Part VIII
Accountants

Section 4(1)(a)(vi) of my Terms of Reference requires me to make findings of fact regarding the "extent, growth, evolution and methods of laundering" in professional services, including the accounting sector.

This Part contains my findings in relation to the accounting sector and is divided into four chapters. Chapter 30 provides an overview of the applicable legal and regulatory framework. It also highlights the distinction between chartered professional accountants and non-regulated accountants, as well as the services offered by both in this province. Chapter 31 considers the nature and extent of money laundering risks facing accountants. In Chapter 32, I examine the regulation of chartered professional accountants undertaken by the Chartered Professional Accountants of British Columbia (CPABC) and how CPABC can supplement federal anti–money laundering measures applicable to accountants. Finally, Chapter 33 discusses anti–money laundering activities currently undertaken by CPABC and the Chartered Professional Accountants of Canada, as well as the potential for a "whistle-blower" regime that would permit reporting by chartered professional accountants without compromising their duty of confidentiality.

Chapter 30
Legal and Regulatory Framework

Accountants, like lawyers, are often described as "gatekeepers" to the financial system, possessing the knowledge and skill necessary to structure a client's finances in a tax-efficient manner. The nature of accountants' work provides them with opportunities to assist criminals – knowingly or unwittingly – in their money laundering activities. In recent years, there have been growing concerns about the involvement of accountants as facilitators in money laundering schemes.

There is, unfortunately, a lack of evidence on the precise nature and extent of accountants' involvement in money laundering in British Columbia. Witnesses from the Chartered Professional Accountants of British Columbia (CPABC) and the Chartered Professional Accountants of Canada (CPA Canada) repeatedly expressed the view that this dearth of evidence suggests there is no money laundering problem with respect to chartered professional accountants (CPAs) in this province.

With respect, I do not interpret the lack of data in the same manner. I agree that the dearth of evidence is problematic and leaves government, regulators, and law enforcement without sufficient data to inform their decisions when implementing anti–money laundering regulation. My hope is that more research will be undertaken in this area. However, the lack of data should not be equated with an absence of risk. The nature of accountants' work renders them vulnerable to being sought out by criminals to assist in money laundering activity. It is crucial that strong preventive anti–money laundering measures be in place to guard against this risk.

In my opinion, anti–money laundering regulation of accountants in British Columbia is currently inadequate in three key ways. First, a large proportion of accountants are not regulated. Only CPAs, who represent approximately one-third of the accounting profession, are regulated. Further, only CPAs are subject to the *Proceeds*

of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c 17 (*PCMLTFA*); unregulated accountants are not. It is problematic that approximately two-thirds of the accountants in British Columbia can carry out many of the same activities as CPAs but are not regulated or subject to the *PCMLTFA*. This disparity raises the question of whether unregulated accountants should be subject to some form of regulation.

Second, while CPAs are subject to extensive regulation by CPABC for accounting purposes, CPABC maintains that its mandate does not, and should not, extend to anti–money laundering regulation. It considers that all such responsibility currently rests, and should continue to rest, with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). As I develop throughout these chapters, I respectfully disagree with CPABC's position. In my view, both FINTRAC and CPABC have responsibility for anti–money laundering regulation, and CPABC must begin to fulfill this aspect of its public interest mandate.

Finally, the *PCMLTFA* captures only limited activities undertaken by CPAs. Combined with CPABC's position that its mandate does not extend to anti–money laundering regulation, this restriction leaves several activities that pose money laundering risks without any anti–money laundering regulation. Further, compliance with the *PCMLTFA* appears to be low, and FINTRAC conducts few compliance examinations. These issues underscore the importance of CPABC conducting anti–money laundering regulation in parallel with FINTRAC.

The Accounting Profession in British Columbia

The term "accountant" is not protected in British Columbia in the same way as the term "lawyer" or "doctor." In this province,[1] accountants include CPAs, a regulated profession with a protected title, and other persons who identify as accountants but are not CPAs.

Non-CPAs are not regulated or subject to any form of statutory oversight. Under the *Chartered Professional Accountants Act*, SBC 2015 c 1 (*CPA Act*), CPABC is tasked with regulating the CPA profession in British Columbia. Subject to certain activities that can be performed only by CPAs (discussed below), the *CPA Act* expressly preserves the right of unregulated accountants to practise accounting in this province.[2]

According to the 2016 Census, approximately 89,000 individuals worked in British Columbia as accountants across all industries in that year. Of these, approximately two-thirds (around 58,000) were unregulated accountants.[3]

1 As my mandate is limited to British Columbia, I have not made findings on the accounting profession in Canada more broadly. However, given the harmonizing role played by CPA Canada, there are sound reasons to believe that accountant regulation occurs similarly across Canada.

2 Section 46 of the *CPA Act* states that "[s]ubject to section 47, this Act does not affect the right of a person who is not a member to practice as an accountant or auditor in British Columbia."

3 Cited in Exhibit 391, Overview Report on the Accounting Sector in British Columbia (December 17, 2020), para 3.

As of March 31, 2020, CPABC had 37,317 members and admitted 1,326 new members in the 2019–20 fiscal year.[4] Lisa Liu, vice-president of public practice regulation at CPABC, testified that approximately 20 precent of CPABC's members are in public practice, while the rest work in industry, academia, and government.[5]

Accounting Services

The common understanding of accountants' work involves finance-related tasks such as preparing and maintaining financial records, preparing tax returns and advising on tax matters, and performing audits or reviews of a company's financial statements.

As I develop below, the *PCMLTFA* applies to "accountants" (defined essentially to mean CPAs) and "accounting firms." An accounting firm is defined as "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."[6]

The Financial Action Task Force's (FATF) accounting guidance[7] states that accounting services include the following tasks:

a) Audit and assurance services (including reporting accountant work in initial public offerings);

b) Book-keeping and the preparation of annual and periodic accounts;

c) Tax compliance work;

d) Tax advice;

e) Trust and company services;

f) Internal audit (as a professional service), and advice on internal control and risk management;

g) Regulatory and compliance services, including outsourced regulatory examinations and remediation services;

h) Company liquidation / insolvency / receiver-managers / bankruptcy related services;

i) Advice on the structuring of transactions;

j) Due diligence in relation to mergers and acquisitions;

4 Ibid, p 8, para 28.

5 Transcript, January 12, 2021, pp 6–7.

6 *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*], s 1, "accountant" and "accounting firm."

7 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendix B, FATF, *Guidance for a Risk-Based Approach: Accounting Profession* (Paris: 2019) [*FATF Accounting Guidance*].

k) Succession advice;

l) Advice on investments and custody of client money; and

m) Forensic accounting.[8]

Section 47 of the *CPA Act* states that certain accounting services in British Columbia can be provided *only* by CPAs:

- performing an audit engagement and issuing an auditor's report in accordance with the standards of professional practice published by CPA Canada;
- performing any other assurance engagement and issuing an assurance report in accordance with the standards of professional practice published by CPA Canada; and
- issuing any form of certification, declaration, or opinion with respect to information related to a financial statement, and performing specified auditing procedures, in accordance with standards published by CPA Canada.[9]

FATF's accounting guidance identifies the following areas of vulnerability for money laundering in accountants' work:

- financial and tax advice;
- company and trust formation;
- buying or selling property;
- performing financial transactions;
- gaining introductions to financial institutions;
- maintenance of incomplete records by clients; and
- preparation, review, and auditing of financial statements.[10]

CPABC submits that "many" of the above services cannot be performed by CPAs in British Columbia.[11] In particular, CPABC and CPA Canada state that CPAs are prohibited from setting up legal structures such as companies and trusts and from providing real estate services.[12] I discuss these activities in turn.

Beginning with the formation of corporations, trusts, and other legal arrangements, CPABC and CPA Canada state that CPAs in British Columbia are not permitted to

8 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 20.

9 *CPA Act*, s 47(a).

10 Exhibit 391, Appendix B, *FATF Accounting Guidance*, paras 22–23.

11 Closing submissions, CPABC, para 44; Exhibit 403, CPABC Review of McGuire Report on Accountants (January 7, 2021) [CPABC McGuire Review], p 2–3.

12 Closing submissions, CPABC, para 43.

incorporate companies, establish trusts and partnerships, or prepare and maintain corporate records because these tasks are considered the practice of law.[13] I agree that these activities constitute the practice of law and are therefore not performed by accountants in this province.[14]

That said, while accountants do not take the final step of creating corporations, trusts, and other similar legal entities, there is no doubt that they routinely provide advice about structuring a client's finances, including through the use of such legal entities. As I elaborate in Chapters 31 and 32, by providing advice about and preparing for the creation of legal entities, accountants are exposed to significant risks of being used to facilitate money laundering, and they are well placed to observe activity on the part of their clients that could qualify as suspicious. Therefore, a singular focus on whether accountants incorporate companies or establish trusts themselves misses the bigger picture and risks failing to recognize a money laundering vulnerability.

CPABC also notes that CPAs are restricted in their ability to provide real estate services by the *Real Estate Services Act*.[15] There are limited circumstances under that statute that would permit an accountant to provide real estate services,[16] and the *PCMLTFA* includes, as triggering activities, the "purchase or [sale of] securities, real property or immovables or business assets or entities" and giving instructions with respect to these activities.[17] I accept that it is relatively uncommon in British Columbia for accountants to be involved in these activities.[18] However, to the extent they are, these activities certainly pose money laundering risks.

On the whole, I disagree with CPABC that "many" of the accounting services identified by the Financial Action Task Force are not performed by CPAs in British Columbia. With respect, this submission is an overstatement and unfairly minimizes the involvement of accountants in activities that carry a money laundering risk. Although there is some nuance regarding the creation of legal entities and real estate transactions, accountants in this province engage in the remaining activities identified by FATF. I do, however, agree with CPABC that many of these services can be performed by *both* CPAs and unregulated accountants,[19] as the latter can perform all accounting

13 Ibid; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 143.

14 *Legal Profession Act*, SBC 1998, c 9, ss 1 ("practice of law") and 15; *Law Society of British Columbia v Siegel*, 2000 BCSC 875 at paras 3, 24–29; Law Society of British Columbia, "What Is Unauthorized Practice of Law?" online: https://www.lawsociety.bc.ca/custodianships-unauthorized-practice/unauthorized-practice-of-law/what-is-unauthorized-practice-of-law/.

15 Closing submissions, CPABC, para 43.

16 Subsection 3(3) of the *Real Estate Services Act*, SBC 2004, c 42, allows certain individuals to provide real estate services without a licence, including individuals acting under the authority of a court or as a trustee in bankruptcy. A guidance document from FINTRAC recognizes that accountants can act as receivers, trustees in bankruptcy, and other similar roles: FINTRAC, Interpretation Notices, No 7, online: https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2011-02-17-eng. Therefore, accountants are authorized to provide real estate services when acting in these roles.

17 *PCMLTF Regulations*, ss 47(b) and (d).

18 Evidence of M. McGuire, Transcript, January 11, 2021, pp 35–36.

19 Exhibit 403, CPABC McGuire Review, pp 3–4; Closing submissions, CPABC, para 40.

services except those identified in section 47 of the *CPA Act* (essentially audit and assurance engagements).

CPABC further submits that it is relatively rare for its members to engage in triggering activities under the *PCMLTFA*. It notes that only about 20 percent of its members work in public practice and points to an informal survey suggesting that more than 85 percent of the respondents did not engage in triggering activities.[20] As I discuss further in Chapter 33, there are several significant limitations with that survey. These limitations prevent me from concluding that it is rare for members to engage in triggering activities or that it is rare enough to justify the almost non-existent *PCMLTFA* reporting by accountants (see Chapter 32).

Overall, I am not persuaded that accounting services in British Columbia, and the associated money laundering risks, are as limited as CPABC suggests. I elaborate on the risks facing accountants in this province in Chapter 31.

CPA Regulation in British Columbia

CPABC was created in 2015 following the amalgamation of the professional accounting profession.[21] Its mandate is set out in section 3 of the *CPA Act* and is worth reproducing in full, given that the scope of CPABC's mandate is at issue:

> **3** The CPABC has the following objects:
>
> (a) to promote and maintain the knowledge, skill and proficiency of members and students in the practice of accounting;
>
> (b) to establish qualifications and requirements for admission as a member and continuation of membership, and for enrolment and continuation of enrolment of students;
>
> (c) to regulate all matters, including competency, fitness and professional conduct, relating to the practice of accounting by members, students, professional accounting corporations and registered firms;
>
> (d) to establish and enforce professional standards;
>
> (e) to represent the interests of members and students.

In Chapter 32, I discuss the scope of CPABC's mandate and whether it does, or should, include anti–money laundering regulation. For present purposes, I highlight that

20 Closing submissions, CPABC, paras 40, 47.

21 Section 2(1) of the *CPA Act* explains that three previous bodies are amalgamated and continued as CPABC: the Certified General Accountants Association of British Columbia, the Certified Management Accountants Society of British Columbia, and the Institute of Chartered Accountants of British Columbia. As I understand it, a similar amalgamation occurred in the profession across Canada.

section 3(c) refers to the regulation of *all* matters relating to members' practice, including competency, fitness, and professional conduct.

CPABC is overseen by a board of directors that must have at least nine members and up to three non-members.[22] The board is empowered to pass bylaws on various matters, including admission, classes of members, membership requirements, designations, practice reviews, investigations, hearings, and extraordinary suspensions.[23] CPABC has accordingly passed the *Chartered Professional Accountants of BC Bylaws,* the *Chartered Professional Accountants of BC Bylaw Regulations*, and the *Chartered Professional Accountants Code of Professional Conduct* (CPA Code),[24] with which all members and firms must comply. CPABC has various committees that include, but are not limited to, the executive, membership, public practice, investigation, and disciplinary committees.[25]

Part 7 of the bylaws sets out various licences that are available to CPAs. Bylaw 700(2) explains that members may not provide services included in public practice unless they hold a current licence or are exempted from licensing under the regulations. Bylaw 703(1) sets out four categories of licences, which are defined in Regulation 706/1. An audit licence is the broadest, with the review licence, compilation licence, and other regulated services licence being progressively more restricted in scope.

Bylaw 100 defines "public accounting services" as any services included in an audit, review, or other assurance engagement; a certification, declaration, opinion, or report with respect to standards published by CPA Canada or the equivalent; or a compilation engagement. Meanwhile, "other regulated services" are defined as any services not constituting public accounting services that involve summarization, analysis, advice, counsel, or interpretation; forensic accounting and financial litigation support services; tax returns; or other services.

CPABC's *Code of Professional Conduct*

The CPA Code sets out the principles that guide CPABC's members, firms, students, and applicants. It applies to all members, students, and firms irrespective of the services provided.[26] CPABC's rules are to be read and applied in light of the CPA Code, *CPA Act*, and bylaws; therefore, compliance with the CPA Code is mandatory.[27]

22 *CPA Act*, s 4.

23 Ibid, Division 2; Bylaws 200–10.

24 The bylaws, regulations, and CPA Code can be found in full in Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendices C [CPABC Bylaws], D [CPABC Regulations], and E [CPA Code], respectively.

25 CPABC Bylaws, Part 3.

26 CPA Code, Preamble, "Application of the Code." Mr. Tanaka testified that the rules apply regardless of the kind of work a CPA is doing. Some provisions relate to specific activities, but otherwise the Code applies broadly. It even applies to some conduct that is not specifically related to work; for example, if a CPA is convicted of any offence, it is still a professional conduct matter: Transcript, January 12, 2021, pp 18–19.

27 CPA Code, Preamble, "Application of the Code."

The CPA Code is comprehensive in scope, practical in application, and illustrative of high ethical standards. It is a "guide not only to the profession" but also "a source of assurance of the profession's concern to serve the public interest."[28] Members of CPABC have "a fundamental responsibility to act in the public interest."[29]

The CPA Code is structured around five "fundamental principles of ethics":

- **Professional behaviour:** CPAs "conduct themselves at all times in a manner which will maintain the good reputation of the profession and serve the public interest," including avoiding action that would discredit the profession.
- **Integrity and due care:** CPAs "perform professional services with integrity and due care," which includes being straightforward, honest, and fair in their professional relationships and acting diligently and in accordance with technical and professional standards.
- **Objectivity:** CPAs "do not allow their professional or business judgment to be compromised by bias, conflict of interest or the undue influence of others." This principle is meant to ensure public confidence in the objectivity and integrity of members.
- **Professional competence:** CPAs "maintain their professional skills and competence by keeping informed of, and complying with, developments in their area of professional service."
- **Confidentiality:** CPAs "protect confidential information acquired as a result of professional, employment and business relationships and do not disclose it without proper and specific authority, nor do they exploit such information for their personal advantage or the advantage of a third party."[30]

Like individual members, accounting firms are bound by the CPA Code. Depending on the circumstances, individual members of a firm may share responsibility for a firm's failure to comply with the CPA Code.[31]

The above provisions are relevant to the question of CPABC's mandate. In my view, the CPA Code's broad principles relating to members acting in the public interest, avoiding conduct that would discredit the profession, and maintaining competence in their practice areas support a conclusion that CPABC's mandate is broad enough to encompass anti–money laundering regulation and oversight. I return to this subject in Chapter 32.

