving the detailed statement required by subsection 18(9); or

(b) if the person so named was already asked the same question or requested to produce the same record or thing and the reasons on which that person based the earlier refusal were determined not to be well-founded by

(i) a judge, if the reasons were based on the Canadian law of non-disclosure of information or privilege, or

(ii) a court of the state or entity or by a person designated by the state or entity, if the reasons were based on a law that applies to the state or entity.

R.S., 1985, c. 30 (4th Supp.), s. 22; 1999, c. 18, s. 112; 2000, c. 24, s. 66.

Approval of request to obtain evidence by video link, etc.

22.1 (1) If the Minister approves a request of a state or entity to compel a person to provide evidence or a statement regarding an offence by means of technology that permits the virtual presence of the person in the territory over which the state or entity has jurisdiction, or that permits the parties and the court to hear and examine the witness, the Minister shall provide a competent authority with any documents or information necessary to apply for the order.

Application for order

(2) The competent authority who is provided with the documents or information shall apply *ex parte* to a judge of the province in which the person may be found for an order for the taking of the evidence or statement from the person under subsection (1).

1999, c. 18, s. 113; 2000, c. 24, s. 67.

Order for video link, etc.

22.2 (1) The judge may make the order if satisfied that there are reasonable grounds to believe that

(a) an offence has been committed; and

(b) the state or entity believes that the person's evidence or statement would be relevant to the investigation or prosecution of the offence.

Provisions of order

(2) An order made under subsection (1) shall order the person

(a) to attend at the place fixed by the judge for the taking of the evidence or statement by means of the technology and to remain in attendance until the person is excused by the authorities of the state or entity;

(b) to answer any questions put to the person by the authorities of the state or entity or by any person authorized by those authorities, in accordance with the law that applies to the state or entity;

(c) to make a copy of a record or to make a record from data and to bring the copy or record, when appropriate; and

(d) to bring any record or thing in his or her possession or control, when appropriate, in order to show it to the authorities by means of the technology.

Order effective throughout Canada

(3) An order made under subsection (1) may be executed anywhere in Canada.

Terms and conditions of order

(4) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named in it and of third parties.

Variation

(5) The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

Expenses

(6) A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

1999, c. 18, s. 113; 2000, c. 24, s. 68.

Other laws about witnesses to apply

22.3 For greater certainty, when a witness gives evidence or a statement pursuant to an order made under section 22.2, the evidence or statement shall be given as though the witness were physically before the court or tribunal outside Canada, for the purposes of the laws relating to evidence and procedure but only to the extent that giving the evidence would not disclose information otherwise protected by the Canadian law of non-disclosure of information or privilege.

1999, c. 18, s. 113.

Contempt of court in Canada

22.4 When a witness gives evidence under section 22.2, the Canadian law relating to contempt of court applies with respect to a refusal by the person to answer a question or to produce a record or thing as ordered by the judge under that section.

1999, c. 18, s. 113.

Arrest warrant

23. (1) The judge who made the order under subsection 18(1) or section 22.2 or another judge of the same court may issue a warrant for the arrest of the person named in the order where the judge is satisfied, on an information in writing and under oath, that

- (a) the person did not attend or remain in attendance as required by the order or is about to abscond;
- (b) the order was personally served on the person; and
- (c) in the case of an order made under subsection 18(1), the person is likely to give material evidence and, in the case of an order under section 22.2, the state or entity believes that the testimony of the person would be relevant to the prosecution of the offence.

Warrant effective throughout Canada

(2) A warrant issued under subsection (1) may be executed anywhere in Canada by any peace officer.

Order

(3) A peace officer who arrests a person in execution of a warrant issued under subsection (1) shall, without delay, bring the person or cause the person to be brought before the judge who issued the warrant or another judge of the same court who may, to ensure compliance with the order made under subsection 18(1) or section 22.2, order that the person be detained in custody or released on recognizance, with or without sureties.

Copy of information

(4) A person who is arrested in execution of a warrant issued under subsection (1) is entitled to receive, on request, a copy of the information on which the warrant was issued.

R.S., 1985, c. 30 (4th Supp.), s. 23; 1999, c. 18, s. 114.

Approval of request for examination of place or site

23.1 (1) When the Minister approves a request of a state or entity to examine a place or site in Canada regarding an offence, including by means of the exhumation and examination of a grave, the Minister shall provide a competent authority with any documents or information necessary to apply for an order.

Application for order

(2) The competent authority that is provided with the documents or information shall apply *ex parte* for an order for the examination of a place or site to a judge of the province in which the place or site is located.

Terms and conditions of order

(3) An order may include any terms or conditions that the judge considers desirable, including those relating to the time and manner of its execution, and a requirement for notice.

2000, c. 24, s. 69.

Transfer of Detained Persons

Approval of transfer request

24. (1) When the Minister approves a request of a state or entity to have a detained person who is serving a term of imprisonment in Canada transferred to the state or entity, the Minister shall provide a competent authority with any documents or information necessary to apply for a transfer order.

Application for transfer order

(2) The competent authority who is provided with the documents or information shall apply for a transfer order to a judge of the province in which the person is detained.

Contents of application

(3) An application made under subsection (2) must

- (a) state the name of the detained person;
- (b) state the place of confinement of the detained person;
- (c) designate a person or class of persons into whose custody the detained person is sought to be delivered;
- (d) state the place to which the detained person is sought to be transferred;
- (e) state the reasons why the detained person is sought to be transferred; and
- (f) specify a period of time at or before the expiration of which the detained person is to be returned.

R.S., 1985, c. 30 (4th Supp.), s. 24; 1999, c. 18, s. 115.

Making of transfer order

25. (1) If the judge to whom an application is made under subsection 24(2) is satisfied, having considered, among other things, any documents filed or information given in support of the application, that the detained person consents to the transfer and that the state or entity has requested the transfer for a fixed period, the judge may make a transfer order.

Warrant to bring detained person

(2) A judge to whom an application is made under subsection 24(2) may order that the detained person be brought before him so that that person may be examined with respect to the transfer.

Terms of transfer order

(3) A transfer order made under subsection (1) must

- (a) set out the name of the detained person and his place of confinement;

(b) order the person who has custody of the detained person to deliver him into the custody of a person who is designated in the order or who is a member of a class of persons so designated;

(c) order the person receiving the detained person into custody under paragraph (b) to take him or her to the state or entity and, on the return of the detained person to Canada, to return that person to the place of confinement where he or she was when the order was made;

(d) state the reasons for the transfer; and

(e) fix the period of time at or before the expiration of which the detained person must be returned.

Terms and conditions

(4) A transfer order made under subsection (1) may include any terms or conditions that the judge making it considers desirable, including those relating to the protection of the interests of the detained person.

R.S., 1985, c. 30 (4th Supp.), s. 25; 1999, c. 18, s. 116.

Absence deemed imprisonment

26. For the purposes of Parts I and II of the *Corrections and Conditional Release Act* and the *Prisons and Reformatories Act*, a detained person who is not in the place of confinement from which he was delivered pursuant to a transfer order shall be deemed to be in that place of confinement and to have applied himself industriously to the program of the place of confinement, as long as he remains in custody pursuant to the transfer order and is of good behaviour.

R.S., 1985, c. 30 (4th Supp.), s. 26; 1992, c. 20, ss. 215, 216.

Variation of transfer order

27. A judge who made a transfer order or another judge of the same court may vary its terms and conditions.

Copy of order to jailer

28. A copy of a transfer order made under subsection 25(1) and of an order varying it made under section 27 shall be delivered, by the competent authority who applied for the order, to the Minister and to the person in whose custody the detained person was when the transfer order was made.

Exception for young persons

29. Sections 24 to 28 do not apply in respect of a person who, at the time the request mentioned in subsection 24(1) is presented, is a young person within the meaning of the *Youth Criminal Justice Act*.

R.S., 1985, c. 30 (4th Supp.), s. 29; 2002, c. 1, s. 195.

Lending Exhibits

Approval of loan request

30. (1) When the Minister approves the request of a state or entity to have an exhibit that was admitted in evidence in a proceeding in respect of an offence in a court in Canada lent to the state or entity, the Minister shall provide a competent authority with any documents or information necessary to apply for a loan order.

Application for loan order

(2) After having given reasonable notice to the attorney general of the province where the exhibit sought to be lent to the state or entity mentioned in subsection (1) is located and to the parties to the proceeding, the competent authority who is provided with the documents or information shall apply for a loan order to the court that has possession of the exhibit.

Contents of application

(3) An application made under subsection (2) must

- (a) contain a description of the exhibit requested to be lent;
- (b) designate a person or class of persons to whom the exhibit is sought to be given;
- (c) state the reasons for the request, as well as contain a description of any tests that are sought to be performed on the exhibit and a statement of the place where the tests will be performed;
- (d) state the place or places to which the exhibit is sought to be removed; and
- (e) specify a period of time at or before the expiration of which the exhibit is to be returned.

R.S., 1985, c. 30 (4th Supp.), s. 30; 1999, c. 18, s. 117.

Making of loan order

31. (1) If the court to which an application is made under subsection 30(2) is satisfied that the state or entity has requested the loan for a fixed period and has agreed to comply with the terms and conditions that the court proposes to include in any loan order, the court may, after having considered any representations of the persons to whom notice of the application was given in accordance with subsection 30(2), make a loan order.

Terms of loan order

(2) A loan order made under subsection (1) must

- (a) contain a description of the exhibit;
- (b) order the person who has possession of the exhibit to give it to a person designated in the order or who is a member of a class of persons so designated;
- (c) contain a description of any tests thereby authorized to be performed on the exhibit, as well as a statement of the place where the tests must be performed;
- (d) fix the place or places to which the exhibit may be removed; and
- (e) fix the period of time at or before the expiration of which the exhibit must be returned.

Terms and conditions

(3) A loan order made under subsection (1) may include any terms or conditions that the court making it considers desirable, including those relating to the preservation of the exhibit.

R.S., 1985, c. 30 (4th Supp.), s. 31; 1999, c. 18, s. 118.

Variation of loan order

32. A court that made a loan order may vary its terms and conditions.

Copy of order to custodian

33. A copy of a loan order and of an order varying it shall be delivered by the competent authority who applied for the order to the Minister and to the person who had possession of the exhibit when the loan order was made.

Presumption of continuity

34. The burden of proving that an exhibit lent to a state or entity pursuant to a loan order made under subsection 31(1) and returned to Canada is not in the same condition as it was when the loan order was made or that it was tampered with after the loan order was made is on the party who makes that allegation and, in the absence of that proof, the exhibit is deemed to have been continuously in the possession of the court that made the loan order.

R.S., 1985, c. 30 (4th Supp.), s. 34; 1999, c. 18, s. 119.

Appeal

Appeal on question of law

35. An appeal lies, with leave, on a question of law alone, to the court of appeal, within the meaning of section 2 of the *Criminal Code*, from any order or decision of a judge or a court in Canada made under this Act, if the application for leave to appeal is made to a judge of the court of appeal within fifteen days after the order or decision.

R.S., 1985, c. 30 (4th Supp.), s. 35; 1994, c. 44, s. 95.

PART II

ADMISSIBILITY IN CANADA OF EVIDENCE OBTAINED ABROAD PURSUANT TO AN AGREEMENT

Foreign records

36. (1) In a proceeding with respect to which Parliament has jurisdiction, a record or a copy of the record and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, sent to the Minister by a state or entity in accordance with a Canadian request, is not inadmissible in evidence by reason only that a statement contained in the record, copy, affidavit, certificate or other statement is hearsay or a statement of opinion.

Probative value

(2) For the purpose of determining the probative value of a record or a copy of a record admitted in evidence under this Act, the trier of fact may examine the record or copy, receive evidence orally or by affidavit, or by a certificate or other statement pertaining to the record in which a person attests that the certificate or statement is made in conformity with the laws that apply to a state or entity, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the state or entity, including evidence as to the circumstances in which the information contained in the record or copy was written, stored or reproduced, and draw any reasonable inference from the form or content of the record or copy.

R.S., 1985, c. 30 (4th Supp.), s. 36; 1994, c. 44, s. 96; 1999, c. 18, s. 120.

Foreign things

37. In a proceeding with respect to which Parliament has jurisdiction, a thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a state or entity as to the identity and possession of the thing from the time it was obtained until its sending to a competent authority in Canada by the state or entity in accordance with a Canadian request, are not inadmissible in evidence by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion.

R.S., 1985, c. 30 (4th Supp.), s. 37; 1994, c. 44, s. 97; 1999, c. 18, s. 120.

Status of certificate

38. (1) An affidavit, certificate or other statement mentioned in section 36 or 37 is, in the absence of evidence to the contrary, proof of the statements contained therein without proof of the signature or official character of the person appearing to have signed the affidavit, certificate or other statement.

Notice

(2) Unless the court decides otherwise, in a proceeding with respect to which Parliament has jurisdiction, no record or copy thereof, no thing and no affidavit, certificate or other statement mentioned in section 36 or 37 shall be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced seven days notice, excluding holidays, of that intention, accompanied by a copy of the record, copy, affidavit, certificate or other statement and unless, in the case of a thing, the party intending to produce it has made it available for inspection by the party against whom it is intended to be produced during the five days following a request by that party that it be made so available.

Service abroad

39. The service of a document in the territory over which the state or entity has jurisdiction may be proved by affidavit of the person who served it.

R.S., 1985, c. 30 (4th Supp.), s. 39; 1999, c. 18, s. 121.

PART III

IMPLEMENTATION OF AGREEMENTS IN CANADA

Special Authorization to Come Into Canada

Special authorization

40. (1) The Minister may, in order to give effect to a request of a Canadian competent authority, authorize a person in a state or entity who is inadmissible under the *Immigration and Refugee Protection Act* to come into Canada at a place designated by the Minister and to go to and remain in a place in Canada so designated for the period of time specified by the Minister, and the Minister may make the authorization subject to any conditions that the Minister considers desirable.

Variation of authorization

(2) The Minister may vary the terms of an authorization granted under subsection (1) and, in particular, may extend the period of time during which the person is authorized to remain in a place in Canada.

Non-compliance with conditions of authorization

(3) A person to whom an authorization is granted under subsection (1) who is found in a place in Canada other than the place designated in the authorization or in any place in Canada after the expiration of the period of time specified in the authorization or who fails to comply with some other condition of the authorization shall, for the purposes of the *Immigration and Refugee Protection Act*, be deemed to be a person who entered Canada as a temporary resident and remains after the period authorized for their stay.

R.S., 1985, c. 30 (4th Supp.), s. 40; 1999, c. 18, s. 123; 2001, c. 27, s. 261.

Safe conduct

41. (1) A person who is in Canada pursuant to a request to give evidence in a proceeding or to give assistance in relation to an investigation or proceeding

(a) may not be detained, prosecuted or punished in Canada for any act or omission that occurred before the person's departure from the state or entity pursuant to the request;

(b) is not subject to civil process in respect of any act or omission that occurred before the person's departure from the state or entity pursuant to the request; and

(c) may not be required to give evidence in any proceeding in Canada other than the proceeding to which the request relates.

Limitation

(2) Subsection (1) ceases to apply to a person who is in Canada pursuant to a request when the person leaves Canada or has the opportunity to leave Canada but remains in Canada for a purpose other than fulfilling the request.

R.S., 1985, c. 30 (4th Supp.), s. 41; 1999, c. 18, s. 124.

Detention in Canada

Detention of transferred person

42. (1) When the Minister, in order to give effect to a request of a Canadian competent authority, authorizes a person who is detained in a state or entity to be transferred to Canada for a period of time specified by the Minister, a judge of the province to which the person is to be transferred may make an order for the detention of the person anywhere in Canada and for the return of the person to the state or entity.

Paramountcy of detention order

(2) An order made under subsection (1) is paramount to any order made, in respect of anything that occurred before the person is transferred to Canada, by a Canadian court, a judge of a Canadian court, a Canadian justice of the peace or any other person who has power in Canada to compel the appearance of another person.

Variation of detention order

(3) The judge who made the detention order or another judge of the same court may vary its terms and conditions and, in particular, may extend the duration of the detention.

R.S., 1985, c. 30 (4th Supp.), s. 42; 1999, c. 18, s. 125.

Determination of the Validity of Refusals

Powers of judge

43. When a Canadian request is presented to a state or entity and a person in the state or entity refuses to answer one or more questions or to give up certain records or things by reason of a law in force in Canada, a judge may determine the validity of the refusal on application made, on reasonable notice to the person, by a Canadian competent authority.

R.S., 1985, c. 30 (4th Supp.), s. 43; 1999, c. 18, s. 126.

Privilege for Foreign Records

Privilege

44. (1) Subject to subsection 38(2), a record sent to the Minister by a state or entity in accordance with a Canadian request is privileged and no person shall disclose to anyone the record or its purport or the contents of the record or any part of it before the record, in compliance with the conditions on which it was so sent, is made public or disclosed in the course or for the purpose of giving evidence.

Idem

(2) No person in possession of a record mentioned in subsection (1) or of a copy thereof, or who has knowledge of any information contained in the record, shall be required, in connection with any legal proceedings, to produce the record or copy or to give evidence relating to any information that is contained therein.

R.S., 1985, c. 30 (4th Supp.), s. 44; 1999, c. 18, s. 127.

PART IV

CONSEQUENTIAL AMENDMENTS AND COMING INTO FORCE

Criminal Code

45. [Amendment]

Crown Liability Act

46. [Amendment]

Immigration Act

47. and 48. [Amendments]

Coming into Force

Coming into force

*49. This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

* [Note: Act in force October 1, 1988, see SI/88-199.]

SCHEDULE

(Sections 2, 4, 6 and 8)

DESIGNATED STATES OR ENTITIES

International Criminal Court

The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Resolution 955 (1994) of the Security Council of the United Nations

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991, established by Resolution 827 (1993) of the Security Council of the United Nations

R.S., 1985, c. 30 (4th Supp.), Sch.; SOR/90-704; SOR/93-446; SOR/98-382; 1999, c. 18, s. 128; SOR/2005-228.

RELATED PROVISION

-- 1998, c. 30, s. 10:

Transitional — proceedings

10. Every proceeding commenced before the coming into force of this section and in respect of which any provision amended by sections 12 to 16 applies shall be taken up and continued under and in conformity with that amended provision without any further formality.

III. The Proceeds of Crime (Money Laundering) and Terrorist Financing Act of 30 June 2007

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

(S.C. 2000, c. 17; S.C. 2000 c. 24;
S.C. 2001, c. 12; S.C. 2001, c. 27;
S.C. 2001, c. 32; S.C. 2001, c. 41;
S.C. 2002, c. 8; S.C. 2003, c. 22;
S.C. 2004, c. 11; S.C. 2004, c. 15;
S.C. 2005, c. 10; S.C. 2005, c. 38
and S.C. 2006, c. 12)

SHADED TEXT HIGHLIGHTS PROVISIONS TO COME INTO FORCE IN 2008

June 30, 2007

(Office Consolidation)

An Act to facilitate combatting the laundering of proceeds of crime and combatting the financing of terrorist activities, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence

(S.C. 2001, c. 41, s. 47)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. (S.C. 2001, c. 41, s. 48)

INTERPRETATION

Definitions

2. The definitions in this section apply in this Act.

"authorized person" "*personne autorisée*"

"authorized person" means a person who is authorized under subsection 45(2).

"Centre" "*Centre*"

"Centre" means the Financial Transactions and Reports Analysis Centre of Canada established by section 41.

"client" "*client*"

"client" means a person or an entity that engages in a financial transaction or activity with a person or an entity referred to in section 5, and includes a person or an entity on whose behalf the person or the entity that engages in the transaction or activity is acting. (S.C. 2001, c. 41, s. 49)

"courier" "*messenger*"

"courier" means a courier as defined by regulation. (S.C. 2001, c. 41 s. 49)

"customs office" "*bureau de douane*"

"customs office" has the same meaning as in subsection 2(1) of the *Customs Act*.

"entity" "*entité*"

"entity" means a body corporate, a trust, a partnership, a fund or an unincorporated association or organization. (S.C. 2001, c. 41, s. 49)

"legal counsel" "*conseiller juridique*"

"legal counsel" means, in the Province of Quebec, an advocate or a notary and, in any other province, a barrister or solicitor.

"mail" "*envois*" ou "*courier*"

"mail" has the same meaning as in subsection 2(1) of the *Canada Post Corporation Act*.

"Minister" "*ministre*"

"Minister" means, in relation to sections 24.1 to 39, the Minister of Public Safety and Emergency Preparedness and, in relation to any other provision of this Act, the Minister of Finance. (S.C. 2005, c. 38, s. 124 and par. 145(2)(h); S.C. 2006, c. 12, s. 1)

"money laundering offence" "*infraction de recyclage des produits de la criminalité*"

"money laundering offence" means an offence under subsection 462.31(1) of the *Criminal Code*. (S.C. 2000, c. 24, s. 76.1; S. C. 2001, c. 32, s. 70; S.C. 2001, c. 41, s. 132)

"officer" "*agent*"

"officer" has the same meaning as in subsection 2(1) of the *Customs Act*.

"person" "*personne*"

"person" means an individual. (S.C. 2001, c. 41, s. 49)

"prescribed" "*Version anglaise seulement*"

"prescribed" means prescribed by regulations made by the Governor in Council.

"President" "*président*"

"President" means the President of the Canada Border Services Agency appointed under subsection 7(1) of the *Canada Border Services Agency Act*. (S.C. 2005, c. 38, s. 124)

"terrorist activity" "*activité terroriste*"

"terrorist activity" has the same meaning as in subsection 83.01(1) of the *Criminal Code*. (S.C. 2001, c. 41, s. 49)

"terrorist activity financing offence" "*infraction de financement des activités terroristes*"

"terrorist activity financing offence" means an offence under section 83.02, 83.03 or 83.04 of the *Criminal Code* or an offence under section 83.12 of the *Criminal Code* arising out of a contravention of section 83.08 of that Act. (S.C. 2001, c. 41, s. 49)

"threats to the security of Canada" "*menaces envers la sécurité du Canada*"

"threats to the security of Canada" has the same meaning as in section 2 of the *Canadian Security Intelligence Service Act*. (S.C. 2001, c. 41, s. 49)

"violation" "violation"

"violation" means a contravention of this Act or the regulations that is designated as a violation by regulations made under subsection 73.1(1).

OBJECT OF ACT

Object

3. The object of this Act is

(a) to implement specific measures to detect and deter money laundering and the financing of terrorist activities and to facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences, including

(i) establishing record keeping and client identification requirements for financial services providers and other persons or entities that engage in businesses, professions or activities that are susceptible to being used for money laundering or the financing of terrorist activities, (S.C. 2001, c. 41, s. 50)

(ii) requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, and

(iii) establishing an agency that is responsible for dealing with reported and other information;

(b) to respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves; and

(c) to assist in fulfilling Canada's international commitments to participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist activity. (S.C. 2001, c. 41, s. 50)

HER MAJESTY

Binding on Her Majesty

4. This Act is binding on Her Majesty in right of Canada or a province.

PART 1

RECORD KEEPING, VERIFYING IDENTITY, REPORTING OF SUSPICIOUS TRANSACTIONS AND REGISTRATION

Application

Application of Part

5. This Part applies to the following persons and entities:

(a) authorized foreign banks within the meaning of section 2 of the *Bank Act* in respect of their business in Canada, or banks to which that Act applies;

(b) cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;

(c) life companies or foreign life companies to which the *Insurance Companies Act* applies or life insurance companies regulated by a provincial Act;

(d) companies to which the *Trust and Loan Companies Act* applies;

(e) trust companies regulated by a provincial Act;

(f) loan companies regulated by a provincial Act;

(g) persons and entities authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments, or to provide portfolio management or investment advising services;

(h) persons and entities engaged in the business of foreign exchange dealing, of remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network, or of issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments except for cheques payable to a named person or entity;

(i) persons and entities engaged in a business, profession or activity described in regulations made under paragraph 73(1)(a);
(S.C. 2001, c. 41, s. 51)

(j) persons and entities engaged in a business or profession described in regulations made under paragraph 73(1)(b), while carrying out the activities described in the regulations; (S.C. 2001, c. 41, s. 51)

(k) casinos, as defined in the regulations, including those owned or controlled by Her Majesty;

(l) departments and agents of Her Majesty in right of Canada or of a province that are engaged in the business of accepting deposit liabilities, that sell money orders to the public or that sell prescribed precious metals, while carrying out the activities described in regulations made under paragraph 73(1)(c); and

(m) for the purposes of section 7, employees of a person or entity referred to in any of paragraphs (a) to (l). (S.C. 2001, c. 41, s. 51)

RECORD KEEPING AND VERIFYING IDENTITY

Record Keeping

6. Every person or entity referred to in section 5 shall keep and retain prescribed records in accordance with the regulations.

Verifying identity

6.1 Every person or entity referred to in section 5 shall verify, in the prescribed circumstances and in accordance with the regulations, the identity of any person or entity.

REPORTING AND OTHER REQUIREMENTS

Transactions if reasonable grounds to suspect

7. Subject to section 10.1, every person or entity referred to in section 5 shall report to the Centre, in the prescribed form and manner, every financial transaction that occurs or that is attempted in the course of their activities and in respect of which there are reasonable grounds to suspect that

- (a) the transaction is related to the commission or the attempted commission of a money laundering offence; or
- (b) the transaction is related to the commission or the attempted commission of a terrorist activity financing offence.

Disclosure

7.1 (1) Every person or entity referred to in section 5 that is required to make a disclosure under section 83.1 of the *Criminal Code* or under section 8 of the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* shall also make a report on it to the Centre, in the prescribed form and manner.

Limitation

(2) Subsection (1) does not apply to prescribed persons or entities, or prescribed classes of persons or entities, in respect of prescribed transactions or property, or classes of transactions or property, if the prescribed conditions are met. (S.C. 2001, c. 41, s. 52)

No disclosure of reports

8. No person or entity shall disclose that they have made a report under section 7, or disclose the contents of such a report, with the intent to prejudice a criminal investigation, whether or not a criminal investigation has begun.

Prescribed financial transactions

9. (1) Subject to section 10.1, every person or entity referred to in section 5 shall report to the Centre, in the prescribed form and manner, every prescribed financial transaction that occurs in the course of their activities. (S.C. 2006, c. 12, s. 7)

Limitation

(2) Subsection (1) does not apply to prescribed persons or entities, or prescribed classes of persons or entities, in respect of prescribed transactions, classes of transactions, clients or classes of clients, if the prescribed conditions are met.

List of persons

(3) Every person or entity referred to in section 5 shall establish and maintain a list, in the prescribed form and manner, of their clients in respect of whom a report would have been required under subsection (1) were it not for subsection (2). However, a person or an entity may choose to report a client's transactions under subsection (1) instead of maintaining the list in respect of that client. (S.C. 2006, c. 12, s. 7)

Reports under other Acts

9.1 Subject to section 9, every person or entity that is required to make a report to the Centre under an Act of Parliament or any regulations under it shall make it in the form and manner prescribed under this Act for a report under that Act. (S.C. 2001, c. 41, s. 53)

Inability to establish identity

9.2 No person or entity referred to in section 5 shall open an account for a client, in the prescribed circumstances, if it cannot establish the identity of the client in accordance with the prescribed measures.

Politically exposed foreign person

9.3 (1) Every person or entity that is referred to in section 5 and that is prescribed shall determine, in the prescribed circumstances and in accordance with the regulations, whether it is dealing with a politically exposed foreign person.

Measures

(2) If the person or entity determines that it is dealing with a politically exposed foreign person, the person or entity shall obtain the approval of senior management in the prescribed circumstances and take prescribed measures.

Definition of "politically exposed foreign person"

(3) For the purposes of this section, "politically exposed foreign person" means a person who holds or has held one of the following offices or positions in or on behalf of a foreign state:

- (a) head of state or head of government;
- (b) member of the executive council of government or member of a legislature;
- (c) deputy minister or equivalent rank;
- (d) ambassador or attaché or counsellor of an ambassador;
- (e) military officer with a rank of general or above;
- (f) president of a state-owned company or a state-owned bank;
- (g) head of a government agency;
- (h) judge;
- (i) leader or president of a political party represented in a legislature; or
- (j) holder of any prescribed office or position.

It includes any prescribed family member of such a person.

Correspondent banking

9.4 (1) Every entity referred to in any of paragraphs 5(a), (b), (d) and (e) and every other entity that is referred to in section 5 and that is prescribed shall take the following measures before entering into a correspondent banking relationship with a prescribed foreign entity:

- (a) obtain prescribed information about the foreign entity and its activities;
- (b) ensure that the foreign entity is not a shell bank as defined in the regulations;
- (c) obtain the approval of senior management;
- (d) set out in writing their obligations and those of the foreign entity in respect of the correspondent banking services; and
- (e) any prescribed measures.

Prohibition – shell bank

(2) No person or entity shall enter into a correspondent banking relationship with a shell bank as defined in the regulations.

Definition of "correspondent banking relationship"

(3) For the purposes of this section, "correspondent banking relationship" means a relationship created by an agreement or arrangement under which an entity referred to in any of paragraphs 5(a), (b), (d) and (e) or an entity that

is referred to in section 5 and that is prescribed undertakes to provide to a prescribed foreign entity services such as international electronic funds transfers, cash management, cheque clearing and any prescribed services.

Electronic funds transfer

9.5 Every person or entity that is referred to in section 5 and that is prescribed shall, in respect of a prescribed electronic funds transfer that occurs in the course of their financial activities,

(a) include with the transfer the name, address, and account number or other reference number, if any, of the client who requested it, and any prescribed information;

(b) take reasonable measures to ensure that any transfer that the person or entity receives includes that information; and

(c) take any prescribed measures.

Compliance program

9.6 (1) Every person or entity referred to in section 5 shall establish and implement, in accordance with the regulations, a program intended to ensure their compliance with this Part.

Risk assessment

(2) The program shall include the development and application of policies and procedures for the person or entity to assess, in the course of their activities, the risk of a money laundering offence or a terrorist activity financing offence

Special measures

(3) If the person or entity considers that the risk referred to in subsection (2) is high, the person or entity shall take prescribed special measures for identifying clients, keeping records and monitoring financial transactions in respect of the activities that pose the high risk.

Foreign subsidiaries

9.7 (1) Every person or entity referred to in any of paragraphs 5(a) to (g), except for authorized foreign banks within the meaning of section 2 of the *Bank Act* and for authorized foreign companies within the meaning of section 2 of the *Insurance Companies Act*, shall ensure that their wholly owned subsidiaries, that are located in a country that is not a member of the Financial Action Task Force and that carry out activities similar to those of persons and entities referred to in those paragraphs, develop and apply policies and procedures that are consistent with the requirements of sections 6, 6.1 and 9.6 when the laws of the country permit it.

Record keeping

(2) If the development or application by a subsidiary of a policy or procedure referred to in subsection (1) would contravene the laws of the country in which the subsidiary is located, the person or entity shall keep and retain a record of that fact in accordance with section 6.

Definition of "Financial Action Task Force"

(3) For the purposes of this section, "Financial Action Task Force" means the Financial Action Task Force on Money Laundering established in 1989.

Foreign branches

9.8 Every entity referred to in paragraphs 5(a) to (g), except for authorized foreign banks within the meaning of section 2 of the *Bank Act* and for authorized foreign companies within the meaning of section 2 of the *Insurance Companies Act*, shall ensure that their branches, that are located in a country that is not a member of the Financial Action Task Force and that carry out activities similar to those of persons and entities referred to in those paragraphs, develop and apply policies and procedures that are consistent with the requirements of sections 6, 6.1 and 9.6 when the laws of the country permit it.

Immunity

10. No criminal or civil proceedings lie against a person or an entity for making a report in good faith under section 7, 7.1 or 9, or for providing the Centre with information about suspicions of money laundering or of the financing of terrorist activities.

(S.C. 2001, c. 41, s. 53)

Non -application to legal counsel

10.1 Sections 7 and 9 do not apply to persons or entities referred to in paragraph 5(i) or (j) who are, as the case may be, legal counsel or legal firms, when they are providing legal services. (S.C. 2006, c. 12, s. 9)

Solicitor-client privilege

11. Nothing in this Part requires a legal counsel to disclose any communication that is subject to solicitor-client privilege.

REGISTRATION *Application and Revocation*

Registration requirement

11.1 Except as otherwise provided in the regulations, every person or entity referred to in paragraph 5(h), those referred to in paragraph 5(l) that sell money orders to the public, and every other person or entity that is referred to in section 5 and that is prescribed must be registered with the Centre in accordance with this section and sections 11.11 to 11.2.

