



## OUR OBLIGATIONS UNDER THE NEW "MONEY LAUNDERING" LEGISLATION

Canada's new Proceeds of Crime (Money Laundering) Act imposes significant reporting requirements on a wide net of people and institutions, among which lawyers are included. The purpose of this memorandum is to advise our clients and potential clients of our obligations in this regard.

### Money Laundering

Money laundering is the process whereby the proceeds of criminal acts, such as drug dealing, are transformed into "clean money", the criminal origin of which it is difficult to trace. The government has set up an agency called the Financial Transactions Reports Analysis Centre of Canada (FinTRAC), which is an independent agency operating at arm's length from law enforcement agencies. It is to be the central repository for all information collected about suspected money laundering activities.

### Information Disclosure

FinTRAC requires lawyers to record and disclose significant amounts of information about a client and activities undertaken on behalf of a client, if that client engages in suspicious transactions involving cash, or even if the transaction is not suspicious, if the cash amount exceeds \$10,000. The Act makes it an offence for a lawyer or any member of the lawyer's staff even to inform a client that a suspicious transaction has been reported to FinTRAC, or to disclose the contents of that report.

### Search and Seizure

FinTRAC has the authority to enter the lawyer's premises without a search warrant, to determine if the lawyer is complying with his reporting and recording obligations as defined under the Act. A compliance search can include access to any computer or data processing systems, the right to remove records from the lawyer's premises for examination or copying.

### Seizure of Mail

The Canadian Customs and Revenue Agency (CCRA) has the authority to seize, retain, and open mail which it believes contains currency or monetary instruments worth \$10,000 or more. In some circumstances, the CCRA

officer can demand that a lawyer open mail in the lawyer's possession.

### Can We Claim Privilege?

The onus is on the lawyer to assert a claim for privilege to prevent a FinTRAC/authorized person from examining and copying documents in the course of a compliance search and seizure. The lawyer must immediately bring an application to have the issue determined by a judge. The lawyer is required to provide the client's name and address at that time, ostensibly to allow FinTRAC to contact the client directly to determine if he wished to waive the privilege.

### Violation of Rights

The anti-money laundering legislation is in our respectful opinion a severe violation of the traditional rights of our clients to absolute confidentiality with us. The members of our law firm have never encountered transactions that we felt were related to money laundering. The new legislation will, of course, be tested over time as to whether it is the kind of legislation that can be tolerated in a free and democratic society. We must, however, warn our clients that the general principle of solicitor and client privilege is subservient to our obligations under the law, and it is not an option for us to refuse to fulfill our obligations under this legislation.

Update: March 26, 2003

The government has, in response to court challenges, removed any requirement for lawyers to report clients under the Proceeds of Crime (Money Laundering) or Terrorist Financing Acts. In consultation with lawyer representatives, the government will be drafting new legislation that will not compromise the lawyer and client relationship.