Rule 102.1 of the CPA Code, entitled "Illegal activities," requires members to notify CPABC of any conviction, violations of securities legislation, or violations of tax

28 Ibid, "Introduction."

29 Ibid, "Fundamental Principles Governing Conduct."

30 Ibid.

31 Ibid, Preamble, "Principles Governing the Responsibilities of Firms."

legislation involving dishonesty. Subsection (a) notably refers to convictions for a variety of finance-related offences, including money laundering.

Under Rules 102.2, 102.3, and 102.4, members must promptly notify CPABC in relation to adverse findings[32] in a disciplinary or similar process with any other provincial CPA body or other regulatory bodies. A "professional regulatory body" is defined as follows:

> A "professional regulatory body" is a body that sets and maintains standards of qualification, attests to the competence of the individual practitioner, develops skills and standards of the profession, sets a code of ethical standards and enforces its professional and ethical standards. Examples of professional regulatory bodies include, but are not limited to, bodies that regulate the accounting, legal, actuarial, investment, real estate, engineering and financial planning professions.[33]

Meanwhile, a "regulatory body" is defined as follows:

> A "regulatory body" is a body that has the power to compel a person to appear and answer to charges relating to compliance with its requirements. In this context, such a regulatory body's requirements include legislation that it is empowered to enforce, whether against its own members or the public generally, codes of ethics, bylaws, regulations, professional or practice requirements and similar standards. Examples of regulatory bodies include, but are not limited to, bodies that regulate competition, elections, gaming, human rights, environmental protection and health and occupational safety.[34]

Edward Tanaka, CPABC's vice-president of professional conduct, testified that members would be required, under Rule 102, to report a finding by FINTRAC that a member has not complied with the *PCMLTFA*.[35] This conclusion is not obvious to me. FINTRAC seems unlikely to constitute a "professional regulatory body" according to the definition above, given that it does not attest to the competence of practitioners or set professional and ethical standards. It could potentially qualify as a "regulatory body"; however, that term is also a poor fit given that FINTRAC cannot compel individuals to appear before it and answer charges.

I consider it important that CPAs be required to report findings of non-compliance by FINTRAC (including that a CPA has not complied with the *PCMLTFA* and/or has been sanctioned under that regime) to CPABC. The obligation to report is unclear and has the

32 These rules refer to findings of "guilt" or being found "guilty." These terms are defined broadly to include findings by a regulatory body of a contravention, breach, violation, or infringement in relation to failures to comply with requirements: CPA Code, Guidance 8 to Rule 102.

33 Ibid, Guidance 5 to Rule 102.

34 Ibid, Guidance 7 to Rule 102.

35 Transcript, January 12, 2021, pp 17–21.

potential to confuse members.[36] I accordingly recommend that CPABC amend the CPA Code to specify that FINTRAC is captured by Rule 102.

Recommendation 69: I recommend that the Chartered Professional Accountants of British Columbia (CPABC) amend its *Code of Professional Conduct* to specify that members must report to CPABC a finding by the Financial Transactions and Reports Analysis Centre of Canada that a member has not complied with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Rule 201 deals with the maintenance of the profession's reputation. Guidance 1 notes that provincial and federal legislation often requires licensing and may govern activities. Guidance 2 specifies that members "should be cognizant of and comply with the provisions of any legislative requirements pertaining to any of the registrant's professional services."[37] This guidance would appear to capture compliance with the *PCMLTFA*.

Guidance 10 to Rule 201 notes that an auditor should not voluntarily cease to act on behalf of a client after starting an audit engagement except for good and sufficient reason. One such reason is the "inducement by a client to perform illegal, unjust or fraudulent acts." The CPA Code also contains extensive rules ensuring independence for audits and assurances.[38]

Rule 205, entitled "False or misleading documents and oral representations," states that a member shall not

> a) sign or associate with any letter, report, statement, representation or financial statement which the registrant knows, or should know, is false or misleading, whether or not the signing or association is subject to a disclaimer of responsibility, nor
>
> b) make or associate with any oral report, statement or representation which the registrant knows, or should know, is false or misleading.

Relatedly, Rule 213, "Unlawful activity," states that members must not associate with activity that they know or should know is unlawful.

These rules and the associated guidance are consistent with CPABC having a role to play in ensuring that its members do not become associated with or facilitate unlawful activity, including money laundering.

In Chapter 33, I review concerns raised by CPABC and CPA Canada witnesses relating to the duty of confidentiality. They emphasize that it is a strict duty with few exceptions and that it may prevent members from reporting suspicious activity that they come

36 Evidence of M. McGuire, Transcript, January 11, 2021, pp 96–97.

37 Guidance 1 and 2 to Rule 201.

38 Rule 204.

across in their practice. Accordingly, it is worth reviewing the CPA Code's provisions on confidentiality in some detail.

Rule 208.1 sets out the general rule and circumstances where confidential information can be disclosed:

> **208.1** A registrant shall not disclose any confidential information concerning the affairs of any client, former client, employer or former employer except when:
>
> a) properly acting in the course of carrying out professional duties;
>
> b) such information should properly be disclosed for purposes of Rules 101, 211 or 302[39] or under the Act or bylaws;
>
> c) such information is required to be disclosed by order of lawful authority or, in the proper exercise of their duties, by the Board, or a committee, officer or other agent of CPABC;
>
> d) justified in order to defend the registrant or any associates or employees of the registrant against any lawsuit or other legal proceeding or against alleged professional misconduct or in any legal proceeding for recovery of unpaid professional fees and disbursements, but only to the extent necessary for such purpose; or
>
> e) the client, former client, employer or former employer, as the case may be, has provided consent to such disclosure.

The CPA Code defines "confidential information" as follows:

> Information acquired in the course of a professional services relationship with a party. Such information is confidential to the party regardless of the nature or source of the information or the fact that others may share the knowledge. Such information remains confidential until the party expressly or impliedly authorizes it to be divulged.[40]

Guidance 2 to Rule 208 notably states that the duty of confidentiality does not excuse a member from complying with a legal requirement to disclose information. However, it advises members to bring the duty to the attention of the courts and to seek legal advice when there is doubt as to the legitimacy or scope of a claim for disclosure. Subject to certain exceptions, members and firms have a duty to report any information concerning an apparent breach of the CPA Code or any information raising doubt as to the competence, integrity, or capacity of another member or applicant.[41]

39 Rule 101 refers to non-compliance with the *CPA Act*, bylaws, regulations, CPA Code, and orders and resolutions of the board and requires CPAs to report breaches to CPABC in some circumstances. Rule 211 refers to a CPA's responsibility to report non-compliance by another member. Finally, Rule 302 refers to information that a CPA must communicate to a successor CPA.

40 CPA Code, Definitions, "Confidential Information."

41 Ibid, Rule 211.

Finally, Rule 212 speaks to the handling of property belonging to others – for example, as a trustee, receiver, guardian, or administrator. A member who receives, handles, or holds money or other property in such a capacity must do so in accordance with the terms of the engagement and maintain records to account for it. Further, money held in trust must be held in a separate trust account.[42] The guidance to Rule 212 specifies, among other things, that trust relationships should be documented in writing; that withdrawals or disbursements from the trust account should be limited to funds properly required for payment to or on behalf of the client or required for payments of the CPA's fees or disbursements; and that CPAs should be able to account at all times for the trust funds or property together with any income, dividends, or gains generated to any person who is entitled to such accounting.[43] It also states that CPAs may hold property rather than funds in trust, in which case "[a]ppropriate safeguards and controls should be established over these properties including, if applicable, the safekeeping of securities or other negotiable instruments."[44]

Investigations and Enforcement by CPABC

CPABC has two main avenues of investigation and enforcement: practice reviews and investigations.

Practice Reviews

A "practice review" is a review of a CPA's professional practice for the purpose of identifying deficiencies, fitness, or professional conduct, and taking appropriate follow-up or remedial action.[45] Practice reviews consider whether an office complies with generally accepted accounting principles and audit/review standards as well as the CPA Code; whether it is maintained at a sufficiently high standard; and whether it should be pre-approved for the training of CPA students. The applicable standards include those set out in the CPA Code and the *CPA Canada Handbook*, the International Financial Reporting Standards, and accounting standards for private enterprises and not-for-profit organizations.[46]

Ms. Liu testified that practice reviews are concerned with "reviewable" services – assurance services, audit reviews, compilation services, and tax services.[47] Bylaw 1000(3) specifies that members who hold a licence under Part 7 (reviewed above) are subject to practice reviews. During the 2019–20 fiscal year, CPABC conducted 810 practice reviews, with an overall pass rate of 94 percent.[48]

42 Ibid, Rule 212.1.

43 Guidance 2 to Rule 212.

44 Guidance 4 to Rule 212.

45 *CPA Act*, s 51(2); Bylaws, Part 10; Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendix I, Chartered Professional Accountants Common Practice Inspection Deficiencies [CPA Inspection].

46 Evidence of L. Liu, Transcript, January 12, 2021, p 129; Bylaw 1003.

47 Transcript, January 12, 2021, p 65.

48 Exhibit 391, Appendix I, CPA Inspection.

Practice reviewers have important powers at their disposal. These include the ability to make requests of members, students, and firms; to interview members or students; to enter a practising office; and to copy documents.[49] Members are required to co-operate with CPABC's regulatory processes.[50] They must comply with requests for information or documents and, should they fail to do so, CPABC can apply for a court order requiring compliance.[51]

The *CPA Act* specifies that a member or a student cannot refuse to comply with a request for information or for documents based on the duty of confidentiality.[52] However, section 69 states that any facts, information, and records obtained under the *CPA Act* must remain confidential, with limited exceptions. The ability of CPABC to see all aspects of a member's practice, including confidential material, is significant and renders CPABC well placed to conduct robust anti–money laundering regulation of its members.

The practice review group has three associate directors and 12 contractors, all of whom are CPAs with extensive experience in the areas they inspect.[53] Ms. Liu testified that reviewers receive extensive training on how to conduct practice reviews and assess firms for compliance with the standards, as well as on the kinds of remedial consequences that may be recommended. This training is ongoing to ensure that reviewers maintain technical knowledge of the standards.[54]

Accounting offices are typically reviewed on a three-year risk-adjusted cycle. Priority is given to offices with newly licensed members, those requesting pre-approval to train CPA students, and those that received a "non-comply" in their last review and require a follow-up review.[55] Risk factors that may result in a more frequent inspection include:

- registration with the Canadian Public Accountability Board or US equivalent;
- a change in the profile of a firm (for example, new partners or a merger);
- disciplinary decisions by CPABC or another regulator;
- a weak history of practice review results; and
- other negative information coming to CPABC's attention.[56]

Michele Wood-Tweel, vice-president of regulatory affairs at CPA Canada, testified that practice reviews do not include any anti–money laundering review. Their focus is on professional standards – generally accepted accounting and audit assurance

49 Bylaw 1002(2).

50 CPA Code, Rule 104.

51 *CPA Act*, ss 51(5) and (6).

52 Ibid, s 51(9).

53 Evidence of L. Liu, Transcript, January 12, 2021, pp 65–66, 127–28.

54 Ibid, pp 128–29.

55 Ibid, pp 66–67.

56 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 50.

standards.[57] Accordingly, practice reviews do not consider, for example, whether members or firms provide services that bring them within the scope of the *PCMLTFA* or whether they have complied with their obligations under that regime.[58]

Ms. Liu testified that anti–money laundering compliance issues could arise in the context of a client's compliance with laws and regulations, noting that auditors are expected to ask their clients whether they comply with all laws and regulations.[59] I review some CPA Canada auditing standards that address anti–money laundering below.

Investigations

The *CPA Act* states that an investigation can be done into a member's conduct to determine if grounds exist for disciplinary action.[60] A practice review can lead to a report to the investigations committee.[61] Investigations can also be started based on complaints from a client, employer, member of the public, or another regulatory body. In addition, matters can be referred for investigation from another CPABC department or initiated on the investigation committee's own initiative following, for example, a media report.[62] When CPABC becomes aware of people who are not actually CPAs but are using the protected CPA designation, it investigates such matters.[63]

The investigations department has five full-time members: currently, Mr. Tanaka, two other CPAs, and two non-CPAs. The department also engages six contract investigators, who are all CPAs.[64] Mr. Tanaka testified that he is not aware of any of the team members being a certified anti–money laundering specialist, although one is a certified fraud examiner.[65]

Mr. Tanaka testified that investigators have considerable powers. He noted that Rule 104 of the CPA Code requires members to co-operate with the investigations team. Further, investigators have the same powers as practice reviewers under the *CPA Act* with respect to requiring information and documents (as outlined above).[66]

An investigator's report is presented to the investigations committee, which decides whether grounds exist for disciplinary action.[67] The investigations committee must make a recommendation of disciplinary action (such as a reprimand, a requirement to take courses, or a fine) or issue a statement of complaint stating the grounds for

57 Transcript, January 13, 2021, pp 69–70.
58 Evidence of L. Liu, Transcript, January 12, 2021, p 69.
59 Ibid, pp 129–30.
60 *CPA Act*, s 51(3).
61 Bylaw 1006.
62 Evidence of E. Tanaka, Transcript, January 12, 2021, pp 56–58; Bylaws 1101(2), 1103.
63 Evidence of E. Tanaka, Transcript, January 12, 2021, p 11.
64 Ibid, p 52.
65 Ibid, p 53.
66 Ibid, pp 53–54; *CPA Act*, ss 51(5)–(9).
67 Bylaw 1106.

disciplinary action.[68] The member can accept the recommendation, refuse it, or request referral to a discipline committee.[69]

Mr. Tanaka testified that CPABC has never received a complaint about a member or a firm related to money laundering issues and that, as a result, there has never been a discipline case relating to money laundering.[70] CPABC and CPA Canada submit that this shows there is no money laundering problem among CPAs. With respect, I do not agree that the fact of there being no complaints means there is no money laundering concern. Money laundering by its nature is clandestine, and if a client seeks the assistance of a CPA to launder funds, they can hardly be expected to make a complaint. Given what we know about the nature of modern mid- and high-level money laundering, it would be naive not to acknowledge the obvious risk of accountants becoming involved in or being used to facilitate transactions in furtherance of money laundering.

When asked about the extent to which investigators look for indicators of money laundering during their investigations, Mr. Tanaka testified that it depends on the nature of the complaint.[71] As for what investigators would do if they came across indicators of illegality, he testified that, because of the CPABC's obligation of confidentiality under the *CPA Act*, they would "very rarely" refer the matter to law enforcement.[72] I return to this matter in Chapter 33.

In 2019–20, CPABC closed 53 investigations, including 15 referrals made to the discipline committee, and received 103 new complaints.[73]

Discipline

As noted above, a discipline committee can be convened on receipt of a statement of complaint issued by an investigation committee.[74] Such proceedings can end in a resolution by agreement or may require a hearing.[75]

A discipline committee decides whether to dismiss or confirm a statement of complaint in whole or in part and must give reasons. If it confirms the statement of complaint, it can make a variety of orders, including a reprimand, suspension with or without conditions, cancellation of membership, imposing conditions on membership, a fine, and/or costs.[76]

68 Bylaw 1106(5).

69 Bylaw 1106(9).

70 Transcript, January 12, 2021, pp 57, 63–64.

71 Ibid, p 54.

72 Ibid, pp 55–56.

73 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 77.

74 Bylaw 1201.

75 Bylaws 1205 and 1206.

76 *CPA Act*, s 53(4).

Continuing Professional Development

Ms. Liu testified that becoming a CPA requires a rigorous education program, a final exam, and a 30-month practical experience term.[77] Bylaw 600(1) states that the CPABC board of directors must establish a program prescribing compulsory continuing education requirements for members. In turn, members must deliver an annual compliance report certifying their compliance with the mandatory professional development. Failure to comply can result in suspension.[78]

Since 2017, CPABC has offered some professional development courses relating in whole or in part to money laundering, though training in this area is not mandatory. I review these courses further in Chapter 33.