Ineligible for registration

11.11 (1) The following persons or entities are not eligible for registration with the Centre:

(a) a listed person as defined in section 1 of the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism;

(b) a listed entity as defined in subsection 83.01(1) of the *Criminal Code*;

(c) a person or entity that has been convicted of any of the following:

(i) a money laundering offence,

(ii) a terrorist activity financing offence,

(iii) an offence under this Act when convicted on indictment,

(iv) an offence under any of sections 83.18 to 83.231, 354 or 467.11 to 467.13 of the *Criminal Code*, or

(v) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in subparagraphs (i) to (iv);

(d) a person or entity that has been convicted on indictment or convicted more than once for an offence under Part X of the *Criminal Code* or under the *Controlled Drugs and Substances Act* except for the offence under subsection 4(1) of that Act;

(e) an entity that is a corporation in respect of which a director, the chief executive officer, the president or the person who owns or controls, directly or indirectly, 20 per cent or more of the shares has been convicted on indictment of an offence under this Act; or

(f) any prescribed person or entity.

Revocation of registration

(2) If the Centre becomes aware that a person or entity referred to in subsection (1) is registered, the Centre shall revoke the registration and shall, without delay, inform the person or entity of the revocation.

Application for registration

11.12 (1) An application for registration shall be submitted to the Centre in the prescribed form and manner, shall include a list of the applicant's agents, mandataries or branches that are engaged, on behalf of the applicant, in the activities referred to in paragraph 5(*h*), in selling money orders to the public if the applicant is a person or entity referred to in paragraph 5(*l*), or in any prescribed activities, and shall include any prescribed information.

Agents, mandataries and branches

(2) Any agent, mandatory or branch included on the list is not required to register with the Centre when they are acting in that capacity.

Changes to information

11.13 An applicant or a person or entity registered with the Centre shall notify the Centre, in the prescribed form and manner, of any change to the information provided in the application or of any newly obtained information that should have been included in the application within 30 days after the day on which the applicant or the registered person or entity becomes aware of the change or obtains the new information.

Clarifications – applicant

11.14 (1) An applicant shall provide the Centre, in the prescribed form and manner, with any clarifications that the Centre may request in respect of the prescribed information and the list referred to in subsection 11.12(1) within 30 days after the day on which the request is made.

Denial of application

(2) If the applicant does not provide the Centre with the clarifications within the 30 days, the Centre may deny the application and shall, without delay, inform the applicant of the denial.

Notice of registration

11.15 The applicant is registered with the Centre once the Centre adds the applicant to the registry referred to in subsection 54.1(1). The Centre shall, without delay, send the applicant notice of their registration.

Denial of application

11.16 The Centre shall deny the application of any person or entity referred to in subsection 11.11(1) and shall, without delay, inform the applicant of the denial.

Clarifications – registrant

11.17 (1) A registered person or entity shall provide the Centre, in the prescribed form and manner, with any clarifications that the Centre may request in respect of the prescribed information and the list referred to in subsection 11.12(1) within 30 days after the day on which the request is made.

Revocation of registration

(2) If the registered person or entity does not provide the Centre with the clarifications within the 30 days, the Centre may revoke the registration and shall, without delay, inform the person or entity of the revocation.

Written reasons

11.18 Any decision to deny an application or revoke a registration must be in writing with reasons.

Renewal of registration

11.19 A registered person or entity shall renew their registration in the prescribed form and manner every two years or within any longer prescribed period.

Cessation of activity

11.2 When a registered person or entity ceases an activity for which they are registered, they shall notify the Centre in the prescribed form and manner within 30 days after the day on which they cease the activity.

Review

Application for review by Director

11.3 (1) Within 30 days after the day on which the person or entity receives a decision to deny their application or revoke their registration, the person or entity may apply in writing to the Director of the Centre for a review of the decision and may provide any information in support of their application for review.

Review by Director

(2) The Director shall review the decision as soon as possible and shall take into consideration any information that the Director deems relevant.

Decision of Director

(3) The Director may either confirm the decision or substitute his or her own decision, and shall, without delay, serve notice of the decision with reasons on the person or entity, together with notice of the right of appeal under subsection 11.4(1).

Appeal to Federal Court

Appeal

11.4 (1) A person or entity that applied for a review under subsection 11.3(1) may appeal the Director's decision to the Federal Court within 30 days after the day on which the decision is served, or within any longer period that the Court allows.

(2) If the Director does not make a decision within 90 days after the day on which the Director received the application for review, the applicant may appeal to the Federal Court, within 30 days after the day on which the 90-day period expires, the decision to deny the application for registration or revoke the registration.

Precaution against disclosure

(3) In an appeal, the Court shall take every reasonable precaution, including, when appropriate, conducting hearings in private, to avoid the disclosure by the Court or any person or entity of information referred to in subsection 55(1).

PART 2

REPORTING OF CURRENCY AND MONETARY INSTRUMENTS

Reporting

Currency and monetary instruments

12. (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations,

the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

(S.C. 2001, c. 41, s. 54)

Limitation

(2) A person or entity is not required to make a report under subsection (1) in respect of an activity if the prescribed conditions are met in respect of the person, entity or activity, and if the person or entity satisfies an officer that those conditions have been met.

Who must report

(3) Currency or monetary instruments shall be reported under subsection (1)

(a) in the case of currency or monetary instruments in the actual possession of a person arriving in or departing from Canada, or that form part of their baggage if they and their baggage are being carried on board the same conveyance, by that person or, in prescribed circumstances, by the person in charge of the conveyance; (S.C. 2001, c. 41, s. 54; S.C. 2006, c. 12, s. 12(F))

(b) in the case of currency or monetary instruments imported into Canada by courier or as mail, by the exporter of the currency or monetary instruments or, on receiving notice under subsection 14(2), by the importer;

(c) in the case of currency or monetary instruments exported from Canada by courier or as mail, by the exporter of the currency or monetary instruments;

(d) in the case of currency or monetary instruments, other than those referred to in paragraph (a) or imported or exported as mail, that are on board a conveyance arriving in or departing from Canada, by the person in charge of the conveyance; and

(e) in any other case, by the person on whose behalf the currency or monetary instruments are imported or exported.

Duty to answer and comply with the request

(4) If a report is made in respect of currency or monetary instruments, the person arriving in or departing from Canada with the currency or monetary instruments shall

(a) answer truthfully any questions that the officer asks with respect to the information required to be contained in the report; and

(b) on request of an officer, present the currency or monetary instruments that they are carrying or transporting, unload any conveyance or part of a conveyance or baggage and open or unpack any package or container that the officer wishes to examine.

Sending reports to Centre

(5) Officers shall send the reports they receive under subsection (1) to the Centre.

Decision not to proceed with importing or exporting

13. A person or an entity that is required to report currency or monetary instruments may, at any time before they are retained under subsection 14(1) or forfeited as a result of a contravention of subsection 12(1), decide not to proceed further with importing or exporting them.

Retention

Temporary retention

14. (1) Subject to subsections (2) to (5), if a person or an entity indicates to an officer that they have currency or

monetary instruments to report under subsection 12(1) but the report has not yet been completed, the officer may, after giving notice in the prescribed manner to the person or entity, retain the currency or monetary instruments for the prescribed period.

Importation or exportation by courier or as mail

(2) In the case of currency or monetary instruments imported or exported by courier or as mail, the officer shall, within the prescribed period, give the notice to the exporter if the exporter's address is known, or, if the exporter's address is not known, to the importer.

Limitation

(3) Currency or monetary instruments may no longer be retained under subsection (1) if, during the period referred to in that subsection,

(a) the officer is satisfied that the currency or monetary instruments have been reported under subsection 12(1); or

(b) the importer or exporter of the currency or monetary instruments advises the officer that they have decided not to proceed further with importing or exporting them.

Content of notice

(4) The notice referred to in subsection (1) must state

(a) the period for which the currency or monetary instruments may be retained;

(b) that if, within that period, the currency or monetary instruments are reported under subsection 12(1) or the importer or exporter decides not to proceed further with importing or exporting them, they may no longer be retained; and

(c) that currency or monetary instruments retained at the end of that period are forfeited to Her Majesty in right of Canada at that time.

Forfeiture and report to Centre

(5) Currency or monetary instruments that are retained by an officer under subsection (1) are forfeited to Her Majesty in right of Canada at the end of the period referred to in that subsection, and the officer shall send any incomplete report in respect of the forfeited currency or monetary instruments made under subsection 12(1) to the Centre.

Searches

Search of the person

15. (1) An officer may search

(a) any person who has arrived in Canada, within a reasonable time after their arrival in Canada,

(b) any person who is about to leave Canada, at any time before their departure, or

(c) any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after they leave the area,

if the officer suspects on reasonable grounds that the person has secreted on or about their person currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and that have not been reported in accordance with that subsection. (S.C. 2001, c. 41, s. 55)

Person taken before senior officer

(2) An officer who is about to search a person under this section shall, on the person's request, without delay take the person before the senior officer at the place where the search is to take place.

Discharge or search

(3) A senior officer before whom a person is taken under subsection (2) shall, if the senior officer believes there are no reasonable grounds for suspicion under subsection (1), discharge the person or, if the senior officer believes otherwise, direct that the person be searched.

Search by same sex

(4) No person shall be searched under this section by a person who is not of the same sex, and if there is no officer of the same sex at the place where the search is to take place, an officer may authorize any suitable person of the same sex to perform the search.

Search of conveyance

16. (1) An officer may, in order to determine whether there are, on or about a conveyance, currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and that have not been reported in accordance with that subsection, stop, board and search the conveyance, examine anything in or on it and open or cause to be opened any package or container in or on it and direct that the conveyance be moved to a customs office or other suitable place for the search, examination or opening. (S.C. 2001, c. 41, s. 56; S.C. 2006, c. 12, s. 13)

Search of baggage

(2) An officer may, in order to determine whether there are, in baggage, currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and that have not been reported in accordance with that subsection, search the baggage, examine anything in it and open or cause to be opened any package or container in it and direct that the baggage be moved to a customs office or other suitable place for the search, examination or opening. (S.C. 2001, c. 41, s. 56; S.C. 2006, c. 12, s. 13)

Examination and opening of mail

17. (1) An officer may examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds contains currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1). (S.C. 2001, c. 41, s. 57)

Exception

(2) An officer may not open or cause to be opened any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached to the mail a label in accordance with article 116 of the Detailed Regulations of the Universal Postal Convention.

Opening of mail in officer's presence

(3) An officer may cause mail that weighs 30 grams or less to be opened in the officer's presence by the person to whom it is addressed, the person who sent it or a person authorized by either of those persons.

Seizures

Seizure and forfeiture

18. (1) If an officer believes on reasonable grounds that subsection 12(1) has been contravened, the officer may seize as forfeit the currency or monetary instruments.

Return of seized currency or monetary instruments

(2) The officer shall, on payment of a penalty in the prescribed amount, return the seized currency or monetary instruments to the person from whom they were seized or to the lawful owner unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3 (1)

of the *Criminal Code* or funds for use in the financing of terrorist activities.

(S.C. 2001, c. 32, s. 71;
S.C. 2001, c. 41, ss. 58 and 134)

Notice of seizure

(3) An officer who seizes currency or monetary instruments under subsection (1) shall

(a) if they were not imported or exported as mail, give the person from whom they were seized written notice of the seizure and of the right to review and appeal set out in sections 25 and 30;

(b) if they were imported or exported as mail and the address of the exporter is known, give the exporter written notice of the seizure and of the right to review and appeal set out in sections 25 and 30; and

(c) take the measures that are reasonable in the circumstances to give notice of the seizure to any person whom the officer believes on reasonable grounds is entitled to make an application under section 32 in respect of the currency or monetary instruments.

Service of notice

(4) The service of a notice under paragraph (3)(b) is sufficient if it is sent by registered mail addressed to the exporter.

Power to call in aid

19. An officer may call on other persons to assist the officer in exercising any power of search, seizure or retention that the officer is authorized under this Part to exercise, and any person so called on is authorized to exercise the power.

Recording of reasons for decision

19.1 If an officer decides to exercise powers under subsection 18(1), the officer shall record in writing reasons for the decision.

Report to President and the Centre

20. If the currency or monetary instruments have been seized under section 18, the officer who seized them shall without delay report the circumstances of the seizure to the President and to the Centre.

(S.C. 2005, c. 38, par. 127(a))

Exported Mail

Mail to be made available to an officer

21. (1) On request of an officer, any mail that is being sent from a place in Canada to a place in a foreign country and that contains or is suspected to contain currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) shall be submitted by the Canada Post Corporation to an officer.

(S.C. 2001, c. 41, s. 59)

Mail in the course of post

(2) All mail that is submitted to an officer under this section remains, for the purposes of the *Canada Post Corporation Act*, in the course of post unless it is retained or seized under this Part.

Notice of retention or seizure

(3) If mail is retained or seized under this Part, notice of the retention or seizure shall be given in writing to the Canada Post Corporation within 60 days after the retention or seizure unless the mail has, before the expiry of that period, been returned to the Corporation.

Mail subject to customs laws

(4) An officer shall deal with all mail submitted to the officer under this section in accordance with the laws relating to customs and this Part and, subject to those laws and this Part, shall return it to the Canada Post Corporation.

Non-mailable matter

(5) Any non-mailable matter found by an officer in mail made available to the officer under this section shall be dealt with in accordance with the regulations made under the *Canada Post Corporation Act*.

Transfer to the Minister of Public Works and Government Services

When forfeiture under s. 14(5)

22. (1) An officer who retains currency or monetary instruments forfeited under subsection 14(5) shall send the currency or monetary instruments to the Minister of Public Works and Government Services. (S.C. 2001, c. 41, s. 60)

When seizure or payment of a penalty

(2) An officer who seizes currency or monetary instruments or is paid a penalty under subsection 18(2) shall send the currency or monetary instruments or the penalty, as the case may be, to the Minister of Public Works and Government Services. (S.C. 2001, c. 41, s. 60)

Forfeiture

Time of forfeiture

23. Subject to subsection 18(2) and sections 25 to 31, currency or monetary instruments seized as forfeit under subsection 18(1) are forfeited to Her Majesty in right of Canada from the time of the contravention of subsection 12(1) in respect of which they were seized, and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

Review and Appeal

Review of forfeiture

24. The forfeiture of currency or monetary instruments seized under this Part is final and is not subject to review or to be set aside or otherwise dealt with except to the extent and in the manner provided by sections 24.1 and 25. (S.C. 2006, c. 12, s. 14)

Corrective measures

24.1 (1) The Minister, or any officer delegated by the President for the purposes of this section, may, within 30 days after a seizure made under subsection 18(1) or an assessment of a penalty referred to in subsection 18(2),

(a) cancel the seizure, or cancel or refund the penalty, if the Minister is satisfied that there was no contravention; or

(b) reduce the penalty or refund the excess amount of the penalty collected if there was a contravention but the Minister considers that there was an error with respect to the penalty assessed or collected, and that the penalty should be reduced. (S.C. 2006, c. 12, s. 14)

Interest

(2) If an amount is refunded to a person or entity under paragraph (1)(a), the person or entity shall be given interest on that amount at the prescribed rate for the period beginning on the day after the day on which the amount was paid by that person or entity and ending on the day on which it was refunded. (S.C. 2006, c. 12, s. 14)

Request for Minister's decision

25. A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the

currency or monetary instruments, may within 90 days after the date of the seizure request a decision of the Minister as to whether subsection 12(1) was contravened, by giving notice in writing to the officer who seized the currency or monetary instruments or to an officer at the customs office closest to the place where the seizure took place.

(S.C. 2001, c. 41, s. 61)

Notice of President

26. (1) If a decision of the Minister is requested under section 25, the President shall without delay serve on the person who requested it written notice of the circumstances of the seizure in respect of which the decision is requested.

(S.C. 2005, c. 38, par. 127(b))

Evidence

(2) The person on whom a notice is served under subsection (1) may, within 30 days after the notice is served, furnish any evidence in the matter that they desire to furnish.

Decision of the Minister

27. (1) Within 90 days after the expiry of the period referred to in subsection 26(2), the Minister shall decide whether subsection 12(1) was contravened.

Deferral of decision

(2) If charges are laid with respect to a money laundering offence or a terrorist activity financing offence in respect of the currency or monetary instruments seized, the Minister may defer making a decision but shall make it in any case no later than 30 days after the conclusion of all court proceedings in respect of those charges. (S.C. 2001, c. 41, s. 62)

Notice of decision

(3) The Minister shall, without delay after making a decision, serve on the person who requested it a written notice of the decision together with the reasons for it.

If there is no contravention

28. If the Minister decides that subsection 12(1) was not contravened, the Minister of Public Works and Government Services shall, on being informed of the Minister's decision, return the penalty that was paid, or the currency or monetary instruments or an amount of money equal to their value at the time of the seizure, as the case may be.

If there is a contravention

29. (1) If the Minister decides that subsection 12(1) was contravened, the Minister may, subject to the terms and conditions that the Minister may determine,

(S.C. 2006, c. 12, s. 15)

(a) decide that the currency or monetary instruments or, subject to subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;

(b) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or

(c) subject to any order made under section 33 or 34, confirm that the currency or monetary instruments are forfeited to Her Majesty in right of Canada.

The Minister of Public Works and Government Services shall give effect to a decision of the Minister under paragraph (a) or (b) on being informed of it.

Limit on amount paid

(2) The total amount paid under paragraph (1)(a) shall, if the currency or monetary instruments were sold or otherwise

disposed of under the *Seized Property Management Act*, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or monetary instruments.

Appeal to Federal Court

30. (1) A person who requests a decision of the Minister under section 27 may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant.

(S.C. 2006, c. 12, s. 16)

Ordinary action

(2) The *Federal Courts Act* and the rules made under that Act that apply to ordinary actions apply to actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

(S.C. 2001, c. 41, 139; S.C. 2002, c. 8, s. 161)

Delivery after final order

(3) The Minister of Public Works and Government Services shall give effect to the decision of the Court on being informed of it.

Limit on amount paid

(4) If the currency or monetary instruments were sold or otherwise disposed of under the *Seized Property Management Act*, the total amount that can be paid under subsection (3) shall not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or monetary instruments.

Service of notices

31. The service of the President's notice under section 26 or the notice of the Minister's decision under section 27 is sufficient if it is sent by registered mail addressed to the person on whom it is to be served at their latest known address.

(S.C. 2005, c. 38, par. 127(c))

Third Party Claims

Interest as owner

32. (1) If currency or monetary instruments have been seized as forfeit under this Part, any person or entity, other than the person or entity in whose possession the currency or monetary instruments were when seized, who claims in respect of the currency or monetary instruments an interest as owner or, in Québec, a right as owner or trustee may, within 90 days after the seizure, apply by notice in writing to the court for an order under section 33. (S.C. 2001, c. 41, s. 63;

S.C. 2006, c. 12, s.17)

Date of hearing

(2) A judge of the court to which an application is made under this section shall fix a day, not less than 30 days after the date of the filing of the application, for the hearing.

Notice to President

(3) The applicant shall serve notice of the application and of the hearing on the President, or an officer delegated by the President for the purpose of this section, not later than 15 days after a day is fixed under subsection (2) for the hearing of the application. (S.C. 2005, c. 38, par. 127(d);

S.C. 2006, c. 12, s. 17)

Service of notice

(4) The service of a notice under subsection (3) is sufficient if it is sent by registered mail addressed to the President.
(S.C. 2005, c. 38, par. 127(d))

Definition of "court"

(5) In this section and sections 33 and 34, "court" means

(a) in the Province of Ontario, the Superior Court of Justice;

(b) in the Province of Quebec, the Superior Court;

(c) in the Provinces of Nova Scotia and British Columbia, the Yukon Territory and the Northwest Territories, the Supreme Court;

(d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench;

(e) in the Provinces of Prince Edward Island and Newfoundland, the Trial Division of the Supreme Court; and

(f) in Nunavut, the Nunavut Court of Justice.

Order

33. If, on the hearing of an application made under subsection 32(1), the court is satisfied

(a) that the applicant acquired the interest or right in good faith before the contravention in respect of which the seizure was made,
(S.C. 2006, c. 12, s. 18)

(b) that the applicant is innocent of any complicity in the contravention of subsection 12(1) that resulted in the seizure and of any collusion in relation to that contravention, and

(c) that the applicant exercised all reasonable care to ensure that any person permitted to obtain possession of the currency or monetary instruments seized would report them in accordance with subsection 12(1),

the applicant is entitled to an order declaring that their interest or right is not affected by the seizure and declaring the nature and extent of their interest or right at the time of the contravention. (S.C. 2006, c. 12, s. 18)

Appeal

34. (1) A person or entity that makes an application under section 32 or Her Majesty in right of Canada may appeal to the court of appeal from an order made under section 33 and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the court of appeal from orders or judgments of a court.
(S.C. 2006, c. 12, s. 19(E))

Definition of "court of appeal"

(2) In this section, "court of appeal" means, in the province in which an order referred to in subsection (1) is made, the court of appeal for that province as defined in section 2 of the *Criminal Code*.

Delivery after final order

35. (1) The Minister of Public Works and Government Services shall, after the forfeiture of currency or monetary instruments has become final and on being informed by the President that a person or entity has obtained a final order under section 33 or 34 in respect of the currency or monetary instruments, give to the person or entity (S.C. 2006, c. 12, s. 20)

(a) the currency or monetary instruments; or

(b) an amount calculated on the basis of the interest of the applicant in the currency or monetary instruments at the time of the contravention in respect of which they were seized, as declared in the order.
(S.C. 2005, c. 38, par. 127(e))

Limit on amount paid

(2) The total amount paid under paragraph (1)(b) shall, if the currency or monetary instruments were sold or otherwise disposed of under the *Seized Property Management Act*, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or monetary instruments.

Disclosure and Use of Information

(L.C. 2006, c. 12, s. 21)

Prohibition

36. (1) Subject to this section and subsection 12(1) of the *Privacy Act*, no official shall disclose the following:

- (a) information set out in a report made under subsection 12(1), whether or not it is completed;
- (b) any other information obtained for the purposes of this Part; or
- (c) information prepared from information referred to in paragraph (a) or (b).

Use of information

(1.1) An officer who has reasonable grounds to suspect that the information referred to in subsection (1) is relevant to determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 117 to 119, 126 or 127 of that Act may use that information.
(S.C. 2006, c. 12, s. 22)

Disclosure of information to a police force

(2) An officer who has reasonable grounds to suspect that information referred to in subsection (1) would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence may disclose the information to the appropriate police force. (S.C. 2001, c. 41, s. 64)

Disclosure of information to the Centre

(3) An officer may disclose to the Centre information referred to in subsection (1) if the officer has reasonable grounds to suspect that it would be of assistance to the Centre in the detection, prevention or deterrence of money laundering or of the financing of terrorist activities. (S.C. 2001, c. 41, s. 64)

Recording of reasons for decision

(3.1) If an officer decides to disclose information under subsection (2) or (3), the officer shall record in writing the reasons for the decision.

Powers, duties and functions

(4) An official may disclose information referred to in subsection (1) for the purpose of exercising powers or performing duties and functions under this Part.

Immunity from compulsory processes

(5) Subject to section 36 of the *Access to Information Act* and sections 34 and 37 of the *Privacy Act*, an official is required to comply with a subpoena, an order for production of documents, a summons or any other compulsory process only if it is issued in the course of (S.C. 2006, c. 12, s. 22)

(a) criminal proceedings under an Act of Parliament that have been commenced by the laying of an information or the preferring of an indictment; or

(b) any legal proceedings that relate to the administration or enforcement of this Part.

Definition of "official"

(6) In this section and section 37, "official" means a person who obtained or who has or had access to information referred to in subsection (1) in the course of exercising powers or performing duties and functions under this Part.

Use of information

37. No official shall use information referred to in subsection 36(1) for any purpose other than exercising powers or performing duties and functions under this Part.

Agreements for Exchange of Information

Agreements with foreign states

38. (1) The Minister, with the consent of the Minister designated for the purpose of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has reporting requirements similar to those set out in this Part, whereby

(a) information set out in reports made under subsection 12(1) in respect of currency or monetary instruments imported into Canada from that state will be provided to a department, institution or agency of that state that has powers and duties similar to those of the Canada Border Services Agency in respect of the reporting of currency or monetary instruments; and

(S.C. 2005, c. 38 s.125 and par. 139(d))

(b) information contained in reports in respect of currency or monetary instruments imported into that state from Canada will be provided to the Canada Border Services Agency.

(S.C. 2005, c. 38 s.125 and par.139(d))

Information sent under an agreement

(2) When an agreement or arrangement referred to in subsection (1) is in effect with a foreign state or an institution or agency of that state and a person fulfils the reporting requirements of that state in respect of currency or monetary instruments that are imported into that state from Canada, the person is deemed to have fulfilled the requirements set out in section 12 in respect of the exportation of the currency or monetary instruments.

Information received by the Centre

(3) The information received under an agreement or arrangement referred to in subsection (1) shall be sent to the Centre and, for the purposes of any provision of this Act dealing with the confidentiality of information or the collection or use of information by the Centre, is deemed to be information set out in a report made under section 12.

Agreements with foreign states

38.1 The Minister, with the consent of the Minister designated for the purpose of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has powers and duties similar to those of the Canada Border Services Agency, whereby the Canada Border Services Agency may, if it has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence, provide information set out in a report made under section 20 to that government, institution or agency. (S.C. 2006, c. 12, s. 23)

Delegation

Minister's duties

39. (1) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister, including any judicial or quasi-judicial powers or duties of the Minister, under this Part.

President's duties

(2) The President may authorize an officer or a class of officers to exercise powers or perform duties of the President under this Part. (S.C. 2005, c. 38, par. 127(f))

PART 3

FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA

Object

Object

40. The object of this Part is to establish an independent agency that

(a) acts at arm's length from law enforcement agencies and other entities to which it is authorized to disclose information;

(b) collects, analyses, assesses and discloses information in order to assist in the detection, prevention and deterrence of money laundering and of the financing of terrorist activities; (S.C. 2001, c. 41, s. 65)

(c) ensures that personal information under its control is protected from unauthorized disclosure;

(d) operates to enhance public awareness and understanding of matters related to money laundering; and

(e) ensures compliance with Part 1.

Establishment of the Centre

Centre established

41. (1) There is hereby established the Financial Transactions and Reports Analysis Centre of Canada.

Powers of Centre

(2) The Centre may exercise powers only as an agent of Her Majesty in right of Canada.

Minister is responsible

42. (1) The Minister is responsible for the Centre.

Minister may direct

(2) The Minister may direct the Centre on any matter that, in the Minister's opinion, materially affects public policy or the strategic direction of the Centre.

Statutory instruments

(3) A direction under subsection (2) is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

Advisor

(4) The Minister may from time to time engage the services of any person to advise and report to the Minister on any matter referred to in subsection (2).

Organization and Head Office

Appointment of Director

43. (1) The Governor in Council shall appoint a Director to hold office during pleasure for a term of not more than five years.

Reappointment

(2) Subject to subsection (3), the Director is eligible to be reappointed on the expiry of a first or subsequent term of office.

Limitation

(3) No person shall hold office as Director for terms of more than ten years in the aggregate.

Absence or incapacity

(4) In the event of the absence or incapacity of the Director, or if the office of Director is vacant, the Governor in Council may appoint a qualified person to hold office instead of the Director for a term of not more than six months, and the person shall, while holding that office, have all of the powers, duties and functions of the Director under this Part.

Delegation by Director

(5) The Director may delegate to any person, subject to any terms and conditions that the Director may specify, any power, duty or function conferred on the Director under this Act.

Accident compensation

44. The Director and the employees of the Centre are deemed to be employees for the purposes of the *Government Employees Compensation Act* and to be employed in the federal public administration for the purposes of any regulations made under section 9 of the *Aeronautics Act*. (S.C. 2003, c. 22, par. 224(z.70)(E))

Director's powers

45. (1) The Director is the chief executive officer of the Centre, has supervision over and direction of its work and employees and may exercise any power and perform any duty or function of the Centre. The Director has the rank and all the powers of a deputy head of a department.

Directions to authorized persons

(2) The Director may authorize any person to act, under the Director's direction, for the purposes of sections 62 to 64.

Employees

46. An employee of the Centre may exercise any power and perform any duty or function of the Centre if the employee is appointed to serve in the Centre in a capacity appropriate to the exercise of the power or the performance of the duty or function.

Remuneration

47. The Director shall be paid the remuneration fixed by the Governor in Council.

Head office

48. (1) The head office of the Centre is to be in the National Capital Region, as described in the schedule to the *National Capital Act*.

Other offices

(2) The Director may, with the approval of the Minister, establish other offices of the Centre elsewhere in Canada.

Human Resources

Personnel

49. (1) The Director has exclusive authority to

- (a) appoint, lay off or terminate the employment of the employees of the Centre; and
- (b) establish standards, procedures and processes governing staffing, including the appointment, lay-off or termination of the employment of employees otherwise than for cause.

Right of employer

(2) Nothing in the *Public Service Labour Relations Act* shall be construed so as to affect the right or authority of the Director to deal with the matters referred to in paragraph (1)(b). (S.C. 2003, c. 22, s. 190 and par. 223(e)(E))

Human Resources management

(3) Subsections 11.1(1) and 12(2) of the *Financial Administration Act* do not apply to the Centre, and the Director may

- (a) determine the organization of and classify the positions in the Centre;
- (b) set the terms and conditions of employment for employees, including termination of employment for cause, and assign to them their duties;
- (c) notwithstanding section 112 of the *Public Service Labour Relations Act*, in accordance with the mandate approved by the Treasury Board, fix the remuneration of the employees of the Centre; and
- (d) provide for any other matters that the Director considers necessary for effective personnel management in the Centre.
(S.C. 2003, c. 22, s. 190)

Political partisanship

50. Part 7 of the *Public Service Employment Act* applies to the Director and employees of the Centre. For the purposes of that Part, the Director is deemed to be a deputy head and the employees are deemed to be employees as defined in subsection 2(1) of that Act.
(S.C. 2003, c. 22, s. 242)

Authority to Provide Services

Authority to provide services

51. When a department or other portion of the federal public administration specified in Schedule I, IV or V to the *Financial Administration Act* is authorized to provide services to another department or portion of the federal public administration specified in any one of those Schedules, it may enter into an agreement to provide those services to the

Centre if it considers it appropriate to do so.
(S.C. 2003, c. 22, s. 191)

Disclosure of Information

Director to report to Minister

52. (1) The Director shall report to the Minister from time to time on the exercise of the Director's powers and the performance of his or her duties and functions under this Act.

Director to keep Minister informed

(2) The Director shall keep the Minister informed of any matter that could materially affect public policy or the strategic direction of the Centre, and any other matter that the Minister considers necessary.

Director to disclose other information

(3) The Director shall, at the Minister's request, disclose to the Minister any information that the Minister considers relevant for the purpose of carrying out the Minister's powers and duties under this Act.

Disclosure of information to advisor

(4) The Director shall disclose to a person engaged under subsection 42(4) any information that the person considers relevant for the purpose of advising the Minister on any matter referred to in subsection 42(2).

Limitation

53. The Director may not disclose any information under section 52 that would directly or indirectly identify an individual who provided a report or information to the Centre, or a person or an entity about whom a report or information was provided under this Act.

Reports and Information

Reports and information

54. The Centre

(a) shall receive reports made under section 7, 7.1, 9, 12 or 20, incomplete reports sent under subsection 14(5), reports referred to in section 9.1, information provided to the Centre by any agency of another country that has powers and duties similar to those of the Centre, information provided to the Centre by law enforcement agencies or government institutions or agencies, and other information voluntarily provided to the Centre about suspicions of money laundering or of the financing of terrorist activities;

(S.C. 2001, c. 41, s. 66)

(b) may collect information that the Centre considers relevant to money laundering activities or the financing of terrorist activities and that is publicly available, including commercially available databases, or that is stored in databases maintained by the federal or provincial governments for purposes related to law enforcement or national security and in respect of which an agreement was entered into under subsection 66(1);

(S.C. 2001, c. 41, s. 66; S.C. 2004, c. 15, s. 100)

(c) shall analyse and assess the reports and information; (S.C. 2001, c. 12, s. 1)

(d) subject to section 6 of the *Privacy Act*, shall retain each report referred to in paragraph (a) and all information referred to in paragraph (a) or (b) for 10 years beginning on the day on which the report is received or the information is received or collected; and
(S.C. 2001, c. 12, s. 1; S.C. 2006, c. 12, s. 24)

(e) despite the *Library and Archives of Canada Act*, shall destroy, 15 years after the day on which a report referred to in paragraph (a) is received, any identifying information contained in the report if the report was not disclosed under subsection 55(3), 55.1(1) or 56.1(1) or (2). (S.C. 2001, c. 12, s. 1; S.C. 2004, c. 11, s. 42; S.C. 2006, c. 12, s. 24)

Registrar

54.1 (1) The Centre is responsible for establishing and maintaining a registry of the prescribed information submitted under sections 11.12 to 11.3.