CPA Canada

CPA Canada is the national "umbrella" organization of the CPA profession in Canada. Membership is mandatory for provincially regulated CPAs,[79] and the organization represents around 220,000 members across Canada.[80]

CPA Canada collaborates with provincial CPA regulatory bodies to harmonize ethical requirements, practice standards, and investigative and disciplinary processes. It also monitors and responds to international developments in rules of ethics and standards, and provides guidance to the provincial bodies about accounting standards and the impact of business issues on the profession.[81]

CPA Canada maintains a model Code of Conduct for the CPA profession, which the provincial regulators develop together. Each provincial regulator can adjust provisions of the model code to suit its unique needs and regulatory framework. However, the model code is largely harmonized across Canada, as are the practice review programs.[82] Provincial and territorial CPA regulators co-ordinate through the public trust committee, which "provides leadership and oversight in establishing policies, strategies and processes to assist in maintaining the integrity of the profession and the confidence and trust of the public."[83]

Importantly, CPA Canada is not a regulator; rather, the provincial CPA bodies regulate their respective members. Nor does CPA Canada have any governance or oversight role over the provincial CPA bodies. Their relationship is collaborative.[84]

77 Transcript, January 12, 2021, p 7.

78 Bylaws 600(2), 602(1).

79 Evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 7.

80 Ibid.

81 Ibid, p 8.

82 Closing submissions, CPA Canada, paras 13–14; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 9; Evidence of E. Tanaka, Transcript, January 12, 2021, p 107; Evidence of L. Liu, Transcript, January 12, 2021, p 108.

83 Closing submissions, CPA Canada, para 13.

84 Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 7–8, 69; Evidence of E. Tanaka, Transcript, January 12, 2021, pp 105–6.

CPA Canada is a member of the International Federation of Accountants (IFAC). Ms. Wood-Tweel testified that IFAC "brings together the global profession to look at the issues associated with the profession" and "supports the independent standard-setting boards that establish the accounting standards and the audit and assurance standards and ethical standards that evolve internationally." Each member country of IFAC then tries to adopt harmonized standards.[85]

CPA Canada also participates in the International Ethics Standards Board for Accountants (IESBA), an independent standard-setting board supported by IFAC. CPA Canada participates as the national standards setter for Canada.[86] As I discuss in Chapter 33, CPA Canada participated in issuing an IESBA alert to the profession in 2020 relating to COVID-19 and money laundering risks.

IFAC member bodies are required to comply with the Statements of Membership Obligations (SMOs). SMO 4 requires the CPA profession to maintain codes of ethics that are at least as stringent as the *IESBA Code* unless there are legal, regulatory, or public interest reasons to differ in members' respective countries.[87]

The *IESBA Code* notably states that, in the course of carrying out their professional activities, professional accountants might encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations that are "recognized to have a direct effect on the determination of material amounts and disclosures in the employing organization's financial statements."[88] They may also encounter or become aware of non-compliance or suspected non-compliance that does not have such a direct effect but "compliance with which might be fundamental to the operating aspects of the employing organization's business, to its ability to continue its business, or to avoid material penalties."[89] Examples of laws and regulations that are captured include (but are not limited to) those relating to money laundering, terrorist financing, and proceeds of crime.[90]

In the words of the *IESBA Code*, a "distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest."[91] The objectives of a professional accountant, when confronted by non-compliance or suspected non-compliance, are to comply with the principles of integrity and professional behaviour, alert management of the employing organization where appropriate to address or deter non-compliance, and to "take such further action as appropriate in the public interest."[92] The *IESBA Code* also notes that non-compliance can result not only in fines, litigation,

85 Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 13–14.

86 Ibid, pp 14–15.

87 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 13.

88 International Ethics Standards Board for Accountants, *International Code of Ethics for Professional Accountants* [*IESBA Code*], s 260.3(a), online: https://www.iesbaecode.org/2021/part/2/260.

89 Ibid, s 260.3(b).

90 Ibid, s 260.5 A2.

91 Ibid, s 260.4

92 Ibid.

or other consequences for the employing organization, but also in wider public interest implications such as potentially substantial harm to investors, creditors, employees, or the general public.[93] It advises professional accountants to understand any requirements they may have under legal or regulatory provisions to report the matter to an appropriate authority, as well as any prohibitions on alerting the relevant party.[94]

The *IESBA Code* also speaks to situations in which professional accountants may hold client money or assets, directing them to make inquiries about the source of the assets and to consider related legal and regulatory obligations.[95] It notes that inquiries about client assets might reveal they were derived from illegal activities, such as money laundering, and that, in such a case, the provisions I reviewed above relating to non-compliance with laws and regulations apply.[96]

CPA Canada's *Canadian Standard on Quality Control* requires audit firms to establish policies and procedures "for the acceptance and continuance of client relationships and specific engagements, designed to provide the firm with reasonable assurance that it will only undertake or continue relationships and engagements where the firm … has considered the integrity of the client, and does not have information that would lead it to conclude that the client lacks integrity." The explanatory note lists various things that a firm should consider, including indications that the client might be involved in money laundering or other criminal activities.[97]

Three of CPA Canada's Canadian Auditing Standards (CAS) contain references to money laundering: CAS 240, "The auditor's responsibilities relating to fraud in an audit of financial statements"; CAS 260, "Communication with those charged with governance"; and CAS 250, "Consideration of laws and regulations in an audit of financial statements."[98] For example, CAS 250 states that

> if the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether law, regulation, or relevant ethical requirements:
>
> a) require the auditor to report to an appropriate authority outside the entity;
>
> b) establish responsibilities under which reporting to an appropriate authority outside the entity may be appropriate in the circumstances.[99]

93 Ibid, s 260.5 A3.

94 Ibid, s R260.6.

95 Ibid, s R350.4, online: https://www.iesbaecode.org/2021/part/3/350.

96 Ibid, s 350.4A.1.

97 CPA Canada, *Canadian Standard on Quality Control* (2009), cited in Exhibit 394, *Report on Accountants, Money Laundering, and Anti–Money Laundering*, prepared by the amlSHOP (October 31, 2020, and updated December 31, 2020) [McGuire Report], para 70.

98 Exhibit 394, McGuire Report, para 71.

99 Ibid.

The *PCMLTFA*

The *PCMLTFA* applies to accountants and accounting firms. However, it does not apply to *all* accountants or *all* their activities. As I discuss in Chapter 31, witnesses before me expressed concern about the limited scope of accountants' obligations under the *PCMLTFA*.

Application of the *PCMLTFA* Regime to CPAs and Accounting Firms

Accountants and accounting firms are reporting entities under the *PCMLTFA*. The regulations define "accountant" as a "chartered accountant, a certified general accountant, a certified management accountant or, if applicable, a chartered professional accountant."[100] Essentially, since the various accounting professions were united into one, the term refers to CPAs.[101] Importantly, that definition does *not* include unregulated accountants. An "accounting firm," meanwhile, is defined as "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."[102]

CPABC has no prescribed role, duties, or functions under the *PCMLTFA*. Nor does CPA Canada, although it does participate in the federal government's Federal Advisory Committee on Money Laundering and Terrorist Financing (see Chapter 33).

Activities Captured by the Regime

The *PCMLTFA* regime applies to CPAs and accounting firms only when they conduct certain activities, often referred to as "triggering activities." Specifically, the regime applies only when CPAs or firms carry out or give instructions with respect to the following activities:

- receiving or paying funds or virtual currency;
- purchasing or selling securities, real property or immovables, or business assets or entities; or
- transferring funds, virtual currency, or securities by any means.[103]

FINTRAC has issued guidance specifying that CPAs or firms are subject to these requirements regardless of whether they receive fees or have a formal letter of engagement to do so.[104]

100 *PCMLTF Regulations*, s 1(2), "accountant."

101 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 79; evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 25.

102 *PCMLTF Regulations*, s 1(2), "accounting firm."

103 Ibid, s 47(1).

104 FINTRAC, Guidance and Resources for Businesses (reporting entities), "Accountants" (July 12, 2021), online: https://www.fintrac-canafe.gc.ca/re-ed/accts-eng.

It is clear from the limited list of triggering activities that the *PCMLTFA* regime does not apply to many services that CPAs and firms provide, including services that could associate them with money laundering or expose them to a money laundering risk (see Chapters 31 and 32). Further, even when a CPA or a firm is engaged in triggering activities, there are circumstances where the reporting is not required.

First, a CPA or a firm that engages in triggering activities in the following contexts is not subject to the regime: on behalf of an employer; in the course of an audit, review, or compilation agreement; or when acting solely as a trustee in bankruptcy.[105]

Second, the obligations under the *PCMLTFA* do not apply when a CPA or a firm is providing only *advice* with respect to triggering activities, rather than "giving instructions" with respect to them. FINTRAC's guidance explains that "giving instructions" means directing the movement of funds, while providing advice (making recommendations or suggestions) is not giving instructions.[106]

Finally, FINTRAC does not consider the following services to be "providing accounting services to the public":

- acting as a receiver pursuant to a court order or by way of a private letter appointment pursuant to the terms of a security interest;
- acting as a trustee in bankruptcy; and
- acting as a monitor under the provisions of the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36, or any other proceeding that results in the dissolution or restructuring of an enterprise or individual and to which the firm, individual, or insolvency practitioner serves as an officer of the court or an agent to a creditor (or creditors) or the debtor.[107]

CPAs' and Firms' Obligations Under the Regime

If a CPA or a firm is performing a triggering activity and does not otherwise fall under an exception, it is subject to various requirements. These include, but are not limited to, client identification and verification measures, suspicious and large cash transaction reporting, and implementation of a compliance program. As with other reporting entities, these requirements do not apply where the client is a financial entity or a public body.

CPAs or firms that receive $3,000 or more in a single transaction in connection with a triggering activity must keep a "receipt of funds record." They must also ascertain the identity of the person conducting the transaction and confirm information about every

105 *PCMLTF Regulations*, ss 47(2) and (3).

106 FINTRAC, Guidance and Resources for Businesses (reporting entities), "Accountants" (July 12, 2021), online: https://www.fintrac-canafe.gc.ca/re-ed/accts-eng.

107 FINTRAC, Interpretation Notices, No 7, online: https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2011-02-17-eng.

person, corporation, or other entity on whose behalf it is conducted.[108] As of June 1, 2021, they must also take reasonable steps to verify the beneficial ownership of entities involved in the transaction.[109] Where there is a "business relationship,"[110] CPAs and firms must also conduct ongoing monitoring of the relationship to detect suspicious transactions, keep client information up to date, reassess the level of risk associated with the client's transactions and activities, and determine whether transactions and activities are consistent with the information obtained about the client, including a risk assessment.[111]

CPAs and firms must report large cash transactions of $10,000 or more in a single transaction or, in relation to a triggering activity, within a 24-hour period.[112] They must also ascertain the identity of the person conducting the transaction.[113] Further, they are required to keep large cash transaction records in respect of these activities.[114]

Suspicious transaction reporting requirements also apply to CPAs and firms. Specifically, they must file a suspicious transaction report for every financial transaction that is attempted in the course of a triggering activity where there are reasonable grounds to suspect that the transaction is related to the commission or attempted commission of a money laundering or terrorist financing offence.[115] They must also take reasonable measures to verify the identity of every person or entity that conducts or attempts to conduct a suspicious transaction.[116]

Finally, CPAs and firms must implement a compliance program. This program must include the development and application of policies and procedures for assessing the risk of money laundering or terrorist financing in their activities.[117] There are five aspects of the compliance program:

- appointing a designated compliance officer responsible for implementing the program;
- producing written policies and procedures that are kept up to date and, in the case of firms, approved by a senior officer;
- developing and applying policies and procedures to assess and document the risk of a money laundering or terrorist financing offence, taking into consideration organization-specific factors;[118]

108 *PCMLTF Regulations*, ss 52(a), 100, 112(3)(i).

109 Ibid, s 138.

110 The regulations explain that a business relationship is created at the earliest of several listed dates, including opening an account for a client and the second time a verification requirement occurs: *PCMLTF Regulations*, s 4.1.

111 Ibid, s 123.1.

112 Ibid, ss 48, 49, 126.

113 Ibid, ss 84(a), 109(4)(a), 112(3)(a).

114 Ibid, ss 50, 51.

115 *PCMTLFA*, s 7.

116 *PCMLTF Regulations*, ss 85(1), 105(7)(c), 109(4)(b), 112(3)(b), 154(4).

117 *PCMLTFA*, s 9.6.

118 These factors include the nature of the products, services, and delivery channels, and the geographic location of their activities: *PCMLTF Regulations*, s 156(c).

- maintaining an ongoing compliance training program for employees and agents; and
- having an internal or external auditor carry out an effectiveness review of the policies and procedures, risk assessment, and training program every two years.[119]

FINTRAC is empowered to conduct "compliance examinations" of reporting entities, which are reviews in which it examines the entity's records and inquires into its affairs for the purpose of ensuring compliance. For this purpose, FINTRAC can enter premises, access computer records, and reproduce records.[120]

Financial Action Task Force Recommendations

As I discuss further in Chapter 6, the Financial Action Task Force maintains a list of 40 recommendations[121] for its member countries to combat money laundering and terrorist financing. It is instructive to review the recommendations that relate to accountants. As I discuss further in Chapter 32, there was some debate before me as to whether Canada is compliant with the recommendations.

Recommendation 22 urges the imposition of customer due diligence and record-keeping obligations on accountants when they prepare for or carry out the following activities:

- buying and selling real estate;
- managing client money, securities, or other assets;
- managing bank, savings, or securities accounts;
- organizing contributions for the creation, operation, or management of companies; and
- creating, operating, or managing legal persons or arrangements, and buying and selling business entities.

Recommendation 23 states that accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to those activities. It further states that "[c]ountries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing."

Recommendation 28 states that accountants should be subject to effective systems for monitoring and ensuring compliance with their money laundering and terrorist

119 *PCMLTF Regulations*, s 156(3).

120 *PCMLTFA*, s 62.

121 Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019) [*FATF Recommendations*].

financing obligations. The monitoring should be done on a risk-sensitive basis and may be performed by "a supervisor" or "an appropriate self-regulatory body, provided that such a body can ensure that its members comply with their obligations to combat money laundering and terrorist financing." The supervisor or self-regulatory body must also take measures "to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function" and have "effective, proportionate, and dissuasive sanctions."

A "supervisor" is defined as the "designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance" with anti–money laundering and counterterrorist financing measures. They should "have the power to supervise and sanction" those they supervise.[122] The FATF fourth mutual evaluation[123] notes that FINTRAC is the primary supervisor for all reporting entities in Canada, while noting that provincial regulators nonetheless have a role to play:

> FINTRAC is the primary anti–money laundering / counter terrorist financing (AML/CFT[124]) supervisor for all [reporting entities] in Canada and is relied upon by provincial regulators to understand [money laundering / terrorist financing] risks within their population and to carry out AML/CFT specific supervision. Provincial supervisors integrate [money laundering / terrorist financing] risks into their wider risk assessment models and leverage off FINTRAC for their assessment of [money laundering / terrorist financing] risks as FINTRAC has responsibility for AML/CFT compliance supervision in Canada.
>
> ...
>
> *The regulatory regime involves both federal and provincial supervisors*. FINTRAC is responsible for supervising all [financial institutions] and [designated non-financial businesses and professions] for compliance with their AML/CFT obligations under the *PCMLTFA*. *Other supervisors may incorporate AML/CFT aspects within their wider supervisory responsibilities* although the assessment team found that in instances where an AML/CFT issue arose, the primary regulator would refer the issue to FINTRAC. [Emphasis added.][125]

Although the FATF mutual evaluation suggests that FINTRAC is the primary anti–money laundering supervisor for reporting entities, the above passages show that

122 Exhibit 4, Appendix E, *FATF Recommendations*, p 124.

123 Exhibit 4, Overview Report: FATF, Appendix N: FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016) [*FATF Fourth Mutual Evaluation*]. See Chapter 6 for a discussion of the mutual evaluation process. Mutual evaluations are essentially peer reviews in which members of FATF evaluate other members' anti–money laundering and counterterrorist financing measures against the 40 recommendations.

124 FATF often uses the terms "counter-terrorist financing" (CTF) and "combating the financing of terrorism" (CFT) interchangeably.

125 Exhibit 4, Appendix N, *FATF Fourth Mutual Evaluation*, paras 248, 252.

its supervisory role is limited to ensuring compliance with the *PCMLTFA* and that provincial supervisors should also be involved in anti–money laundering supervision "within their wider supervisory responsibilities." In my view, this involvement lends support to the idea that CPABC does or should have an anti–money laundering mandate.

Conclusion

This chapter has reviewed the legal and regulatory framework applicable to accountants in British Columbia and shown that a significant number are unregulated altogether. Although professional accountants are heavily regulated, there was significant debate before me about the role of CPABC in regulating its members for anti–money laundering purposes. The discussion above has highlighted some reasons why I believe CPABC does have this responsibility, and I return to this subject in Chapter 32. Before addressing this subject, however, I turn to the money laundering vulnerabilities in the accounting profession.

Chapter 31
Money Laundering Risks in the Accounting Profession

Accountants are frequently referred to as "gatekeepers" to the financial system. They have expertise in often complex financial matters and lend an air of legitimacy to the activities they undertake. There is certainly a risk that criminals will seek out accountants to assist them, knowingly or unwittingly, in their money laundering activities. Indeed, those looking to conceal proceeds of crime may seek assistance with bookkeeping or advice about how to use corporations or other legal entities.

While it is not difficult to see the inherent risks in this sector, there is unfortunately a lack of evidence on which I can determine the precise nature and extent of accountant involvement in money laundering in this province. This dearth of evidence must not, however, be confused with an absence of risk. In this regard, I am unable to accept submissions by CPABC and CPA Canada that the lack of evidence about CPA involvement in money laundering means it is not occurring in the accounting sector. In keeping with the risk-based approach, the Province and CPABC (which represents only chartered professional accountants and therefore about a third of the accountants in the province) must ensure that adequate preventive measures are in place to address the inherent risks facing accountants.

In this chapter, I consider key areas of risk facing accountants in British Columbia. In the next chapter, I turn to various issues with the *PCMLTFA* regime that were canvassed before me, including its narrow scope, apparently low compliance by CPAs and firms, and few compliance examinations by FINTRAC. Although these issues also play into the risks facing accountants, I have dedicated a separate chapter to them, given the volume of evidence on these matters.

Another issue related to the risks is the fact that CPABC currently does not engage in anti–money laundering regulation of its members, given its view that its mandate does not capture such regulation (see Chapter 32). The lack of anti–money laundering regulation by CPABC, combined with the apparently low compliance with the *PCMLTFA* and few compliance examinations by FINTRAC, suggests that accountants in this province have been largely free of any meaningful anti–money laundering oversight. In my opinion, this lack of oversight increases the risk in this sector.

A "Common Sense" Approach to Risk

The risks facing accountants, like those applicable to lawyers,[1] seem to be common sense. Accountants have special knowledge of their clients' finances, understand potentially complex financial transactions, and lend an air of legitimacy to the activities they undertake. Matthew McGuire, a fellow of the Chartered Professional Accountants of Ontario with expertise in money laundering, testified that accountants' involvement in money laundering can take different forms:

- **Self-laundering:** the accountant commits a fraud, theft, or other offence and launders the proceeds for his or her own benefit.
- **Unknowing involvement:** the accountant commits an unknowing fraud by, for example, giving advice to a client ostensibly about tax efficiency but in reality to help move proceeds of crime abroad.
- **Knowing complicity:** the accountant may knowingly be involved in commingling legitimate and illegitimate proceeds, such as by making financial statements believable for tax purposes.[2]

These different roles reveal that the capacity in which an accountant is acting may call for different responses. An accountant who self-launders is essentially a primary offender. The main "responder" would therefore be law enforcement, although the regulator would also have an interest in addressing unethical conduct. An accountant who is unknowingly involved in money laundering by clients would likely benefit from increased education from the regulator. Finally, an accountant who is knowingly complicit in a client's money laundering activities requires responses from both law enforcement and the regulator.

Limitations in Assessing Risk

In assessing areas of risk facing accountants, we must keep in mind the limitations on evidence relating to their involvement in money laundering. In a report prepared for the Commission, Mr. McGuire and his colleague Monika Cywinska addressed

1 See Chapter 26.

2 Transcript, January 11, 2021, pp 23–24.

the nature and extent of accountant involvement in money laundering domestically and internationally, the effectiveness of current measures in place, and areas of improvement.[3] To determine the nature and extent of accountant involvement, they relied on authoritative sources, including guidance from FATF, FINTRAC, law enforcement, and academia. Based on that review, they conclude:

> *The role of accountants in money laundering internationally has been escalating since the adoption of anti–money laundering standards.* This is due to the complexity of money laundering at scale, the nature of their expertise, and the credibility that the collective reputation of the profession brings. *Without additional controls, the role of the accountant and professional money launderer will continue to gain prominence* to keep pace with the enhancements to global anti–money laundering measures and their more consistent application worldwide.
>
> The extent of accountant involvement in money laundering changes based on the sophistication of the organization for which they are laundering funds and the degree to which the organization's activities are illegal. Accountant expertise becomes more critical as organizations become more sophisticated and geographically diverse, and as they accumulate capital from excess criminal profits. The most prevalent money laundering techniques used by accountant, wittingly and not, and those that are causing the greatest international concern generally include:
>
> a) the exploitation of the opacity of beneficial ownership
>
> b) trade based money laundering[4]
>
> c) the use of new and alternative payment systems
>
> The crimes from which those funds derive range from corruption to tax evasion, securities fraud, narcotics offences and human trafficking. [Emphasis added.][5]

They further note that "credible research has pointed to accountant involvement in money laundering since it was criminalized" and that the absence, until recently, of an element of recklessness in the *Criminal Code* offences, combined with generally low enforcement levels in Canada, has led to few reported criminal cases of money laundering involving accountants.[6]

Although these conclusions are presented firmly in the report, Mr. McGuire candidly acknowledged some caveats in his testimony. First, many of the sources

3 Exhibit 394, *Report on Accountants, Money Laundering, and Anti–Money Laundering*, prepared by the amlSHOP (October 31, 2020 and updated December 31, 2020) [McGuire Report], para 4(a–c).

4 I discuss trade-based money laundering in Chapter 38.

5 Exhibit 394, McGuire Report, paras 77–78.

6 Ibid, para 79.

he and Ms. Cywinska examined do not reference specific cases or even narratives to back up their statements.[7] Second, none of the sources refer specifically to Canadian CPAs or suggest that CPAs are systematically involved in money laundering in Canada.[8] Finally, he agreed that some of the accounting skills and knowledge presumably needed for complex money laundering skills could be held by unregulated accountants.[9] Given these limitations, Mr. McGuire agreed that the conclusions in his report are ultimately a hypothesis that has not been proven by actual convictions.[10]

I review the sources referenced in Mr. McGuire and Ms. Cywinska's report below. I agree that they do have several limitations, as Mr. McGuire acknowledged. In particular, many include broad statements that accountants are increasingly involved in money laundering without discussing particular cases or evidence, and there are few studies on the subject. Further, many sources do not discuss the situation in British Columbia or even Canada specifically. On the available evidence, I am unable to make firm findings about the precise nature and extent of accountants' involvement in money laundering in this province. However, the sources are nonetheless useful to consider in that they reveal areas of accountants' practice that raise particular risk.

Of particular interest are the Canadian cases that Mr. McGuire and Ms. Cywinska identified in which an accountant appeared to be implicated in money laundering. Mr. McGuire explained that they used a simple methodology to identify the cases: searching keywords in published cases on the Canadian legal database CanLII. They identified 10 cases meeting those criteria between 1992 and 2020. Mr. McGuire acknowledged that, as not all cases are published on CanLII and given the general lack of prosecution of money laundering, the sample is not representative or indicative of all accountant involvement in money laundering. However, it can serve as an indicator of what money laundering can look like.[11] I agree that the sample cases are illustrative of ways in which accountants may be involved in money laundering, and I refer to some of them below. However, I am mindful of the small sample size and am unable to draw firm conclusions about accountant involvement in money laundering in this province from the sample cases.

I am also mindful of the submissions of CPABC and CPA Canada expressing concerns with these cases. First, they assert that only one case (*Neilson*[12]) involves a CPA since the unification of the profession. Second, they point out that two of the four BC cases pre-date the *PCMLTFA*, one involves an unregulated bookkeeper, and one references an accounting firm without indicating that it did anything illegal.[13] Third,

7 Evidence of M. McGuire, Transcript, January 11, 2021, p 45.

8 Ibid, pp 114–15, 118–19, 129.

9 Ibid, pp 32, 38, 111–12.

10 Ibid, pp 138–39.

11 Exhibit 394, McGuire Report, para 30; Evidence of M. McGuire, Transcript, January 11, 2021, pp 46–47.

12 *R v Neilson*, 2020 ABQB 556.

13 Closing submissions, CPABC, para 61; Closing submissions, CPA Canada, para 73.

they highlight that there were relatively few cases in a 28-year period.[14] Overall, CPABC submits that these cases "do not provide credible support for the assertion that there is a systemic problem – or any problem – relating to professional accountants in British Columbia or Canada being engaged in or helping to facilitate money laundering or terrorist financing."[15]

While I appreciate these concerns, as I noted above, I am considering these cases as illustrations rather than relying on them to draw specific conclusions about the extent to which CPAs in British Columbia are involved in money laundering. I agree that the cases do not support a finding of a *systemic* problem of CPA involvement in money laundering in British Columbia. However, I am not persuaded that the fact that several cases pre-date the *PCMLTFA* and the unification of the accounting profession renders them less significant. Again, compliance with the *PCMLTFA* appears to be low and, despite the unification of the accounting profession, CPABC does not currently engage in anti–money laundering regulation. Therefore, I respectfully disagree with CPABC's attempt to minimize the issues raised in these cases.

Mr. McGuire and Ms. Cywinska also reviewed professional and disciplinary cases between 2017 and 2020 from the Chartered Professional Accountants of Ontario and CPABC and found that none related to compliance with anti–money laundering or counterterrorist financing or sanctions legislation.[16] As practice reviews in British Columbia do not include anti–money laundering within their scope, it is not surprising that there is a dearth of disciplinary cases addressing activity related to money laundering.

In what follows, I consider the main areas of risk facing accountants, mindful of the limitations in the evidence I have identified. I have found it useful to organize my discussion broadly in line with the areas of risk discussed by FATF:[17]

- financial and tax advice;
- bookkeeping;
- company and trust formation;
- buying or selling property;
- performing financial transactions;
- preparation, review, and auditing of financial statements; and
- the lack of regulation of non-CPAs in this province.

14 Exhibit 403, CPABC Review of McGuire Report on Accountants (January 7, 2021), p 5.

15 Ibid.

16 Exhibit 394, McGuire Report, para 61.

17 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendix B, FATF, *Guidance for a Risk-Based Approach: Accounting Profession* (Paris, 2019) [*FATF Accounting Guidance*], paras 22–23.

Areas of Money Laundering Risk in the Accounting Profession

Financial and Tax Advice

The FATF guidance states that "criminals may pose as individuals seeking financial or tax advice to place assets out of reach in order to avoid future liabilities."[18] As I expand in the next chapter, providing advice is not considered to be a triggering activity under the *PCMLTFA*. However, there was no dispute in the evidence before me that accountants frequently provide advice on financial and tax affairs. Indeed, in Mr. McGuire's view, accountants provide advice with respect to transactions more frequently than they conduct the transactions themselves.[19]

In his paper entitled "The Role of Accounting in Money Laundering and Money Dirtying," Frédéric Compin developed a vertical and hierarchical approach organizing accountant involvement in money laundering based on the sophistication of criminal players.[20] The vertical model looked at three "levels" of crime that progressively increase in sophistication, namely unorganized crime, organized crime, and organized crime networks. Mr. Compin argues that accountants' services become more important as the crime becomes more sophisticated, as there is increased capital accumulation and a desire to maintain tax compliance to avoid scrutiny by tax authorities.[21]

Mr. McGuire explained why criminals need assistance with tax compliance:

> [T]ax compliance is one of the weak spots of any organized crime network … Because, you know, the point of a good money laundering scheme is to … have the absence of the most oversight. So, less scrutiny paid to the activities and the identities of the people involved and the ultimate sources and use of the money. And so, the moment you fall afoul of tax rules, you attract that scrutiny and those audits which can uncover identities and purposes and means. And, you know, the tax powers are quite significant when it comes to the power to seize and gather information.[22]

Thus, in considering the areas of risk below, it is important to keep in mind that accountants provide advice with respect to them, even if they do not necessarily conduct the activity themselves. In providing advice, accountants clearly gain knowledge about a client's financial affairs and are well placed to observe suspicious circumstances. Therefore, there are significant money laundering risks associated with the provision of financial and tax advice.

18 Ibid, para 22(a).

19 Evidence of M. McGuire, Transcript, January 11, 2021, p 40.

20 Frédéric Compin, "The Role of Accounting in Money Laundering and Money Dirtying" (2008) 19(5) *Critical Perspectives on Accounting*, p 593.

21 Ibid; Exhibit 394, McGuire Report, para 17; Evidence of M. McGuire, Transcript, January 11, 2021, pp 28–29.

22 Transcript, January 11, 2021, p 30.

Bookkeeping

The FATF guidance notes that "maintenance of incomplete records by clients as revealed during the accounting/bookkeeping services provided by accountants can be an area of higher risk."[23] It further states that criminals may seek to engage an accountant to provide a sense of legitimacy to falsified accounts:

> Criminals may abuse services provided by accountants to provide a sense of legitimacy to falsified accounts in order to conceal the source of funds. For example, accountants may review and sign off such accounts for businesses engaged in criminality, thereby facilitating the laundering of the proceeds.[24]

Dr. Katie Benson, a professor of criminology at Lancaster University, notes that accountants may be involved in preparing accounts that hide or falsify transactions (e.g., hiding income or misdescribing money coming out of a business) or providing a public, legitimate face to a business.[25]

In Chapter 26, I review a 2004 study by Stephen Schneider, professor of criminology at St. Mary's University in Halifax, in which he analyzed 149 cases from RCMP proceeds of crime case files in an attempt to analyze how proceeds are laundered through Canada's legitimate economy. He concluded that "[b]ecause the vast majority of the [proceeds of crime] cases examined in this study involved the use of at least one sector of the legitimate economy, it was inevitable that the accused or an accomplice came in contact with a professional working in one of these industries."[26] Accountants did not, however, figure prominently in the cases he analyzed. He found that an accountant had come into contact with proceeds of crime in approximately 9 percent of cases.[27] He testified that "[n]ot that many [accountants] came up in my study … I have not come across a large number of cases that involved accountants."[28]

Professor Schneider described the necessity of involving an accountant in money laundering as follows:

> Although criminal organizations parallel legitimate businesses in many ways, they are unique in that few companies conduct business entirely in

23 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 23.

24 Ibid, para 30.

25 Exhibit 218, Katie Benson, "The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response" (DPhil, University of Manchester, School of Law, 216) [unpublished], p 121.

26 Exhibit 7, Stephen Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, Nathanson Centre (Toronto: 2004), p 1. In 138 of the 149 cases examined (92.6 percent), the accused or accomplice conducted a transaction with a company in the legitimate economy and would therefore encounter a professional, most commonly professionals working in deposit institutions, lawyers, insurance agents or brokers, and real estate professionals: ibid, p 3.

27 Exhibit 6, Stephen Schneider, *Money Laundering in British Columbia: A Review of the Literature* (May 11, 2020), p 102.

28 Evidence of S. Schneider, Transcript, May 26, 2020, p 22.

> cash. A principal job of an accountant working for a successful criminal enterprise is to keep track of the volumes of cash generated and spent. In those police cases where accountants were implicated in laundering money, they were used to provide accounting services for both the personal and company-related finances of criminal entrepreneurs.[29]

Elsewhere he explains:

> As with a legitimate company, criminal entrepreneurs need to keep track of their revenue and expenses, as well as assets and liabilities. Ideally, this job is best carried out by a bookkeeper or accountant. A principal job of an accountant working for a successful criminal enterprise is to keep track of the volumes of cash generated and spent.[30]

Professor Schneider reviews some sample cases involving accountants. He notes that in one instance, a Hells Angels affiliate would collect bags of cash for cocaine purchases. Police eventually confiscated about $5.5 million in cash, along with accounting spreadsheets, and overheard a criminal talking about how he would give his accountant cash to launder.[31] Another case involved a drug dealer who held multiple companies. Police seized correspondence indicating the use of accountants, including comprehensive financial statements.[32]

It is important to keep in mind that Professor Schneider's study is somewhat dated, relying on cases concluded between 1993 and 1998.[33] I am also mindful of the relatively few cases involving accountants in his study and the fact that no differentiation is made between CPAs and non-CPAs. Nonetheless, the cases are illustrative of the fact that criminals may seek the assistance of accountants in bookkeeping.

Another study illustrating the potential for misuse of bookkeeping services is one done by Melvin Soudijn, a member of the National Crime Squad of the Netherlands Police Agency.[34] Mr. Soudijn analyzed the involvement of "financial facilitators" in money laundering, referring to professionals of various backgrounds who assist a criminal in a key way with money laundering.[35] He put the cases into two categories:

29 Exhibit 7, S. Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, p 73.

30 Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, p 108.

31 Ibid.

32 Ibid, pp 109–10.

33 Exhibit 7, S. Schneider, *Money Laundering in Canada: An Analysis of RCMP Cases*, p 8.

34 Melvin R.J. Soudijn, "Removing Excuses in Money Laundering" (2012) 15(2) *Trends in Organized Crime* p 146. Dr. Benson notes that Soudijn's study is one of the few empirical studies that have been done on professionals' involvement in money laundering: Exhibit 218, p 14.