Registry

(2) The registry shall be organized in any manner and kept in any form that the Centre may determine.

Public access

(3) The Centre shall make available to the public the part of the information referred to in subsection (1) that is identifying information as defined in the regulations.

Verification of information

(4) The Centre may verify the information contained in any application for registration or any other information submitted under sections 11.12 to 11.3.

Analysis of information

(5) The Centre may analyse and assess the information referred to in subsection (4) and, in that case, that analysis or assessment is deemed to be an analysis or assessment conducted under paragraph 54(c).

Retention of information

(6) Subject to section 6 of the *Privacy Act*, the Centre shall retain information referred to in subsection (4) for 10 years beginning on the day on which the Centre denies the registration of an applicant, on which a registered person or entity notifies the Centre that they have ceased their activities, or on which a person or entity is no longer registered with the Centre.

Disclosure and Use of Information

Disclosure by Centre prohibited

55. (1) Subject to subsection (3), sections 52, 55.1, 56.1 and 56.2, subsection 58(1) and sections 65 and 65.1 of this Act and to subsection 12(1) of the *Privacy Act*, the Centre shall not disclose the following:
(S.C. 2001, c. 41, s. 67; S.C. 2006, c. 12, s. 26)

(a) information set out in a report made under section 7;

(a.1) information set out in a report made under section 7.1; (S.C. 2001, c. 41, s. 67)

(b) information set out in a report made under section 9;

(b.1) information set out in a report referred to in section 9.1; (S.C. 2001, c. 41, s. 67)

(b.2) information provided under sections 11.12 to 11.3 except for identifying information referred to in subsection 54.1(3);

(c) information set out in a report made under subsection 12(1), whether or not it is completed, or section 20;

(d) information voluntarily provided to the Centre about suspicions of money laundering or of the financing of terrorist activities;

(S.C. 2001, c. 41, s. 67)

(e) information prepared by the Centre from information referred to in paragraphs (a) to (d); or

(f) any other information, other than publicly available information, obtained in the administration or enforcement of this Part.

Disclosure by others prohibited

(2) The prohibition in subsection (1) also applies to the following persons:

(a) any person who, in the course of exercising powers or performing duties or functions under this Part, obtained or has or had access to information referred to in subsection (1); and

(b) any person or an employee of any person with whom the Centre enters into a contract, memorandum of understanding or other agreement for the provision of goods or services.

Disclosure of designated information

(3) If the Centre, on the basis of its analysis and assessment under paragraph 54(c), has reasonable grounds to suspect that designated information would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence, the Centre shall disclose the information to

(S.C. 2001, c. 41, s. 67)

(a) the appropriate police force;

(b) the Canada Revenue Agency, if the Centre also determines that the information is relevant to an offence of obtaining or attempting to obtain a rebate, refund or credit to which a person or entity is not entitled, or of evading or attempting to evade paying taxes or duties imposed under an Act of Parliament administered by the Minister of National Revenue;

(b.1) the Canada Border Services Agency, if the Centre also determines that the information is relevant to an offence of evading or attempting to evade paying taxes or duties imposed under an Act of Parliament administered by the Agency; (S.C. 2005, c. 38, s. 126)

(c) the Canada Revenue Agency, if the Centre also has reasonable grounds to suspect that the information is relevant to determining

(i) whether a registered charity, as defined in subsection 248(1) of the *Income Tax Act*, has ceased to comply with the requirements of that Act for its registration as such, or

(ii) whether a person or entity that the Centre has reasonable grounds to suspect has applied to be a registered charity, as defined in subsection 248(1) of the *Income Tax Act*, is eligible to be registered as such;

(d) the Canada Border Services Agency, if the Centre also determines that the information is relevant to determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 117 to 119, 126 or 127 of that Act;

(e) the Canada Border Services Agency, if the Centre also determines that the information is relevant to investigating or prosecuting an offence of smuggling or attempting to smuggle goods subject to duties or an offence related to the importation of goods that are prohibited, controlled or regulated under the *Customs Act* or under any other Act of Parliament; and

(f) the Communications Security Establishment, if the Centre also determines that the information is relevant to the mandate of the Communications Security Establishment referred to in paragraph 273.64(1)(a) of the *National Defence Act*.

Exception

(3.1) Paragraph (3)(b) or (b.1) does not apply in respect of an offence relating to taxes or duties imposed under a prescribed Act or a prescribed portion of an Act.
(S.C. 2005, c. 38, s. 126)

(4) Repealed (S.C. 2001, c. 41, s. 67)

(5) Repealed (S.C. 2001, c. 41, s. 67)

Recording of reasons for decision

(5.1) The Centre shall record in writing the reasons for all decisions to disclose information made under subsection (3).
(S.C. 2001, c. 41, s. 67)

Exception

(6) A person may disclose any information referred to in subsection (1) if the disclosure is necessary for the purpose of exercising powers or performing duties and functions under this Part.

Definition of "designated information"

(7) For the purposes of subsection (3), "designated information" means, in respect of a financial transaction, an attempted financial transaction or an importation or exportation of currency or monetary instruments,

(a) the name of any person or entity that is involved in the transaction, attempted transaction, importation or exportation, or any person or entity acting on their behalf;

(b) the name and address of the place of business where the transaction occurred or the address of the customs office where the importation or exportation occurred, and the date the transaction, importation or exportation occurred;

(c) the amount and type of currency or monetary instruments involved or, in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;

(d) in the case of a transaction, the transaction number and the account number, if any;

(e) the name, address, electronic mail address and telephone number of each partner, director or officer of an entity referred to in paragraph (a), and the address and telephone number of its principal place of business;

(f) any other similar identifying information that may be prescribed for the purposes of this section;

(g) the details of the criminal record of a person or entity referred to in paragraph (a) and any criminal charges laid against them that the Centre considers relevant in the circumstances;

(h) the relationships suspected by the Centre on reasonable grounds to exist between any persons or entities referred to in paragraph (a) and any other persons or entities;

(i) the financial interest that a person or entity referred to in paragraph (a) has in the entity on whose behalf the transaction was made or attempted, or on whose behalf the importation or exportation was made;

(j) the name of the person or entity referred to in paragraph (a) suspected by the Centre on reasonable grounds to direct, either directly or indirectly, the transaction, attempted transaction, importation or exportation;

(k) the grounds on which a person or entity made a report under section 7 about the transaction or attempted transaction and that the Centre considers relevant in the circumstances;

(l) the number and types of reports on which a disclosure is based;

(m) the number and categories of persons or entities that made those reports; and

(n) indicators of a money laundering offence or a terrorist activity financing offence related to the transaction, attempted transaction, importation or exportation.

Disclosure of information

55.1 (1) If the Centre, on the basis of its analysis and assessment under paragraph 54 (c) has reasonable grounds to suspect that designated information would be relevant to threats to the security of Canada, the Centre shall disclose that information to the Canadian Security Intelligence Service.

(S.C. 2001, c. 41, s. 68)

Recording of reasons for decision

(2) The Centre shall record in writing the reasons for all decisions to disclose information made under subsection (1).

(S.C. 2001, c. 41, s. 68)

Definition of "designated information"

(3) For the purposes of subsection (1), "designated information" means, in respect of a financial transaction, an attempted financial transaction or an importation or exportation of currency or monetary instruments,

(a) the name of any person or entity that is involved in the transaction, attempted transaction, importation or exportation, or any person or entity acting on their behalf;

(b) the name and address of the place of business where the transaction occurred or the address of the customs office where the importation or exportation occurred, and the date the transaction, importation or exportation occurred;

(c) the amount and type of currency or monetary instruments involved or, in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;

(d) in the case of a transaction, the transaction number and the account number, if any;

(e) the name, address, electronic mail address and telephone number of each partner, director or officer of an entity referred to in paragraph (a), and the address and telephone number of its principal place of business;

(f) any other similar identifying information that may be prescribed for the purposes of this section;

(g) the details of the criminal record of a person or entity referred to in paragraph (a) and any criminal charges laid against them that the Centre considers relevant in the circumstances;

(h) the relationships suspected by the Centre on reasonable grounds to exist between any persons or entities referred to in paragraph (a) and any other persons or entities;

(i) the financial interest that a person or entity referred to in paragraph (a) has in the entity on whose behalf the transaction was made or attempted, or on whose behalf the importation or exportation was made;

(j) the name of the person or entity referred to in paragraph (a) suspected by the Centre on reasonable grounds to direct, either directly or indirectly, the transaction, attempted transaction, importation or exportation;

(k) the grounds on which a person or entity made a report under section 7 about the transaction or attempted transaction and that the Centre considers relevant in the circumstances;

(l) the number and types of reports on which a disclosure is based;

(m) the number and categories of persons or entities that made those reports; and

(n) indicators of a money laundering offence or a terrorist activity financing offence related to the transaction, attempted transaction, importation or exportation.

Agreements and arrangements

56. (1) The Minister may enter into an agreement or arrangement, in writing, with the government of a foreign state, or an international organization established by the governments of foreign states regarding the exchange, between the Centre and any institution or agency of that state or organization that has powers and duties similar to those of the Centre, of information that the Centre, institution or agency has reasonable grounds to suspect would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence.

(S.C. 2001, c. 41, s. 68)

Agreements and arrangements Centre

(2) The Centre may, with the approval of the Minister, enter into an agreement or arrangement, in writing, with an institution or agency of a foreign state that has powers and duties similar to those of the Centre, regarding the exchange, between the Centre and the institution or agency, of information that the Centre, institution or agency has reasonable grounds to suspect would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence.

(S.C. 2001, c. 41, s. 68)

Purpose

(3) Agreements or arrangements entered into under subsection (1) or (2) must

(a) restrict the use of information to purposes relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence; and

(b) stipulate that the information be treated in a confidential manner and not be further disclosed without the express consent of the Centre. (S.C. 2001, c. 41, s. 68)

Disclosure to foreign agencies

56.1 (1) The Centre may disclose designated information to an institution or agency of a foreign state or of an international organization established by the governments of foreign states that has powers and duties similar to those of the Centre, if

(a) the Centre has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence; and

(b) the Minister has, in accordance with subsection 56(1), entered into an agreement or arrangement with that foreign state or international organization regarding the exchange of such information.

(S.C. 2001, c. 41, s. 68)

Disclosure to foreign agencies

(2) The Centre may disclose designated information to an institution or agency of a foreign state that has powers and duties similar to those of the Centre, if

(a) the Centre has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence; and

(b) the Centre has, in accordance with subsection 56(2), entered into an agreement or arrangement with that institution or agency regarding the exchange of such information. (S.C. 2001, c. 41, s. 68)

Request for information

(2.1) For greater certainty, designated information may be disclosed to an institution or agency under subsection (1) or (2) in response to a request made by the institution or agency. (S.C. 2001, c. 41, s. 68)

Other disclosure

(3) In order to perform its functions under paragraph 54(c), the Centre may direct queries to an institution or agency in respect of which an agreement or arrangement referred to in subsection (1) or (2) has been entered into, and in doing so it may disclose designated information. (S.C. 2001, c. 41, s. 68; S.C. 2006, c. 12, s. 28(E))

Recording of reasons for decision

(4) The Centre shall record in writing the reasons for all decisions to disclose information made under paragraph (1)(a) or (2)(a). (S.C. 2001, c. 41, s. 68)

Definition of "designated information"

(5) For the purposes of this section, "designated information" means, in respect of a financial transaction, an attempted financial transaction or an importation or exportation of currency or monetary instruments,

(a) the name of any person or entity that is involved in the transaction, attempted transaction, importation or exportation, or any person or entity acting on their behalf;

(b) the name and address of the place of business where the transaction occurred or the address of the customs office where the importation or exportation occurred, and the date the transaction, importation or exportation occurred;

(c) the amount and type of currency or monetary instruments involved or, in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;

(d) in the case of a transaction, the transaction number and the account number, if any;

(e) the name, address, electronic mail address and telephone number of each partner, director or officer of an entity referred to in paragraph (a), and the address and telephone number of its principal place of business;

(f) any other similar identifying information that may be prescribed for the purposes of this section;

(g) the details of the criminal record of a person or entity referred to in paragraph (a) and any criminal charges laid against them that the Centre considers relevant in the circumstances;

(h) the relationships suspected by the Centre on reasonable grounds to exist between any persons or entities referred to in paragraph (a) and any other persons or entities;

(i) the financial interest that a person or entity referred to in paragraph (a) has in the entity on whose behalf the transaction was made or attempted, or on whose behalf the importation or exportation was made;

(j) the name of the person or entity referred to in paragraph (a) suspected by the Centre on reasonable grounds to direct, either directly or indirectly, the transaction, attempted transaction, importation or exportation;

(k) the grounds on which a person or entity made a report under section 7 about the transaction or attempted transaction and that the Centre considers relevant in the circumstances;

(l) the number and types of reports on which a disclosure is based;

(m) the number and categories of persons or entities that made those reports; and

(n) indicators of a money laundering offence or a terrorist activity financing offence related to the transaction, attempted

transaction, importation or exportation.

Usefulness of information

56.2 When the Centre receives information from an institution or agency under an agreement or arrangement referred to in subsection 56(1) or (2), the Centre may provide it with an evaluation of whether the information is useful to the Centre.

(S.C. 2006, c. 12, s. 29)

Use of information

57. No person who obtained or who has or had access to information referred to in subsection 55(1) in the course of exercising powers or performing duties and functions under this Part shall use the information for a purpose other than exercising those powers or performing those duties and functions.

Feedback, research and public education

58. (1) The Centre may

(a) inform persons and entities that have provided a report under section 7, 7.1 or 9, or a report referred to in section 9.1, about measures that have been taken with respect to reports under those sections;

(S.C. 2001, c. 41, s. 69)

(b) conduct research into trends and developments in the area of money laundering and the financing of terrorist activities and improved ways of detecting, preventing and deterring money laundering and the financing of terrorist activities; and

(S.C. 2001, c. 41, s. 69)

(c) undertake measures to inform the public, persons and entities referred to in section 5, authorities engaged in the investigation and prosecution of money laundering offences and terrorist activity financing offences, and others, with respect to

(S.C. 2001, c. 41, s. 69)

(i) their obligations under this Act,

(S.C. 2001, c. 41, s. 69)

(ii) the nature and extent of money laundering in Canada,

(S.C. 2001, c. 41, s. 69)

(ii.1) the nature and extent of the financing of terrorist activities in Canada, and

(S.C. 2001, c. 41, s. 69)

(iii) measures that have been or might be taken to detect, prevent and deter money laundering and the financing of terrorist activities in Canada, and the effectiveness of those measures.

(S.C. 2001, c. 41, s. 69)

Limitation

(2) The Centre may not disclose any information that would directly or indirectly identify an individual who provided a report or information to the Centre, or a person or an entity about whom a report or information was provided.

Immunity from compulsory processes

59. (1) Subject to section 36 of the *Access to Information Act* and sections 34 and 37 of the *Privacy Act*, the Centre, and any person who has obtained or who has or had access to any information or documents in the course of exercising powers or performing duties and functions under this Act, other than Part 2, is required to comply with a subpoena, a summons, an order for production of documents, or any other compulsory process only if it is issued in the course of

court proceedings in respect of a money laundering offence, a terrorist activity financing offence or an offence under this Act in respect of which an information has been laid or an indictment preferred or, in the case of an order for production of documents, if it is issued under section 60, 60.1 or 60.3.

(S.C. 2001, c. 41, s. 70; S.C. 2006, c. 12, s. 30)

Search warrants

(2) Despite any other Act, no search warrant may be issued in respect of the Centre.

Limitation on orders for disclosure of information

60. (1) Despite the provisions of any other Act, except sections 49 and 50 of the *Access to Information Act* and sections 48 and 49 of the *Privacy Act*, an order for disclosure of information may be issued in respect of the Centre only under subsection (4) or section 60.1 or 60.3. (S.C. 2001, c. 12, s. 3;

S.C. 2001, c. 41, s. 71; S.C. 2006, c. 12, s. 31)

Purpose of application

(2) The Attorney General may, for the purposes of an investigation in respect of a money laundering offence or a terrorist activity financing offence, make an application under subsection (3) for an order for disclosure of information.

(S.C. 2001, c. 41, s. 71)

Application

(3) An application shall be made ex parte in writing to a judge and be accompanied by an affidavit sworn on the information and belief of the Attorney General — or a person specially designated by the Attorney General for that purpose — deposing to the following matters:

(a) the offence under investigation;

(b) the person or entity in relation to whom the information or documents referred to in paragraph (c) are required; (S.C. 2006, c. 12, s. 31)

(c) the type of information or documents — whether in written form, in the form of a report or record or in any other form — obtained by or on behalf of the Director in respect of which disclosure is sought;

(d) the facts relied on to justify the belief, on reasonable grounds, that the person or entity referred to in paragraph (b) has committed or benefited from the commission of a money laundering offence or a terrorist activity financing offence and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to an investigation in respect of that offence;

(S.C. 2001, c. 41, s. 71; S.C. 2006, c. 12, s. 31)

(e) a summary of any information already received from the Centre in respect of the offence; and

(f) information respecting all previous applications brought under this section in respect of any person or entity being investigated for the offence. (S.C. 2006, c. 12, s. 31)

Order for disclosure of information

(4) Subject to the conditions that the judge considers advisable in the public interest, the judge to whom an application is made may order the Director — or any person specially designated in writing by the Director for the purposes of this section — to allow a police officer named in the order to have access to and examine all information and documents to which the application relates or, if the judge considers it necessary in the circumstances, to produce the information and documents to the police officer and allow the police officer to remove them, where the judge is satisfied

(a) of the matters referred to in paragraph (3)(d); and

(b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents, having regard to the benefit likely to accrue to the investigation if the access is obtained.

The order must be complied with within the period following the service of the order that the judge may specify.

Execution in another province

(5) A judge may, if the information or documents in respect of which disclosure is sought are in a province other than the one in which the judge has jurisdiction, issue an order for disclosure and the order may be executed in the other province after it has been endorsed by a judge who has jurisdiction in that other province.

Service of order

(6) A copy of the order shall be served on the person to whom it is addressed in the manner that the judge directs or as may be prescribed by rules of court.

Extension of period for compliance with order

(7) A judge who makes an order under subsection (4) may, on application of the Director, extend the period within which it is to be complied with.

Objection to disclosure of information

(8) The Director — or any person specially designated in writing by the Director for the purposes of this section — may object to the disclosure of any information or document in respect of which an order under subsection (4) has been made by certifying orally or in writing that it should not be disclosed on the ground that

(a) the Director is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement to which the Government of Canada is a signatory respecting the sharing of information related to a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence; (S.C. 2001, c. 41, s. 71)

(b) a privilege is attached by law to the information or document;

(c) the information or document has been placed in a sealed package pursuant to law or an order of a court of competent jurisdiction;
(S.C. 2006, c. 12, s. 31(E))

(c.1) disclosure of the information or document would be injurious to national security; or (S.C. 2006, c. 12, s. 31)

(d) disclosure of the information or document would not, for any other reason, be in the public interest.

Determination of objection

(9) An objection made under subsection (8) may be determined, on application, in accordance with subsection (10), by the Chief Justice of the Federal Court, or by any other judge of that Court that the Chief Justice may designate to hear those applications.

Judge may examine information

(10) A judge who is to determine an objection may, if the judge considers it necessary to determine the objection, examine the information or document in relation to which the objection is made. The judge shall grant the objection and order that disclosure be refused if the judge is satisfied of any of the grounds mentioned in subsection (8).

Limitation period

(11) An application under subsection (9) shall be made within 10 days after the objection is made or within such greater or lesser period as the Chief Justice of the Federal Court, or any other judge of that Court that the Chief Justice may designate to hear those applications, considers appropriate in the circumstances.

Appeal to Federal Court of Appeal

(12) An appeal lies from a determination under subsection (9) to the Federal Court of Appeal.

Limitation period for appeal

(13) An appeal under subsection (12) shall be brought within 10 days after the date of the determination appealed from or within such further time as the Federal Court of Appeal considers appropriate in the circumstances.

Special rules for hearings

(14) An application under subsection (9) or an appeal brought in respect of that application shall be heard in private and, on the request of the person objecting to the disclosure of the information or documents, be heard and determined in the National Capital Region described in the schedule to the *National Capital Act*.

Ex parte representations

(15) During the hearing of an application under subsection (9) or an appeal brought in respect of that application, the person who made the objection in respect of which the application was made or the appeal was brought shall, on the request of that person, be given the opportunity to make representations ex parte.

Copies

(16) Where any information or document is examined or provided under subsection (4), the person by whom it is examined or to whom it is provided or any employee of the Centre may make, or cause to be made, one or more copies of it and any copy purporting to be certified by the Director to be a copy made under this subsection is evidence of the nature and content of the original information or document and has the same probative force as the original information or document would have had if it had been proved in the ordinary way. (S.C. 2006, c. 12, s. 31)

Definitions

(17) The definitions in this subsection apply in this section.

"Attorney General" "*procureur général*"

"Attorney General" means the Attorney General as defined in section 2 of the Criminal Code.

"judge" "*juge*"

"judge" means a provincial court judge as defined in section 2 of the *Criminal Code* or a judge as defined in subsection 462.3(1) of that Act. (S.C. 2001, c. 32, s. 72)

"police officer" "*policier*"

"police officer" means any officer, constable or other person employed for the preservation and maintenance of the public peace.

Application for production order

60.1 (1) The Director of the Canadian Security Intelligence Service, or any employee of the Canadian Security Intelligence Service, may, for the purposes of an investigation in respect of a threat to the security of Canada, after having obtained the approval of the Minister of Public Safety and Emergency Preparedness, make an application under subsection (2) to a judge for an order for disclosure of information.

(S.C. 2001, c. 41, s.72; S.C. 2005, c. 10, par. 34(1)(q))

Matters to be specified in application

(2) An application shall be made *ex parte* in writing and be accompanied by an affidavit of the applicant deposing to the following matters:

- (a) the person or entity in relation to whom the information or documents referred to in paragraph (b) are required;
- (b) the type of information or documents – whether in written form, in the form of a report or record or in any other form – obtained by or on behalf of the Director in respect of which disclosure is sought;
- (c) the facts relied on to justify the belief, on reasonable grounds, that a production order under this section is required to enable the Canadian Security Intelligence Service to investigate a threat to the security of Canada;
- (d) a summary of any information already received from the Centre in respect of the threat to the security of Canada; and
- (e) information respecting all previous applications brought under this section in respect of any person or entity being investigated in relation to the threat to the security of Canada. (S.C. 2001, c. 41, s. 72)

Order for disclosure of information

(3) Subject to the conditions that the judge considers advisable in the public interest, the judge to whom an application is made may order the Director – or any person specially designated in writing by the Director for the purpose of this section – to allow an employee of the Canadian Security Intelligence Service named in the order to have access to and examine all information and documents to which the application relates or, if the judge considers it necessary in the circumstances, to produce the information and documents to the employee and allow the employee to remove them, if the judge is satisfied

(a) of the matters referred to in subsection (2); and

(b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents, having regard to the benefit likely to accrue to the investigation if the access is obtained.

The order must be complied with within the period following the service of the order that the judge may specify. (S.C. 2001, c. 41, s. 72)

Maximum duration of production order

(4) A production order shall not be issued under subsection (3) for a period exceeding sixty days. (S.C. 2001, c. 41, s. 72)

Service of order

(5) A copy of the order shall be served on the person or entity to whom it is addressed in the manner that the judge directs or as may be prescribed by rules of court. (S.C. 2001, c. 41, s. 72)

Extension of period for compliance with order

(6) A judge who makes an order under subsection (3) may, on application of the Director, extend the period within which it is to be complied with. (S.C. 2001, c. 41, s. 72)

Objection to disclosure of information

(7) The Director – or any person specially designated in writing by the Director for the purposes of this section – may object to the disclosure of any information or document in respect of which an order under subsection (3) has been made by certifying orally or in writing that it should not be disclosed on the ground that

(a) the Director is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement to which the Government of Canada is a signatory respecting the sharing of information related to a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence;

(b) a privilege is attached by law to the information or document;

(c) the information or document has been placed in a sealed package pursuant to law or an order of a court of competent jurisdiction;

(S.C. 2006, c. 12, s. 32(E))

(c.1) disclosure of the information or document would be injurious to national security; or (S.C. 2006, c. 12, s. 32)

(d) disclosure of the information or document would not, for any other reason, be in the public interest. (S.C. 2001, c. 41, s. 72)

Determination of objection

(8) An objection made under subsection (7) may be determined, on application, in accordance with subsection (9), by the Chief Justice of the Federal Court, or by any other judge of that Court that the Chief Justice may designate to hear those applications.

(S.C. 2001, c. 41, s. 72)

Judge may examine information

(9) A judge who is to determine an objection may, if the judge considers it necessary to determine the objection, examine the information or document in relation to which the objection is made. The judge shall grant the objection and order that disclosure be refused if the judge is satisfied of any of the grounds mentioned in subsection (7).

(S.C. 2001, c. 41, s. 72)

Limitation period

(10) An application under subsection (8) shall be made within 10 days after the objection is made or within such greater or lesser period as the Chief Justice of the Federal Court, or any other judge of that Court that the Chief Justice may designate to hear those applications, considers appropriate in the circumstances. (S.C. 2001, c. 41, s. 72)

Appeal to Federal Court of Appeal

(11) An appeal lies from a determination under subsection (8) to the Federal Court of Appeal. (S.C. 2001, c. 41, s. 72)

Limitation period for appeal

(12) An appeal under subsection (11) shall be brought within 10 days after the date of the determination appealed from or within such further time as the Federal Court of Appeal considers appropriate in the circumstances. (S.C. 2001, c. 41, s. 72)

Special rules for hearings

(13) An application under subsection (8) or an appeal brought in respect of that application shall be heard in private and, on the request of the person objecting to the disclosure of the information or documents, be heard and determined in the National Capital Region described in the schedule to the *National Capital Act*. (S.C. 2001, c. 41, s. 72)

Ex parte representations

(14) During the hearing of an application under subsection (8) or an appeal brought in respect of that application, the person who made the objection in respect of which the application was made or the appeal was brought shall, on the request of that person, be given the opportunity to make representations *ex parte*. (S.C. 2001, c. 41, s. 72)

Copies

(15) Where any information or document is examined or provided under subsection (3), the person by whom it is examined or to whom it is provided or any employee of the Centre may make, or cause to be made, one or more copies of it and any copy purporting to be certified by the Director to be a copy made under this subsection is evidence of the nature and content of the original information or document and has the same probative force as the original information or document would have had if it had been proved in the ordinary way. (S.C. 2001, c. 41, s. 72; S.C. 2006, c. 12, s. 32)

Definition of "judge"

(16) In this section, "judge" means a judge of the Federal Court designated by the Chief Justice of the Federal Court for the purposes of the *Canadian Security Intelligence Service Act*. (S.C. 2001, c. 41, s. 72)

Hearing of applications

60.2 An application under subsection 60.1(2) to a judge for a production order, or an objection under subsection 60.1(7), shall be heard in private in accordance with regulations made under section 28 of the *Canadian Security Intelligence Service Act*. (S.C. 2001, c. 41, s. 72)

Purpose of application

60.3 (1) If the Centre makes a disclosure under paragraph 55(3)(b), the Commissioner of Revenue, appointed under section 25 of the *Canada Revenue Agency Act*, may, for the purposes of an investigation in respect of an offence that is the subject of the disclosure, after having obtained the approval of the Minister of National Revenue, make an application for an order for disclosure of information. (S.C. 2006, c. 12, s. 33)

Application

(2) An application shall be made *ex parte* in writing to a judge and be accompanied by an affidavit sworn on the information and belief of the Commissioner — or a person specially designated by the Commissioner for that purpose — deposing to the following matters:

(a) the offence under investigation;

(b) the person or entity in relation to which the information or documents referred to in paragraph (c) are required;

(c) the type of information or documents — whether in written form, in the form of a report or record or in any other form — obtained by or on behalf of the Director in respect of which disclosure is sought;

(d) the facts relied on to justify the belief, on reasonable grounds, that the person or entity referred to in paragraph (b) has committed or benefited from the commission of an offence referred to in subsection (1) and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to an investigation in respect of that offence;

(e) a summary of any information already received from the Centre in respect of the offence; and

(f) information respecting all previous applications brought under this section in respect of any person or entity being investigated for the offence.

(S.C. 2006, c. 12, s. 33)

Order for disclosure of information

(3) Subject to the conditions that the judge considers advisable in the public interest, the judge to whom an application is made may order the Director — or any person specially designated in writing by the Director for the purposes of this section — to allow an employee of the Canada Revenue Agency named in the order to have access to and examine all information and documents to which the application relates or, if the judge considers it necessary in the circumstances, to produce the information and documents to the employee and allow the employee to remove them, if the judge is satisfied

(a) of the matters referred to in paragraph (2)(d); and

(b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents, having regard to the benefit likely to accrue to the investigation if the access is obtained.

The order must be complied with within the period following the service of the order that the judge may specify. (S.C. 2006, c. 12, s. 33)

Execution in another province

(4) A judge may, if the information or documents in respect of which disclosure is sought are in a province other than the one in which the judge has jurisdiction, issue an order for disclosure and the order may be executed in the other province after it has been endorsed by a judge who has jurisdiction in that other province. (S.C. 2006, c. 12, s. 33)

Service of Order

(5) A copy of the order shall be served on the person to whom it is addressed in the manner that the judge directs or as may be prescribed by rules of court. (S.C. 2006, c. 12, s. 33)

Extension of period for compliance with order

(6) A judge who makes an order under subsection (3) may, on application of the Director, extend the period within which it is to be complied with. (S.C. 2006, c. 12, s. 33)

Objection to disclosure of information

(7) The Director — or any person specially designated in writing by the Director for the purposes of this section — may object to the disclosure of any information or document in respect of which an order under subsection (3) has been made by certifying orally or in writing that it should not be disclosed on the ground that

(a) the Director is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement to which the Government of Canada is a signatory respecting the sharing of information related to a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence;

(b) a privilege is attached by law to the information or document;

(c) the information or document has been placed in a sealed package pursuant to law or an order of a court of competent jurisdiction;

(d) disclosure of the information or document would be injurious to national security; or

(e) disclosure of the information or document would not, for any other reason, be in the public interest. (S.C. 2006, c. 12, s. 33)

Determination of objection

(8) An objection made under subsection (7) may be determined, on application, in accordance with subsection (9), by the Chief Justice of the Federal Court, or by any other judge of that Court that the Chief Justice may designate to hear those applications.

(S.C. 2006, c. 12, s. 33)

Judge may examine information

(9) A judge who is to determine an objection may, if the judge considers it necessary to determine the objection, examine the information or document in relation to which the objection is made. The judge shall grant the objection and order that disclosure be refused if the judge is satisfied of any of the grounds mentioned in subsection (7).

(S.C. 2006, c. 12, s. 33)

Limitation period

(10) An application under subsection (8) shall be made within 10 days after the objection is made or within any greater or lesser period that the Chief Justice of the Federal Court, or any other judge of that Court that the Chief Justice may designate to hear those applications, considers appropriate in the circumstances. (S.C. 2006, c. 12, s. 33)

Appeal to Federal Court of Appeal

(11) An appeal lies from a determination under subsection (8) to the Federal Court of Appeal. (S.C. 2006, c. 12, s. 33)

Limitation period for appeal

(12) An appeal under subsection (11) shall be brought within 10 days after the date of the determination appealed from or within any further time that the Federal Court of Appeal considers appropriate in the circumstances. (S.C. 2006, c. 12, s. 33)

Special rules for hearings

(13) An application under subsection (8) or an appeal brought in respect of that application shall be heard in private and, on the request of the person objecting to the disclosure of the information or documents, be heard and determined in the National Capital Region described in the schedule to the *National Capital Act*. (S.C. 2006, c. 12, s. 33)

Ex parte representations

(14) During the hearing of an application under subsection (8) or an appeal brought in respect of that application, the person who made the objection in respect of which the application was made or the appeal was brought shall, on his or her request, be given the opportunity to make representations *ex parte*. (S.C. 2006, c. 12, s. 33)

Copies

(15) Where any information or document is examined or provided under subsection (3), the person by whom it is examined or to whom it is provided or any employee of the Centre may make, or cause to be made, one or more copies of it and any copy purporting to be certified by the Director to be a copy made under this subsection is evidence of the nature and content of the original information or document and has the same probative force as the original information or document would have had if it had been proved in the ordinary way. (S.C. 2006, c. 12, s. 33)

Definition of "judge"

(16) For the purposes of this section, "judge" means a provincial court judge as defined in section 2 of the *Criminal Code* or a judge as defined in subsection 462.3(1) of that Act. (S.C. 2006, c. 12, s. 33)

Certain provisions not applicable

61. Section 43 of the *Customs Act*, section 231.2 of the *Income Tax Act* and section 289 of the *Excise Tax Act* do not apply to the Centre or to its employees in their capacity as employees.

Compliance Measures

To ensure compliance

62. (1) An authorized person may, from time to time, examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part 1, and for that purpose may

(a) at any reasonable time, enter any premises, other than a dwelling-house, in which the authorized person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Part 1;

(b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and

(d) use or cause to be used any copying equipment in the premises to make copies of any record.

Assistance to Centre

(2) The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the

authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information with respect to the administration of Part 1 or the regulations under it that they may reasonably require.

Warrant required to enter dwelling-house

63. (1) If the premises referred to in subsection 62(1) is a dwelling-house, the authorized person may not enter it without the consent of the occupant except under the authority of a warrant issued under subsection (2).

Authority to issue warrant

(2) A justice of the peace may issue a warrant authorizing the authorized person to enter a dwelling-house, subject to any conditions that may be specified in the warrant, if on ex parte application the justice is satisfied by information on oath that

- (a) there are reasonable grounds to believe that there are in the premises records relevant to ensuring compliance with Part 1;
- (b) entry to the dwelling-house is necessary for any purpose that relates to ensuring compliance with Part 1; and
- (c) entry to the dwelling-house has been refused or there are reasonable grounds for believing that entry will be refused.

Areas that may be entered

(3) For greater certainty, an authorized person who enters a dwelling-house under authority of a warrant may enter only a room or part of a room in which the person believes on reasonable grounds that a person or an entity referred to in section 5 is carrying on its business, profession or activity.

Information demand

63.1 (1) For an examination under subsection 62(1), an authorized person may also serve notice to require that the person or entity provide, at the place and in accordance with the time and manner stipulated in the notice, any document or other information relevant to the administration of Part 1 in the form of electronic data, a printout or other intelligible output. (S.C. 2006, c. 12, s. 34)

Obligation to provide information

(2) The person or entity on whom the notice is served shall provide, in accordance with the notice, the documents or other information with respect to the administration of Part 1 that the authorized person may reasonably require. (S.C. 2006, c. 12, s. 34)

Definition of "judge"

64. (1) In this section, "judge" means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court.

No examination or copying of certain documents when privilege claimed

(2) If an authorized person acting under section 62, 63 or 63.1 is about to examine or copy a document in the possession of a legal counsel who claims that a named client or former client of the legal counsel has a solicitor-client privilege in respect of the document, the authorized person shall not examine or make copies of the document. (S.C. 2006, c. 12, s. 35(E))

Retention of documents

(3) A legal counsel who claims privilege under subsection (2) shall

(a) place the document, together with any other document in respect of which the legal counsel at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package or, if the authorized person and the legal counsel agree, allow the pages of the document to be initialled and numbered or

otherwise suitably identified; and

(b) retain it and ensure that it is preserved until it is produced to a judge as required under this section and an order is issued under this section in respect of the document.

Application to judge

(4) If a document has been retained under subsection (3), the client or the legal counsel on behalf of the client may

(a) within 14 days after the day the document was begun to be so retained, apply, on three days notice of motion to the Deputy Attorney General of Canada, to a judge for an order

(i) fixing a day, not later than 21 days after the date of the order, and a place for the determination of the question whether the client has solicitor-client privilege in respect of the document, and

(ii) requiring the production of the document to the judge at that time and place;

(b) serve a copy of the order on the Deputy Attorney General of Canada; and

(c) if the client or legal counsel has served a copy of the order under paragraph (b), apply at the appointed time and place for an order determining the question.

Disposition of application

(5) An application under paragraph (4)(c) shall be heard in private and, on the application, the judge

(a) may, if the judge considers it necessary to determine the question, inspect the document and, if the judge does so, the judge shall ensure that it is repackaged and resealed;

(b) shall decide the question summarily and

(i) if the judge is of the opinion that the client has a solicitor-client privilege in respect of the document, order the release of the document to the legal counsel, or

(ii) if the judge is of the opinion that the client does not have a solicitor-client privilege in respect of the document, order that the legal counsel make the document available for examination or copying by the authorized person; and

(c) at the same time as making an order under paragraph (b), deliver concise reasons that identify the document without divulging the details of it.

Order to deliver

(6) If a document is being retained under subsection (3) and a judge, on the application of the Attorney General of Canada, is satisfied that no application has been made under paragraph (4)(a) or that after having made that application no further application has been made under paragraph (4)(c), the judge shall order that the legal counsel make the document available for examination or copying by the authorized person.

Application to another judge

(7) If the judge to whom an application has been made under paragraph (4)(a) cannot act or continue to act in the application under paragraph (4)(c) for any reason, the application under paragraph (4)(c) may be made to another judge.

Costs

(8) No costs may be awarded on the disposition of an application under this section.

Prohibition

(9) The authorized person shall not examine or make copies of any document without giving a reasonable opportunity for a claim of solicitor-client privilege to be made under subsection (2).

Prohibition

(9.1) The authorized person shall not examine or make copies of a document in the possession of a person, not being a legal counsel, who contends that a claim of solicitor-client privilege may be made in respect of the document by a legal counsel, without giving that person a reasonable opportunity to contact that legal counsel to enable a claim of solicitor-client privilege to be made. (S.C. 2001, c. 12, s. 4)

Waiver of claim of privilege

(10) If a legal counsel has made a claim that a named client or former client of the legal counsel has a solicitor-client privilege in respect of a document, the legal counsel shall at the same time communicate to the authorized person the client's latest known address so that the authorized person may endeavour to advise the client of the claim of privilege that has been made on their behalf and may by doing so give the client an opportunity, if it is practicable within the time limited by this section, to waive the privilege before the matter is to be decided by a judge.

Disclosure to law enforcement agencies

65(1). The Centre may disclose to the appropriate law enforcement agencies any information of which it becomes aware under section 62, 63 or 63.1 and that it suspects on reasonable grounds is evidence of a contravention of Part 1. (S.C. 2004, c. 15, s. 101; S.C. 2006, c. 12, s. 36)

Compliance of persons or entities

(2) For the purpose of ensuring compliance with Part 1, the Centre may disclose to or receive from any agency or body that regulates or supervises persons or entities to whom Part 1 applies information relating to the compliance of those persons or entities with that Part. (S.C. 2004, c. 15, s. 101)

Limitation

(3) Any information disclosed by the Centre under subsection (2) may be used by an agency or body referred to in that subsection only for purposes relating to compliance with Part 1. (S.C. 2004, c. 15, s. 101)

Agreements and arrangements

65.1 (1) The Centre may enter into an agreement or arrangement, in writing, with an institution or agency of a foreign state that has powers and duties, similar to those of the Centre, with respect to verifying compliance with requirements to identify persons or entities, keep and retain records or make reports, or with an international organization made up of such institutions or agencies and established by the governments of states, that stipulates

(a) that the Centre and the institution, agency or organization may exchange information about the compliance of persons and entities with those requirements and about the assessment of risk related to their compliance;

(b) that the information may only be used for purposes relevant to ensuring compliance with the requirements and to assessing risk related to compliance; and

(c) that the information will be treated in a confidential manner and not be further disclosed without the express consent of the Centre. (S.C. 2006, c. 12, s. 37)

Disclosure

(2) The Centre may, in accordance with the agreement or arrangement, provide the institution, agency or organization

with information referred to in the agreement or arrangement. (S.C. 2006, c. 12, s. 37)

Usefulness of information

(3) When the Centre receives information from an institution, agency or organization under an agreement or arrangement, the Centre may provide it with an evaluation of whether the information is useful to the Centre. (S.C. 2006, c. 12, s. 37)

Contracts and Agreements

Power to enter into

66. (1) The Centre may, for the purpose of exercising its powers or performing its duties and functions under this Part, enter into contracts, memoranda of understanding and other agreements with a department or an agency of the Government of Canada or the government of a province and with any other person or organization, whether inside or outside Canada, in its own name or in the name of Her Majesty in right of Canada.

Agreements re databases

(2) Agreements relating to the Centre's collection of information from databases referred to in paragraph 54(b) must specify the nature of and limits with respect to the information that the Centre may collect from those databases.

Limitation

(3) Despite subsection (1), only the Minister may enter into an agreement or arrangement referred to in subsection 56(1).

Choice of service providers

67. Despite section 9 of the *Department of Public Works and Government Services Act*, the Centre may, with the approval of the Governor in Council given on the recommendation of the Treasury Board, procure goods and services, including legal services, from outside the federal public administration. (S.C. 2003, c. 22, par. 224(z.70)(E))

Legal Proceedings

Centre

68. Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Centre, whether in its own name or in the name of Her Majesty in right of Canada, may be brought or taken by or against the Centre in the name of the Centre in any court that would have jurisdiction if the Centre were a corporation that is not an agent of Her Majesty.

No liability

69. No action lies against Her Majesty, the Minister, the Director, any employee of the Centre or any person acting under the direction of the Director for anything done or omitted to be done in good faith in the administration or discharge of any powers, duties or functions that under this Act are intended or authorized to be exercised or performed.

Audit

Audit

70. (1) All receipts and expenditures of the Centre are subject to examination and audit by the Auditor General of Canada.

Use and disclosure

(2) The Auditor General of Canada and every person acting on behalf of or under the direction of the Auditor General of Canada shall not use or disclose any information referred to in subsection 55(1) that they have obtained, or to which they have had access, in the course of exercising powers or performing duties and functions under this Act or the *Auditor General Act*, except for the purposes of exercising those powers or performing those duties and functions.

Reports

Annual report

71. (1) The Director shall, on or before September 30 of each year following the Centre's first full year of operations, submit an annual report on the operations of the Centre for the preceding year to the Minister, and the Minister shall table a copy of the report in each House of Parliament on any of the first 30 days on which that House is sitting after the Minister receives the report.

Human rights and freedoms

(2) The report referred to in subsection (1) shall include a description of the management guidelines and policies of the Centre for the protection of human rights and freedoms.

Review of Act by parliamentary committee

72. (1) Every five years beginning on the day on which this section comes into force, the administration and operation of this Act shall be reviewed by the committee of the House of Commons, of the Senate or of both Houses that is designated or established for that purpose. (S.C. 2006, c. 12, s. 38)

Review by Privacy Commissioner

(2) Every two years beginning on the day on which this section comes into force, the Privacy Commissioner, appointed under section 53 of the *Privacy Act*, shall review the measures taken by the Centre to protect information it receives or collects under this Act and shall, within three months after the review, submit a report on those measures to the Speaker of the Senate and the Speaker of the House of Commons, who shall each table the report in the House over which he or she presides without delay after receiving it or, if that House is not then sitting, on any of the first 15 days on which that House is sitting after the Speaker receives it. (S.C. 2006, c. 12, s. 38)

PART 4

REGULATIONS

Regulations

73. (1) The Governor in Council may, on the recommendation of the Minister, make any regulations that the Governor in Council considers necessary for carrying out the purposes and provisions of this Act, including regulations

(a) describing businesses, professions and activities for the purpose of paragraph 5(i);

(b) describing businesses and professions for the purpose of paragraph 5(j), and the activities to which that paragraph applies;

- (c) describing the activities to which paragraph 5(l) applies;
- (d) specifying the types of records to be kept and retained under section 6 and the information to be included in them;
- (e) specifying the period for which, and the methods by which, records referred to in paragraph (d) are to be retained;
- (e.1) specifying the information to be contained in a report under section 7 or 7.1 or subsection 9(1); (S.C. 2001, c. 41, s. 73)
- (e.2) prescribing the form and manner in which persons or entities or classes of persons or entities shall report under section 7, 7.1, 9 or 9.1; (S.C. 2006, c. 12, s. 39)
- (f) specifying measures and the periods within which those measures must be taken, that persons or entities are to take to identify any person or entity that requests the opening of an account or any person or entity in respect of which a record is required to be kept or a report made; (S.C. 2001, c. 41, s. 73; S.C. 2006, c. 12, s. 39)
- (g) defining "casinos", "courier" and "monetary instruments"; (S.C. 2001, c. 41, s. 73)
- (h) specifying the form and manner of reporting currency and monetary instruments for the purpose of subsection 12(1), and the information to be contained in the form, and specifying the period within which the reporting must be made; (S.C. 2006, c. 12, s. 39(E))
- (i) prescribing the circumstances referred to in section 9.2; (S.C. 2006, c. 12, s. 39)
- (j) prescribing, for the purposes of subsection 9.3(1), the manner for determining whether a person is a politically exposed foreign person and the circumstances in which it is necessary to make that determination; (S.C. 2006, c. 12, s. 39)
- (k) prescribing, for the purposes of subsection 9.3(2), the circumstances in which it is necessary to obtain the approval of senior management and the measures to be taken when dealing with a politically exposed foreign person; (S.C. 2006, c. 12, s. 39)
- (l) prescribing the offices and positions whose holders are politically exposed foreign persons for the purposes of paragraph 9.3(3)(j), prescribing the family members that are included in the definition "politically exposed foreign person" in subsection 9.3(3) and defining "foreign state" for the purposes of that subsection; (S.C. 2006, c. 12, s. 39)
- (m) prescribing the foreign entities to which subsection 9.4(1) applies and, for the purposes of that subsection, prescribing the information to be obtained about those entities and prescribing the measures to be taken; (S.C. 2006, c. 12, s. 39)
- (n) defining the expression "shell bank" referred to in section 9.4; (S.C. 2006, c. 12, s. 39)
- (o) prescribing the services referred to in the definition "correspondent banking relationship" in subsection 9.4(3); (S.C. 2006, c. 12, s. 39)
- (p) prescribing the electronic funds transfers to which section 9.5 applies, the information to be included with those transfers and the measures to be taken under that section; (S.C. 2006, c. 12, s. 39)
- (q) specifying the manner for establishing and implementing the program referred to in subsection 9.6(1); (S.C. 2006, c. 12, s. 39)
- (r) prescribing the special measures to be taken under subsection 9.6(3); (S.C. 2006, c. 12, s. 39)
- (s) prescribing persons and entities that must be registered with the Centre under section 11.1; (S.C. 2006, c. 12, s. 39)

(t) prescribing persons or entities or classes of persons or entities that are not subject to section 11.1; (S.C. 2006, c. 12, s. 39)

(u) prescribing, for the purposes of paragraph 11.11(1)(f), persons or entities that are not eligible for registration; (S.C. 2006, c. 12, s. 39)

(v) prescribing the form and manner of submitting an application for registration under subsection 11.12(1) and the information that must be included with the application; (S.C. 2006, c. 12, s. 39)

(w) prescribing the form and manner of notifying the Centre of any information that must be provided under section 11.13; (S.C. 2006, c. 12, s. 39)

(x) prescribing the form and manner of providing the Centre with any clarifications under subsection 11.14(1) and any clarifications under subsection 11.17(1); (S.C. 2006, c. 12, s. 39)

(y) prescribing, for the purposes of section 11.19, the form and manner for renewing registration and any longer renewal period; (S.C. 2006, c. 12, s. 39)

(z) defining "identifying information" for the purposes of subsection 54.1(3); and (S.C. 2006, c. 12, s. 39)

(z.1) prescribing anything else that by this Act is to be prescribed. (S.C. 2006, c. 12, s. 39)

(2) Repealed (S.C. 2001, c. 41, s. 73(2))

(3) Repealed (S.C. 2001, c. 41, s. 73(2))

PART 4.1

NOTICES OF VIOLATION, COMPLIANCE AGREEMENTS AND PENALTIES

Regulations

73.1 (1) The Governor in Council may make regulations

(a) designating, as a violation that may be proceeded with under this Part, the contravention of a specified provision of this Act or the regulations;

(b) classifying each violation as a minor violation, a serious violation or a very serious violation, and classifying a series of minor violations as a serious violation or a very serious violation;

(c) having regard to subsection (2), fixing a penalty, or a range of penalties, in respect of any violation;

(d) prescribing the additional penalty to be paid for the purposes of subsection 73.18(1);

(e) respecting the service of documents under this Part, including the manner and proof of service and the circumstances under which documents are deemed to be served; and

(f) generally for carrying out the purposes and provisions of this Part.

Maximum penalties

(2) The maximum penalty for a violation is \$100,000 if the violation is committed by a person and \$500,000 if the violation is committed by an entity.

Criteria for penalty

73.11 Except if a penalty is fixed under paragraph 73.1(1)(c), the amount of a penalty shall, in each case, be determined taking into account that penalties have as their purpose to encourage compliance with this Act rather than to punish, the harm done by the violation and any other criteria that may be prescribed by regulation.

How contravention may be proceeded with

73.12 If a contravention that is designated under paragraph 73.1(1)(a) can be proceeded with either as a violation or as an offence under this Act, proceeding in one manner precludes proceeding in the other.

Commission of violation

73.13 (1) Every contravention that is designated under paragraph 73.1(1)(a) constitutes a violation and the person who commits the violation is liable to a penalty determined in accordance with sections 73.1 and 73.11.

Notice of violation or compliance agreement

(2) If the Centre believes on reasonable grounds that a person or entity has committed a violation, the Centre may

(a) issue and cause to be served on the person or entity a notice of violation; or

(b) issue and cause to be served on the person or entity a notice of violation with an offer to reduce by half the penalty proposed in the notice if the person or entity enters into a compliance agreement with the Centre in respect of the provision to which the violation relates.

NOTICES OF VIOLATION

Contents of notice

73.14 (1) When the Centre issues a notice of violation under subsection 73.13(2), the notice shall name the person or entity believed to have committed a violation, identify the violation and set out

(a) the penalty that the Centre proposes to impose;

(b) the right of the person or entity, within 30 days after the day on which the notice is served or within any longer period that the Centre specifies, to pay the penalty or to make representations to the Director with respect to the violation and the proposed penalty, and the manner for doing so; and

(c) the fact that, if the person or entity does not pay the penalty or make representations in accordance with the notice, the person or entity will be deemed to have committed the violation and the Centre will impose the penalty in respect of it.

Administrative corrections

(2) If a notice of violation contains any error or omission, the Centre may serve a corrected notice of violation on the person or entity at any time during the period referred to in paragraph (1)(b).

Payment of penalty

73.15 (1) If the person or entity pays the penalty proposed in the notice of violation, the person is deemed to have committed the violation and proceedings in respect of it are ended.

Representations to Director

(2) If the person or entity makes representations in accordance with the notice, the Director shall decide, on a balance of probabilities, whether the person or entity committed the violation and, if so, may, subject to any regulations made under paragraph 73.1(1)(c), impose the penalty proposed, a lesser penalty or no penalty.

Failure to pay or make representations

(3) A person or entity that neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the violation and the Centre shall impose the penalty proposed in the notice.

Notice of decision and right of appeal

(4) The Director shall cause notice of any decision made under subsection (2) or the penalty imposed under subsection (3) to be issued and served on the person or entity together with, in the case of a decision made under subsection (2) in respect of a serious violation or very serious violation, notice of the right of appeal under subsection 73.21(1).

COMPLIANCE AGREEMENTS

Contents of compliance agreement

73.16 (1) When the Centre offers to enter into a compliance agreement under paragraph 73.13(2)(b), the agreement shall

(a) identify the violation and provide that the person or entity will comply with the provision to which the violation relates within the period, and be subject to the terms and conditions, specified in the agreement; and

(b) set out the amount that the person or entity will have to pay as the reduced penalty for the violation if the compliance agreement is entered into.

Refusal to enter into agreement

(2) The person or entity shall enter into the compliance agreement and pay the reduced penalty within 10 days after receiving the notice of violation and, if it does not do so, the person or entity is deemed to have refused to enter into the agreement, and the full penalty proposed in the notice of violation and section 73.15 apply.

Extension of period

(3) The Centre may extend the period referred to in paragraph (1)(a) if the Centre is satisfied that the person or entity with which the compliance agreement was entered into is unable to comply with it within that period for reasons beyond their control.

Compliance agreement complied with

73.17 If the Centre considers that a compliance agreement has been complied with, the Centre shall serve a notice to that effect on the person or entity and, on the service of the notice, no further proceedings may be taken against the person or entity with respect to the violation.

Compliance agreement not complied with

73.18 (1) If the Centre considers that a compliance agreement has not been complied with, the Centre may issue and serve a notice of default on the person or entity to the effect that the person or entity is liable to pay the remainder of the penalty set out in the notice of violation and a prescribed additional penalty.

Content of notice

(2) A notice of default shall include the date, which shall be 30 days after the day on which the notice is served, on or before which an application for review may be filed and particulars of how the application may be filed.

No set-off or compensation

(3) On the service of a notice of default, the person or entity served has no right of set-off or compensation against any amount that they spent under the compliance agreement.

Application for review

73.19 (1) A person or entity served with a notice of default under subsection 73.18(1) may, on or before the date specified in the notice or within any further time that the Centre allows, file an application for review by the Director.

Review

(2) The Director may confirm the Centre's decision or decide that the person or entity has complied with the compliance agreement.

Failure to pay or apply for review

(3) A person or entity that neither pays the amounts set out in the notice of default nor files an application for review in accordance with the notice is deemed to have not complied with the compliance agreement and shall pay the amounts without delay.

Notice of decision and right of appeal

(4) The Director shall cause notice of the decision to be issued and served on the person or entity together with, in the case of a serious violation or very serious violation, notice of the right of appeal under subsection 73.21(1).

Deemed violation

73.2 A person or entity that enters into a compliance agreement is deemed to have committed the violation in respect of which the agreement was entered into.

APPEAL TO FEDERAL COURT

Right of appeal

73.21 (1) A person or entity on which a notice of a decision made under subsection 73.15(2) or 73.19(2) is served, in respect of a serious violation or very serious violation, may, within 30 days after the day on which the notice is served, or within any longer period that the Court allows, appeal the decision to the Federal Court.

Appeal – no notice of decision

(2) If the Director does not cause notice of a decision to be issued and served under subsection 73.15(4) within 90 days after the completion of representations made under subsection 73.15(2), the person or entity that made the representations may appeal the penalty proposed in the notice of violation to the Federal Court, within 30 days after the day on which the 90-day period expires.

(3) If the Director does not cause notice of a decision to be issued and served under subsection 73.19(4) within 90 days after the day on which the Director received the application for review under subsection 73.19(1), the person or entity that filed the application may appeal to the Federal Court the amounts set out in the notice of default referred to in subsection 73.18(1), within 30 days after the day on which the 90-day period expires.

Precaution against disclosure

(4) In an appeal, the Court shall take every reasonable precaution, including, when appropriate, conducting hearings in private, to avoid the disclosure by the Court or any person or entity of information referred to in subsection 55(1).

Powers of Court

(5) On an appeal, the Court may confirm, set aside or, subject to any regulations made under paragraph 73.1(1)(c), vary the decision of the Director.

PUBLICATION

Publication

73.22 When proceedings in respect of a violation are ended, the Centre may make public the nature of the violation, the name of the person or entity that committed it, and the amount of the penalty imposed.

RULES ABOUT VIOLATIONS

Violations not offences

73.23 (1) For greater certainty, a violation is not an offence.

Non-application of section 126 of the *Criminal Code*

(2) Section 126 of the *Criminal Code* does not apply in respect of any obligation or prohibition under this Act whose contravention is a violation under this Act.

Due diligence available

73.24 (1) Due diligence is a defence in a proceeding in relation to a violation.

Common law principles

(2) Every rule and principle of the common law that renders any circumstance a justification or an excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.

COLLECTION OF PENALTIES

Debts to Her Majesty

73.25 (1) A penalty and any interest due in respect of the penalty constitute a debt due to Her Majesty in right of Canada and may be recovered in the Federal Court.

Time limit

(2) No proceedings to recover a debt referred to in subsection (1) may be commenced after the period of five years that begins on the day on which the debt became payable.

Proceeds payable to Receiver General

(3) A penalty paid or recovered under this Part is payable to and shall be remitted to the Receiver General.

Certificate

73.26 (1) The unpaid amount of any debt referred to in subsection 73.25(1) may be certified by the Director.

Registration in Federal Court

(2) Registration in the Federal Court of a certificate made under subsection (1) has the same effect as a judgment of that Court for a debt of the amount specified in the certificate and all related registration costs.

Collecting penalties

73.27 (1) The Centre may, for the purpose of collecting penalties proposed in a notice of violation issued under subsection 73.13(2) or imposed under this Part, enter into a contract, memorandum of understanding or other agreement with a department or an agency of the Government of Canada or the government of a province and with any other person or organization, inside Canada, in its own name or in the name of Her Majesty in right of Canada.

Disclosure of information

(2) The Centre may disclose to the other party of the contract, memorandum or agreement any information required to collect the penalties.

Use of information

(3) The other party shall not use the information referred to in subsection (2) for any purpose other than collecting the

penalties.

Interest

73.28 If a person or entity fails to remit a penalty payable under this Part to the Receiver General, the person or entity shall pay to the Receiver General interest on the amount of the penalty. The interest shall be calculated at the prescribed rate for the period beginning on the first day after the day on which the amount was required to be paid and ending on the day on which the amount is paid.

Garnishment

73.29 (1) If the Director is of the opinion that a person or entity is or is about to become liable to make a payment to a person or entity liable to pay a penalty or interest under this Part, the Director may, by written notice, require the first person or entity to pay without delay to the Receiver General, on account of the second person's or entity's liability, all or part of the money otherwise payable to the second person or entity.

Applicability to future payments

(2) If the Director requires an employer to pay to the Receiver General money otherwise payable to an employee as remuneration,

(a) the requirement is applicable to all future payments of remuneration until the liability is satisfied; and

(b) the employer shall pay to the Receiver General out of each payment of remuneration the amount that the Director stipulates in the notice.

Discharge of liability

(3) The receipt of the Director is a good and sufficient discharge of the original liability to the extent of the payment.

Write-off

73.3 (1) The Director may write off in whole or in part a penalty or interest payable by a person or entity under this Part.

Effect of write-off

(2) The writing off of a penalty or interest under this section does not affect any right of Her Majesty to collect or recover the penalty or interest.

GENERAL PROVISIONS

Evidence

73.4 In a proceeding in respect of a violation or a prosecution for an offence, a notice of violation purporting to be issued under subsection 73.13(2), a notice of decision purporting to be issued under subsection 73.15(4) or 73.19(4), a notice of default purporting to be issued under subsection 73.18(1) or a certificate purporting to be made under subsection 73.26(1) is admissible in evidence without proof of the signature or official character of the person appearing to have signed it.

Time limit

73.5 (1) No proceedings in respect of a violation may be commenced later than two years after the subject-matter of the proceedings became known to the Centre.

Certificate of Centre

(2) A document appearing to have been issued by the Centre, certifying the day on which the subject-matter of any proceedings became known to the Centre, is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

PART 5

OFFENCES AND PUNISHMENT

General offences

74. Every person or entity that knowingly contravenes any of sections 6, 6.1 or 9.1 to 9.3, subsection 9.4(2), sections 9.5 to 9.7 or 11.1, subsection 12(1) or (4) or 36(1), section 37, subsection 55(1) or (2), section 57 or subsection 62(2), 63.1(2) or 64(3) or the regulations is guilty of an offence and liable
(S.C. 2006, c. 12, s. 41)

(a) on summary conviction, to a fine of not more than \$50,000 or to imprisonment for a term of not more than six months, or to both; or

(b) on conviction on indictment, to a fine of not more than \$500,000 or to imprisonment for a term of not more than five years, or to both.

Reporting — section 7 and 7.1

75. (1) Every person or entity that knowingly contravenes section 7 or 7.1 is guilty of an offence and liable

(a) on summary conviction,

(i) for a first offence, to a fine of not more than \$500,000 or to imprisonment for a term of not more than six months, or to both, and

(ii) for a subsequent offence, to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than one year, or to both; or

(b) on conviction on indictment, to a fine of not more than \$2,000,000 or to imprisonment for a term of not more than five years, or to both. (S.C. 2001, c. 41, s. 74)

Defence for employees

(2) No employee of a person or an entity shall be convicted of an offence under subsection (1) in respect of a transaction or proposed transaction that they reported to their superior or in respect of property whose existence they reported to their superior.

(S.C. 2001, c. 41, s. 74)

Disclosure

76. Every person or entity that contravenes section 8

(a) is guilty of an offence punishable on summary conviction; or

(b) is guilty of an indictable offence and liable to imprisonment for a term of not more than two years.

Reporting — section 9

77. (1) Every person or entity that contravenes subsection 9(1) or (3) is guilty of an offence and liable on summary conviction to a fine of not more than \$500,000 for a first offence and of not more than \$1,000,000 for each subsequent offence.

Due diligence defence

(2) No person or entity shall be convicted of an offence under subsection (1) if they exercised due diligence to prevent its commission.

Registry

77.1 Every person or entity that provides information to the Centre under section 11.12, 11.13, 11.14 or 11.3 and that knowingly makes any false or misleading statement or knowingly provides false or misleading information to a person responsible for carrying out functions under this Act is guilty of an offence and liable

(a) on summary conviction, to a fine of not more than \$50,000 or to imprisonment for a term of not more than six months, or to both; or

(b) on conviction on indictment, to a fine of not more than \$500,000 or to imprisonment for a term of not more than five years, or to both.

Liability of officers and directors

78. If a person or an entity commits an offence under this Act, any officer, director or agent of the person or entity who directed, authorized, assented to, acquiesced in or participated in its commission is a party to and guilty of the offence and liable on conviction to the punishment provided for the offence, whether or not the person or entity has been prosecuted or convicted.

Offence by employee, agent or mandatary

79. In a prosecution for an offence under section 75, 77 or 77.1,

(a) it is sufficient proof of the offence to establish that it was committed by an employee, agent or mandatary of the accused, whether or not the employee, agent or mandatary is identified or has been prosecuted for the offence; and

(b) no person shall be found guilty of the offence if they establish that they exercised due diligence to prevent its commission.

Exemption

80. A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under any of sections 74 to 77 if the peace officer or person does any of the things mentioned in those sections for the purpose of investigating a money laundering offence or a terrorist activity financing offence. (S. C. 2001, c. 41, s. 75)

Time limitation

81. Proceedings under paragraph 74(a), 75(1)(a) or 76(a), subsection 77(1) or paragraph 77.1(a) may be instituted within, but not after, five years after the time when the subject-matter of the proceedings arose. (S.C. 2006, c. 12, s. 44)

Venue

82. A complaint or information in respect of an offence under this Act may be heard, tried or determined by a court if the accused is resident or carrying on business within the territorial jurisdiction of the court although the subject-matter of the complaint or information did not arise in that territorial jurisdiction.

PART 6

83. to 98. Transitional Provision and Consequential and Conditional Amendments

Coming into Force

Coming into force

99. The provisions of this Act, other than section 97, come into force on a day or days to be fixed by order of the Governor in Council.

IV. Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations issued of June 2007

Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations

PROVISIONS TO COME INTO FORCE ON JUNE 30, 2007

PROVISIONS TO COME INTO FORCE ON JUNE 23, 2008

INTERPRETATION

1. (1) The following definitions apply in the Act and in these Regulations.

"casino" means a person or entity that is licensed, registered, permitted or otherwise authorized to do business under any of paragraphs 207(1)(a) to (g) of the *Criminal Code* and that conducts its business activities in a permanent establishment

(a) that the person or entity holds out to be a casino and in which roulette or card games are carried on; or

(b) where there is a slot machine, which, for the purposes of this definition, does not include a video lottery terminal.

It does not include a person or entity that is a registered charity as defined in subsection 248(1) of the *Income Tax Act* and is licensed, registered, permitted or otherwise authorized to carry on business temporarily for charitable purposes, if the business is carried out in the establishment of the casino for not more than two consecutive days at a time under the supervision of the casino. (*casino*)

"shell bank" means a foreign financial institution that does not have a physical presence in any country, unless it is controlled by or is under common control with a depository institution, credit union or foreign financial institution that maintains a physical presence in Canada or in a foreign country. (*banque fictive*)

(2) The following definitions apply in these Regulations.