35 He adopted this approach as the criminal law notion of a "facilitator" is not necessarily someone from a legitimate professional society. For example, a janitor who provides their access pass to an airport's restricted area to someone involved in human smuggling would be acting in the capacity of a facilitator. Soudijn therefore added the qualifier that the person's involvement must be essential to narrow the potentially broad category of facilitators and the qualifier of a financial facilitator to narrow the discussion to professionals, such as lawyers, accountants, bank employees, and the like: Melvin R.J. Soudijn, "Removing Excuses in Money Laundering" (2012) 15(2) *Trends in Organized Crime*, p 148.

those where the involvement centred on cash and those whose work involved the documentation required to lend an air of legitimacy to activities.[36]

The latter category revealed instances of accountant involvement in money laundering. For example, he came across a bookkeeper whose job was to reconcile the profits of a café that was used to launder proceeds of heroin sales. Mr. Soudijn notes that research indicates criminals have a preference for small businesses for such work as they are more vulnerable economically, and criminal clients are less likely to be turned away.[37]

Another case revealed a bookkeeper who regularly deposited large amounts of money at a local bank on behalf of two owners of a garage. The bank reported the activity to the financial intelligence unit. It turned out that the garage owners were involved in a wholesale cocaine business and mixed their illegitimate funds with the garage's profits. The bookkeeper maintained that it was not his job to notice discrepancies in the books, one of which was the fact that the garage would have had to be open six days a week and operating at full capacity to even approach the profits it was reporting.[38]

A final case involved a money transfer company that misused the identities of people who had sent legitimate transfers in order to launder proceeds of narcotics trafficking. The police investigation showed that an accountant had drawn up fraudulent annual financial statements concealing the true owner of the money transfer company, who was a trafficker in narcotics. Ultimately, his statements to police were used as evidence against the trafficker.[39]

Because Mr. Soudijn's paper does not expand on its methodology, it is unclear how these cases were identified or what countries they are from. Nonetheless, the case studies are again illustrative of ways in which bookkeeping services can be misused for money laundering purposes.

Company and Trust Formation

The FATF guidance states that criminals may attempt to confuse or disguise the links between the proceeds of a crime and the perpetrator by forming corporate vehicles or other complex legal arrangements including trusts and companies:

> Criminals may seek the opportunity to retain control over criminally derived assets while frustrating the ability of law enforcement to trace the origin and ownership of the assets. Companies and often trusts and other similar legal arrangements are seen by criminals as potentially useful vehicles to achieve this outcome. While shell companies, which do not

36 Ibid, p 150.

37 Ibid, p 154.

38 Ibid.

39 Ibid, pp 154–55.

> have any ongoing business activities or assets, may be used for legitimate purposes such as serving as a transaction vehicle, they may also be used to conceal beneficial ownership, or enhance the perception of legitimacy. Criminals may also seek to misuse shelf companies, which can be formed by accountants, by seeking access to companies that have been "sitting on the shelf" for a long time. This may be in an attempt to create the impression that the company is reputable and trading in the ordinary course because it has been in existence.[40]

The guidance recognizes that accountants in some countries are involved in forming companies and other legal entities, while in others they provide advice at least in relation to initial corporate, tax, and administrative matters.[41] The guidance further states that criminals will sometimes seek to involve accountants in the management of companies or trusts to provide respectability and legitimacy to the company or trust and its activities. Similarly, criminals might seek to have accountants hold shares as a nominee. The guidance recognizes, however, that professional rules in some countries prohibit or restrict those activities.[42]

As I discussed in Chapter 30, I accept that the incorporation of companies and the establishment of trusts or other legal entities in this province requires a lawyer. Nonetheless, accountants provide advice with respect to these matters and require knowledge of the client's financial circumstances to do so. In providing advice on these matters, therefore, accountants are well placed to observe suspicious circumstances.

Buying or Selling Property

The FATF guidance states that criminals sometimes use property transfers to disguise transfers of illegal funds or as an investment following the laundering process.[43] Relatedly, Canada's 2015 national risk assessment states that real estate transactions can involve accountants as facilitators:

> The real estate sector is integrated with a range of other sectors, and the purchase and sale of real estate involves a variety of facilitators, including real estate agents, lawyers, accountants, mortgage providers and appraisers … Although real estate transactions are typically done face-to-face, third parties can be used to conduct the transactions and there is opportunity to put in place complex ownership structures to obscure the beneficial owner and the source of funds used for the purchase.[44]

40 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 27.

41 Ibid, para 26.

42 Ibid, paras 28–29.

43 Ibid, para 22.

44 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* (Ottawa: 2015), p 41.

As noted in Chapter 30, the *PCMLTFA* includes as triggering activities the "purchase or [sale of] securities, real property or immovables or business assets or entities."[45] It also specifies that accountants are covered by the regime whether they conduct the transaction or give instructions with respect to it. Such a purchase or sale clearly gives rise to money laundering risks. Purchasing property is a key way in which criminals may seek to disguise or legitimize ill-gotten gains. To the extent that accountants in this province are engaged in these activities, they raise money laundering risks.

Performing Financial Transactions

The FATF guidance states that "criminals may use accountants to carry out or facilitate various financial operations on their behalf (e.g. cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers, etc.)."[46] The triggering activities under the *PCMLTFA* accordingly cover performing or providing instructions with respect to the receipt or payment of funds or virtual currency or the transfer of funds, virtual currency, or securities by any means.[47]

CPA Canada's *Guide to Comply with Canada's Anti–Money Laundering (AML) Legislation*[48] provides examples in which accountants may be involved in financial transactions:

> a) Your Accounting Firm performs bookkeeping services and has signing authority over the account of a not-for-profit organization client and pays invoices from that account on its behalf.
>
> b) A client issues a cheque to you as a sole practitioner Accountant in an amount equal to their income tax payable and your accounting fees. You then deposit the cheque and wire the income tax payable to the Canada Revenue Agency from your account.
>
> c) A client instructs their vendor to settle their invoice by remitting funds to your Accounting Firm and then asks that your firm issues a cheque for the difference between the value of the wire and your outstanding fees.
>
> d) A client requests assistance in transferring funds from a sanctioned country into Canada, in respect of which an Accountant arranges for Canadian accounts and wire transfers through intermediate countries.[49]

45 *PCMLTF Regulations*, s 47(1)(b).

46 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 22(d).

47 *PCMLTF Regulations*, s 47(1).

48 Exhibit 393, CPA Canada, *Guide to Comply with Canada's Anti–Money Laundering (AML) Legislation*, prepared by MNP LLP (2014). This guide was prepared to help CPA Canada's members and accounting firm understand amendments to the PCMLTFA and their obligations: Preface.

49 Ibid, pp 4–5.

Mr. McGuire testified that it much more common for accountants to perform financial transactions than real estate transactions. In his experience, the smaller the firm is, "the more likely it is that an accountant is trusted by an individual to perform financial transactions on their behalf, to open bank accounts or to assist in references to opening bank accounts, to assist with making payments, to make out cheques, in preparing the documentation related to those things."[50]

Some Canadian cases illustrate how accountants' involvement in financial transactions may raise money laundering risks. In *Neilson*,[51] a certified general accountant (one of the precursors to the CPA designation) was convicted of multiple counts of fraud, theft, and money laundering. He had convinced various individuals to invest in two businesses that he controlled by showing them fraudulent banking and financial statements and making fraudulent representations about the potential and actual results of the businesses.[52] He admitted to defrauding nine investors and a lender of approximately $2.3 million in total.[53]

The *PacNet* case[54] involved an entity that was sanctioned by the US Office of Foreign Asset Control as a "significant transnational criminal organization" based on its involvement in fraudulent mailings. The BC director of civil forfeiture learned that a bank draft was about to be delivered from PacNet Services' account in the United Kingdom to an unnamed accounting firm in British Columbia (referred to as "ABC Accounting") and its principal (referred to as "John Doe #4"); the firm had provided external accounting services to PacNet for many years.[55] PacNet had asked ABC Accounting and John Doe #4 to hold the funds in trust and later disburse them.[56]

PacNet did not question the propriety of ABC Accounting and John Doe #4 receiving the funds. Indeed, CPABC submits that there is no indication that the accounting firm did anything illegal.[57] I agree that the case does not focus on the legality or propriety of the firm's or its principal's actions. Even so, the case illustrates that accountants and firms may be called upon to hold funds in trust and should be aware that such funds could be illegitimate. I discuss accountants' trust accounts in Chapter 33.

The *Loewen* case[58] was an appeal of a conviction of two counts of attempting to launder money. The charges were brought following an undercover sting operation. The case mentions a chartered accountant who met with the undercover police agent and agreed to launder bags of cash derived from drug trafficking for a 5 percent commission. The accountant apparently laundered the cash by transferring it to

50 Evidence of M. McGuire, Transcript, January 11, 2021, p 36.

51 *R v Neilson*, 2020 ABQB 556 [*Neilson*].

52 *Neilson* at para 5.

53 *Neilson* at para 8.

54 *British Columbia (Director of Civil Forfeiture) v PacNet Services Ltd*, 2019 BCSC 1658 [*PacNet*].

55 *PacNet* at paras 26, 45.

56 *PacNet* at para 50.

57 Closing submissions, CPABC, para 61.

58 *R v Loewen*, 1999 CanLII 18745 (MB CA) [*Loewen*].

bank accounts in Vancouver on the undercover officer's instructions. Mr. Loewen participated in the scheme by taking cash to various financial institutions, arranging to obtain money orders and the like. The funds were eventually consolidated into a bank account in Manitoba that Mr. Loewen controlled and forwarded to the Vancouver bank accounts.[59] Although the case does not detail how the accountant transferred the funds, it demonstrates one way in which an accountant's ability to perform financial transactions can be misused.

Finally, *Joubert*[60] involved a scheme whereby two individuals used a lawyer's trust account to launder large amounts of cash. The case mentions that a chartered accountant was aware of the transactions in the trust account. Although there is little detail about the accountant's involvement, it shows that accountants have special knowledge of a client's financial affairs.

As these cases illustrate, accountants can face money laundering risks with respect to financial transactions, whether they provide advice, conduct the transactions, or give instructions with respect to the transactions. For this reason, as I elaborate in Chapter 32, I am of the view that anti–money laundering regulation must focus not only on transactions; it should encompass advice as well.

Preparation, Review, and Auditing of Financial Statements

The FATF guidance notes that the preparation, review, and auditing of financial statements may be susceptible to misuse where there is no oversight by a professional body or required use of accounting and auditing standards.[61] As I elaborate in Chapter 32, I am satisfied that there is robust regulation in place in British Columbia applicable to auditing services, which significantly mitigates the money laundering risks associated with these activities.

CPABC and CPA Canada's Positions Regarding Risks in the Sector

CPABC and CPA Canada strongly dispute that there is a money laundering problem in British Columbia with respect to CPAs. They submit that there is "no evidence before the Commission" of CPAs being involved in or enabling money laundering.[62] Instead, there is a "dominant" and "unproven" assumption, which was adopted by Mr. McGuire, that, because money laundering is increasing in complexity, criminals must be enlisting the help of accountants.[63]

59 *Loewen* at paras 10–13.

60 *R v Joubert*, 1992 CanLII 1073 (BCCA) [*Joubert*].

61 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 23.

62 Closing submissions, CPABC, para 6; Closing submissions, CPA Canada, para 71.

63 Closing submissions, CPA Canada, para 71.

I agree that the available evidence has limitations and that it would not be prudent to come to firm conclusions about the nature and extent of accountant involvement in money laundering in this province based on it. However, I respectfully disagree with CPABC and CPA Canada insofar as they state that there is *no* evidence of CPA involvement.

To begin with, some of the cases reviewed above do involve CPAs and their precursors. More generally, however, I am not prepared to accept that the limited state of the evidence means CPAs are not involved in money laundering. It may be that cases are difficult to prove or that cases involving accountants are generally not investigated, as Dr. Benson's research suggests.[64] It may also be the case that law enforcement and prosecutors prefer to use accountants as witnesses in cases relating to primary offenders, as Dr. Benson's research also suggests and as appears to have occurred in some of the cases I reviewed above. Finally, the fact that CPABC does not consider anti–money laundering to be within its mandate or the scope of its practice reviews and does not otherwise investigate anti–money laundering can readily be seen as a factor going into the lack of disciplinary cases. The international experience, the limited evidence available about the Canadian context, and common sense provide a sufficient basis to conclude that there is a significant risk of accountants being used to facilitate money laundering, and that the services they provide give them insight that could allow them to identify suspicious activity.

CPABC and CPA Canada further submit that, if there is a risk of money laundering in this sector, it lies with unregulated accountants. This is because unregulated accountants are not subject to CPABC's Code or regulatory jurisdiction and are not covered by any *PCMLTFA* regime.[65] As CPABC explains:

> Accountants are unlike many of the other professionals who are often labeled as possible "enablers," "facilitators," or "gatekeepers." Unlike lawyers, notaries, or real estate professionals, the majority of people working in the accounting sector in BC are not registered or licensed by any regulatory body, but rather are unregulated accountants who are not subject to any professional regulation, oversight or accountability at the provincial level.
>
> …
>
> Since unregulated accountants operate outside of CPABC's regulatory jurisdiction and oversight, CPABC generally has no contact with them and no direct knowledge of who they are. However, to the extent there may be any money laundering risk relating to the provision of accounting services, that risk clearly applies to unregulated accountants who provide many of the same services, but without being subject to CPABC's educational and training requirements, the ethical obligations of the CPA profession, or CPABC's regulatory oversight.[66]

64 See Chapter 26.

65 Closing submissions, CPABC, para 83; Closing submissions, CPA Canada, para 71.

66 Closing submissions, CPABC, paras 18, 21.

With respect, I do not agree that the fact of CPAs being regulated and subject to the *PCMLTFA* means that any risk in the sector lies solely with unregulated accountants. As I expand in the next chapter, compliance among CPAs and firms with the *PCMLTFA* appears to be low. Further, CPABC acknowledges that it does not regulate for anti–money laundering purposes. Thus, I do not consider that CPABC's regulation or the fact of the *PCMLTFA* applying to accountants has significantly lessened the risk of CPA involvement in money laundering. It may be that unregulated accountants pose an even greater risk, but I do not accept that provincial regulation that explicitly does not consider anti–money laundering lessens the risks facing CPAs.

CPABC and CPA Canada point to various factors that lessen the risk among CPAs. The first is that many activities identified by FATF involving significant risk (i.e., company and trust formation, real estate) are beyond their practice.[67] As I have said, whether CPAs actually incorporate a company, create a legal entity, or perform a particular kind of transaction, they provide advice with respect to those activities and thus are exposed to risks.

A second factor said to decrease risk is that FATF states that the preparation, review, and auditing of financial statements may be susceptible to misuse by criminals only "where there is a lack of professional body oversight or required use of accounting or auditing standards."[68] CPABC does provide significant oversight, as do others such as the Canadian Public Accountability Board and the Public Company Accounting Oversight Board.[69] As I elaborate in the next chapter, I agree that auditing is already heavily regulated and accept that further anti–money laundering regulation is not necessary in this regard.

A third factor said to decrease risk is that CPABC understands that the use of trust accounts and acceptance of cash by its members is low.[70] I return to this subject in Chapter 33. However, I note here that this understanding by CPABC is based on a survey with significant limitations and therefore does not provide a strong basis to conclude that such use is low. CPABC must do more to understand its members' activities in this regard.

Finally, CPABC and CPA Canada point out that the 2015 national risk assessment said that accountants (without differentiating between CPAs and unregulated accountants) have a "medium vulnerability" rating and that only one of the 21 distinct sectors had a lower risk rating.[71] This is true. However, given the relatively scarce discussion of accountants in the risk assessment, I find it difficult to rely on it to conclude that accountants pose a low risk.

67 Ibid, para 78.

68 Exhibit 391, Appendix B, *FATF Accounting Guidance*, para 23.

69 Closing submissions, CPABC, para 79.

70 Closing submissions, CPABC, para 80; Closing submissions, CPA Canada, para 76.

71 Closing submissions, CPABC, para 81; Closing submissions, CPA Canada, para 75.

On the whole, I agree with CPABC and CPA Canada that evidence is lacking on accountant involvement in money laundering. However, with respect, I do not agree with their subsequent reasoning. They essentially reason that, because there is little direct evidence of CPA involvement in money laundering, there is no problem. In my view, the more likely explanation is that insufficient law enforcement, regulatory, and academic attention has been paid to the subject.

Conclusion

This chapter has reviewed the money laundering risks in the accounting profession, while noting that evidence is generally lacking on the precise nature and extent of accountant involvement in money laundering. While I am unable to make definitive findings about the nature and extent of accountant involvement in money laundering in British Columbia, it is clear that accountants are at a significant *risk* of being used to facilitate money laundering. This risk must be addressed both by the *PCMLTFA* and by CPABC. In the next two chapters, I discuss ways in which anti–money laundering regulation of accountants can be strengthened to address these risks.

Chapter 32
Limitations of the *PCMLTFA* and the Need for Additional Provincial Measures

In order to evaluate money laundering vulnerabilities and recommend improvements in the accounting sector in British Columbia, I must consider the current state of regulation, compliance, and oversight of accountants in this province. Significant evidence was led before me relating to the scope of the federal *PCMLTFA* and the level of compliance by chartered professional accountants (CPAs) and accounting firms with the reporting and other requirements mandated by that legislation. Witnesses endorsed expanding the scope of the regime, and evidence put before me suggests that the understanding and compliance of CPAs and firms with the *PCMLTFA* regime is low. Despite this low level of understanding and compliance, FINTRAC has conducted few compliance examinations of CPAs and accounting firms.

As a provincial commissioner, my jurisdiction is limited to recommending changes that fall within the provincial domain; I am not permitted to make recommendations to the federal government. However, in evaluating the money laundering risks facing the accounting sector in British Columbia and recommending improvements to the provincial government, it is essential that I analyze the current state of anti–money laundering regulation of accountants in this province and evaluate its sufficiency. As this regulation is at present contained almost entirely within the *PCMLTFA*, this cannot be accomplished without discussing the current scope of the *PCMLTFA* and the level of compliance by CPAs and accounting firms with their obligations. It is important to understand what form of anti–money laundering regulation of accountants currently occurs in order to consider what further provincial measures should be put in place, including what kind of regulation CPABC should undertake.

In what follows, I first explain why, in my view, CPABC's mandate is broad enough to encompass anti–money laundering regulation and why it should engage in this work. I then review evidence highlighting limitations with the current state of anti–money laundering regulation of accountants with a view to strengthening provincial measures in the accounting sector. I also examine the limited reach of the *PCMLTFA* and its impact in this province, which will allow the provincial government to decide whether to request that the federal government amend the *PCMLTFA*. Finally, I discuss the apparently low compliance by CPAs with the *PCMLTFA* regime.

CPABC's Mandate

Witnesses from CPABC and CPA Canada expressed the view before me that CPABC's mandate does not extend to anti–money laundering regulation of its members. In their view, this regulation properly falls to FINTRAC, and it would be duplicative for CPABC to engage in such regulation as well.

I respectfully disagree with this position for two reasons. First, in my view, CPABC's mandate, as it currently stands, is broad enough to encompass anti–money laundering regulation, as CPABC is mandated to regulate all aspects of members' practice in the public interest. Second, as I discuss later in this chapter, the anti–money laundering regulation of accountants provided for in the *PCMLTFA* is insufficient to address the risk in the accounting sector. The fact that CPAs and accounting firms are subject to the *PCMLTFA* does not mean that FINTRAC is or should be the sole anti–money laundering regulator for accountants.

It is convenient to begin with CPABC's mandate, as articulated in the *CPA Act*:

> **3** The CPABC has the following objects:
>
> (a) to promote and maintain the knowledge, skill and proficiency of members and students in the practice of accounting;
>
> (b) to establish qualifications and requirements for admission as a member and continuation of membership, and for enrolment and continuation of enrolment of students;
>
> (c) to regulate all matters, including competency, fitness and professional conduct, relating to the practice of accounting by members, students, professional accounting corporations and registered firms;
>
> (d) to establish and enforce professional standards;
>
> (e) to represent the interests of members and students.[1]

1 *Chartered Professional Accountants Act*, SBC 2015, c 1 [*CPA Act*], s 3.

Subsection (c) states that one of CPABC's objects is to regulate *all* matters relating to a CPA's practice and refers to the competency, fitness, and professional conduct of its members. Mr. Tanaka testified that courts have recognized the protection of the public as the "transcendent purpose of CPABC" and that "we regulate in that fashion … our paramount object or mandate is the protection of the public."[2]

CPABC further notes that it has "general authority under the *CPA Act* to regulate all matters relating to the practice of accounting by its members" and that "[a]lthough the *CPA Act* does not give CPABC a specific mandate over money laundering, CPABC may use these regulatory tools, as appropriate, to respond to money laundering-related concerns."[3] It submits that the CPA Code is "nimble and flexible enough to respond to a wide range of potential issues in an ever-changing business environment."[4] Indeed, Mr. Tanaka testified that several sections of the CPA Code are broad enough to prohibit or encompass money laundering conduct, namely:

- Rule 102, which requires members to self-report convictions and regulatory offences;
- Rule 201, which requires members to abide by the *CPA Act*, the Bylaws, the Regulations, and the CPA Code;
- Rule 205, which prohibits members from being involved in false or misleading statements;
- Rule 211, which requires members to report non-compliance by other members; and
- Rule 213, which prohibits involvement in unlawful activity.[5]

Despite the foregoing, CPABC takes the position that all anti–money laundering regulation falls to FINTRAC. It notes that "FINTRAC is the regulatory and oversight authority for Canada's [anti–money laundering] regime" and that "CPABC does not have any specific [anti–money laundering] mandate under its governing legislation" nor is it given a role under the *PCMLTFA*.[6] Accordingly, CPABC has focused on education and providing resources to assist its members in meeting their *PCMLTFA* obligations.[7]

It is important to recognize what exactly FINTRAC does. Canada created FINTRAC to fill the role of a "financial intelligence unit" as outlined by the FATF recommendations. Recommendation 29 describes the function of a financial intelligence unit:

2 Evidence of E. Tanaka, Transcript, January 12, 2021, p 122. See also Evidence of L. Liu, Transcript, January 12, 2021, p 96; Closing submissions, CPABC, para 23, citing *McPherson v Institute of Chartered Accountants of British Columbia*, 1988 CanLII 3106 2589 (BCSC) at para 31, aff'd 1991 CanLII 800 (BCCA).

3 Closing submissions, CPABC, para 4.

4 Ibid, paras 26–27.

5 Transcript, January 12, 2021, pp 16–18, 20–21.

6 Closing submissions, CPABC, paras 34, 36, 93–94. See also Evidence of E. Tanaka, Transcript, January 12, 2021, p 26; Evidence of L. Liu, Transcript, January 12, 2021, p 29; Closing submissions, CPA Canada, para 80.

7 Evidence of E. Tanaka, Transcript, January 12, 2021, pp 26–27; Evidence of L. Liu, Transcript, January 12, 2021, p 29.

> Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative, and law enforcement information that it requires to undertake its functions properly.[8]

The financial intelligence unit's role is therefore to gather intelligence and information, distribute it to law enforcement and other bodies, and monitor compliance with the *PCMLTFA*. This kind of supervision is qualitatively different from that undertaken by self-regulatory bodies like CPABC, which is mandated to regulate *all* aspects of members' conduct and to ensure high standards of work, professionalism, and ethics. Further, FINTRAC lacks the same access to reporting entities as regulators, who can view all parts of their members' files (even confidential information), compel information, and impose important sanctions.

The volume of reporting entities under FINTRAC's supervision also renders it unable to undertake the same detailed supervision of reporting entities as a regulator like CPABC. As set out in FATF's 2016 mutual evaluation, FINTRAC supervised 26,000 designated non-financial businesses and professions and had a total staff of 79 members in 2014–15.[9] As a practical matter, the volume of reporting entities that FINTRAC supervises, combined with its relatively small team, provides it with far less capacity to regulate every reporting entity than a regulator like CPABC can do. Moreover, FATF evaluators noted that FINTRAC's "understanding of the different sectors and business models and of how [anti–money laundering / counterterrorist financing] obligations apply taking into account materiality and context is somewhat limited," and that, although FINTRAC had increased its understanding of the different sectors, it "is a challenge given the large number and diverse range of entities it supervises."[10] In contrast, regulators have particular knowledge of the populations they regulate.

As the above demonstrates, CPABC has a broad public interest mandate and authority over all aspects of its members' practice. The CPA Code already contains provisions that are broad enough to address intentional or unwitting involvement by CPAs in money laundering. In my view, CPABC's public interest mandate is broad enough to encompass anti–money laundering, and CPABC should begin regulating its members for this purpose. Notably, the Law Society of British Columbia has a similarly broad public interest mandate and has long held the view that regulating in

8 Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019) [*FATF Recommendations*], p 22, recommendation 29.

9 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti–Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016) [*FATF Fourth Mutual Evaluation*], paras 179, 253.

10 Ibid, para 253.

the public interest necessitates conducting anti–money laundering regulation (see Chapters 27 and 28).

I accept that FATF describes FINTRAC as the anti–money laundering "supervisor" in its fourth mutual evaluation report. However, it also notes that provincial regulators have a role to play. In my view, it is essential that *both* FINTRAC and self-regulatory agencies play roles in anti–money laundering regulation based on their respective mandates and powers. It is insufficient for CPABC to proceed on the footing that FINTRAC is the regulator and to limit its involvement to education and support. This is not to say that CPABC must duplicate measures in place under the *PCMTLFA*; to the contrary, as I set out below and in Chapter 33, CPABC should play a complementary role and address matters that are not covered by the *PCMLTFA*.

Exclusion of Unregulated Accountants from the *PCMLTFA*

As I noted in Chapter 30, the *PCMLTFA* defines "accountant" as "a chartered accountant, a certified general accountant, a certified management accountant or, if applicable, a chartered professional accountant."[11] This definition excludes unregulated accountants. In other words, unregulated accountants have no obligations under the *PCMLTFA*, even if they conduct triggering activities.

In their report for the Commission, Mr. McGuire and Ms. Cywinska adopt broad definitions of "accountant" and "accounting firm" to include both CPAs and unregulated accountants.[12] Mr. McGuire testified that they did so because they consider it to be consistent with the FATF approach, which does not differentiate based on the designation of an accountant. He explained:

> [R]egardless of what designation you hold, if you have the skills, wherever gained, and you perform these services or help somebody to prepare for performing these services, you pose the same threat as someone who's designated.[13]

CPABC expressed concerns with Mr. McGuire and Ms. Cywinska's approach of defining these terms broadly. It notes that the 2016 Census indicates that, of the approximately 89,000 individuals working as accountants in British Columbia, only around 31,000 are CPAs. It submits:

> By adopting a broad definition of accountants and failing to make any distinction between CPAs and unregulated accountants throughout the analysis, the McGuire Report disregards:

11 *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*], s 1(1).

12 Exhibit 394, *Report on Accountants, Money Laundering, and Anti–Money Laundering*, prepared by the amlSHOP (October 31, 2020 and updated December 31, 2020) [McGuire Report], para 11.

13 Transcript, January 11, 2021, p 20.

- The extensive education and training of CPAs;
- That CPAs are the only accountants in British Columbia subject to regulatory oversight, including CPABC's ethical and professional standards; and
- The fact that only CPAs are subject to Canada's anti–money laundering regime and that unregulated accountants are not.[14]

I accept that failing to distinguish between CPAs and unregulated accountants when identifying money laundering vulnerabilities in the accounting sector risks blending two groups with quite different levels of regulation and oversight. I am mindful of the distinction between the two groups and have considered this distinction where it is relevant to my analysis. That said, I agree with Mr. McGuire that the activities of *all* accountants should be considered when evaluating risk, measures currently in place, and opportunities for improvement. Apart from the activities listed in section 47 of the *CPA Act*, all other accounting activities can be undertaken by both CPAs and unregulated accountants in this province. Regulation may lessen the money laundering risks, but it is the services rendered (whether by a CPA or an unregulated accountant) that are of interest to criminals.

Mr. McGuire and Ms. Cywinska urge that the definition of "accountant" in the *PCMLTFA* should be amended to include all those who perform FATF-specified accounting services, rather than focusing on professional designations.[15] CPABC and CPA Canada support an extension of the *PCMLTFA* regime to capture unregulated accountants.[16] As I noted in Chapter 31, CPABC submits that any risks in the sector rest with unregulated accountants; it therefore states that any new regulatory measures should be focused on unregulated accountants rather than CPAs.[17]

Although, as I explained in Chapter 31, I do not agree that *all* risks in the accounting sector lie with unregulated accountants, it is problematic that approximately two-thirds of accountants in this province are not regulated or subject to the *PCMLTFA*. As a result, the majority of those offering accounting services that money launderers may require have no supervision or obligations to report suspicious activity or collect client identification and verification information. With respect to the *PCMLTFA* specifically, it seems anomalous that any number of accountants may be performing the same activities as CPAs and yet have no obligations under that regime. From a risk-based perspective, there would appear to be no less risk (and possibly even more risk) if a non-designated accountant performs certain services compared with a designated one.

14 Exhibit 403, CPABC Review of McGuire Report on Accountants (January 7, 2021) [CPABC McGuire Review], pp 1–2.

15 Exhibit 394, McGuire Report, para 86.

16 Exhibit 403, CPABC McGuire Review, p 18; Closing submissions, CPABC, paras 66, 105–7; Closing submissions, CPA Canada, para 69.

17 Closing submissions, CPABC, paras 63–64.

The decision by the BC Legislative Assembly (and, as I understand it, every province) to allow unregulated accountants to perform most accounting services without any supervision or oversight is not a matter that is squarely before me. I have not heard evidence about why this is the case or what unintended consequences could arise from a decision to subject all accountants to regulation. The issue also touches on matters extending beyond my mandate. Accordingly, I am not prepared to make a recommendation that unregulated accountants should be subject to regulation by CPABC or some other body. However, I consider it essential that the Government of British Columbia better understand the kind of work being performed by unregulated accountants in this province, given that many of the same money laundering risks arise whether a service is provided by a professional or unregulated accountant. I accordingly recommend that the Province study the unregulated accounting sector in this province and consider whether to subject unregulated accountants to some form of anti–money laundering regulation and oversight.

Recommendation 70: I recommend that the Province study the nature and scope of work performed by unregulated accountants in British Columbia to determine where they work, what clientele they service, what services they provide, whether those services engage a significant risk of facilitating money laundering, and, if so, what some form of anti–money laundering regulation and oversight is warranted.

Limited Triggering Activities

As I explained in Chapter 30, the *PCMLTFA* currently applies to CPAs and accounting firms only when they complete the following "triggering activities":

- receiving or paying funds or virtual currency;
- purchasing or selling securities, real property or immovables, or business assets or entities; or
- transferring funds, virtual currency, or securities by any means.[18]

FATF's fourth mutual evaluation of Canada in 2016 noted that the *PCMLTFA* regime does not apply to "all relevant activities of accountants."[19] FATF Recommendations 22 and 23 state that accountants should be subject to customer due diligence measures and suspicious transaction reporting requirements when they engage in the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;

18 *PCMTLF Regulations*, s 47.

19 Exhibit 4, Appendix N, *FATF Fourth Mutual Evaluation*, p 161.

- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.[20]

Recommendation 23 also "strongly encourages" countries to extend these measures to "the rest of the professional activities of accountants, including auditing."[21]

The FATF fourth mutual evaluation report found that Canada was not technically compliant with the FATF recommendations relating to accountants, in part because several of the above accounting services were not included as triggering activities in the *PCMLTFA*.[22]

In Mr. McGuire's view, the limited scope of triggering activities ultimately deprives FINTRAC of important data, which is problematic given that "it's generally accepted that financial intelligence is the way to defeat money laundering and so accountants have a front seat to these transactions."[23] Further, on a practical level, Mr. McGuire testified that the current *PCMLTFA* scheme results in a lack of clarity for the profession given the various exceptions. For this reason, while preparing CPA Canada's anti–money laundering guide,[24] he included a "waterfall diagram" that asked a series of questions CPAs could use to determine if their activities fell under the *PCMLTFA* regime.[25] In describing the "waterfall diagram" he explained the difficulties for the profession as follows:

> So if you don't provide those accounting services to the public, then you are not covered. So that's an important point ... you could be providing [triggering] activities ... and not be an accounting firm and have no obligation under the legislation. That is why I'm a big fan of approaches that look to the services you provide and not necessarily what designation you have.
>
> And then the next question is [even if you are providing] ... accounting services to the public, [do you] ... have an employee who is professionally designated with a Canadian designation? So picture, if you will ... a bookkeeping firm where the individual at the helm of the bookkeeping firm is a foreign trained chartered accountant [for example] ... a US CPA. Well, that firm would not qualify once we get to this point in the table

20 Exhibit 4, Appendix E, *FATF Recommendations*, p 18, Recommendation 22(d).

21 Ibid, pp 18–19, Recommendation 23.

22 Ibid, pp 159–62, finding Canada non-compliant with Recommendations 22 and 23 in part because of the scope of accountants' activities.

23 Transcript, January 11, 2021, p 41.

24 Exhibit 393, CPA Canada, *Guide to Comply with Canada's Anti–Money Laundering (AML) Legislation*, prepared by MNP LLP (2014).