"accountant" means a chartered accountant, a certified general accountant or a certified management accountant. (*comptable*)

"accounting firm" means an entity that is engaged in the business of providing accounting services to the public and has at least one partner, employee or administrator that is an accountant. (*cabinet d'expertise comptable*)

"Act" means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. (*Loi*)

"annuity" has the same meaning as in subsection 248(1) of the *Income Tax Act*. (*rente*)

"cash" means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada or coins or bank notes of countries other than Canada. (*espèces*)

"CICA Handbook" means the handbook prepared and published by the Canadian Institute of Chartered Accountants, as amended from time to time. (*Manuel de l'ICCA*)

"client credit file" means a record that relates to a credit arrangement with a client and includes the name, address and financial capacity of the client, the terms of the credit arrangement, the nature of the principal business or occupation of the client, the name of the business, if any, and the address of the client's business or place of work. (*dossier de crédit*)

"client information record" means a record that sets out a client's name and address and date of birth and the nature of the client's principal business or occupation. (*dossier-client*)

"correspondent banking relationship" has the same meaning as in subsection 9.4(3) of the Act. (*relation de correspondant bancaire*)

"deferred profit sharing plan" has the same meaning as in subsection 248(1) of the *Income Tax Act*. (*régime de participation différée aux bénéfices*)

"deposit slip" means a record that sets out the date of a deposit, the holder of the account in whose name the deposit is made, the number of the account, the amount of the deposit and any part of the deposit that is made in cash. (*relevé de dépôt*)

"electronic funds transfer" means the transmission — through any electronic, magnetic or optical device, telephone instrument or computer — of instructions for the transfer of funds, other than the transfer of funds within Canada. In the case of SWIFT messages, only **SWIFT MT 103** messages are included. (*télévirement*)

"employees profit sharing plan" has the same meaning as in subsection 248(1) of the *Income Tax Act*. (*régime de participation des employés aux bénéfices*)

"financial entity" means an authorized foreign bank **as defined in** section 2 of the *Bank Act* in respect of its business in Canada or a bank to which that Act applies, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act, an association that is regulated by the *Cooperative Credit Associations Act*, a company to which the *Trust and Loan Companies Act* applies and a trust company or loan company regulated by a provincial Act. It includes a department or agent of Her Majesty in right of Canada or of a province **when** the department or agent is carrying out an activity referred to in section 45. (*entité financière*)

"funds" means cash, currency or securities, or negotiable instruments or other financial instruments, in any form, that indicate a person's or an entity's title or interest in them. (*fonds*)

"*inter vivos* trust" means a personal trust, other than a trust created by will. (*fiducie entre vifs*)

"large cash transaction record" means a record that indicates the receipt of an amount of \$10,000 or more in cash in the course of a single transaction and that contains the following information:

(a) as the case may be

(i) if the amount is received for deposit by a financial entity, the name of each person or entity in whose account the amount is deposited, or

(ii) in any other case, the name of the person from whom the amount is in fact received, their address **and date of birth** and the nature of their principal business or occupation, if the information is not readily obtainable from other records that the recipient keeps and retains under these Regulations;

(b) the date of the transaction;

(c) where the transaction is a deposit that is made during normal business hours of the recipient, the time of the deposit or, where the transaction is a deposit that is made by means of a night deposit before or after those hours, an indication that the deposit was a night deposit;

(d) the number of any account that is affected by the transaction, and the type of that account, the full name of any person or entity that holds the account and the currency in which account transactions are conducted;

(e) the purpose and details of the transaction, including other persons or entities involved and the type of transaction (such as cash, electronic funds transfer, deposit, currency exchange or the purchase or cashing of a cheque, money order, traveller's cheque or banker's draft);

(f) whether the cash is received by armoured car, in person, by mail or in any other way; and

(g) the amount and currency of the cash received. (*relevé d'opération importante en espèces*)

"legal firm" [Repealed, SOR/2003-102, s. 3]

"life insurance broker or agent" means a person or entity that is registered or licensed under provincial legislation to carry on the business of arranging contracts of life insurance. (*représentant d'assurance-vie*)

"life insurance company" means a life company or foreign life company to which the *Insurance Companies Act* applies or a life insurance company regulated by a provincial Act. (*société d'assurance-vie*)

"money services business" means a person or entity referred to in paragraph 5(h) of the Act. (*entreprise de transfert de fonds ou de vente de titres négociables*)

"physical presence" means, in respect of a foreign financial institution, a place of business that is maintained by the institution, is located at a fixed address in a country in which the institution is authorized to conduct banking activities — at which address it employs one or more individuals on a full-time basis and maintains operating records related to its banking activities — and is subject to inspection by the banking authority that licensed the institution to conduct banking activities. (*présence physique*)

"public body" means

- (a) any department or agent of Her Majesty in right of Canada or of a province;
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them; and
- (c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act*, or any agent of such an organization. (*organisme public*)

"real estate broker or sales representative" means a person or entity that is registered or licensed under provincial legislation in respect of the sale or purchase of real estate. (*courtier ou agent immobilier*)

"receipt of funds record" means, in respect of a transaction in which an amount of funds is received, a record that contains the following information:

(a) if the information is not readily obtainable from other records that the recipient keeps and retains under these Regulations, the name of the person or entity from whom the amount is in fact received and

(i) where the amount is received from a person, their address and date of birth and the nature of their principal business or occupation, and

(ii) where the amount is received from an entity, their address and the nature of their principal business;

(b) the date of the transaction;

(c) the number of any account that is affected by the transaction, and the type of that account, the full name of the person or entity that is the account holder and the currency in which the transaction is conducted;

(d) the purpose and details of the transaction, including other persons or entities involved and the type and form of the transaction;

(e) if the funds are received in cash, whether the cash is received by armoured car, in person, by mail or in any other way; and

(f) the amount and currency of the funds received. (*relevé de réception de fonds*)

"registered pension plan" has the same meaning as in subsection 248(1) of the *Income Tax Act*. (*régime de pension agréé*)

"registered retirement income fund" has the same meaning as in subsection 248(1) of the *Income Tax Act*. (*fonds enregistré de revenu de retraite*)

"securities dealer" means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services. (*courtier en valeurs mobilières*)

"senior officer" , in respect of an entity, means, if applicable,

(a) a director of the entity who is one of its full-time employees;

(b) the entity's chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief accountant, chief auditor or chief actuary, or any person who performs any of those functions; or

(c) any other officer who reports directly to the entity's board of directors, chief executive officer or chief operating officer. (*cadre dirigeant*)

"signature" includes an electronic signature. (*signature*)

"signature card" , in respect of an account, means any record that is signed by a person who is authorized to give instructions in respect of the account. (*fiche-signature*)

"SWIFT" means the Society for Worldwide Interbank Financial Telecommunication. (*SWIFT*)

"transaction ticket" means a record respecting a foreign currency exchange transaction — which may take the form of an entry in a transaction register — that sets out

(a) the date, amount and currency of the purchase or sale;

(b) the method, amount and currency of the payment made or received; and

(c) in the case of a transaction of \$3,000 or more that is carried out by a person, the name and address of that person. (*fiche d'opération*)

"trust company" means a trust company to which the *Trust and Loan Companies Act* applies or a trust company regulated by a provincial Act. (*société de fiducie*)

1.1 For the purpose of the definition "politically exposed foreign person" in subsection 9.3(3) of the Act, the prescribed family members of a politically exposed foreign person are

(a) the person's spouse or common-law partner;

(b) a child of the person;

(c) the person's mother or father

(d) the mother or father of the person's spouse or common-law partner; and

(e) a child of the person's mother or father;

NON-APPLICATION OF CERTAIN PROVISIONS

1.2 Sections 11.1, 12, 13, 14, 14.1, 15.1, 53.1, 54, 54.1, and 54.2 do not apply in respect of the credit card acquiring activities of a financial entity.

GENERAL

FOREIGN CURRENCY

2. Where a transaction is carried out by a person or entity in a foreign currency, the amount of the transaction shall, for the purposes of these Regulations, be converted into Canadian dollars based on

(a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's *Daily Memorandum of Exchange Rates* that is in effect at the time of the transaction; or

(b) if no official conversion rate is set out in that publication for that currency, the conversion rate that the person or entity would use for that currency in the normal course of business at the time of the transaction.

SINGLE TRANSACTIONS

3. (1) In these Regulations, two or more cash transactions or electronic funds transfers of less than \$10,000 each that are made within 24 consecutive hours and that total \$10,000 or more are considered to be a single transaction of \$10,000 or more if

(a) where a person is required to keep a large cash transaction record or to report an electronic funds transfer in accordance with these Regulations, the person knows that the transactions or transfers are conducted by, or on behalf of, the same person or entity; and

(b) where an entity is required to keep a large cash transaction record or to report an electronic funds transfer in accordance with these Regulations, an employee or a senior officer of the entity knows that the transactions or transfers are conducted by, or on behalf of, the same person or entity.

(2) For greater certainty, subsection (1) does not apply in respect of an electronic funds transfer sent to two or more beneficiaries where the transfer is requested by

(a) a public body or a corporation referred to in paragraph 62(2)(b); or

(b) an administrator of a pension fund that is regulated by or under an Act of Parliament or of the legislature of a province.

SENDING REPORTS

4. (1) A report that is required to be made to the Centre shall be sent electronically in accordance with guidelines for report submissions that are prepared by the Centre, if the sender has the technical capabilities to do so.

(2) The report shall be sent in paper format, in accordance with guidelines for report submissions that are prepared by the Centre, if the sender does not have the technical capabilities to send the report electronically.

REPORTING TIME LIMITS

5. (1) A report that is required to be made under these Regulations in respect of an electronic funds transfer shall be sent to the Centre not later than five working days after the day of the transfer.

(2) A report in respect of a transaction for which a large cash transaction record must be kept and retained under these Regulations shall be sent to the Centre

(a) within 30 days after the transaction, where the transaction occurs on the day on which this section comes into force or within 12 months after that day; or

(b) in any other case, within 15 days after the transaction.

TRANSACTIONS CONDUCTED BY EMPLOYEES OR AGENTS

6. (1) Where a person who is subject to the requirements of these Regulations is an employee of a person or entity referred to in any of paragraphs 5(a) to (j) of the Act, it is the employer rather than the employee who is responsible for meeting those requirements.

(2) Where a person or entity who is subject to the requirements of these Regulations, other than a life insurance broker or agent, is an agent of or is authorized to act on behalf of another person or entity referred to in any of paragraphs 5(a) to (j) of the Act, it is that other person or entity rather than the agent or the authorized person or entity, as the case may be, that is responsible for meeting those requirements.

7. For the purposes of these Regulations, a person acting on behalf of their employer is considered to be acting on behalf of a third party except when the person is depositing cash into the employer's **business** account.

THIRD PARTY DETERMINATION

8. (1) Every person or entity that is required to keep a large cash transaction record under these Regulations shall take reasonable measures to determine whether the individual who in fact gives the cash in respect of which the record is kept is acting on behalf of a third party.

(2) Where the person or entity determines that the individual is acting on behalf of a third party, the person or entity shall keep a record that sets out

(a) the third party's name and address **and date of birth** and the nature of the principal business or occupation of the third party, if the third party is an individual;

(b) if the third party is an entity, the third party's name and address and the nature of the principal business of the third party, and, if the entity is a corporation, the entity's incorporation number and its place of issue; and

(c) the nature of the relationship between the third party and the individual who gives the cash.

(3) Where the person or entity is not able to determine whether the individual is acting on behalf of a third party but there are reasonable grounds to suspect that the individual is doing so, the person or entity shall keep a record that

(a) indicates whether, according to the individual, the transaction is being conducted on behalf of a third party; and

(b) describes the reasonable grounds to suspect that the individual is acting on behalf of a third party.

9. (1) Subject to subsections (4) **and (4.1)**, every person or entity that is required to keep a signature card or an account operating agreement in respect of an account under these Regulations shall, at the time that the account is opened, take reasonable measures to determine whether the account is to be used by or on behalf of a third party.

(2) Subject to subsections (5) and (6), where the person or entity determines that the account is to be used by or on behalf of a third party, the person or entity shall keep a record that sets out

(a) the third party's name and address **and date of birth** and the nature of the principal business or occupation of the third party, if the third party is an individual;

(b) if the third party is an entity, the third party's name and address and the nature of the principal business of the third party, and, if the entity is a corporation, the entity's incorporation number and its place of issue; and

(c) the nature of the relationship between the third party and the account holder.

(3) Where the person or entity is not able to determine if the account is to be used by or on behalf of a third party but there are reasonable grounds to suspect that it will be so used, the person or entity shall keep a record that

(a) indicates whether, according to the individual who is authorized to act in respect of the account, the account is to be used by or on behalf of a third party; and

(b) describes the reasonable grounds to suspect that the individual is acting on behalf of a third party.

(4) Subsection (1) does not apply in respect of an account where the account holder is a financial entity or a securities dealer that is engaged in the business of dealing in securities in Canada.

(4.1) Subsection (1) does not apply in respect of an account that is opened by a financial entity for use in relation to a credit card acquiring business.

(5) Subsection (2) does not apply where a securities dealer is required to keep an account operating agreement in respect of an account of a person or entity that is engaged in the business of dealing in securities only outside of Canada and where

(a) the account is in a country that is a member of the **Financial Action Task Force**;

(b) the account is in a country that is not a member of the Task Force referred to in paragraph (a) but has implemented the recommendations of the Task Force relating to customer identification and, at the time that the account is opened, the securities dealer has obtained written assurance from the entity where the account is located that the country has implemented those recommendations; or

(c) the account is in a country that is not a member of the Task Force referred to in paragraph (a) and has not implemented the recommendations of the Task Force relating to customer identification but, at the time that the account is opened, the securities dealer has ascertained the identity of all third parties relating to the account as described in **subsection 64(1)**.

(6) Subsection (2) does not apply where

(a) the account is opened by a legal counsel, an accountant or a real estate broker or sales representative; and

(b) the person or entity has reasonable grounds to believe that the account is to be used only for clients of the legal counsel, accountant or real estate broker or sales representative, as the case may be.

10. (1) Every person or entity that is required to keep a client information record under these Regulations in respect of a client shall, at the time that the client information record is created, take reasonable measures to determine whether the client is acting on behalf of a third party.

(2) Where the person or entity determines that the client is acting on behalf of a third party, the person or entity shall keep a record that sets out

(a) the third party's name and address **and date of birth** and the nature of the principal business or occupation of the third party, if the third party is an individual;

(b) if the third party is a entity, the third party's name and address and the nature of the principal business of the third party, and, if the entity is a corporation, the entity's incorporation number and its place of issue; and

(c) the relationship between the third party and the client.

(3) Where the person or entity is not able to determine that the client in respect of whom the client information record is kept is acting on behalf of a third party but there are reasonable grounds to suspect that the client is so acting, the person or entity shall keep a record that

(a) indicates whether, according to the client, the transaction is being conducted on behalf of a third party; and

(b) describes the reasonable grounds to suspect that the client is acting on behalf of a third party.

INFORMATION ON BENEFICIARIES

11. A trust company that is required to keep a record in respect of an *inter vivos* trust in accordance with these Regulations shall keep a record that sets out the name and address and date of birth and the nature of the principal business and occupation, of each of the beneficiaries that are known at the time that the trust company becomes a trustee for the trust.

INFORMATION ON DIRECTORS OR PARTNERS OR ON PERSONS WHO OWN OR CONTROL 25 PER CENT OR MORE OF A CORPORATION OR OTHER ENTITY

11.1 (1) Every financial entity or securities dealer that is required to confirm the existence of an entity in accordance with these Regulations when it opens an account in respect of that entity, every life insurance company or life insurance broker or agent that is required to confirm the existence of an entity in accordance with these Regulations and every money services business that is required to confirm the existence of an entity in accordance with these Regulations when it enters into an ongoing electronic funds transfer, fund remittance or foreign exchange service agreement with that entity, or a service agreement for the issuance or redemption of money orders, traveller's cheques or other similar negotiable instruments, shall, at the time the existence of the entity is confirmed, take reasonable measures to obtain and, if obtained, keep a record of

(a) where the confirmation is in respect of a corporation, the name and occupation of all directors of the corporation and the name, address and occupation of all persons who own or control, directly or indirectly, 25 per cent or more of the shares of the corporation; and

(b) where the confirmation is in respect of an entity other than a corporation, the name, address and occupation of all persons who own or control, directly or indirectly, 25 per cent or more of the entity.

(2) Where the person or entity is not able to obtain the information referred to in subsection (1), the person or entity shall keep a record that indicates the reason why the information could not be obtained.

(3) Where the entity the existence of which is being confirmed by a person or entity under subsection (1) is a not-for-profit organization, the person or entity shall determine, and keep a record that sets out, whether that entity is

(a) a charity registered with the Canada Revenue Agency under the Income Tax Act; or

(b) an organization, other than one referred to in paragraph (a), that solicits charitable financial donations from the public.

REPORTING OF FINANCIAL TRANSACTIONS AND RECORD KEEPING

Financial Entities

12. (1) Subject to section 50 and subsection 52(1), every financial entity shall report the following transactions and information to the Centre:

(a) the receipt from a client of an amount in cash of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 1, unless the cash is received from another financial entity or a public body;

(b) the sending out of Canada, at the request of a client, of an electronic funds transfer of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 2 or 5, as the case may be; and

(c) the receipt from outside Canada of an electronic funds transfer, sent at the request of a client, of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 3 or 6, as the case may be.

(2) For greater certainty, paragraph (1)(b) does not apply when the financial entity sends an electronic funds transfer to a person or entity in Canada, even if the final recipient is outside Canada.

(3) Paragraph (1)(b) applies in respect of a financial entity that orders a person or entity, to which subsection (1), 28(1) or

40(1) applies, to send out of Canada an electronic funds transfer made at the request of a client, unless it provides that person or entity with the name and address of that client.

(4) Subject to subsection (5), for greater certainty, paragraph (1)(c) does not apply when the financial entity receives an electronic funds transfer from a person or entity in Canada, even if the initial sender is outside Canada.

(5) Paragraph (1)(c) applies in respect of a financial entity that receives an electronic funds transfer for a beneficiary in Canada from a person or entity to which subsection (1), 28(1) or 40(1) applies where the initial sender is outside Canada, unless the electronic funds transfer contains the name and address of that beneficiary.

13. Subject to subsection 52(2), every financial entity shall keep a large cash transaction record in respect of every amount in cash of \$10,000 or more that is received from a client in the course of a single transaction, unless the cash is received from another financial entity or a public body.

14. Subject to subsection 62(2), every financial entity shall keep the following records in respect of an account other than a credit card account:

(a) where it opens an account, a signature card in respect of each account holder for that account;

(b) where it opens an account in respect of a corporation, a copy of the part of official corporate records that contains any provision relating to the power to bind the corporation in respect of the account;

(c) where it opens an account in the name of a client that is a person or an entity other than a corporation, a record of the name and address of the client and

(i) if the client is a person, their date of birth and the nature of their principal business or their occupation, as applicable, and

(ii) if the client is an entity other than a corporation, the nature of their principal business;

(c.1) in respect of every account that it opens, a record that sets out the intended use of the account;

(d) every account operating agreement that it creates in the normal course of business;

(e) a deposit slip in respect of every deposit that is made to an account;

(f) every debit and credit memo that it creates or receives in the normal course of business in respect of an account, except debit memos that relate to another account at the same branch of the financial entity that created the debit memo;

(g) a copy of every account statement that it sends to a client, if the information in the statement is not readily obtainable from other records that are kept and retained by it under these Regulations;

(h) every cleared cheque that is drawn on, and a copy of every cleared cheque that is deposited to, an account, unless

(i) the account on which the cheque is drawn and the account to which the cheque is deposited are at the same branch of the financial entity, or

(ii) the following conditions are met, namely,

(A) an image of the cheque has been recorded on microfilm or on an electronic medium,

(B) an image of the cheque can be readily reproduced from the microfilm or electronic medium,

(C) it is possible to readily ascertain where the image of any particular cheque is recorded, and

(D) the microfilm or electronic medium is retained for a period of at least five years;

(j) every client credit file that it creates in the normal course of business;

(j) a transaction ticket in respect of every foreign currency exchange transaction.

(k) where it receives an amount of \$3,000 or more from a person or from an entity other than a financial entity in consideration of the issuance of traveller's cheques, money orders or similar negotiable instruments, a record of the date amount received, the date it was received, the name and address of the person who in fact gave the amount and whether the amount received was in cash, cheques, traveller's cheques, money orders or other similar negotiable instruments;

(l) where, in a single transaction, it redeems one money order of \$3,000 or more, or two or more money orders of that, taken together, add up to a total of \$3,000 or more, a record of the total amount of the money order or orders, the date on which the money order or orders were redeemed, the name and address of the person who made the request for the money order or orders to be redeemed and the name of the issuer of each money order;

(m) where, at the request of a client, it sends an electronic funds transfer, as prescribed by subsection 66.1(2), in an amount of \$1,000 or more, a record of

(i) the name, address and telephone number of the client initiating the transaction and the nature of their principal business or their occupation

(ii) if the client initiating the transaction is a person, their date of birth,

(iii) the relevant account number, if any, and the reference number, if any, of the transaction and the date of the transaction,

(iv) the name or account number of the person or entity to whom the electronic funds transfer is sent, and

(v) the amount and currency of the transaction;

(n) where it has obtained approval under paragraph 67.1(b) to keep the account of a person that has been determined to be a politically exposed foreign person open, a record of

(i) the office or position in respect of which the person was determined to be a politically exposed foreign person,

(ii) the source, if known, of the funds that are or are expected to be deposited in the account,

(iii) the date of the determination that the person was a politically exposed foreign person,

(iv) the name of the member of senior management who gave the approval to keep the account open, and

(v) the date of that approval; and

(o) where a transaction has been reviewed under subsection 67.2(2), a record of

(i) the office or position in respect of which the person initiating the transaction or the beneficiary of the transaction was determined to be a politically exposed foreign person,

(ii) the source, if known, of the funds that have been used for the transaction,

(iii) the date of the determination that the person referred to in subparagraph (i) was a politically exposed foreign person,

(iv) the name of the member of senior management who reviewed the transaction, and

(v) the date of that review.

14.1 Subject to subsection 62(2), every financial entity shall, in respect of every credit card account that it opens, keep a credit card account record that includes

(a) where the account is opened in the name of a client that is a person or an entity other than a corporation, the name and address of the client and

(i) if the client is a person, their date of birth and the nature of their principal business or their occupation, as applicable, and

(ii) if the client is an entity other than a corporation, the nature of their principal business;

(b) where the account is opened in the name of a client that is a corporation, a copy of the part of official corporate records that contains any provision relating to the power to bind the corporation in respect of the account;

(c) the name, address and telephone number of every holder of a credit card for the account;

(d) the date of birth of every holder of a credit card for the account, if that information is known after reasonable measures have been taken by the financial entity to obtain it;

(e) every credit card application that the financial entity receives from the client in the normal course of business;

(f) a copy of every credit card statement that the financial entity sends to the client, if the information in the statement is not readily obtainable from other records that are kept and retained by it under these Regulations; and

(g) where the financial entity has obtained approval under paragraph 67.1(b) to keep the account of a person that has been determined to be a politically exposed foreign person open

(i) the office or position in respect of which the person was determined to be a politically exposed foreign person,

(ii) the source, if known, of the funds that are or are expected to be deposited in the account,

(iii) the date of the determination that the person was a politically exposed foreign person,

(iv) the name of the member of senior management who gave the approval to keep the account open, and

(v) the date of that approval.

15. (1) Every trust company shall, in addition to the records referred to in sections 13 and 14, keep the following records in respect of a trust for which it is trustee:

(a) a copy of the trust deed;

(b) a record of the settlor's name and address and date of birth and the nature of the principal business or occupation of the settlor; and

(c) where the trust is an institutional trust and the settlor is a corporation, a copy of the part of official corporate records that contains any provision relating to the power to bind the settlor in respect of the trust.

(2) In this section, "institutional trust" means a trust that is established by a corporation, partnership or other entity for a particular business purpose and includes pension plan trusts, pension master trusts, supplemental pension plan trusts, mutual fund trusts, pooled fund trusts, registered retirement savings plan trusts, registered retirement income fund trusts, registered education savings plan trusts, group registered retirement savings plan trusts, deferred profit sharing plan trusts, employee profit sharing plan trusts, retirement compensation arrangement trusts, employee savings plan trusts, health and welfare trusts, unemployment benefit plan trusts, foreign insurance company trusts, foreign reinsurance trusts, reinsurance trusts, real estate investment trusts, environmental trusts and trusts established in respect of endowments, foundations and registered charities.

15.1 (1) For the purposes of subsections 9.4(1) and (3) of the Act, the prescribed foreign entity is a foreign financial institution.

(2) Every financial entity shall, when it enters into a correspondent banking relationship, keep a record in respect of the foreign financial institution containing the following information and documents:

(a) the name and address of the foreign financial institution;

(b) the names of the directors of the foreign financial institution;

(c) the primary business line of the foreign financial institution;

(d) a copy of the most recent annual report or audited financial statement of the foreign financial institution;

(e) a copy of the foreign financial institution's banking licence, banking charter, authorization or certification to operate from the relevant regulatory agency or certificate of corporate status or a copy of another similar document;

(f) a copy of the correspondent banking agreement or arrangement, or product agreements, defining the respective responsibilities of each entity;

(g) the anticipated correspondent banking account activity of the foreign financial institution, including the products or services to be used;

(h) a statement from the foreign financial institution that it does not have, directly or indirectly, correspondent banking relationships with shell banks; and

(i) a statement from the foreign financial institution that it is in compliance with anti-money laundering and anti-terrorist financing legislation in its own jurisdiction.

(3) The financial entity shall take reasonable measures to ascertain whether the foreign financial institution has in place anti-money laundering and anti-terrorist financing policies and procedures, including procedures for approval for the opening of new accounts and, if not, shall, for the purpose of detecting any transactions that are required to be reported to the Centre under section 7 of the Act, take reasonable measures to conduct ongoing monitoring of all transactions conducted in the context of the correspondent banking relationship.

(4) For greater certainty, section 14 does not apply in respect of an account opened for a foreign financial institution in the context of a correspondent banking relationship.

LIFE INSURANCE COMPANIES AND LIFE INSURANCE BROKERS OR AGENTS

16. Part 1 of the Act applies to life insurance brokers or agents.

17. Subject to section 20.2 and subsection 52(1), every life insurance company or life insurance broker or agent who receives from a client an amount in cash of \$10,000 or more in the course of a single transaction shall report the transaction to the Centre, together with the information referred to in Schedule 1, except

(a) if the amount is received from a financial entity or a public body; or

(b) in respect of transactions referred to in subsection 62(2).

18. Subject to section 20.2 and subsection 52(2), every life insurance company or life insurance broker or agent shall keep a large cash transaction record in respect of every amount in cash of \$10,000 or more that is received from a client in the course of a single transaction, unless

(a) the cash is received from a financial entity or a public body; or

(b) the transaction is a transaction referred to in subsection 62(2).

19. (1) Subject to section 20.2 and subsection 62(2), every life insurance company or life insurance broker or agent shall keep a client information record for every purchase from the company, broker or agent of an immediate or deferred annuity

or of a life insurance policy for which the client may pay \$10,000 or more over the duration of the annuity or policy, regardless of the means of payment.

(2) Subject to section 20.2 and subsection 62(2), in the case of a life insurance policy that is a group life insurance policy or in the case of a group annuity, the client information record shall be kept in respect of the applicant for the policy or annuity.

20. Subject to section 20.2, every life insurance company or life insurance broker or agent who keeps a client information record in respect of a corporation in under subsection 19(1) shall also keep a copy of the part of official corporate records that contains any provision relating to the power to bind the corporation in respect of transactions with the life insurance company or life insurance broker or agent, if the copy of that part is obtained in the normal course of business.

20.1 Subject to section 20.2, every life insurance company or life insurance broker or agent shall keep a record of the following information when a transaction is reviewed under subsection 67.2(2):

(a) the office or position in respect of which the person initiating the transaction is determined to be a politically exposed foreign person;

(b) the source, if known, of the funds that are used for the transaction;

(c) the date of the determination that the person is a politically exposed foreign person;

(d) the name of the member of senior management who reviewed the transaction; and

(e) the date the transaction was reviewed

20.2 Sections 17 to 20.1 do not apply to a life insurance company or a life insurance broker or agent when they are dealing in reinsurance.

SECURITIES DEALERS

21. Subject to subsection 52(1), every securities dealer who receives from a client an amount in cash of \$10,000 or more in the course of a single transaction shall report the transaction to the Centre, together with the information set out in Schedule 1, unless the amount is received from a financial entity or a public body.

22. Subject to subsection 52(2), every securities dealer shall keep a large cash transaction record in respect of every amount in cash of \$10,000 or more that is received from a client in the course of a single transaction, unless the cash is received from a financial entity or a public body.

23. (1) Subject to subsection 62(2), every securities dealer shall keep the following records:

(a) in respect of every account that the securities dealer opens, a signature card, an account operating agreement or an account application that

(i) bears the signature of the person who is authorized to give instructions in respect of the account,

(ii) REPEALED

(a.1) in respect of every account that the securities dealer opens, a record that sets out the intended use of the account;

(b) where the securities dealer opens an account in respect of a corporation, a copy of the part of official corporate records that contains any provision relating to the power to bind the corporation in respect of that account;

(c) where the securities dealer opens an account in the name of a person or of an entity other than a corporation, a record of the name and address and date of birth and the nature of the principal business or occupation of the person or entity, as the case may be;

(d) every new account application, confirmation of purchase or sale, guarantee, trade authorization, power of attorney and joint account agreement, and all correspondence that pertains to the operation of accounts, that the securities dealer creates in the normal course of business;

(e) a copy of every statement that the securities dealer sends to a client, if the information in the statement is not readily obtainable from other records that the securities dealer keeps and retains under these Regulations; and

(f) where it has obtained approval under paragraph 67.1(b) to keep the account of a person that has been determined to be a politically exposed foreign person open

(i) the office or position in respect of which the person was determined to be a politically exposed foreign person,

(ii) the source, if known, of the funds that are or are expected to be deposited in the account,

(iii) the date of the determination that the person was a politically exposed foreign person,

(iv) the name of the member of senior management who gave the approval to keep the account open, and

(v) the date of that approval.

(2) REPEALED.

24. REPEALED

25. REPEALED.

26. REPEALED

MONEY SERVICES BUSINESSES

27. REPEALED

28. (1) Subject to subsection 52(1), every money services business shall report the following transactions and information to the Centre:

(a) the receipt from a client of an amount in cash of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 1, unless the cash is received from a financial entity or a public body;

(b) the sending out of Canada, at the request of a client, of an electronic funds transfer of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 2 or 5, as the case may be; and

(c) the receipt from outside Canada of an electronic funds transfer, sent at the request of a client, of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 3 or 6, as the case may be.

(2) For greater certainty, paragraph (1)(b) does not apply when the money services business sends an electronic funds transfer to a person or an entity in Canada, even if the final recipient is outside Canada.

(3) Paragraph (1)(b) applies in respect of a money services business that orders a person or entity, to which subsection (1), 12(1) or 40(1) applies, to send out of Canada an electronic funds transfer made at the request of a client, unless it provides that person or entity with the name and address of that client.

(4) Subject to subsection (5), for greater certainty, paragraph (1)(c) does not apply when the money services business receives an electronic funds transfer from a person or an entity in Canada, even if the initial sender is outside Canada.

(5) Paragraph (1)(c) applies in respect of a money services business that receives an electronic funds transfer for a beneficiary in Canada from a person or entity to which subsection (1), 12(1) or 40(1) applies where the initial sender is outside Canada, unless the electronic funds transfer contains the name and address of that beneficiary.

29. Subject to subsection 52(2), every money services business shall keep a large cash transaction record in respect of every amount in cash of \$10,000 or more that is received from a client in the course of a single transaction, unless the cash is received from a financial entity or a public body.

30. Every money services business shall keep the following records in respect of any of the activities referred to in paragraph 5(h) of the Act:

(a) every client credit file that it creates in the normal course of business;

(a.1) every internal memorandum that it receives or creates in the normal course of business and that concerns services provided to its clients;

(b) where a client information record is created in respect of a client that is a corporation, a copy of the part of official corporate records that contains any provision relating to the power to bind the corporation in respect of transactions with the money services business, if the copy of that part is obtained in the normal course of business;

(c) where it receives an amount of \$3,000 or more from a person or from an entity other than a financial entity in consideration of the issuance of traveller's cheques, money orders or other similar negotiable instruments, a record of the amount received, the date it was received, the name and address and date of birth of the person who in fact gave the amount and whether the amount received was in cash, cheques, traveller's cheques, money orders or other similar negotiable instruments;

(d) where money orders of \$3,000 or more are cashed, a record of the name and address and date of birth of the person cashing the money orders and the name of the issuer of the money orders;

(e) where an amount of \$1,000 or more is remitted or transmitted, a record of

(i) the name, address and telephone number of the client initiating the transaction and the nature of their principal business or occupation,

(ii) if the client initiating the transaction is a person, their date of birth,

(iii) the reference number and date of the transaction,

(iv) the name of the person or entity to whom the amount is remitted or transmitted, and

(v) the amount and currency of the transaction; and

(f) a transaction ticket in respect of every foreign currency exchange transaction.

31. Every money services business shall keep a record of the following information when a transaction is reviewed under subsection 67.2(2):

(a) the office or position in respect of which the person initiating the transaction or the beneficiary of the transaction is determined to be a politically exposed foreign person;

(b) the source, if known, of the funds that have been used for the transaction;

(c) the date of the determination that the person referred to in paragraph (a) is a politically exposed foreign person;

(d) the name of the member of senior management who reviewed the transaction; and

(e) the date the transaction was reviewed.

32. Every money services business that enters into an ongoing electronic funds transfer, funds remittance or foreign exchange service agreement with an entity, or a service agreement for the issuance or redemption of money orders, traveller's cheques or other negotiable instruments, shall keep a record of the name, address, date of birth and occupation of every person who has signed the agreement on behalf of the entity, a client information record with respect to the entity and a list containing the name, address and date of birth of every employee authorized to order transactions under the agreement.

33. [Repealed]

ACCOUNTANTS AND ACCOUNTING FIRMS

34. (1) Subject to subsections (2) and (3), every accountant and every accounting firm is subject to Part 1 of the Act when they

(a) engage in any of the following activities on behalf of any person or entity, namely,

(i) receiving or paying funds,

(ii) purchasing or selling securities, real properties or business assets or entities, or

(iii) transferring funds or securities by any means; or

(b) give instructions on behalf of any person or entity in respect of any activity referred to in paragraph (a)

(c) REPEALED.

(2) Subsection (1) does not apply in respect of an accountant when they engage in any of the activities referred to in paragraph (1)(a) or (b) on behalf of their employer.

(3) For greater certainty, subsection (1) does not apply in respect of audit, review or compilation engagements, carried out in accordance with the recommendations set out in the CICA Handbook.

35. Subject to subsection 52(1), every accountant and every accounting firm that, while engaging in an activity described in section 34, receives an amount in cash of \$10,000 or more in the course of a single transaction shall report the transaction to the Centre, together with the information set out in Schedule 1, unless the cash is received from a financial entity or a public body.

36. (1) Every accountant and every accounting firm shall, when engaging in an activity described in section 34, keep the following records:

(a) a receipt of funds record in respect of every amount of \$3,000 or more that they receive in the course of a single transaction, unless the amount is received from a financial entity or a public body; and

(b) where the receipt of funds record is in respect of a client that is a corporation, a copy of the part of official corporate records that contains any provision relating to the power to bind the corporation in respect of transactions with the accountant or accounting firm.

(2) Subject to subsection 52(2), every accountant and every accounting firm shall, when engaging in an activity described in section 34, keep a large cash transaction record in respect of every amount in cash of \$10,000 or more that they receive in the course of a single transaction, unless the cash is received from a financial entity or a public body.

(3) Subsection (1) does not apply in respect of a transaction if a large cash transaction record is also required by subsection (2) to be kept in respect of that same transaction.

REAL ESTATE BROKERS OR SALES REPRESENTATIVES

37. Every real estate broker or sales representative is subject to Part 1 of the Act when they act as an agent in respect of the purchase or sale of real estate.

38. Subject to subsection 52(1), every real estate broker or sales representative who, while engaging in an activity described in section 37, receives an amount in cash of \$10,000 or more in the course of a single transaction shall report the transaction to the Centre, together with the information set out in Schedule 1, unless the amount is received from a financial entity or a public body.

39. (1) Subject to subsections (3) and 52(2), every real estate broker or sales representative shall, when engaging in an activity described in section 37, keep the following records:

(a) a receipt of funds record in respect of every amount that they receive in the course of a single transaction, unless the amount is received from a financial entity or a public body;

(b) a client information record in respect of every purchase or sale of real estate; and

(c) where the receipt of funds record or the client information record is in respect of a corporation, a copy of the part of official corporate records that contains any provision relating to the power to bind the corporation in respect of transactions with the real estate broker or sales representative.

(2) Subject to subsection 52(2), every real estate broker or sales representative shall, when engaging in an activity described in section 37, keep a large cash transaction record in respect of every amount in cash of \$10,000 or more that they receive in the course of a single transaction, unless the cash is received from a financial entity or a public body.

(3) Paragraphs (1)(a) and (c) do not apply in respect of a transaction if a large cash transaction record is also required by subsection (2) to be kept in respect of that same transaction.

CASINOS

40. (1) Subject to subsection 52(1), every casino shall report the following transactions and information to the Centre:

(a) the receipt from a client of an amount in cash of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 1, unless the cash is received from a financial entity or a public body;

(b) the sending out of Canada, at the request of a client, of an electronic funds transfer of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 5; and

(c) the receipt from outside Canada of an electronic funds transfer, sent at the request of a client, of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 6.

(2) Subject to subsection (3), for greater certainty, paragraph (1)(b) does not apply when the casino sends an electronic funds transfer to a person or entity in Canada, even if the final recipient is outside Canada.

(3) Paragraph (1)(b) applies in respect of a casino that orders a person or entity, to which subsection (1), 12(1) or 28(1) applies, to send out of Canada an electronic funds transfer made at the request of a client, unless it provides that person or entity with the name and address of that client.

(4) Subject to subsection (5), for greater certainty, paragraph (1)(c) does not apply when the casino receives an electronic funds transfer from a person or entity in Canada, even if the initial sender is outside Canada.

(5) Paragraph (1)(c) applies in respect of a casino that receives an electronic funds transfer for a beneficiary in Canada from a person or entity to which subsection (1), 12(1) or 28(1) applies where the initial sender is outside Canada, unless the electronic funds transfer contains the name and address of that beneficiary.

41. (1) Subject to subsection 52(2), every casino shall keep a large cash transaction record in respect of every amount in cash of \$10,000 or more that it receives in the course of a single transaction, unless the amount is received from a financial entity or a public body.

(2) For greater certainty, the transactions in respect of which a casino is required to keep large cash transaction records in accordance with subsection (1) include the following transactions involving an amount in cash of \$10,000 or more:

- (a) the sale of chips, tokens or plaques;
- (b) front cash deposits;
- (c) safekeeping deposits;
- (d) the repayment of any form of credit, including repayment by markers or counter cheques;
- (e) bets of currency; and
- (f) sales of the casino's cheques.

42. (1) Subject to section 44, every casino shall keep a large cash disbursement record in respect of each of the following transactions in the course of which the total amount of cash disbursed is \$10,000 or more:

- (a) the redemption of chips, tokens or plaques;
- (b) front cash withdrawals;
- (c) safekeeping withdrawals;
- (d) advances on any form of credit, including advances by markers or counter cheques;
- (e) payments on bets, including slot jackpots;
- (f) payments to a client of funds received for credit to that client or any other client;
- (g) the cashing of cheques or other negotiable instruments; and
- (h) reimbursements to clients of travel and entertainment expenses.

(2) For the purpose of subsection (1), the large cash disbursement record shall set out

- (a) the name of the person to whom the disbursement is made;
- (b) the person's address and the nature of their principal business or occupation;
- (c) the date and nature of the disbursement; and
- (d) the person's date of birth.

42.1 Any transaction described in section 40, 41 or 42 that occurs in the course of the business, temporarily conducted for charitable purposes in the establishment of a casino by a registered charity carried on for not more than two consecutive days at a time under the supervision of the casino, shall be reported by the supervising casino.

43. Every casino shall keep the following records:

- (a) with respect to every client account that it opens,
 - (i) a signature card in respect of each account holder,

- (ii) every account operating agreement that is received or created in the normal course of business,
- (iii) a deposit slip in respect of every deposit that is made to the account, and
- (iv) every debit and credit memo that is received or created in the normal course of business;

(b) where it opens a client account in respect of a corporation, a copy of the part of the official corporate records that contains any provision relating to the power to bind the corporation in respect of the account;

(c) where it opens a client account in the name of a person or of an entity other than a corporation, a record of the name and address and date of birth and the nature of the principal business or occupation of the person or entity, as the case may be;

(d) with respect to every extension of credit to a client of \$3,000 or more, an extension of credit record that indicates

- (i) the client's name and address and date of birth and the nature of the principal business or occupation of the client,
- (ii) the terms and conditions of the extension of credit, and
- (iii) the date and amount of the extension of credit;

(e) with respect to every foreign currency exchange transaction, a transaction ticket; and

(f) where an amount of \$1,000 or more is remitted or transmitted, a record of

- (i) the name, address and telephone number of the client initiating the transaction and the nature of their principal business or occupation,
- (ii) if the client initiating the transaction is a person, their date of birth,
- (iii) the relevant account number if any, and the reference number, if any, of the transaction and the date of the transaction,
- (iv) the name or account number of the person or entity to whom the amount is remitted or transmitted, and
- (v) the amount and currency of the transaction.

44. A casino is not required to keep a large cash disbursement record if the information that is required to be found in it is readily obtainable from other records that must be kept and retained by the casino under these Regulations.

DEPARTMENTS AND AGENTS OF HER MAJESTY IN RIGHT OF CANADA OR OF A PROVINCE

Acceptance of Deposit Liabilities

45. Every department and agent of Her Majesty in right of Canada or of a province is subject to Part 1 of the Act when it accepts deposit liabilities in the course of providing financial services to the public.

Sale or Redemption of Money Orders

46. Every department and agent of Her Majesty in right of Canada or of a province is subject to Part 1 of the Act when it sells or redeems money orders in the course of providing financial services to the public.

47. Subject to subsection 52(1), every department and agent of Her Majesty in right of Canada or of a province that, while engaging in an activity referred to in section 46, receives from a client an amount in cash of \$10,000 or more in the course of

a single transaction shall report the transaction to the Centre, together with the information set out in Schedule 1, unless the amount is received from a financial entity or a public body.

48. Subject to subsection 52(2), every department and agent of Her Majesty in right of Canada or of a province, while engaging in an activity referred to in section 46, shall keep a large cash transaction record in respect of every amount in cash of \$10,000 or more that it receives from a client in the course of a single transaction, unless the amount is received from a financial entity or a public body.

49. Every department and agent of Her Majesty in right of Canada or of a province that engages in an activity referred to in section 46 shall keep the following records in respect of that activity:

(a) every client information record that is created for the purpose of an ongoing business relationship between the department or agent and a client;

(b) where the client information record is in respect of a corporation, a copy of the part of official corporate records that contains any provision relating to the power to bind the corporation in respect of transactions with the department or agent;

(c) where the department or agent receives \$3,000 or more in consideration of the issuance of money orders or other similar negotiable instruments, a record of the date, the amount received, the name and address and date of birth of the person who in fact gives the amount and whether the amount is in cash, cheques, traveller's cheques, money orders or other similar negotiable instruments; and

(d) where money orders of \$3,000 or more are cashed, a record of the name and address and date of birth of the person cashing the money orders and the name of the issuer of the money orders.

EXCEPTIONS

50. (1) A financial entity is not required to report transactions under paragraph 12(1)(a) in respect of a business of a client, if the following conditions are met:

(a) subject to subsection (2), the client is a corporation that carries on that business as an establishment described in sector 22, 44 (excluding codes 4411, 4412 and 44831) or 45 (excluding code 45392), or code 481, 482, 485 (excluding code 4853), 51322, 51331, 61121 or 61131 of the *North American Industry Classification System* as that sector or code read on January 31, 2003;

(b) the client has had

(i) for the entire preceding 24-month period, an account in respect of that business with that financial entity, or

(ii) an account in respect of that business with a financial entity other than the one referred to in subparagraph (i), for a continuous period of 24 months ending immediately before the client opened an account with that financial entity;

(c) the financial entity has records that indicate that the client has deposited \$10,000 or more in cash into that account on an average of at least twice in every week for the preceding 12 months;

(d) the cash deposits made by the client are consistent with its usual practice in respect of the business;

(e) the financial entity has taken reasonable measures to determine the source of the cash for those deposits; and

(f) subject to subsection 52(1), the financial entity has provided to the Centre the information set out in Schedule 4.

(2) Paragraph (1)(a) does not apply to a corporation that carries on a business related to pawnbroking or a corporation whose principal business is the sale of vehicles, vessels, farm machinery, aircraft, mobile homes, jewellery, precious gems or metals, antiquities or art.

(3) A financial entity that, in accordance with subsection (1), chooses not to report transactions of more than \$10,000 shall report to the Centre any change in the following information, within 15 days after the change is made:

- (a) the name and address of the client;
- (b) the nature of the client's business; and
- (c) the client's incorporation number.

(4) A financial entity that, in accordance with subsection (1), chooses not to report transactions of more than \$10,000 shall, at least once every 12 months,

- (a) verify that the conditions referred to in subsection (1) are still met in respect of each client; and
- (b) send a report to the Centre setting out the name and address of each client, together with the name of a senior officer of the financial entity who has confirmed that the conditions referred to in subsection (1) are still being met in respect of each client.

SOR/2003-358, s. 10.

51. Where a person or entity maintains a list of clients for the purposes of subsection 9(3) of the Act, the list must contain the name and address of each client and be kept in paper form or in a form referred to in section 68.

52. (1) The requirement to report information set out in Schedules 1 to 6 does not apply to a person or entity in respect of information set out in an item of any of those Schedules that is not marked with an asterisk if, after taking reasonable measures to do so, the person or entity is unable to obtain the information.

(2) The requirement that a person or entity keep or retain a **record** or include information in it does not apply if the information that must be found in the record is readily obtainable from other records that the person or entity is required to keep or retain under these Regulations.

(3) Despite subsection (1), for the application of **subsection 3(1)**, the requirement to report information set out in Schedules **1 to 3, 5 and 6** does not apply to a person or entity in respect of information set out in an item of any of those Schedules that is marked with an asterisk if, after taking reasonable measures to do so, the person or entity is unable to obtain the information.

(4) For greater certainty, Schedules 2 and 3 apply only to SWIFT members sending or receiving SWIFT messages.

ASCERTAINING IDENTITY

PERSONS OR ENTITIES REQUIRED TO KEEP LARGE CASH TRANSACTION RECORDS

53. Subject to subsection 63(1), every person or entity that is required to keep and retain a large cash transaction record under these Regulations shall ascertain, in accordance with **subsection 64(1)**, the identity of every person with whom the person or entity conducts a transaction in respect of which that record must be kept, other than a deposit made to a business account or a deposit made by means of an automated banking machine.

SUSPICIOUS TRANSACTIONS

53.1 (1) Except where identity has been previously ascertained as required by these Regulations, every person or entity that is subject to these Regulations shall take reasonable measures to ascertain, in accordance with subsection 64(1), the identity of every person with whom the person or entity conducts a transaction that is required to be reported to the Centre under section 7 of the Act.

(2) Subsection (1) does not apply if the person or entity believes that complying with that subsection would inform the person that the transaction and the related information is being reported under section 7 of the Act.

53.2 For the purposes of section 9.2 of the Act, the prescribed circumstances are the circumstances in which a financial entity, a securities dealer or a casino is required to ascertain the identity of a person or confirm the existence of an entity in connection with the opening of a new account in accordance with section 64, 65 or 66, as applicable.

Financial Entities

54. (1) Subject to sections 62 and 63, every financial entity shall

(a) in accordance with subsection 64(1), ascertain the identity of every person who signs a signature card in respect of an account, other than a credit card account, that the financial entity opens, except in the case of a business account the signature card of which is signed by more than three persons authorized to act with respect to the account, if the financial entity has ascertained the identity of at least three of those persons;

(b) in accordance with subsection 64(1), ascertain the identity of every person who has not signed a signature card in respect of an account held with the financial entity and has not been authorized to act with respect to such an account but who conducts

(i) a transaction whereby the financial entity issues or redeems money orders, traveller's cheques or other similar negotiable instruments in an amount of \$3,000 or more;

(ii) an electronic funds transfer, as prescribed by subsection 66.1(2), in an amount of \$1,000 or more sent at the request of a client, or

(iii) a foreign currency exchange transaction of \$3,000 or more;

(c) REPEALED

(d) in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation for which the financial entity opens an account and the names of the corporation's directors; and

(e) in accordance with section 66, confirm the existence of every entity, other than a corporation, for which the financial entity opens an account.

(2) For the purpose of paragraph (1)(a), where the person who signs a signature card is under 12 years of age, the financial entity shall ascertain the identity of the father, mother or guardian of the person in accordance with subsection 64(1).

54.1 Subject to subsections 62(1) and (2) and section 63, every financial entity shall

(a) where the financial entity opens a credit card account in the name of a person, ascertain their identity in accordance with subsection 64(1.1);

(b) where the financial entity opens a credit card account in the name of a corporation, confirm the existence of and ascertain the name and address of the corporation and the names of its directors in accordance with section 65; and

(c) where the financial entity opens a credit card account in the name of an entity other than a corporation, confirm the existence of the entity in accordance with section 66.

54.2 Subject to section 62 and subsection 63(5), every financial entity shall

(a) in accordance with subsection 67.1(2), take reasonable measures to determine whether a person for whom the financial entity opens an account is a politically exposed foreign person;

(b) take reasonable measures, based on the level of the risk referred to in subsection 9.6(2) of the Act, to determine whether a person who is an existing account holder is a politically exposed foreign person;

(c) in accordance with subsection 67.2(3), take reasonable measures to determine whether the person who initiates an electronic funds transfer of \$100,000 or more is a politically exposed foreign person; and

(d) in accordance with subsection 67.2(3), take reasonable measures to determine whether the person who is the beneficiary of an electronic funds transfer of \$100,000 or more is a politically exposed foreign person.

55. Subject to sections 62 and 63, every trust company shall, in addition to complying with section 54,

(a) in accordance with subsection 64(1), ascertain the identity of every person who is the settlor of an *inter vivos* trust in respect of which the company is required to keep records under section 15;

(b) in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation that is the settlor of an institutional trust in respect of which the company is required to keep records in accordance with section 15;

(c) in accordance with section 66, confirm the existence of every entity, other than a corporation, that is the settlor of an institutional trust in respect of which the company is required to keep records in accordance with section 15;

(d) where an entity is authorized to act as a co-trustee of any trust

(i) confirm the existence of the entity and ascertain its name and address in accordance with section 65 or confirm the existence of the entity in accordance with section 66, as the case may be, and

(ii) in accordance with subsection 64(1), ascertain the identity of all persons — up to three — who are authorized to give instructions with respect to the entity's activities as co-trustee; and

(e) in accordance with subsection 64(1), ascertain the identity of each person who is authorized to act as co-trustee of any trust.

CORRESPONDENT BANKING RELATIONSHIP

55.1 Every financial entity that enters into a correspondent banking relationship shall

(a) ascertain the name and address of the foreign financial institution by examining a copy of the foreign financial institution's banking licence, banking charter, authorization or certification to operate from the relevant regulatory agency or certificate of corporate status or a copy of another similar document; and

(b) take reasonable measures to ascertain, based on publicly available information, whether there are any civil or criminal penalties that have been imposed on the foreign financial institution in respect of anti-money laundering or anti-terrorist financing requirements and, if so, to conduct, for the purpose of detecting any transactions that are required to be reported under section 7 of the Act, ongoing monitoring of all transactions in the context of the correspondent banking relationship.

55.2 In respect of correspondent banking relationships, where the customer of the foreign financial institution has direct access to the services provided under the correspondent banking relationship, the financial entity shall take reasonable measures to ascertain whether

(a) the foreign financial institution has, in respect of those of its customers that have direct access to the accounts of the financial entity, met requirements that are consistent with the requirements of sections 54 and 64; and

(b) the foreign financial institution has agreed to provide relevant customer identification data upon request to the financial entity.

LIFE INSURANCE COMPANIES AND LIFE INSURANCE BROKERS OR AGENTS

56. (1) Subject to subsection (2), section 56.2 and subsections 62(2) and (3) and 63(1), every life insurance company or life insurance broker or agent shall ascertain, in accordance with subsection 64(1), the identity of every person who conducts, on the person's own behalf or on behalf of a third party, a transaction with that life insurance company or life insurance broker or agent for which a client information record is required to be kept under section 19.

(2) A life insurance company or life insurance broker or agent is not required to ascertain the identity of a person where there are reasonable grounds to believe that the person's identity has been ascertained in accordance with subsection 64(1) by another life insurance company or life insurance broker or agent in respect of the same transaction or of a transaction that is part of a series of transactions that includes the original transaction.

(3) Subject to subsections 62(2) and 63(2) and (4), every life insurance company or life insurance broker or agent shall, in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation in respect of which they are required to keep a client information record and the names of the corporation's directors.

(4) Subject to subsections 62(2) and 63(3), every life insurance company or life insurance broker or agent shall, in accordance with section 66, confirm the existence of every entity, other than a corporation, in respect of which they are required to keep a client information record.

56.1 Subject to section 56.2 and subsections 62(2) and 63(5), every life insurance company or life insurance broker or agent shall, in accordance with subsection 67.2(3), take reasonable measures to determine if a person who makes a lump-sum payment of \$100,000 or more in respect of an immediate or deferred annuity or life insurance policy on their own behalf or on behalf of a third party is a politically exposed foreign person.

56.2 Sections 56 and 56.1 do not apply to a life insurance company or a life insurance broker or agent when they are dealing in reinsurance.

SECURITIES DEALERS

57. (1) Subject to section 62 and subsection 63(1), every securities dealer shall ascertain, in accordance with subsection 64(1), the identity of every person who is authorized to give instructions in respect of an account for which a record must be kept by the securities dealer under subsection 23(1).

(2) REPEALED

(3) Subject to section 62 and subsections 63(2) and (4), every securities dealer shall, in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation for which it opens an account and the names of the corporation's directors.

(4) Subject to section 62 and subsection 63(3), every securities dealer shall, in accordance with section 66, confirm the existence of every entity, other than a corporation, for which it opens an account.

(5) REPEALED

57.1 (1) Subject to section 62 and subsection 63(5), every securities dealer shall, in accordance with subsection 67.1(2), take reasonable measures to determine if the person for whom the securities dealer opens an account is a politically exposed foreign person.

(2) Subject to section 62 and subsection 63(5), every securities dealer shall take reasonable measures, based on the level of the risk referred to in subsection 9.6(2) of the Act, to determine whether a person who is an existing account holder is a politically exposed foreign person.

58. REPEALED

MONEY SERVICES BUSINESSES

59. (1) Subject to subsection 63(1), every money services business shall, in accordance with subsection 64(1), ascertain the identity of every person who conducts any of the following transactions:

(a) the issuance or redemption of money orders, traveller's cheques or other similar negotiable instruments in an amount of \$3,000 or more;

(b) the remittance or transmission of \$1,000 or more by any means through any person or entity; or

(c) a foreign currency exchange transaction of \$3,000 or more.

(2) Subject to subsections (6) and 63(2) and (4), every money services business shall, in accordance with section 65, confirm the existence of every corporation in respect of which they are required to keep a client information record and ascertain the name and address of the corporation and the names of the corporation's directors.

(3) Subject to subsections (6) and 63(3), every money services business shall, in accordance with section 66, confirm the existence of every entity, other than a corporation, in respect of which they are required to keep a client information record .

(4) Subsection (1) does not apply when a person referred to in section 32 conducts a transaction on behalf of their employer under an agreement referred to in that section.

(5) Subject to section 63, every money services business shall, in accordance with subsection 67.2(3),

(a) take reasonable measures to determine whether the person who initiates an electronic funds transfer of \$100,000 or more is a politically exposed foreign person; and

(b) take reasonable measures to determine whether the person who is the beneficiary of an electronic funds transfer of \$100,000 or more is a politically exposed foreign person.

(6) Subsections (2) and (3) do not apply in respect of a corporation or an entity other than a corporation referred to in paragraph 62(2)(m) or (n) with which the money services business has entered into a service agreement referred to in section 32 .

ACCOUNTANTS AND ACCOUNTING FIRMS

59.1 Subject to section 63, every accountant and every accounting firm shall, in respect of a transaction for which a record is required to be kept under subsection 36(1),

(a) in accordance with subsection 64(1), ascertain the identity of every person who conducts the transaction;

(b) in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation on whose behalf the transaction is conducted and the names of its directors; and

(c) in accordance with section 66, confirm the existence of every entity, other than a corporation, on whose behalf the transaction is conducted.

REAL ESTATE BROKERS OR SALES REPRESENTATIVES

59.2 (1) Subject to section 63, every real estate broker or sales representative shall, in respect of a transaction for which a record is required to be kept under subsection 39(1),

(a) in accordance with subsection 64(1), ascertain the identity of every person who conducts the transaction;

(b) in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation on whose behalf the transaction is conducted and the names of its directors; and

(c) in accordance with section 66, confirm the existence of every entity, other than a corporation, on whose behalf the transaction is conducted .

(2) Where the persons or entities that are parties to a real estate transaction are each represented by a different real estate broker or sales representative, the real estate broker or sales representative that represents one party is not required to ascertain the identity or the name and address of any other party or confirm their existence.

(3) Where one or more but not all of the parties to a real estate transaction are represented by a real estate broker or sales representative, each real estate broker or sales representative that represents a party to the transaction shall ascertain the identity or confirm the existence of the parties that are not so represented.

CASINOS

60. Subject to subsection 62(1) and section 63, every casino shall

(a) in accordance with subsection 64(1), ascertain the identity of every person who signs a signature card in respect of an account that the casino opens, except in the case of a business account whose signature card is signed by more than three persons authorized to act with respect to the account, if the casino has ascertained the identity of at least three of those persons;

(b) in accordance with subsection 64(1), ascertain the identity of every person who

(i) conducts a transaction with the casino for which a large cash disbursement record is required to be kept under subsection 42(1),

(ii) conducts a transaction of \$3,000 or more with the casino for which an extension of credit record is required to be kept under paragraph 43(d),

(iii) conducts a foreign currency exchange transaction of \$3,000 or more with the casino for which a transaction ticket is required to be kept under paragraph 43(e), or

(iv) requests that an amount of \$1,000 or more be remitted or transmitted;

(c) REPEALED

(d) REPEALED

(e) in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation for which the casino opens an account and the names of the corporation's directors; and

(f) in accordance with section 66, confirm the existence of every entity, other than a corporation, for which the casino opens an account.

DEPARTMENTS OR AGENTS OF HER MAJESTY IN RIGHT OF CANADA OR OF A PROVINCE THAT SELL OR REDEEM MONEY ORDERS

61. Subject to section 63, a department or agent of Her Majesty in right of Canada or of a province that engages in an activity referred to in section 46 shall

(a) in accordance with subsection 64(1), ascertain the identity of every person in respect of whom a client information record is required to be kept under paragraph 49(a);

(b) in accordance with subsection 64(1), ascertain the identity of every person in respect of whom they are not required to keep a client information record and who conducts a transaction that involves an amount of \$3,000 or more for the issuance or redemption of money orders or other similar negotiable instruments;

(c) in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation in respect of which a client information record is required to be kept under paragraph 49(a) and the names of the corporation's directors; and

(d) in accordance with section 66, confirm the existence of every entity, other than a corporation, in respect of which a client information record is required to be kept under paragraph 49(a).

EXCEPTIONS TO ASCERTAINING IDENTITY

62. (1) Sections 54, 54.1, 54.2, 55, 57, 57.1 and 60 do not apply in respect of
- (a) the opening of a business account in respect of which the financial entity, the securities dealer or the casino, as the case may be, has already ascertained the identity of at least three persons who are authorized to give instructions in respect of the account;
 - (b) the opening of an account for the sale of mutual funds where there are reasonable grounds to believe that identity has been ascertained in accordance with subsection 64(1) by a securities dealer in respect of
 - (i) the sale of the mutual funds for which the account has been opened, or
 - (ii) a transaction that is part of a series of transactions that includes that sale; or
 - (c) a person who already has an account with the financial entity, the securities dealer or the casino, as the case may be.
- (2) Sections 14, 14.1, 19, 23, 54, 54.1, 54.2, 55, 56, 56.1, 57 and 57.1 do not apply in respect of
- (a) the purchase of an exempt policy as defined in subsection 306(1) of the *Income Tax Regulations*, as it read on May 1, 1992;
 - (b) the purchase of a group life insurance policy that does not provide for a cash surrender value or a savings component;
 - (c) the purchase of an immediate or deferred annuity that is paid for entirely with funds that are directly transferred from a registered pension plan or from a pension plan that is required to be registered under the *Pension Benefits Standards Act*, 1985, or similar provincial legislation;
 - (d) the purchase of a registered annuity policy or a registered retirement income fund;
 - (e) the purchase of an immediate or deferred annuity that is paid for entirely with the proceeds of a group life insurance policy;
 - (f) a transaction that is part of a reverse mortgage or of a structured settlement;
 - (g) the opening of an account for the deposit and sale of shares from a corporate demutualization or the privatization of a Crown corporation;
 - (h) the opening of an account in the name of an affiliate of a financial entity, if that affiliate carries out activities that are similar to those of persons and entities referred to in paragraphs 5(a) to (g) of the Act;
 - (i) the opening of a registered plan account, including a locked-in retirement plan account, a registered retirement savings plan account and a group registered retirement savings plan account;
 - (j) the opening of an account established pursuant to the escrow requirements of a Canadian securities regulator or Canadian stock exchange or any provincial legislation;
 - (k) the opening of an account where the account holder or settlor is a pension fund that is regulated by or under an Act of Parliament or of the legislature of a province;
 - (l) the opening of an account in the name of, or in respect of which instructions are authorized to be given by, a financial entity, a securities dealer or a life insurance company or by an investment fund that is regulated under provincial securities legislation;
 - (m) instances where the entity in respect of which a client information record is otherwise required to be kept is a public body, or a corporation that has minimum net assets of \$75 million on its last audited balance sheet and whose shares are traded on a Canadian stock exchange or a stock exchange that is prescribed by section 3201 of the *Income Tax Regulations*, and operates in a country that is a member of the Financial Action Task Force;

(n) instances where the entity in respect of which a client information record is otherwise required to be kept is a subsidiary of a public body or a corporation referred to in paragraph (m) and the financial statements of the entity are consolidated with the financial statements of that public body or corporation; or

(o) the opening of an account that is opened solely in the course of providing customer accounting services to a securities dealer.

(3) In respect of a group plan account, other than a group plan account referred to in subsection (2), a financial entity, securities dealer, life insurance company or life insurance broker or agent is not required to ascertain the identity of, or keep a signature card in respect of, any individual member of the group plan or determine whether they are a politically exposed foreign person if

(a) the member's contributions are made by the sponsor of the plan or by means of payroll deductions; and

(b) the existence of the plan sponsor has been confirmed in accordance with section 65 or 66.

63. (1) Where a person has ascertained the identity of another person in accordance with section 64, the person is not required to subsequently ascertain that same identity again if they recognize that other person.

(1.1) Subsection (1) does not apply where the person has doubts about the information collected.

(2) Where a person has confirmed the existence of a corporation and ascertained its name and address and the names of its directors in accordance with section 65, the person is not required to subsequently confirm or ascertain that same information.

(3) Where a person has confirmed the existence of an entity other than a corporation in accordance with section 66, the person is not required to subsequently confirm that same information.

(4) Despite paragraphs 54(1)(d) and 54.1(b), subsections 56(3), 57(3) and 59(2) and paragraphs 59.1(b), 59.2(1)(b), 60(e) and 61(c), the names of a corporation's directors need not be ascertained if the corporation is a securities dealer.

(5) A person or entity that has determined that a person is a politically exposed foreign person in accordance with section 54.2, 56.1 or 57.1 or subsection 59(5) is not required to subsequently determine if that same person is a politically exposed foreign person.