25 Ibid, pp 8–11.

> because they don't have at least one of their folks who are professionally designated with a Canadian professional designation.
>
> So then you get to the next point and you say, well, do you perform transactions or give instructions that involve triggering activities, otherwise known as qualifying activities. Those are those three there: receiving, paying, or transferring funds; purchasing, selling property, business assets, or entities; [and] purchasing, transferring, selling securities. So you see the problem here is that … this is performing the transactions … or giving instructions, not advice. So if you get to this point in the diagram and you realize … that [if] you're only giving advice with respect to these things, you're still … not covered.
>
> Let's say that you are covered. And then the next question is are you only doing those things with respect to [an] insurance engagement or trustee in bankruptcy appointments. And if the answer is yes, again you're not covered.
>
> So … in this guide together with CPA Canada we've spent … nearly four pages just to try to explain to a person or a firm whether or not they even have obligations. And … I think you can see as we go through the waterfall diagram that it gets narrower and narrower to the point where it might not capture all the concepts that the FATF say are subject to a money laundering threat by the sorts of services accountants provide.[26]

CPABC and CPA Canada are opposed to any recommendation that would expand the scope of triggering activities under the *PCMLTFA*. CPA Canada submits that the nature and extent of money laundering risks can be answered by the scope of the Act. In other words, the "risks arise when an accountant is acting as an intermediary in the financial system," which is reflected in the triggering activities.[27] It explains:

> These triggering activities reflect how the *PCMLTFA* has been intentionally sculpted to target the risk posed by the direct involvement of a CPA or Accounting Firm in a transaction that actually interfaces with the financial system. When directing the transaction or providing instructions, the CPA or Accounting Firm is directly interacting with the financial system and so is scoped into the regime, unlike when they are merely providing advice and have no involvement in the transaction itself.[28]

José Hernandez, a CPA who formerly represented CPA Canada at the Department of Finance's Public–Private Advisory Committee on Money Laundering and Terrorist Financing,[29] similarly testified that the current triggering activities are those in which

26 Transcript, January 11, 2021, pp 60–62.

27 Closing submissions, CPA Canada, para 36.

28 Ibid, para 38.

29 See Chapter 33.

accountants "are actually transacting in a way that is having an impact on the financial system."[30] Ms. Wood-Tweel added that this kind of activity is "not core necessarily to the business that we do, which is public accounting. It can happen, but it's not as common as one might think."[31]

With respect, I do not agree that the analysis can begin and end with what activities are included in the *PCMLTFA*. It may be that the intention was to include only activities directly implicating the financial system, but that is a different question from whether other activities that do not "directly" implicate the financial system also pose a risk.

In what follows, I review the various accounting services flagged by the FATF as presenting money laundering risks and consider whether additional anti–money laundering regulation is necessary. From this review, I arrive at the following conclusions and recommendations.

First, the Province of British Columbia should advocate for amendments to the *PCMLTFA* to include the preparation for and the provision of advice with respect to triggering activities.

Recommendation 71: I recommend that the provincial Minister of Finance urge her federal counterpart to introduce amendments to the *Proceeds of Crime (Money Laundering) and Financing of Terrorism Act* so that accountants' reporting and other obligations arise when they prepare for and provide advice about triggering activities.

Second, CPABC should impose client identification and verification measures for high-risk activities, namely the provision of advice with respect to financial transactions and tax affairs, as well as private sector bookkeeping. These measures should include a requirement to verify a client's source of funds, in line with the provisions in the Code of the International Ethics Standards Board for Accountants on handling the property of others and determining source of funds.[32] It is important that CPABC impose such measures because expanding the scope of triggering activities in the *PCMLTFA* will not, on its own, address the risks in the accounting sector. As I have discussed throughout this Report, particularly in Chapter 7, a repeated criticism of the *PCMLTFA* regime is that it generates a high volume of low-quality reports and that intelligence is not shared with law enforcement and other stakeholders as often as would be desirable. Further, as I discuss below, CPAs appear to have a poor understanding of, and have demonstrated low compliance with, the *PCMLTFA* regime. All of this underscores that CPABC must undertake its own anti–money laundering regulation.

30 Transcript, January 13, 2021, p 26.

31 Transcript, January 13, 2021, p 53.

32 Ms. Wood-Tweel testified that CPA Canada is doing a "mapping project" in which it is comparing all the Canadian provisions with the IESBA provisions: Transcript, January 13, 2021, p 38.

Recommendation 72: I recommend that the Chartered Professional Accountants of British Columbia implement client identification and verification requirements, as well as requirements to verify a client's source of funds, that apply, at a minimum, when a chartered professional accountant engages in the following activities:

- preparing for and providing advice with respect to financial transactions, including real estate transactions;
- preparing for and providing advice with respect to the use of corporations and other legal entities; and
- private-sector bookkeeping.

Finally, as I discuss further in Chapter 8, the AML Commissioner should be responsible for monitoring anti–money laundering measures put in place by CPABC going forward.

Preparation for Transactions and Advice

The FATF recommendations state that accountants should be subject to reporting obligations both when they execute and prepare for transactions.[33] In contrast, the Canadian regime applies only when a CPA or firm engages in or gives instructions with respect to triggering activities. Thus, the Canadian regime is narrower than the FATF recommendations insofar as it excludes preparation for triggering activities.

The FATF recommendations do not specify what is meant by "preparing for" transactions. However, it seems logical that it would include the provision of advice. FINTRAC has issued an interpretation notice distinguishing between "giving advice" and "giving instructions":

> When you **give instructions** for any of the [triggering] activities, it means that you actually direct the movement of funds. By contrast, when you **provide advice** to your clients, it means that you make recommendations or suggestions to them. Providing advice is not considered to be giving instructions.
>
> **Example of giving instructions:** "Based on my client's instructions, I request that you transfer $15,000 from my client's account, account number XXX, to account number YYY at Bank X in Country Z."
>
> **Example of providing advice:** "For tax purposes, we recommend that you transfer your money into a certain investment vehicle."[34]

33 FATF's Recommendation 22 states that accountants should be subject to customer due diligence and record-keeping obligations when they *prepare for or carry out* listed activities: Exhibit 4, Appendix E, *FATF Recommendations*, p 18.

34 FINTRAC Interpretation Notices, No 2, "Accountants – Giving Instructions Versus Providing Advice" (July 8, 2008), https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2008-07-08-eng.

Therefore, FINTRAC does not consider giving advice to constitute "giving instructions." As the *PCMLTFA* refers to engaging in triggering activities or giving instructions with respect to them, providing advice is not covered. Mr. McGuire testified that this omission is problematic given that, in his experience, accountants provide advice far more often than they engage in or give instructions with respect to transactions:

> [F]ar less often does an accountant provide specific instructions for a particular financial activity than does an accountant provide advice about how to structure affairs in a tax-efficient manner. For instance, the advice is far more common an activity and, in my view, just as threatening from a money laundering perspective as conducting the instructions themselves.
>
> [I]n fact, if I saw an accountant conducting transactions through one of the accounts we monitor for a client, it would arouse far more suspicion than if the client conducted it themselves, and I wouldn't know about the advice behind the scenes, for instance. And so, as I say, only the actual instructions themselves are covered by Canadian law.[35]

He added that preparation and advice about the use of corporations and other legal entities are services that are routinely provided by accountants.[36]

Ms. Wood-Tweel testified that advice is not included as a triggering activity under the *PCMLTFA* because that would be contrary to the intent of the legislation, which is focused on interactions with the financial system:

> It's been sculpted in a way to look at the risk posed by the involvement of an accountant in a transaction that actually interfaces with the financial system, and the provision of advice doesn't. However, clearly what has been made clear is that if you are providing instructions and you are directing, then that is the same thing as being actually involved in the direct transaction. So there's a differentiation being made between advice and between instructions.[37]

In my view, it is problematic that the provision of advice and preparation for transactions are not covered by the *PCMLTFA*. When providing advice on financial matters or helping a client prepare for transactions, an accountant needs to have a good understanding of the client's financial affairs. In doing so, the accountant is well placed to observe suspicious circumstances, yet currently has no obligation to report the suspicious activity. Further, it appears that accountants provide advice much more frequently than they engage in triggering activities.

For this reason, I have recommended above that the Province seek amendments to the *PCMLTFA* to include the provision of advice and preparation for triggering activities.

35 Transcript, January 11, 2021, p 40.

36 Ibid, p 34. See also Exhibit 394, McGuire Report, p 20, footnote 13.

37 Transcript, January 13, 2021, pp 26–27.

I have also recommended that CPABC implement client identification and verification measures that will apply when a CPA prepares for or provides advice on financial transactions and the use of corporations and other legal entities.

Bookkeeping

Ms. Wood-Tweel testified that bookkeeping likely does not constitute a triggering activity under the *PCMLTFA*:

> The keeping of books is basically – I say this with respect – a paper process. So it is not the movement of assets and it is not the movement of money. It is the recording of transactions on paper and is not anything that ends up leading to a financial transaction itself with the financial system.[38]

Mr. Hernandez added that the "nostalgic view of an accountant actually booking the revenues and the expenses" is "not really true for most corporations" today, given that many use compartmentalized and automated services around the world.[39]

While I take the point that the nature of bookkeeping may have changed over the years, I consider that private sector bookkeeping nonetheless presents opportunities for accountants to come across suspicious activity relating to money laundering. Indeed, several cases I reviewed in Chapter 31 related to private sector bookkeeping.

It is also interesting to consider the situation in the United Kingdom. Ms. Wood-Tweel testified that, whereas a suspicious transaction report in Canada requires a transaction or attempted transaction, the United Kingdom uses "suspicious activity reports" that do not necessarily require a transaction; rather, "circumstances may be observed, seen or arise where suspicion is formed." She gave the example that an accountant might observe that the possessions of an individual were inconsistent with their overall income, which may in some situations arouse suspicion that needs to be reported.[40] Although I am mindful that the two systems are structured differently, the UK model seems to recognize that suspicions can arise in circumstances not involving financial transactions.

In my view, it is crucial to impose some form of anti–money laundering regulation on private sector bookkeeping activities. As the *PCMLTFA* focuses on transactions, it is not surprising that its reporting and other requirements do not extend to bookkeeping services. Given this context, I have concluded that anti–money laundering regulation over private sector bookkeeping performed by CPAs in this province ought to be done by CPABC. I have therefore recommended above that CPABC implement client identification and verification requirements that would apply when a CPA engages in private sector bookkeeping activities.

38 Ibid, p 27.

39 Transcript, January 13, 2021, pp 28–29.

40 Transcript, January 13, 2021, pp 141–42.

Auditing and Assurance Services

FATF strongly recommends, but does not require, that auditing be included as a triggering activity.[41] Mr. McGuire and Ms. Cywinska express the view that auditing should be included as a triggering activity under the *PCMLTFA*.[42] However, CPABC and CPA Canada take the opposite view, noting that there are various reasons why the exception for audits, review, and compilation agreements exist and should continue to exist:

- They do not involve interaction with the financial system, which is the approach taken in the *PCMLTFA*. Their exclusion aligns with the goal of targeting activities that involve financial intermediation.[43]
- Auditing activities are already heavily regulated, being "subject to the requirements of the profession and, depending on the circumstances, the Canadian Public Accountability Board and Public Company Accounting Oversight Board." Further, the Canadian Auditing Standards apply.[44]
- The Canadian Auditing Standards already state that if a CPA comes across information suggesting non-compliance with laws and regulations, including money laundering, they should escalate the issue with management. If the issue cannot be resolved, they are encouraged to seek legal advice and may need to resign.[45]
- Auditing was not noted as an area of deficiency in the 2016 FATF mutual evaluation.[46]
- On the whole, "[c]ompliance with the FATF Recommendations must be interpreted within the legislative and regulatory context of each member country. In Canada, these services are adequately regulated, and scoping into the federal regime is not needed."[47]

As I noted in Chapter 30, three of the Canadian Auditing Standards (CAS) deal with money laundering. This includes CAS 250, which states that auditors who identify or suspect non-compliance with laws and regulations must determine if they are required to report to an appropriate authority and potentially seek legal advice and resign if the issue cannot be resolved.

In my view, the auditing regulation currently in place by CPABC is sufficiently rigorous that additional anti–money laundering regulation of these services is not

41 FATF's Recommendation 23(a) states that "[c]ountries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing": Exhibit 4, Appendix E, *FATF Recommendations*, p 18.

42 Exhibit 394, McGuire Report, para 88; Mr. McGuire testified that he is "less convinced that professional accountants are complicit in the preparation of assurance statements for those that they know are laundering money"; rather, the point is that reviewing and auditing financial statements is an opportunity to observe potential crime and money laundering: Transcript, January 11, 2021, p 37.

43 Closing submissions, CPA Canada, paras 41, 78.

44 Ibid, paras 41, 78; Closing submissions, CPABC, para 104.

45 Closing submissions, CPA Canada, para 42.

46 Ibid, para 44.

47 Ibid, para 78.

necessary. When conducting auditing and assurance services, CPAs are held to a very high standard of conduct and are subject to extensive regulation by CPABC and other independent boards. Further, the Canadian Auditing Standards already address the possibility of coming across indicators of illegality including money laundering in the course of an audit and set out recommended actions for auditors. Therefore, I am satisfied that, from an anti–money laundering perspective, additional regulation for auditing and assurance services is not necessary.

Insolvency and Related Activities

As I noted in Chapter 30, FINTRAC does not consider the following activities to be "providing accounting services to the public":

- Acting as a receiver pursuant to a Court order or by way of a private letter appointment pursuant to the terms of a security interest;
- Acting as a trustee in bankruptcy; and
- Acting as a monitor under the provisions of the *Companies' Creditors Arrangement Act* [RSC 1985, c C-36], or any other proceeding that results in the dissolution or restructuring of an enterprise or individual and to which the firm, individual or insolvency practitioner serves as an officer of the Court or agent to a creditor(s) or the debtor.[48]

The policy rationale for these exclusions is that there is a very low risk of money laundering with respect to these activities, given the extensive court oversight and the reporting obligations that already exist under the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3.[49]

In my view, given the extensive court supervision and highly regulated nature of insolvency proceedings, there is a very low risk of these activities being misused for money laundering purposes. Accordingly, I am satisfied that further anti–money laundering regulation in this area is not necessary.

Compliance Issues

The evidence before me suggests that compliance by CPAs and accounting firms with the *PCMLTFA* is low, and that, despite this low reporting, FINTRAC conducts few compliance examinations of CPAs or firms.

48 FINTRAC, Interpretation Notices, No 7, online: https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2011-02-17-eng.

49 Evidence of M. McGuire, Transcript, January 11, 2021, pp 64–65; Closing submissions, CPA Canada, paras 45, 79.

Low Reporting

The 2016 FATF fourth mutual evaluation report indicates that, between 2011 and 2015, only one suspicious transaction report was filed by an accountant or accounting firm in Canada.[50] The report accordingly noted that "accountants' level of awareness of [anti–money laundering / counterterrorist financing] obligations is quite low" and that the "fact that no [suspicious transaction reports] have been filed by accountants … raise[s] concern."[51]

It is curious that the number of suspicious transaction reports filed by accountants and firms between 2001 and 2007 was somewhat higher, ranging from seven to 40 per year, for a total of 119 reports.[52] Nevertheless, the evaluators who conducted the third mutual evaluation in 2008 characterized those numbers as "relatively low" even though accountants and firms had been subject to outreach from FINTRAC.[53]

Mr. McGuire testified that there are, in his view, three principal reasons why CPAs and firms are not reporting suspicious transactions:

- They lack an understanding of their obligations.
- The triggering activities are so narrowly defined that even when accountants do observe suspicious activity, they need not report it.
- There are no consequences for a failure to report, given the low numbers of examinations conducted by FINTRAC and the complete absence of any administrative penalties being applied to any accounting firms (both discussed below).[54]

He also highlighted that suspicious activity report figures in the United Kingdom were much higher than in Canada: roughly 5,000 were filed in 2019, around 25 percent of which indicated suspected accountant involvement.[55] I am mindful of differences between the two regimes, including (as noted above) that suspicious activity reports in the United Kingdom do not require a transaction and that it appears that accountants there are permitted to incorporate companies,[56] unlike accountants in this province. Nonetheless, the difference between 5,000 suspicious activity reports and numbers of suspicious transaction reports ranging from one to 40 in a year (as outlined above) is stark.

In 2015, CPA Canada's Anti–Money Laundering and Terrorist Financing Committee[57] invited FINTRAC to give a presentation on its role and accountants' obligations under

50 Exhibit 4, Appendix N, *FATF Fourth Mutual Evaluation*, para 232.

51 Ibid, paras 214, 30.

52 Exhibit 4, Overview Report: Financial Action Task Force, Appendix L, FATF, *Third Mutual Evaluation on Anti–Money Laundering and Combating the Financing of Terrorism, Canada* (Paris: FATF, 2008) [*FATF Third Mutual Evaluation*], para 1254.

53 Ibid, para 1255.

54 Transcript, January 11, 2021, pp 89–91.

55 Ibid, p 142.

56 Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 144–45.