MEASURES FOR ASCERTAINING IDENTITY

64. (1) In the cases referred to in sections 53, 53.1, 54, 55, 56, 57, 59, 59.1, 59.2, 60 and 61, the identity of a person shall be ascertained, at the time referred to in subsection (2) and in accordance with subsection (3),

(a) by referring to the person's birth certificate, driver's licence, provincial health insurance card (if such use of the card is not prohibited by the applicable provincial law), passport or other similar document; or

(b) if the person is not physically present when the account is opened, the credit card application is submitted, the trust is established, the client information record is created or the transaction is conducted,

(i) by obtaining the person's name, address and date of birth and

(A) confirming that one of the following entities has identified the person in accordance with paragraph (a), namely,

(I) an entity, referred to in any of paragraphs 5(a) to (g) of the Act, that is affiliated with the entity ascertaining the identity of the person,

(II) an entity that carries on activities outside Canada similar to the activities of a person or entity referred to in any of paragraphs 5(a) to (g) of the Act and that is affiliated with the entity ascertaining the identity of the person, or

(III) an entity that is a member of the same association — being a central cooperative credit society as defined in section 2 of the *Cooperative Credit Associations Act*— as the entity ascertaining the identity of the person, and

(B) verifying that the name, address and date of birth in the record kept by that affiliated entity or that entity that is a member of the same association corresponds to the information provided in accordance with these Regulations by the person, or

(ii) subject to subsection (1.3), by using one of the following combinations of the identification methods set out in Part A of Schedule 7, namely,

(A) methods 1 and 3,

(B) methods 1 and 4,

(C) methods 1 and 5,

(D) methods 2 and 3,

(E) methods 2 and 4,

(F) methods 2 and 5,

(G) methods 3 and 4, or

(H) methods 3 and 5.

(1.1) In the case referred to in paragraph 54.1(a), the identity of a person shall be ascertained by a person or entity, at the time referred to in subsection (2) and in accordance with subsection (3),

(a) by referring to the person's birth certificate, driver's licence, provincial health insurance card (if such use of the card is not prohibited by the applicable provincial law), passport or other similar document; or

(b) where the person is not physically present when the credit card application is submitted.

(i) by obtaining the person's name, address and date of birth and

(A) confirming that one of the following entities has identified the person in accordance with paragraph (a), namely,

(I) an entity, referred to in any of paragraphs 5(a) to (g) of the Act, that is affiliated with the entity ascertaining the identity of the person,

(II) an entity that carries on activities outside Canada similar to the activities of a person or entity referred to in any of paragraphs 5(a) to (g) of the Act and that is affiliated with the entity ascertaining the identity of the person, or

(III) an entity that is a member of the same association — being a central cooperative credit society as defined in section 2 of the *Cooperative Credit Associations Act* — as the entity ascertaining the identity of the person, and

(B) verifying that the name, address and date of birth in the record kept by that affiliated entity or that entity that is a member of the same association corresponds to the information provided in accordance with these Regulations by the person,

(ii) subject to subsection (1.3), by using a combination of any two identification methods referred to in either Part A or Part B of Schedule 7, or

(iii) subject to subsection (1.3), where the person has no credit history in Canada and the credit limit on the card is not more than \$1,500, by using a combination of any two identification methods referred to in any of Parts A, B and C of Schedule 7.

(1.2) For the purposes of paragraphs (1)(b)(i) and (1.1)(b)(i), an entity is affiliated with another entity if one of them is wholly-owned by the other or both are wholly-owned by the same entity.

(1.3) A combination of methods referred to in subparagraph (1)(b)(ii) or (1.1)(b)(ii) or (iii) shall not be relied on by a person or entity to ascertain the identity of a person unless

(a) the information obtained in respect of that person from each of the two applicable identification methods is determined by the person or entity to be consistent; and

(b) the information referred to in paragraph (a) is determined by the person or entity to be consistent with the information in respect of that person, if any, that is contained in a record kept by the person or entity under these Regulations.

(2) The identity shall be ascertained

(a) in the cases referred to in paragraph 54(1)(a), subsection 57(1) and paragraph 60(a), before any transaction other than an initial deposit is carried out on an account;

(b) in the cases referred to in section 53, paragraph 54(1)(b), subsection 59(1) and paragraphs 60(b) and 61(b), at the time of the transaction;

(b.1) in the case referred to in section 53.1, before the transaction is reported as required under section 7 of the Act;

(b.2) in the case referred to in paragraph 54.1(a), before any credit card is activated;

(c) in the cases referred to in paragraphs 55(a), (d) and (e), within 15 days after the trust company becomes the trustee;

(d) in the cases referred to in subsection 56(1) and paragraph 61(a), within 30 days after the client information record is created;

(e) in the cases referred to in paragraphs 59.1(a) and 59.2(1)(a), at the time of the transaction; and

(f) in the case referred to in subsection 62(3), at the time a contribution in respect of an individual member of the group plan is made to the plan, if

(i) the member's contribution is not made as described in paragraph 62(3)(a), or

(ii) the existence of the plan sponsor has not been confirmed in accordance with section 65 or 66.

(3) Unless otherwise specified in these Regulations, only original documents that are valid and have not expired may be referred to for the purpose of ascertaining identity in accordance with paragraph (1)(a) or (1.1)(a).

64.1 (1) A person or entity required to take measures to ascertain identity under subsection 64(1) or (1.1) may rely on an agent or mandatary to take the identification measures described in paragraph 64(1)(a) or (1.1)(a), respectively, only if that person or entity has entered into an agreement or arrangement, in writing, with that agent or mandatary for the purposes of ascertaining identity.

(2) A person or entity that enters into an agreement or arrangement referred to in subsection (1) must obtain from the agent or mandatary the customer information obtained by the agent or mandatary under that agreement or arrangement.

65. (1) The existence of a corporation shall be confirmed and its name and address and the names of its directors shall be ascertained as of the time referred to in subsection (2), by referring to its certificate of corporate status, a record that it is required to file annually under the applicable provincial securities legislation or any other record that ascertains its existence as a corporation. The record may be in paper form or in an electronic version that is obtained from a source that is accessible to the public.

(2) The information referred to in subsection (1) shall be ascertained,

(a) in the case referred to in paragraphs 54(1)(d) and 60(e), before any transaction other than the initial deposit is carried out on the account;

(a.1) in the case referred to in paragraph 54.1(b), before any credit card is issued on the account;

(b) in the cases referred to in paragraphs 55(b) and (d), within 15 days after the trust company becomes the trustee;

(c) in the cases referred to in subsections 56(3) and 59(2) and paragraph 61(c), within 30 days after the client information record is created;

(d) in the case referred to in subsection 57(3), within 30 days after the opening of the account; and

(e) in the cases referred to in paragraphs 59.1(b) and 59.2(1)(b), within 30 days after the transaction.

(3) Where the information has been ascertained by referring to an electronic version of a record, the person or entity required to ascertain the information shall keep a record that sets out the corporation's registration number, the type of record referred to and the source of the electronic version of the record.

(4) Where the information has been ascertained by referring to a paper copy of a record, the person or entity required to ascertain the information shall retain the record or a copy of it.

66. (1) The existence of an entity, other than a corporation, shall be confirmed as of the time referred to in subsection (2), by referring to a partnership agreement, articles of association or other similar record that ascertains its existence. The record may be in paper form or in an electronic version that is obtained from a source that is accessible to the public.

(2) The existence of the entity shall be confirmed

(a) in the case referred to in paragraphs 54(1)(e) and 60(f), before any transaction other than the initial deposit is carried out on the account;

(a.1) in the case referred to in paragraph 54.1(c), before any credit card is issued on the account;

(b) in the cases referred to in paragraphs 55(c) and (d), within 15 days after the trust company becomes the trustee;

(c) in the cases referred to in subsections 56(4) and 59(3) and paragraph 61(d), within 30 days after the client information record is created;

(d) in the case referred to in subsection 57(4), within 30 days after the account is opened; and

(e) in the cases referred to in paragraphs 59.1(c) and 59.2(1)(c), within 30 days after the transaction.

(3) Where the existence of the entity has been confirmed by referring to an electronic version of a record, the person or entity required to confirm that information shall keep a record that sets out the registration number of the entity whose existence is being confirmed, the type of record referred to and the source of the electronic version of the record.

(4) Where the existence of the entity has been confirmed by referring to a paper copy of a record, the person or entity required to confirm that information shall retain the record or a copy of it.

66.1 (1) The prescribed persons or entities for the purpose of section 9.5 of the Act are every financial entity, money services business and casino that is required to keep a record under these Regulations in respect of an electronic funds transfer referred to in subsection (2).

(2) Subject to subsection (3), the prescribed electronic funds transfers to which section 9.5 of the Act applies are electronic funds transfers as defined in subsection 1(2) — but including transfers within Canada that are SWIFT MT 103 messages — that are sent at the request of a client by a means that allows for the information referred to in paragraph 9.5(a) of the Act to be included with the transfers.

(3) For greater certainty, subsection (2) does not apply in respect of

(a) a transfer carried out using a credit or debit card, if the recipient has an agreement with the payment service provider permitting payment by such means for the provision of goods and services;

(b) a transfer where the recipient withdraws cash from their account;

(c) a transfer carried out by means of a direct deposit or a pre-authorized debit ; or

(d) a transfer carried out using cheque imaging and presentment.

67. Every person or entity that is required by these Regulations to ascertain the identity of a person in connection with a record that the person or entity has created and is required to keep under these Regulations, or a transaction that they have carried out and in respect of which they are required to keep a record under these Regulations or under section 12.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*, shall set out on or in or include with that record the name of that person and

(a) if a birth certificate, driver's licence, provincial health insurance card (if such use of the card is not prohibited by the applicable provincial law), passport or any other similar record is relied on to ascertain the person's identity, the type and reference number of the record and the place where it was issued;

(b) if a confirmation of a cleared cheque from a financial entity is relied on to ascertain the person's identity, the name of the financial entity and the account number of the deposit account on which the cheque was drawn;

(c) if the person's identity is ascertained by confirming that they hold a deposit account with a financial entity, the name of the financial entity where the account is held and the number of the account and the date of the confirmation;

(d) if the person's identity is ascertained by relying on a previous confirmation of their identity by an entity that is affiliated with the entity ascertaining the identity of the person or an entity that is a member of the same association — being a central cooperative credit society as defined in section 2 of the *Cooperative Credit Associations Act* — as the entity ascertaining the identity of the person, the name of that entity and the type and reference number of the record that entity previously relied on to ascertain the person's identity;

(e) if an identification product is used to ascertain the person's identity, the name of the identification product, the name of the entity offering the product, the search reference number and the date the product was used to ascertain the person's identity;

(f) if the person's identity is ascertained by consulting a credit file kept by an entity in respect of the person, the name of the entity and the date of the consultation;

(g) if the person's identity is ascertained from an attestation signed by a commissioner of oaths in Canada or a guarantor in Canada, the attestation;

(h) if the person's identity is ascertained by consulting an independent data source, the name of the data source, the date of the consultation and the information provided by the data source;

(i) if the person's identity is ascertained by relying on a utility invoice issued in the person's name, the invoice or a legible photocopy or electronic image of the invoice;

(j) if the person's identity is ascertained by relying on a photocopy or electronic image of a document provided by the person, that photocopy or electronic image; and

(k) if the person's identity is ascertained by relying on a deposit account statement issued in the person's name by a financial entity, a legible photocopy or electronic image of the statement.

DILIGENCE MEASURES IN RESPECT OF POLITICALLY EXPOSED FOREIGN PERSONS

67.1 (1) A financial entity or securities dealer that has determined under paragraph 54.2(a) or (b) or section 57.1 that a person is a politically exposed foreign person shall

(a) take reasonable measures to establish the source of the funds that have been, will be or are expected to be deposited in the account in question;

(b) subject to subsections (2) and (3), obtain the approval of senior management to keep the account open; and

(c) conduct enhanced ongoing monitoring of the activities in respect of the account for the purpose of detecting transactions that are required to be reported to the Centre under section 7 of the Act.

(2) The determination referred to in paragraph 54.2(a) and section 57.1(1) as to whether a person is a politically exposed foreign person shall be made, and the approval referred to in paragraph (1)(b) shall be obtained, within 14 days from the day on which the account is activated.

(3) The approval referred to in paragraph (1)(b) shall be obtained within 14 days after the day on which a financial entity or securities dealer has determined under paragraph 54.2(b) or subsection 57.1(2) that a person is a politically exposed foreign person.

67.2 (1) A financial entity, life insurance company or life insurance broker or agent or money services business that has determined under paragraph 54.2(c), section 56.1 or paragraph 59(5)(a) that a person is a politically exposed person shall take reasonable measures to establish the source of the funds that have been used for the transaction in question.

(2) Where a financial entity, life insurance company, life insurance broker or agent or money services business has determined under paragraph 54.2(c) or (d), section 56.1 or subsection 59(5) that a person is a politically exposed foreign person, a member of senior management shall review the transaction in question in accordance with subsection (3).

(3) The determination, referred to in paragraphs 54.2(c) and (d), section 56.1 and subsection 59(5), as to whether a person is a politically exposed foreign person and the review of a transaction referred to in subsection (2) shall be completed within 14 days after the day on which the transaction occurred.

RETENTION OF RECORDS

68. Where any record is required to be kept under these Regulations, a copy of it may be kept

(a) in a machine-readable form, if a paper copy can be readily produced from it; or

(b) in an electronic form, if a paper copy can be readily produced from it and an electronic signature of the person who must sign the record in accordance with these Regulations is retained.

69. (1) Subject to subsection (2), every person or entity that is required to obtain, keep or create records under these Regulations shall retain those records for a period of at least five years following

(a) in respect of signature cards, account operating agreements, client credit files and account application forms, the day of the closing of the account to which they relate;

(b) in respect of client information records, certificates of corporate status, records that are required to be filed annually under the applicable provincial securities legislation or other similar records that ascertain the existence of a corporation, and records that ascertain the existence of an entity, other than a corporation, including partnership agreements and articles of association, the day on which the last business transaction is conducted; and

(c) in respect of all other records, the day on which they were created.

(2) Where records that an individual keeps under these Regulations are the property of the individual's employer or a person or entity with which the individual is in a contractual relationship, the individual is not required to retain the records after the end of the individual's employment or contractual relationship.

70. Every record that is required to be kept under these Regulations shall be retained in such a way that it can be provided to an authorized person within 30 days after a request is made to examine it under section 62 of the Act.

COMPLIANCE

71. (1) For the purpose of subsection 9.6(1) of the Act, a person or entity referred to in that subsection shall, as applicable, implement the compliance program referred to in that subsection by

(a) appointing a person — who, where the compliance program is being implemented by a person, may be that person — who is to be responsible for the implementation of the program;

(b) developing and applying written compliance policies and procedures that are kept up to date and, in the case of an entity, are approved by a senior officer;

(c) assessing and documenting, in a manner that is appropriate for the person or entity, the risk referred to in subsection 9.6(2) of the Act, taking into consideration

(i) the clients and business relationships of the person or entity,

(ii) the products and delivery channels of the person or entity,

(iii) the geographic location of the activities of the person or entity, and

(iv) any other relevant factor;

(d) if the person or entity has employees, agents or other persons authorized to act on their behalf, developing and maintaining a written ongoing compliance training program for those employees, agents or persons; and

(e) instituting and documenting a review of the policies and procedures, the risk assessment and the training program for the purpose of testing their effectiveness, which review is required to be carried out every two years by an internal or external auditor of the person or entity, or by the person or entity if they do not have such an auditor.

(2) For the purposes of the compliance program referred to in subsection 9.6(1) of the Act, every entity referred to in that subsection shall report the following in written form to a senior officer within 30 days after the assessment:

(a) the findings of the review referred to in paragraph (1)(e);

(b) any updates made to the policies and procedures within the reporting period; and

(c) the status of the implementation of the updates to those policies and procedures .

71.1 The prescribed special measures that are required to be taken by a person or entity referred to in subsection 9.6(1) of the Act for the purpose of subsection 9.6(3) of the Act are the development and application of written policies and procedures for

(a) taking reasonable measures to keep client identification information and the information referred to in section 11.1 up to date;

(b) taking reasonable measures to conduct ongoing monitoring for the purpose of detecting transactions that are required to be reported to the Centre under section 7 of the Act; and

(c) mitigating the risks identified in accordance with subsection 9.6(3) of the Act.

AMENDMENTS TO THESE REGULATIONS

72. Paragraph 3(2)(a) of the Regulations, as enacted by subsection (1) , is replaced by the following:

(a) a public body or a corporation referred to in paragraph 62(2)(m); or

SCHEDULE 1

(Paragraph 12(1)(a), sections 17 and 21, paragraph 28(1)(a), sections 35 and 38, paragraph 40(1)(a), section 47 and subsections 52(1) and (3))

LARGE CASH TRANSACTION REPORT

PART A — Information on Place of Business Where Transaction Occurred

- 1.* Type of reporting person or entity, as described in paragraphs 5(a) to (h), (k) and (l) of the Act, and, if reporting person or entity is referred to in paragraph 5(j) or (j) of the Act, type of business, profession or activity of reporting person or entity, as described in sections 16, 34, 37, 45 and 46 of these Regulations
- 2.* Identification number of place of business where transaction occurred (e.g., institution's identification number, licence number or registration number), if applicable
- 3.* Full name of reporting person or entity
- 4.* Full address of place of business where transaction occurred
- 5.* Name and telephone number of contact person

PART B — Information on Transaction

- 1.* Date of transaction or night deposit indicator
2. Time of transaction and, for a transaction for which the date is provided in item 1, the posting date (if different from the date of the transaction)
- 3.* Posting date for a transaction for which night deposit indicator is provided in item 1, if date of transaction is not provided
- 4.* Purpose and details of the transaction, including amount of transaction and currency of transaction
- 5.* Disposition of funds, amount of disposition, currency of disposition and, if applicable, name and number of each other institution and name, account number and policy number of each other person or entity
- 6.* Method by which the transaction is conducted (in branch or office, ABM, armoured car, mail deposit, courier or other)

PART C — Account Information (if applicable)

- 1.* Account number
- 2.* Branch number or transit number
- 3.* Type of account (personal, business, trust or other)

- 4.* Full name of each account holder
- 5.* Type of currency of the account

PART D — Information on Person Conducting Transaction That Is not a Deposit Into a Business Account (if applicable)

- 1.* Person's full name
- 2.* Client number provided by reporting person or entity, if applicable
- 3.* Person's full address
4. Person's personal telephone number
5. Person's country of residence
- 6.* Person's type of identifier (e.g., driver's licence, birth certificate, provincial health insurance card — if such use of the card is not prohibited by the applicable provincial law — or passport) and identifier number
- 7.* Place of issue of person's identifier (province or state, country)
- 8.* Person's date of birth
9. Person's business telephone number
- 10.* Person's occupation

PART E — Information on Person Conducting Transaction That Is a Deposit Into a Business Account Other Than a Night Deposit or a Quick Drop (if applicable)

- 1.* Person's full name

PART F — Information on Entity on Whose Behalf Transaction is Conducted (if applicable)

- 1.* Entity's full name
- 2.* Entity's incorporation number and place of issue of its incorporation number, if applicable
- 3.* Entity's type of business
- 4.* Entity's full address
5. Entity's telephone number
6. Full name of each person — up to three — who is authorized to bind the entity or act with respect to the account

PART G — Information on Person on Whose Behalf Transaction is Conducted (if applicable)

- 1.* Person's full name
- 2.* Person's full address
3. Person's personal telephone number
4. Person's business telephone number
5. Person's type of identifier (e.g., driver's licence, birth certificate, provincial health insurance card — if such use of the card is not prohibited by the applicable provincial law — or passport) and identifier number
6. Place of issue of person's identifier (province or state, country)
7. Person's date of birth
8. Person's occupation
9. Person's country of residence
10. Relationship of person conducting the transaction to the person on whose behalf the transaction is conducted

SCHEDULE 2

(Paragraphs 12(1)(b) and 28(1)(b) and subsections 52(1), (3) and (4))

OUTGOING SWIFT MESSAGES REPORT INFORMATION

PART A — Transaction Information

1. Time indication
- 2.* Value date
- 3.* Amount of electronic funds transfer
- 4.* Currency of electronic funds transfer
5. Exchange rate
6. Transaction type code

PART B — Information on Client Ordering Payment of Electronic Funds Transfer

- 1.* Client's full name
- 2.* Client's full address
- 3.* Client's account number, if applicable

PART C — Information on Person or Entity Sending Electronic Funds Transfer (person or entity that sends payment instructions)

- 1.* (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART D — Information on Person or Entity Ordering Electronic Funds Transfer on Behalf of a Client (ordering institution) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART E — Information on Sender's Correspondent (person or entity, other than sending person or entity, acting as reimbursement bank for sender) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART F — Information on Receiver's Correspondent (person or entity acting as reimbursement bank for receiver) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART G — Information on Third Reimbursement Institution (receiver's branch, when the funds are made available to it through a financial institution other than sender's correspondent) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -

(b) Full name and full address

PART H — Information on Intermediary Institution (financial institution, between receiver and account with institution, through which transaction must pass) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -
- (b) Full name and full address

PART I — Information on Account with Institution (financial institution when other than the receiver that services account for the beneficiary customer) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -
- (b) Full name and full address

PART J — Information on Person or Entity Receiving Electronic Funds Transfer (person or entity receiving payment instructions)

- 1.* (a) Bank Identification Code (BIC)
- or -
- (b) Full name and full address

PART K — Information on Client to Whose Benefit Payment is Made

- 1.* Client's full name
- 2.* Client's full address
- 3.* Client's account number, if applicable

PART L — Additional Payment Information

1. Remittance information
2. Details of charges
3. Sender's charges
4. Sender's reference
5. Bank operation code
6. Instruction code
7. Sender-to-receiver information
8. Regulatory reporting
9. Envelope contents

SCHEDULE 3

(Paragraphs 12(1)(c) and 28(1)(c) and subsections 52(1), (3) and (4))

INCOMING SWIFT MESSAGES REPORT INFORMATION

PART A — Transaction Information

1. Time indication
- 2.* Value date
- 3.* Amount of electronic funds transfer
- 4.* Currency of electronic funds transfer

5. Exchange rate
6. Transaction type code

PART B — Information on Client Ordering Payment of Electronic Funds Transfer

1. Client's full name
2. Client's full address
3. Client's account number, if applicable

PART C — Information on Person or Entity Sending Electronic Funds Transfer (person or entity that sends payment instructions)

1. (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART D — Information on Person or Entity Ordering Electronic Funds Transfer on Behalf of a Client (ordering institution)

1. (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART E — Information on Sender's Correspondent (person or entity, other than sending person or entity, acting as reimbursement bank for sender) (if applicable)

1. (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART F — Information on Receiver's Correspondent (person or entity acting as reimbursement bank for receiver) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART G — Information on Third Reimbursement Institution (receiver's branch, when the funds are made available to it through a financial institution other than sender's correspondent) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART H — Information on Intermediary Institution (financial institution, between receiver and account with institution, through which transaction must pass) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART I — Information on Account with Institution (financial institution when other than the receiver that services account for the beneficiary customer) (if applicable)

- 1.* (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART J — Information on Person or Entity Receiving Electronic Funds Transfer (person or entity receiving payment instructions)

- 1.* (a) Bank Identification Code (BIC)
- or -
(b) Full name and full address

PART K — Information on Client to Whose Benefit Payment is Made

1. Client's full name
2. Client's full address
3. Client's account number, if applicable

PART L — Additional Payment Information

1. Remittance information
2. Details of charges
3. Sender's charges
4. Sender's reference
5. Bank operation code
6. Instruction code
7. Sender-to-receiver information
8. Regulatory reporting
9. Envelope contents

SCHEDULE 4

(Paragraph 50(1)(f) and subsection 52(1))

INFORMATION TO BE PROVIDED BY FINANCIAL ENTITY CHOOSING NOT TO REPORT LARGE CASH TRANSACTION WITH RESPECT TO A CLIENT'S BUSINESS

PART A — Information on Financial Entity

- 1.* Identification number of financial entity where client has account
- 2.* Full name of financial entity
- 3.* Full address of financial entity

PART B — Information on Client

- 1.* Name and address of client
- 2.* Nature of client's business
- 3.* Incorporation number of client and date and jurisdiction of its incorporation
- 4.* Total value and total number of client's cash deposits in respect of that business over the preceding 12 months

PART C — Contact Person at Financial Entity

- 1.* Name of contact person
- 2.* Telephone number of contact person

SCHEDULE 5

(Paragraphs 12(1)(b), 28(1)(b) and 40(1)(b) and subsections 52(1) and (3))

OUTGOING NON-SWIFT INTERNATIONAL ELECTRONIC FUNDS TRANSFER REPORT INFORMATION

PART A — Transaction Information

1. Time Sent
- 2.* Date
- 3.* Amount of electronic funds transfer
- 4.* Currency of electronic funds transfer
5. Exchange rate

PART B — Information on Client Ordering Payment of Electronic Funds Transfer

- 1.* Client's full name
2. Client's full address
3. Client's telephone number
4. Client's date of birth
5. Client's occupation
- 6.* Client's account number, if applicable
7. Client's identifier
8. Client's Identifier Number

PART C — Information on Sender of Electronic Funds Transfer (person or entity that sends payment instructions)

- 1.* Full name of sending institution
- 2.* Full address of sending institution

PART D — Information on Third Party where Client Ordering Electronic Funds Transfer is Acting on Behalf of a Third Party (if applicable)

1. Third party's full name
2. Third party's full address
3. Third party's date of birth
4. Third party's occupation
5. Third party's identifier

PART E — Information on Receiver of Electronic Funds Transfer (person or entity that receives payment instructions)

1. Full name of receiving institution
2. Full address of receiving institution

PART F — Information on Client to Whose Benefit the Payment is Made

- 1.* Client's full name
2. Client's full address
3. Client's telephone number
4. Client's date of birth
5. Client's occupation
- 6.* Client's account number, if applicable
7. Client's identifier

PART G — Information on Third Party where Client to Whose Benefit Payment is Made is Acting on Behalf of a Third Party (if applicable)

1. Third party's full name
2. Third party's full address
3. Third party's date of birth
4. Third party's occupation
5. Third party's identifier

SCHEDULE 6

(Paragraphs 12(1)(c), 28(1)(c) and 40(1)(c) and subsections 52(1) and (3))

INCOMING NON-SWIFT INTERNATIONAL ELECTRONIC FUNDS TRANSFER REPORT INFORMATION

PART A — Transaction Information

1. Time sent
- 2.* Date
- 3.* Amount of electronic funds transfer
- 4.* Currency of electronic funds transfer
5. Exchange rate

PART B — Information on Client Ordering Payment of an Electronic Funds Transfer

- 1.* Client's full name
2. Client's full address
3. Client's telephone number
4. Client's date of birth
5. Client's occupation
- 6.* Client's account number, if applicable
7. Client's identifier
8. Client's Identifier Number

PART C — Information on Sender of Electronic Funds Transfer (person or entity that sends payment instructions)

- 1.* Full name of sending institution
- 2.* Full address of sending institution

PART D — Information on Third Party where Client Ordering Electronic Funds Transfer is Acting on Behalf of a Third Party (if applicable)

1. Third party's full name
2. Third party's full address
3. Third party's date of birth
4. Third party's occupation
5. Third party's identifier

PART E — Information on Receiver of Electronic Funds Transfer (person or entity that receives payment instructions)

- 1.* Full name of receiving institution
- 2.* Full address of receiving institution

PART F — Information on Client to Whose Benefit the Payment is Made

- 1.* Client's full name
2. Client's full address
3. Client's telephone number
4. Client's date of birth
5. Client's occupation
- 6.* Client's account number, if applicable
7. Client's identifier

PART G — Information on Third Party where Client to Whose Benefit Payment is Made is Acting on Behalf of a Third Party (if applicable)

1. Third party's full name
2. Third party's full address
3. Third party's date of birth
4. Third party's occupation
5. Third party's identifier

SCHEDULE 7

(Subparagraphs 64(1)(b)(ii) and (1.1)(b)(ii) and (iii))

NON-FACE-TO-FACE IDENTIFICATION METHODS

PART A

IDENTIFICATION METHODS FOR ALL REPORTING ENTITIES

IDENTIFICATION PRODUCT METHOD

1. This method of ascertaining a person's identity consists of referring to an independent and reliable identification product that is based on personal information in respect of the person and a Canadian credit history of the person of at least six month's duration.

CREDIT FILE METHOD

2. This method of ascertaining a person's identity consists of confirming, after obtaining authorization from the person, their name, address and date of birth by referring to a credit file in respect of that person in Canada that has been in existence for at least six months.

ATTESTATION METHOD

3. (1) This method of ascertaining a person's identity consists of obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that they have seen one of the documents referred to in paragraph 64(1)(a) of these Regulations. The attestation must be produced on a legible photocopy of the document (if such use of the document is not prohibited by the applicable provincial law) and must include

- (a) the name, profession and address of the person providing the attestation;
- (b) the signature of the person providing the attestation; and
- (c) the type and number of the identifying document provided by the person.

(2) For the purpose of subsection (1), a guarantor is a person engaged in one of the following

professions in Canada:

- (a) dentist;
- (b) medical doctor;
- (c) chiropractor;
- (d) judge;
- (e) magistrate;
- (f) lawyer;
- (g) notary (in Quebec);
- (h) notary public;
- (i) optometrist;
- (j) pharmacist;
- (k) professional accountant (APA [Accredited Public Accountant], CA [Chartered Accountant], CGA [Certified General Accountant], CMA [Certified Management Accountant], PA [Public Accountant] or RPA [Registered Public Accountant]);
- (l) professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec] or Eng. [Engineer, in Quebec]); or
- (m) veterinarian.

CLEARED CHEQUE METHOD

4. This method of ascertaining a person's identity consists of confirming that a cheque drawn by the person on a deposit account of a financial entity, other than an account referred to in section 62 of these Regulations, has been cleared.

CONFIRMATION OF DEPOSIT ACCOUNT METHOD

5. This method of ascertaining a person's identity consists of confirming that the person has a deposit account with a financial entity, other than an account referred to in section 62 of these Regulations.

PART B

IDENTIFICATION METHODS FOR CREDIT CARD ACCOUNTS

IDENTIFICATION PRODUCT METHOD

1. This method of ascertaining a person's identity consists of referring to an independent and reliable identification product that is based on personal information in respect of the person and a Canadian credit history of the person of at least six month's duration.

CREDIT FILE METHOD

2. This method of ascertaining a person's identity consists of confirming, after obtaining authorization from the person, their name, address and date of birth by referring to a credit file in respect of that person in Canada that has been in existence for at least six months.

INDEPENDENT DATA SOURCE METHOD

3. This method of ascertaining a person's identity consists of consulting a reputable and independent database that is compiled from a directory of a telecommunications entity or a federal, provincial or municipal voter's registry and that contains the names, addresses and telephone numbers of individuals in order to confirm the person's name, address and telephone number.

PART C

IDENTIFICATION METHODS FOR CREDIT CARD ACCOUNT APPLICANTS WITH NO CREDIT HISTORY IN CANADA

INDEPENDENT DATA SOURCE METHOD

1. This method of ascertaining a person's identity consists of consulting a reputable and independent database that is compiled from a directory of a telecommunications entity or a federal, provincial or municipal voter's registry and that contains the names, addresses and telephone numbers of individuals in order to confirm the person's name, address and telephone number.

UTILITY INVOICE METHOD

2. This method of ascertaining a person's identity consists of obtaining a utility service invoice that is issued by a Canadian utility provider in the name of the person and that includes their address.

PHOTOCOPY OF AN IDENTIFICATION DOCUMENT METHOD

3. This method of ascertaining a person's identity consists of obtaining a legible photocopy or electronic image of a document referred to in paragraph 64(1)(a) of these Regulations in respect of the person.

DEPOSIT ACCOUNT STATEMENT METHOD

4. This method of ascertaining a person's identity consists of obtaining a legible photocopy or electronic image of a deposit account statement issued by a financial entity in the name of the person.

V. OSFI Guideline B-8 - Deterring and Detecting Money Laundering and Terrorist Financing

Subject: Deterring and Detecting Money Laundering and Terrorist Financing

Category: Sound Business and Financial Practices

No: B-8

Date: April 2003

Revised: November 2004

Money laundering and terrorist financing activities (MLTFA) continue to be a serious international problem that is receiving increasing attention as nations attempt to deal with issues such as organized crime and terrorism. Financial institutions, in particular, are at risk of being used by criminal organisations to launder money and by terrorist groups to facilitate the financing of their activities.

When necessary, this Guideline references the work of the Financial Action Task Force on Money Laundering (FATF), the international body, of which Canada is a member, that develops and monitors international anti-money laundering and terrorist financing standards.

This guideline is intended to identify some of the steps that federally regulated financial institutions (FRFIs) should take to assist their compliance with the various legal requirements related to deterring and detecting money laundering and terrorist financing and, more generally, to minimize the possibility that they could become a party to MLTFA. Effective policies and procedures are essential to reducing the risk that facilitating MLTFA poses to FRFIs' reputations and operations. Both management and the boards of directors of FRFIs are responsible for the development of specific policies and procedures for deterring and detecting MLTFA as well as for ensuring that FRFIs adhere to those policies and procedures. OSFI also expects that institutions will be able to demonstrate, on request, that they have developed and implemented policies and procedures consistent with this guideline, and that staff are applying them as intended.

OSFI works closely with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) concerning the policies and procedures that FRFIs have in place for complying with Part I of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). On June 14, 2004 OSFI and FINTRAC signed a Memorandum of Understanding for exchanging information relating to compliance with Part I of the PCMLTFA, pursuant to the *Public Safety Act, 2002*.

Certain provisions of the PCMLTFA and the *Criminal Code* give both FINTRAC and OSFI responsibility for dealing with issues related to the financing of terrorist activities. FINTRAC's objectives now include the detection, prevention and deterrence of the financing of terrorist activities, while OSFI has assumed the role of a central reporting point for the aggregate reporting requirements outlined in subsection 83.11(2) of the *Criminal Code*.

With respect to FRFIs' reporting requirements to OSFI related to terrorist assets, OSFI posts on its Web site (www.osfi-bsif.gc.ca) lists of terrorist individuals and organizations, and will continue to receive reports from FRFIs as required by the *United Nations Suppression of Terrorism Regulations* or by subsection 83.11(1) of the *Criminal Code* in respect of entities listed in the *Regulations Establishing a List of Entities* made under subsection 83.05(1) of the *Criminal Code*. In addition, FINTRAC and a number of international organisations have published information related to terrorist financing activities. FINTRAC has also issued a guideline on Submitting Terrorist Property Reports. FRFIs should keep in mind that the financing of terrorist activities is sometimes linked to money laundering. In addition, actual or suspected FRFI involvement in facilitating the financing of terrorist activities may expose FRFIs to risks similar to those related to the facilitation of money laundering.

I. Introduction and Background

This guideline applies to banks, authorized foreign banks in respect of their business in Canada (foreign bank branches or FBBs), companies to which the *Trust and Loan Companies Act* applies, cooperative credit associations subject to the *Cooperative Credit Associations Act*, and life insurance companies or foreign life insurance company branches to which the *Insurance Companies Act* applies. For the purposes of this guideline, they will be referred to as federally regulated financial institutions (FRFIs). FRFIs should ensure that subsidiaries having potential exposure to money laundering or terrorist financing activities follow the guideline.

This guideline reflects actions taken both nationally and internationally to deal with money laundering and terrorist financing. Key among the actions taken in Canada has been the enactment of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), the creation of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the development of the current transaction reporting regime. FRFIs should be aware of the specific requirements related to customer identification set out in the PCMLTFA and the Regulations¹. Both the PCMLTFA and the Regulations are available from the Department of Justice Web site (<http://www.canada.justice.gc.ca>) and from the FINTRAC Web site (<http://www.fintrac.gc.ca>).

FINTRAC, an agency of the federal government, is Canada's financial intelligence unit and has a mandate to collect, analyze and assess information related to money laundering and terrorist financing activities, and to disclose certain information to law enforcement and intelligence authorities to assist in the detection, prevention and deterrence of these criminal activities. FINTRAC is also responsible for ensuring that FRFIs comply with the record keeping, reporting, and customer identification requirements set out in Part 1 of the PCMLTFA and the accompanying Regulations. More information on FINTRAC is available on its Web site, noted above.

Specific requirements related to the reporting of various transactions are outlined in the Regulations and in FINTRAC guidelines. The Regulations set out reporting and record keeping requirements for suspicious transactions (including terrorist property reporting), large cash transactions and international electronic funds transfers. Among other things, the Regulations outline requirements for client identification, retention of records, and the implementation of a compliance regime, including staff training. Please refer to the FINTRAC Web site for copies of the PCMLTFA, Regulations, and FINTRAC guidelines, as well as for general information related to money laundering and terrorist financing.

II. Programs to Combat MLTFA

(a) MLTFA Risks

Financial regulators and international organizations recognize that MLTFA is a serious problem that can pose a number of risks to financial institutions. The failure of a financial institution to implement adequate anti- MLTFA policies and procedures can have a negative impact on its reputation and, consequently, on its ability to carry on business.

FRFIs that fail to implement adequate measures in relation to the prevention of money laundering and the reporting of terrorist financing activities are exposed to potentially serious regulatory intervention initiatives, both domestically and internationally.

¹ *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transactions Regulations.*

Consistent with the duty of care imposed by FRFI legislation on boards of directors and on officers of FRFIs, standards of sound business and financial practices, and OSFI's Supervisory Framework, which focuses on identifying and mitigating risks, FRFIs should have anti- MLTFA policies and procedures in place that are adapted to their individual situations. Where appropriate, these policies and procedures should articulate a group- or enterprise-wide standard, applicable to the FRFI itself, all domestic or foreign subsidiaries and all foreign branches. In October 2004, the Basel Committee on Banking Supervision (Basel Committee) published a paper entitled *Consolidated KYC Risk Management* that emphasises the importance of banks managing risks on a global consolidated basis. This paper addresses explicitly the need for financial institutions to be able to share information with their head offices and urges jurisdictions in which legal impediments remain to remove them. The Basel Committee intends this paper to be read in conjunction with its paper *Customer Due Diligence for Banks*.

FRFIs should design these policies and procedures to ensure compliance with legal requirements related to deterring and detecting MLTFA. As appropriate, such policies and procedures should be broad enough to not only include specific legal requirements but also take into account the business environment and activities specific to the institution. Policies and procedures should be formally documented. Not only will this assist OSFI and FINTRAC, it will also enhance a FRFI's internal compliance function and the overall effectiveness of its policies and procedures.

The policies and procedures should include measures to permit the FRFI to identify and report Large Cash Transactions as required by the PCMLTFA and the Regulations. The policies and procedures should also include measures to monitor transactions. These measures will help FRFIs to identify potentially suspicious transactions by using criteria that will enable them to detect unusual or abnormal activity. Where appropriate (for example, where the volume of transactions is high), FRFIs should consider whether monitoring activity could be strengthened by information technology solutions.

To identify their level of exposure to potential MLTFA and the associated risks, FRFIs must understand the nature of the risks associated with the different parts of their operations:

Products and Services

Although MLTFA are frequently associated with deposit accounts, other financial products, such as loans, mortgages and other credit products, may also be used to hide the proceeds of crime or terrorist funds. For life insurers, attention should be paid to products and services that permit a customer to make substantial funds withdrawals and/or large single-premium payments.

Customers

Both the FATF and the Basel Committee believe that it is vital that financial institutions adequately identify those who beneficially own corporate customers who do business with them. This goes further than merely ascertaining that an entity exists. The FATF recommends that financial institutions "understand the ownership and control structure" of their customers. OSFI suggests that this principle is particularly important when dealing with privately owned companies, trusts and customers that may have more complex legal structures. In addition, certain customers may merit additional due diligence. Examples could include businesses that handle large amounts of cash, or that deal in luxury or high-end consumer goods. Finally, customers that hold important public positions (often referred to as "politically exposed persons") may require special attention.

Reliance on Others

FRFIs that outsource record keeping or other functions that form part of their PCMLTFA compliance regime, or that utilize introducers to gather new business (such as deposit brokers, mortgage brokers, correspondents, law firms, accounting firms, etc., including those outside Canada) are reminded that

they retain full accountability for having customer identification and verification processes, and for obtaining customer records with respect to accounts opened through such sources.

With respect to introduced business, FRFIs must obtain the necessary customer information for their records prior to, at, or at a reasonable time after, the time that the business is accepted. OSFI recommends that relationships with introducers be subject to written agreements to ensure that the responsibility for collecting and verifying customer identification information is clearly understood. FRFIs should consider terminating relationships with introducers that cannot, or fail to, provide the FRFI with the requisite customer identification and verification data that the FRFI is required to obtain under the PCMLTFA and the Regulations.

Geography

FRFIs with operations that conduct business in offshore jurisdictions, or that have customers that operate in those jurisdictions, need to be especially vigilant. The FATF and the IMF/World Bank have highlighted the risks of doing business internationally, and issue reports identifying jurisdictions that have deficiencies in their anti-money laundering regimes, or that are Non-Cooperating Countries and Territories (NCCTs)². Enhanced due diligence may be required for certain electronic funds transfers (particularly those from outside Canada, non-customers or non-correspondent banks), or pass-through accounts at FRFIs that are opened by foreign institutions to allow their customers to conduct business in Canada. Higher levels of due diligence are necessary when processing transactions connected to NCCTs, and may also be necessary when processing transactions connected to countries that are not considered to have adequate anti- MLTFA requirements. FRFIs are encouraged to adopt country risk policies that address these and related issues.

We draw the attention of FRFIs to the risks involved in dealing with “shell” banks (banks that do not have a physical presence in any country), and in light of applicable international standards, OSFI encourages all FRFIs to adopt measures which will ensure that they do not enter into correspondent banking relationships with shell banks.

FRFIs should note that the Regulations do not permit the same degree of reliance on the acceptance of cheques drawn on banks outside Canada as they do for cheques drawn on Canadian institutions. Therefore, it is suggested that FRFIs ensure that if they accept foreign cheques, they are satisfied with the reputation and standing of the foreign institution upon which such cheques are drawn. The degree of potential exposure to MLTFA should be understood, and the implementation of measures to deter and detect these activities should be flexible in order to reflect the features of different products and service locations, as well as changes in legal requirements.

(b) Board and Management Oversight

Given their ultimate responsibility for the effectiveness of the FRFI’s anti- MLTFA program, the board of directors and senior management must be strongly committed to ensuring that measures designed to address risks associated with these activities are implemented. It is essential that both the board of directors and senior management support these programs through all stages - design, approval, implementation, and review. The board and senior management should be directly involved in the approval and review stages, principally throughout the receipt and review of the FRFI’s self-assessment discussed under (c)(v) below.

(c) Policies and Procedures

² The FATF provides updates on the progress being made by jurisdictions named in its report and conducts reviews of additional countries and jurisdictions. Jurisdictions making sufficient progress in strengthening their anti-money laundering regimes are de-listed, while others may face various countermeasures if progress is insufficient. To obtain additional information on this report or on other FATF activities, FRFIs should refer to the FATF Web site located at <http://www.oecd.org/fatf>.

Senior management is responsible for the development of risk management programs and for keeping the board of directors adequately informed about these programs and their effectiveness. Policies and procedures to combat MLTFA should form an integral part of a FRFI's overall compliance function. The following steps would form a sound basis for a comprehensive set of policies and procedures to deter and detect these activities.

- i) Ensure that the FRFI has sufficient qualified resources to comply with all legal requirements.
- ii) Name a "designated officer" to be responsible for corporate-wide measures to combat MLTFA and who will report directly to senior management and the board of directors. The designated officer should ensure that each operating division of the FRFI having potential exposure to MLTFA appoints an officer to ensure that these divisions carry out policies and procedures as required. These officers should report regularly on compliance issues and the need for any revisions to policies and procedures. FRFIs should designate employees (who need not be full time compliance officers) to be accountable for ensuring that anti- MLTFA policies and procedures intended for these branches or units are applied.
- iii) Ensure that managers are aware of their overall compliance responsibilities, and, in particular, those linked to areas such as MLTFA where non-compliance has the potential to cause damage to the FRFI's reputation.
- iv) Establish internal compliance reporting processes³ capable of demonstrating, at a minimum, conformity with all anti- MLTFA legal requirements. Further, the internal compliance reporting system should provide for regular reviews of compliance issues, for the documentation of such reviews, and for a process to address instances of non-compliance or any general areas of weakness identified. Where a FRFI believes the review has identified significant issues, it should review such issues with OSFI. Policies and procedures should be adequately documented to permit independent testing (referred to below) and OSFI to understand the processes described.
- v) Establish an annual self-assessment program designed to 1) evaluate, on a group-wide basis, the effectiveness of the FRFI's anti- MLTFA procedures for identifying areas and types of risk, and 2) suggest corrective measures to address any weaknesses or gaps identified in the risk management systems. The annual self-assessment should include a report for senior management and the board of directors that summarizes the assessment's findings, including the scope of the review, the main elements of anti- MLTFA policies and procedures, the level of adherence to them, and evidence that the policies and procedures comply with the PCMLTFA and the Regulations, and with applicable FINTRAC and OSFI guidelines.
- vi) Establish a system of independent procedures testing to be conducted by the internal audit department, compliance department, or by an outside party such as the FRFI's external auditor. Where anti- MLTFA testing is incorporated into all regular or cyclic testing of other internal controls, procedures testing should cover the entire operation of the FRFI no less frequently than the testing of such other internal controls. Otherwise, the procedures testing should be conducted annually.

The scope of the testing and results should be documented, with deficiencies in anti- MLTFA systems being reported to senior management and to the board of directors, and with a summary of steps taken (or to be taken) to address any deficiencies. The report should address areas such as: employee knowledge of legal requirements and the FRFI's policies and

³ It should be noted that OSFI has issued guidance on legislative compliance management and that it refers to compliance requirements in both FRFI governing statutes (*e.g. Bank Act*) and in other legislation that affects FRFIs, such as the PCMLTFA.

procedures; the FRFI's systems for client identification and for suspicious and large cash transaction identification and reporting; and the associated record-keeping system.

- vii) Ensure that appropriate employees are given sufficient training. This should include knowledge of the FRFI's anti- MLTFA policies and procedures, the techniques⁴ used by criminals to launder funds through financial institutions, and the current anti- MLTFA legislation and regulations. Front-line staff plays an essential role in implementing anti-MLTFA measures and, therefore, must receive appropriate training to understand problems associated with MLTFA, the financial institution's anti- MLTFA policies, and the proper application of procedures.

(d) Customer Identification

Comprehensive customer identification policies and procedures can greatly reduce the risk of exposure to money laundering and terrorist financing activities, and should form a key part of an anti- MLTFA program. International bodies such as the FATF and the Basel Committee recognize the importance of customer identification on Banking Supervision (Basel Committee). The International Association of Insurance Supervisors (IAIS) has also issued anti-money laundering guidance that highlights the importance of customer identification issues.

In October 2001, the Basel Committee released a final version of its paper entitled *Customer Due Diligence for Banks*. The paper sets out minimum standards for the development of appropriate practices in this area. OSFI believes that the customer due diligence standards identified in this paper represent a sound basis for ensuring that FRFIs have adequate "know your customer" controls and procedures in place. OSFI encourages FRFIs to familiarize themselves with the standards outlined in the paper and to implement these standards in a manner appropriate to the size, complexity, and nature of the institution's business activities. The paper is available on the BIS Web site (<http://www.bis.org/publ/bcbs85.pdf>).

More recently, the FATF has made substantial revisions to its Forty Recommendations, which can be referenced at the FATF Web site (http://www.fatf-gafi.org/40Recs_en.htm). The FATF has also released a number of Special Recommendations on Terrorist Financing, some dealing more specifically with roles and responsibilities of financial institutions for combating terrorist financing activities (http://www.fatf-gafi.org/TerFinance_en.htm).

The IAIS approved the final draft of its *Guidance Paper on Anti-Money Laundering and Combating the Financing of Terrorism* in October 2004. The Guidance Paper, which replaces anti-money guidance notes issued in January 2002, now addresses issues related to the combating of terrorist financing. The Paper is also more consistent with the FATF's Forty Recommendations and includes enhanced guidance with respect to customer due diligence. When developing or modifying their anti-MLTFA programs, life insurance entities should familiarize themselves with this document, as it provides a strong summary of key elements of an anti- MLTFA program from an insurance entity perspective.

III. Review by the Office of the Superintendent of Financial Institutions

As part of its risk-based supervisory framework, OSFI reviews the adequacy of FRFIs' enterprise-wide anti- MLTFA policies and procedures, and their implementation, to determine whether FRFIs are taking appropriate steps to address MLTFA and associated risks. OSFI may share results of these reviews with FINTRAC⁵, as they relate to compliance with Part 1 of the PCMLTFA. FRFIs should be

⁴ The three stages of money laundering (placement, layering and integration) should be covered by appropriate training material, ideally geared to the FRFI's own products and services.

⁵ In accordance with section 97 of Bill C-7 (the *Public Safety Act, 2002*).

prepared to provide information or material on MLTFA deterrence and detection procedures to OSFI personnel when they are conducting an on-site review and, upon request, at any other time. (Note: additional information related to the items below can be found in Section II(c).) Material that may be examined would include, but would not necessarily be limited to:

- i) Board-approved policies on anti- MLTFA and related procedures;
- i) The self-assessment referred to in (c) (v) above;
- iii) Documented evidence of tests undertaken to confirm the appropriate functioning of the entity's anti- MLTFA policies and procedures;
- iv) The name of the officer designated as responsible for the institution's overall MLTFA deterrence and detection procedures, usually referred to by OSFI as the Chief Anti- Money Laundering Officer (CAMLO);
- v) A description of the frequency and type of reporting to the CAMLO and by the CAMLO to senior management and the board;
- vi) Electronic or paper evidence (could include FINTRAC confirmation of report filings) of all suspicious transaction, large cash transaction, electronic funds transfer, and other reports made by the FRFI pursuant to its reporting obligations; and
- vii) Evidence of a summary report to senior management in respect of suspicious transactions reports and large cash transaction reports that were made to FINTRAC.

- END -

ANNEX 4

REFERENCE WEB SITES

The following is a list of organisations and their Web sites where additional information may be obtained regarding the prevention of MLTFA. Many of the sites provide search engines that can be of assistance in obtaining helpful documentation.

Domestic Organisations

Office of the Superintendent of Financial Institutions (OSFI)

<http://www.osfi-bsif.gc.ca/>

Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

<http://www.fintrac.gc.ca/>

Foreign Regulators and International Organisations

Bank for International Settlements (BIS)

<http://www.bis.org/>

Financial Action Task Force on Money Laundering (FATF)

<http://www1.oecd.org/fatf/>

International Association of Insurance Supervisors (IAIS)

<http://www.iaisweb.org/>

Board of Governors of the Federal Reserve System (Federal Reserve)

<http://www.federalreserve.gov/>

Office of the Comptroller of the Currency (OCC)

<http://www.occ.treas.gov/>

Financial Crimes Enforcement Network (FinCEN)

<http://www.treas.gov/fincen/>

U.K. Financial Services Authority (FSA)

<http://www.fsa.gov.uk/>

Australian Transaction and Reports Analysis Centre (AUSTRAC)

<http://www.austrac.gov.au/>

ANNEX 5

LIST OF KEY LAWS, REGULATIONS AND OTHER MATERIALS RECEIVED BY THE ASSESSMENT TEAM

Applicable Articles in the Criminal Code

- Criminal Code - complete version updated on 17 January 2007
- Proceeds of Crime (Money Laundering) and Terrorist Financing Act - 10 February 2007
- Proceeds of Crime (Money Laundering) and Terrorist Financing Act - 29 June 2000
- New regulations under the PCMLTFA - Assessors Guide
- Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations
- Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations
- Cross-border Currency and Monetary Instruments Reporting Regulations
- An Act to amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act
- United Nations Al-Qaida and Taliban Regulations
- Controlled Drugs and Substances Act
- Seized Property Management Act
- Mutual Legal Assistance in Criminal Matters Act
- Extradition Act
- The Constitution Act, 1867
- The Canadian Charter of Rights and Freedoms
- Personal Information Protection and Electronic Documents Act
- United Nations Act
- Regulations Excluding Certain Indictable Offences
- Canada Business Corporations Act
- Charities Registration (Security Information) Act

FINTRAC Documents

- Guideline 1 - Backgrounder
- Guideline 2 - Suspicious Transactions
- Guideline 3A - Submitting Suspicious Transaction Reports to FINTRAC Electronically
- Guideline 3B - Submitting Suspicious Transaction Reports to FINTRAC by Paper
- Guideline 4 - Implementation of a Compliance Regime
- Guideline 5 - Submitting Terrorist Property Reports to FINTRAC
- Guideline 6B - Record Keeping and Client Identification
- Guideline 7A - Submitting Large Cash Transaction Reports to FINTRAC Electronically
- Guideline 7B - Submitting Large Cash Transaction Reports to FINTRAC by Paper
- Guideline 8A - Submitting non-SWIFT Electronic Funds Transfer Reports to FINTRAC Electronically

- Guideline 8B - Submitting SWIFT Electronic Funds Transfer Reports to FINTRAC
- Guideline 8C - Submitting Electronic Funds Transfer Reports to FINTRAC by Paper
- Guideline 9 - Alternative to Large Cash Transaction Reports to FINTRAC
- FINTRAC Compliance Questionnaire for Real Estate Agents
- FINTRAC Compliance Questionnaire for Accountants
- FINTRAC Compliance Questionnaire for Money Service Businesses
- FINTRAC Compliance Questionnaire for Security Dealers
- FINTRAC Compliance Questionnaire for Credit Union/ Caisse Populaire Sector
- FINTRAC Compliance Questionnaire for Life Insurance Intermediaries
- FINTRAC Compliance Questionnaire for Casinos
- Memorandum of Understanding between FINTRAC and OSFI
- FINTRAC Interpretation Notice 1: Criteria for “Engaged in the Business of Money Services Business or Foreign Exchange Dealer”
- FINTRAC Interpretation Notice 2: Accountants - Giving Instructions Versus Providing Advice
- FINTRAC Interpretation Notice 3: Opening an Account for a Person or Entity Engaged in the Business of Dealing in Securities Only Outside of Canada
- FINTRAC Interpretation Notice 4: Large Cash Transaction and Electronic Funds Transfer Reporting Requirements: Two Or More Transactions In A 24-Hour Period (The "24-Hour Rule")
- FINTRAC Pamphlet: F2R Web Reporting Quick Reference
- FINTRAC Pamphlet: Connecting the money to the crime
- FINTRAC Pamphlet: How to report suspicious transactions
- FINTRAC Pamphlet: The Proceeds of Crime (Money Laundering) and Terrorist Financing Act - What you need to know
- FINTRAC Pamphlet: FINTRAC Examinations: Your Responsibilities And What You Can Expect From FINTRAC
- Information Sheet for Financial Entities
- Information Sheet for Life Insurance
- Information Sheet for Security Dealers
- Information Sheet for Real Estate Brokers
- Information Sheet for Foreign Exchange Dealers
- Information Sheet for Money Service Businesses
- Information Sheet for Accountants
- Information Sheet for Casinos
- FINTRAC's 2006 Annual Report
- FINTRAC's MOU template for Foreign FIUs
- FINTRAC's MOU template for Regulators
- Ipsos Reid: Tracking Public Perceptions Surrounding Money Laundering
- Sample Deficiency Letter
- Summary of Proposed Changes by Reporting Entity Sector
- Sanitized Money Laundering Case
- FINTRAC's Business Process

OSFI documents

- OSFI letter regarding Enhanced Due Diligence for Correspondent Accounts
- OSFI Letters regarding Non-Cooperative Countries and Territories
- OSFI Guideline: Deterring and Detecting Money Laundering and Terrorist Financing
- OSFI Guideline E-13: Legislative Compliance Management
- OSFI form: Notice of Change of Corporate Information
- OSFI form: Return of Corporate Information

- OSFI Presentation for AML/ATF Information Session on October 17, 2006
- Personnel Screening, Consent and Authorization Form - Enhanced Reliability Check
- OSFI Code of Professional Conduct
- OSFI Supervisory Framework
- OSFI Memorandum of Understanding template concerning Mutual Cooperation
- List of Countries and Regulators that OSFI has signed MOUs with
- Draft Guideline: Assessments of Responsible Persons by FREs
- Correspondent Banking File Review for AML/ATF On-Site Review
- Letter Informing Update of Terrorism Financing Lists
- Lists of Names subject to the Regulations Establishing a List of Entities made under subsection 83.05(1) of the Criminal Code, and/or the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST) and/or United Nations Al-Qaida and Taliban Regulations (UNAQTR)
- ANNEX C17(i) - Terrorism Financing Entities ANNEX C17(ii) - Terrorism Financing Individuals
- Regulations Establishing a List of Entities

Assessments and Other General Government Documents

- Office of the Auditor General of Canada - Chapter 2: Implementation of the National Initiative to Combat Money Laundering
- EKOS - Year Five Evaluation of the National Initiatives to Combat Money Laundering and Interim Evaluation of Measures to Combat Terrorist Financing
- Standing Senate Committee on Banking, Trade and Commerce - Stemming the Flow of Illicit Money: A Priority for Canada, Parliamentary Review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act
- Enhancing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime: Consultation Paper
- Securing an Open Society: Canada's National Security Policy
- Financial Leasing Industry in Canada and Money Laundering
- UN Security Council - Report of the Government of Canada on the Implementation of Security Council Resolution 1373

Provincial Regulations

- British Columbia Ministry of Public Safety and Solicitor General, Gaming Policy and Enforcement Branch - Standard Procedures for Limited Casinos
- British Columbia Ministry of Public Safety and Solicitor General, Gaming Policy and Enforcement Branch – Annual Report April 1, 2005- March 31, 2006
- Alberta Gaming and Liquor Commission – Casino Terms & Conditions and Operating Guidelines
- Ontario Gaming Control Act, 1992, Regulation 197/95
- BC Corporate Disclosure Forms
- BC Person Disclosure Forms
- Deposit Insurance Corporation of Ontario - Review of Compliance to Money Laundering Legislation form

Documents from Self-Regulated Organizations

- CICA - Canada's Anti-Money Laundering & Anti-Terrorist Financing Requirements – A Guide for Chartered Accountants
- Investment Dealers of Canada – Regulation 1300 – Supervision of Accounts (CDD)
- IDA Policy No. 6 on Proficiency and Education

- IDA AML/CFT Documentation
- IDA Compliance Interpretation Bulletin: Proceeds of Crime (Money Laundering)
- IDA Declaration of Funds form for Large Cash Transactions
- IDA Member Regulation Notice: Implementation of Suspicious Transaction Reporting Regulations Under The Proceeds of Crime (Money Laundering) Act, 2000
- IDA Member Regulation Notice: Revised Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations
- IDA Member Regulation Notice: Cross Border Currency and Monetary Instruments Reporting Regulations
- IDA Member Regulation Notice: Financial Action Task Force Withdrawal of Countermeasures against Ukraine Identification of Non-Cooperating Countries and Territories
- IDA Member Regulation Notice: Obtaining Financial Entity Information under Anti-Money Laundering Regulation
- IDA Member Regulation Notice: FINTRAC Publishes Revised Anti-Money Laundering Guidance Document for Securities Dealers
- IDA Bulletin on Discipline Penalties
- Discipline Penalties Imposed on First Delta Securities Inc., George (Geordie) Aubrey Trusler, Frederick Meredith Jr. and Gail Louise Stopforth – Violations of Regulation 1300.1, 1300.2 and By-Law 29.1
- Discipline Penalties imposed on Brant Securities Limited, Keith McMeekin, Hugh Jackson Jr. and John Davies – Violation of By-Law 29.1, Regulations 1300.1 and 1300.2, Policy 2 and Rule 31-505 of the Ontario Securities Act Discipline Penalties Imposed on Lawrence Kenneth Freedman – Violations of By-law 29.1 and Regulation 1300.1
- Discipline Penalties Imposed on Research Capital Corporation and Patrick Gerald Walsh; Violations of By-law 29.1
- IDA Letter regarding Anti-Money Laundering and Suspicious Transaction Reporting to Executive Committee
- IDA Bulletin: Discipline Penalties Imposed on Union Securities Ltd.; Violation of By-law 19.6 - Failure to Provide Business Records to IDA Investigators
- IDA Information regarding UN Suppression of Terrorism Regulations
- IDA Member Regulation Notice: Filing of Reports Under The United Nations Suppression of Terrorism Regulations And Revised Schedule of Listed Persons
- IDA Monthly Report form- United Nations Suppression of Terrorism Regulations
- IDA Bulletin & Member Regulation Notice
- Amendments to Regulation 1300 Beneficial Ownership of Non-Individual Accounts
- Amendments to Regulation 1300.1 Identification of Beneficial Owners of Non-Individual Accounts
- IDA Bylaw No. 38 on Responsibilities of the Chief Compliance Officer and Ultimate Designated Person
- IDA Policy No. 3: Internal Control Policy Statements
- IDA Policy No. 4: Minimum Standards for Institutional Account Opening, Operation and Supervision
- IDA – Deterring Money Laundering Activity: A Guide for Investment Dealers, October 2002
- IDA Presentation – Anti-Money Laundering Requirements
- IDA By-Law 19
- Section 29.27 of IDA By-Law 29
- IDA Joint Notice: The Role of Compliance and Supervision
- IDA Joint Notice: Federal and Provincial Privacy Legislation
- IDA Mission Statement and Values
- Canadian Securities Institute AML/CFT Course Content

- Law Society of Upper Canada – By-Law 18: Recording Keeping Requirements
- Law Society of Upper Canada – By-Law 19: Handling of Money and Other Property
- Federation of Law Societies of Canada – Model Rule on Cash Transactions
- CREA – The Realtor Code

RCMP/ Law Enforcement Documents

- Drug Situation in Canada
- Criminal Code C-46
- General Guidelines and Protocols for the Exchange and Release of RCMP Information and Criminal Intelligence Sharing and Exchange of Information with External Partners
- RCMP Operational Policing Organizational Chart
- RCMP Proceeds Of Crime International Training & Workshops
- Nathanson Centre for the Study of Organized Crime and Corruption – Money Laundering In Canada: An Analysis of RCMP Cases
- Restraints and Seizures for Proceeds of Crime and Offence Related Property – Ontario Provincial Police, Asset Forfeiture Unit
- Argent Saisi, Confisqué et Remis – Sûreté du Québec
- Sûreté du Québec - Rapport sur les produits de la criminalité

Department of Justice Documents

- Countries that Canada has Bilateral Extradition Treaties With and States or Entities Designated as Extradition Partners
- Mutual Legal Assistance Treaties
- Reciprocal International Sharing Agreements With Canada
- The Extradition Process
- Director of Public Prosecutions Act
- Department of Justice Act
- Supreme Court of Canada – R. v. Lavigne 2006
- Court of Appeal for Ontario - R. v. Tejani 1999
- Case Law on Money Laundering Sentences

CRA Documents

- Charities in the International Context
- Application to Register a Charity under the Income Tax Act form
- Registered Charity Information Return form
- A Review of the Canadian Non-Profit Organization Sector: A Discussion Paper for the FATF WGTF

Industry related documentation

Desjardins Group

- Procédures de contrôles
- Rapport trimestriel aux dirigeants – Conformité à la LRPCFAT

JEWELLERY INDUSTRY

- Dealers in Precious Metals and Stones: Industry Structure and Money Laundering Typologies

REAL ESTATE INDUSTRY

- Booklet - Organised Real Estate in Canada
- Cash Flow in a real estate transaction
- The Realtor Code of Ethics
- Booklet - Your Privacy and the Real Estate Transaction

LAWYERS

- Information on the Canadian legal profession for the FATF Mutual Evaluation of Canada's AML regime
- Rules of Professional Conduct

ACCOUNTANTS

- What CAs do
- Overview of Professional Services- Audit and Assurance, Tax and Advisory Services - Large CA Firm
- Overview of Professional Services - Small CA Firm – Canada
- Overview of Client Acceptance Procedures - Audit, Tax and Advisory Services - Large CA Firm
- Public Practice Manual: Section 300 - PCMLTFA, Guidelines for compliance and Section 500 - Sample Compliance Manual

Other documentation

- Canada - Risk Assessment Model for AML/CFT
- Distribution of Branches of Financial Institutions in Canada
- Bank Act
- INTERAC - Due Diligence Requirements for Acquirers
- Finance companies - Information from the Association of Canadian Financial Corporations (ACFC)
- RCMP LIAISON OFFICER PROGRAM 2007
- Location of liaison officers
- Typologies involving lawyers