57 See Chapter 33.

the *PCMLTFA*. FINTRAC's presentation[58] noted the deficiencies observed in compliance examinations with respect to several requirements, including the obligations to conduct a two-year review, implement a training program, and conduct risk assessments. The presentation also noted that the level of awareness appeared to be low and that many accountants did not realize they were covered by the regime.[59]

The presentation also said, however, that FINTRAC considered the accounting sector to be low risk.[60] Mr. McGuire testified that he found this surprising, given that the 2015 national risk assessment called the sector at least medium risk and that a 2014 study by Grant Thornton had assessed the sector as highest risk along with real estate. In his view, FINTRAC did not seem to be prioritizing the sector, despite expressing frustration at the level of compliance.[61]

Ms. Wood-Tweel testified that we must be careful in considering the statistics on suspicious transaction reporting because only a fraction of the CPA membership actually engages in triggering activities. She explained that if accountants are "fastidious" about how they enter into business with clients, they may never come across a suspicious transaction. She testified that she personally has not come across a suspicious transaction in her practice.[62] She further noted that triggering activities are not part of the "core" of a CPA's practice.[63]

CPA Canada accordingly submits that "the fact that low numbers of [suspicious transaction reports] are filed in the accounting sector does not necessarily point to a compliance issue, since few CPAs engage in the type of activity that would trigger a reporting obligation. Of the approximately 200,000 CPAs in Canada, only around 20 percent are in public practice. Of those, only a fraction are likely to be involved in triggering activities."[64] Therefore, "[d]ue to the narrower scope of practice in Canada, it is entirely possible that a CPA would not encounter any reportable transactions over the course of their career," and "[o]ne of the reasons that few [suspicious transaction reports] are filed by the accounting sector may be that CPAs' services are not being used to carry out money laundering transactions."[65] CPABC agrees that it is "not surprising" that the levels of reporting are "relatively low," noting that "Canada's AML regime is designed to focus on interaction with the financial system, and CPAs' reporting obligations are triggered only in narrow circumstances."[66]

58 Exhibit 408, FINTRAC Presentation – Anti–Money Laundering and Anti–Terrorism Financing in Canada (CPA Canada), March 4, 2015.

59 Exhibit 395, Email from Marial Stirling re Materials for AMLATF Committees conference call, July 13, 2015, p 3; Evidence of M. McGuire, Transcript, January 11, 2021, p 82.

60 Exhibit 395, Email from Marial Stirling re Materials for AMLATF Committees conference call, July 13, 2015, p 3.

61 Transcript, January 11, 2021, pp 82–83.

62 Transcript, January 13, 2021, pp 76–78.

63 Ibid, p 53.

64 Closing submissions, CPA Canada, para 54.

65 Ibid, para 55.

66 Closing submissions, CPABC, para 86.

Notably, neither CPABC nor CPA Canada gathers statistics on the numbers of its members who engage in triggering activities.[67] While I accept that CPA Canada and CPABC are speaking from experience when they say that it is relatively uncommon for a CPA to be engaged in triggering activities, I am not prepared to make such a finding in the absence of some formal evidence confirming that such is the case. As I elaborate in Chapter 33, I consider it essential that CPABC begin to collect reliable data on its members' activities in order to have an accurate picture.

On the whole, the reporting numbers of CPAs and firms are concerning. Although it may be that it is less common for CPAs to engage in triggering activities than other accounting services, I find it unlikely that only one CPA or firm encountered a suspicious transaction across Canada between 2011 and 2015. Rather, it is more likely that CPAs and firms have a low level of understanding and, therefore, compliance. As I elaborate in the next chapter, it is essential that CPABC and CPA Canada continue to provide guidance and education to their members on their obligations under the *PCMLTFA*.

FINTRAC Compliance Examinations

Despite the low reporting numbers I have just discussed, FINTRAC has conducted few compliance examinations of CPAs and firms. FATF's third mutual evaluation of Canada noted that FINTRAC had conducted 26 compliance examinations between 2004 and 2007. The evaluators expressed the view that this was far too low:

> Quite obviously, such a limited number of on-site examinations made by FINTRAC compared with the number of potential reporting entities cannot be considered as sufficient to ensure an effective monitoring of compliance even if FINTRAC targets its examinations based on a comprehensive risk assessment. It should be completed by interventions of provincial regulators or [self-regulatory organizations]. However, these institutions are not in charge of ensuring [anti–money laundering / counterterrorist financing] compliance and, as for the other sectors examined above, their level of involvement in that area, the regulatory basis on which they rely and the methodology adopted may strongly differ from one province or sector to another.[68]

The fourth mutual evaluation notes that, between 2009 and 2015, FINTRAC conducted 114 compliance examinations of CPAs and accounting firms. This constitutes 2 percent of the total number of examinations conducted for designated non-financial businesses and professions in that same period (114 of 5,434).[69]

Perhaps because of the increase from 26 to 114 examinations, the FATF's fourth mutual evaluation was less harsh in its critiques. It noted that FINTRAC is applying its supervisory program to designated non-financial businesses and professions

67 Closing submissions, CPA Canada, para 54; Evidence of L. Liu, Transcript, January 12, 2021, p 31; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 36, 68.

68 Exhibit 4, Appendix L, *FATF Third Mutual Evaluation*, para 1315.

69 Exhibit 4, Appendix N, *FATF Fourth Mutual Evaluation*, para 256.

(including accountants) on a risk-based approach. In other words, it is "conducting more examinations in higher-risk sectors and using assistance, outreach, and compliance questionnaires to a large extent in sectors that it sees as lower-risk."[70]

Since the fourth mutual evaluation, the number of compliance examinations has decreased again, with FINTRAC conducting only seven examinations between 2016 and 2020.[71] The compliance examinations done have revealed significant numbers of "structural deficiencies." Such deficiencies are "anti–money laundering pillars," namely, the requirements to have a designated officer, policies and procedures, training, a risk assessment and management plan, and a mechanism for evaluating compliance over time.[72] The following statistics indicate the percentage of firms cited for at least one structural deficiency between 2008 and 2014:

- 2008/2009 – 38% (8 of 21)
- 2009/2010 – 52% (25 of 48)
- 2010/2011 – 45% (9 of 20)
- 2011/2012 – no examinations
- 2012/2013 – 92% (23 of 25)
- 2013/2014 – 64% (7 of 11)[73]

Despite the foregoing, no CPA or accounting firm has ever received an administrative monetary fine under the *PCMLTFA*.[74]

It is concerning that there have been so few compliance examinations in view of the low reporting numbers and high numbers of structural deficiencies identified in the examinations that have been done. The low number of compliance examinations again points to the need for CPABC to be more involved in anti–money laundering regulation. As I discuss in the next chapter, CPABC should incorporate anti–money laundering considerations into its practice review program.

Conclusion

This chapter has illustrated a number of ways in which anti–money laundering regulation of accountants in this province is currently inadequate. Of considerable

70 Ibid, para 262.

71 Exhibit 630, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2017), p 21 (two examinations in 2016–17); Exhibit 448, 2018 FINTRAC's Report to the Minister of Finance on Compliance and Related Activities (September 2018) (Redacted), p 6 (no examinations in 2017–18); Exhibit 629, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2019), p 17 (four examinations in 2018–19); Exhibit 1021 (previously marked as ex. L) Overview Report: Miscellaneous Documents, Appendix 15, p 16 (one examination in 2019–20).

72 Evidence of M. McGuire, Transcript, January 11, 2021, p 80.

73 Exhibit 394, McGuire Report, para 58.

74 Ibid, para 59.

concern is the fact that most accountants in British Columbia are not subject to any regulation, despite being able to provide many of the same services as professional accountants. Further, the application of the *PCMLTFA* to accountants is narrow, applying only to CPAs and only for specific activities. It also appears that compliance and understanding among CPAs with the *PCMLTFA* regime is low, and FINTRAC conducts few compliance examinations in this sector.

The foregoing makes it clear that CPABC must play a role in anti–money laundering regulation. In my view, CPABC's mandate is already broad enough to encompass anti–money laundering, and it should begin exercising this part of its mandate promptly. I have outlined in this chapter, and expand in Chapter 33, some ways in which CPABC should exercise this mandate.

Chapter 33
Current Measures and Improvements

In this final chapter on the accounting sector, I discuss the current state of the regulation of accountants for anti–money laundering purposes in British Columbia and improvements that can be made. I begin by considering some further measures to those set out in Chapter 32 that CPABC can take to begin regulating for anti–money laundering purposes. I then consider CPA Canada's anti–money laundering activities and recommend further measures that it can take. Finally, I discuss the desirability of a whistle-blower framework in which accountants and firms could report suspicious activity without breaching their duty of confidentiality.

CPABC's Anti–Money Laundering Regulation

As CPABC has not considered anti–money laundering to fall within its mandate to date, it has taken relatively few steps to address the issue. In what follows, I outline measures that CPABC should take, in addition to the client identification and verification measures I recommend in Chapter 32.

Amendments to the CPABC Code and Bylaws

I reviewed CPABC's Code and Bylaws in detail in Chapter 30. Mr. Tanaka expressed the view that the Code and Bylaws are broad enough to cover anti–money laundering activities.[1] This belief may be correct in some respects; however, in my view, some anti–money laundering issues should be dealt with more explicitly.

1 Transcript, January 12, 2021, pp 16–18, 20–21.

CPABC submits that the

> harmonization of professional standards nationally is critically important to ensuring the efficient functioning of financial systems that depend on the seamless delivery of services by CPAs across provincial and international boundaries. That efficiency would be hindered by inconsistency in regulatory practices. As such, any significant changes to the CPABC Code require national study and review.[2]

I accept that changes to the CPABC Code could have effects on the codes in other provinces. However, although harmonization is important, it should not trump the necessity of updating the CPABC Code to address money laundering risks in British Columbia. CPABC should therefore implement the following measures promptly. I encourage CPABC to continue working with its counterparts and CPA Canada to seek harmonization of rules and practices across the country, while also recognizing that it has a duty to regulate its members in this province in the public interest and has the ultimate authority to implement changes in this province to effect that purpose.

Use of Trust Accounts

Accountants in British Columbia are permitted to use trust accounts, although it is unclear how often they do so and for what purpose.

Rule 212 of the CPA Code speaks to handling the property of others. Among other things, the rule states that members who receive, handle, or hold money or property while acting in specified circumstances (e.g., as a trustee, guardian, or liquidator) shall do so in accordance with the terms of the engagement and the applicable law. They must also maintain records to account for the money or property and, unless otherwise provided for in the terms of the trust, hold money in a separate trust account. Members must also "handle with due care any entrusted property."

CPABC states that, to its knowledge, the use of trust accounts by CPAs in public practice and their firms is infrequent.[3] It accordingly submits that it "does not believe that trust accounts held by CPAs in BC pose a significant risk for money laundering." CPABC notes it has never received information from law enforcement, another regulatory agency, or a member of the public expressing concerns about how a CPA or a firm handled funds (contrary to examples in the legal profession).[4]

CPABC does not, however, collect information from its members in any systematic or regular way as to whether they use trust accounts and, if they do, why. It appears that CPABC's first attempt to ascertain this information was through an informal survey

2 Closing submissions, CPABC, para 31.

3 Exhibit 403, CPABC Review of McGuire Report on Accountants (January 7, 2021) [CPABC McGuire Review], p 16.

4 Closing submissions, CPABC, para 51.

conducted in December 2020.[5] That survey, however, had important limitations. A key one was that only 450 of the 4,129 licensed public practice members responded, or approximately 10 percent.[6] Further, the survey did not collect any information about the characteristics of the firms of the members who responded,[7] nor did it ask for details about *why* members engaged in certain activities, such as the use of trust accounts or acceptance of cash.

A reporting memo on the results of the survey notes that "[i]t is our understanding that trust accounts are more often used in relation to bankruptcy and insolvency matters as well as professionals who act as trustees in estate matters" and that when practitioners take retainers, "[i]t is believed [they] typically apply the retainers against their client's account, as opposed to placing the retainer in trust as lawyers may do."[8] Ms. Liu testified that the belief that practitioners typically apply the retainers against their client's account rather than putting it in trust was an assumption based on CPABC's general understanding of how its members practice. The survey did not ask why practitioners used trust accounts.[9]

Apparently based on the results of this informal survey, CPABC noted in its closing submissions that the "few CPABC members who do operate trust accounts"[10] must comply with the "regulatory requirements," meaning Rule 212. It noted that it is "in the process of seeking additional information from members" with respect to their use of trust accounts.[11]

I accept that the survey was meant to be anonymous and simply an attempt to gain information so that CPABC could determine further outreach measures.[12] While the survey was a good first step, its limitations – particularly the very small sample size and minimal information collected – make it difficult to draw any firm conclusions about members' practices. Accordingly, I do not accept that the survey establishes that "few" members operate trust accounts, and I cannot conclude that the use of trust accounts among CPAs is infrequent or that the risk associated with them is low.

In my view, CPABC must better understand its members' use of trust accounts. The risks relating to trust accounts operated by CPAs differ from those relating to lawyers, as there is not the risk of solicitor-client privilege attaching to a CPA's trust account records. Nonetheless, to minimize the risk of a CPA's services being misused, it is important to have robust anti–money laundering regulation in place when a CPA

5 Exhibit 400 is an internal memo discussing the results of the survey.

6 Exhibit 400, CPA Memo from Lisa Eng-Liu, re Possible Opportunities for Education, December 21, 2020 [CPA Education Memo], p 1.

7 Evidence of L. Liu, Transcript, January 12, 2021, p 39.

8 Exhibit 400, CPA Education Memo, pp 1–2.

9 Transcript, January 12, 2021, p 42; Mr. Tanaka agreed that, based on his experience, trust accounts are not generally used: Transcript, January 12, 2021, p 63.

10 Closing submissions, CPABC, para 50.

11 Ibid, para 52.

12 Evidence of L. Liu, Transcript, January 12, 2021, p 39.

handles client funds through a trust account. Further, funds that pass through a CPA's trust account benefit from the perceived legitimacy that the CPA's professional status provides – a perception that underscores the need for robust regulation. I accordingly recommend that CPABC promptly determine how many of its members operate trust accounts, for what purpose, and in what circumstances.

Recommendation 73: I recommend that the Chartered Professional Accountants of British Columbia promptly determine how many of its members operate trust accounts, for what purpose, and in what circumstances.

Once CPABC determines which of its members operate trust accounts, it should begin conducting regular trust account audits. It strikes me that it would be relatively straightforward for CPABC to conduct these audits in the course of its practice reviews (which I discuss below). CPABC is well placed to determine how frequently its members' trust accounts should be audited; however, I note that the Law Society of British Columbia has implemented a system whereby every law firm operating a trust account will be audited every six years, with audits occurring more frequently in some situations. Further, the Law Society audits a sample of firms that report not operating a trust account, to ensure that is the case. I discuss the Law Society's audit procedures, which could serve as a useful model for CPABC, in Chapter 28.

Recommendation 74: I recommend that the Chartered Professional Accountants of British Columbia implement a trust account auditing regime in which chartered professional accountants and firms that operate a trust account are audited on a regular basis, and that a sample of chartered professional accountants and firms that report not operating a trust account be audited to ensure that is the case.

Acceptance of Cash

CPABC's informal survey asked about members' acceptance of cash. Approximately 40 percent of respondents noted that they accept cash for payments or retainers. The reporting memo notes that "[i]t is likely that such cash is for nominal payments of services such as preparation of simple tax returns."[13] Ms. Liu testified that that belief is based on answers suggesting the sums were nominal, so they assumed that cash was received for those kinds of services; however, the survey did not ask why or in what amounts members were accepting cash.[14]

Based on the results of this informal survey, CPABC concluded that "a small number of members may receive and handle cash from clients," likely in small amounts.[15] It

13 Exhibit 400, CPA Education Memo, p 2.

14 Transcript, January 12, 2021, p 43.

15 Closing submissions, CPABC, para 53.

submits that it is "in the process of seeking additional information from members" regarding their handling of cash.[16] Given the limitations of CPABC's informal survey, I am unable to conclude that a "small number" of members "may" receive and handle small amounts of cash. It is important that CPABC promptly gain an accurate understanding of its members' use of cash, whether this information is gathered through a self-reporting mechanism or other method.

Recommendation 75: I recommend that the Chartered Professional Accountants of British Columbia determine the circumstances in which its members accept cash from clients and in what amounts.

A related question is whether there should be a limit on the amount of cash that accountants can receive, as there is for lawyers (see Chapter 28). There is currently no limit on the amount of cash that accountants can receive.[17] Ms. Wood-Tweel testified that she is not opposed to imposing a limit on the amount of cash that can be accepted. However, she emphasized that the CPA Code already provides protection in this regard:

> I look at the issue and I look to my experience in terms of the profession. I think that what we have is … a code that speaks to the principles that right off the bat, if you are accepting any form of payment – cash, cryptocurrency, … virtual currency, anything that is anything other than bona fide – you are already having problems with the Code because the Code is saying you shouldn't be doing it. So the principles of the Code remain true. It's the foundation of the profession, and we have it.
>
> If we were to look towards something that is more pointed as a rule, that certainly could be introduced. It's not to say that the principles of the Code are not applying. They are. It's just that you may choose to move to a pointed rule with respect to cash.[18]

Ms. Wood-Tweel repeated that, in her experience, the majority of the work carried out in public practice does not relate to specific assets or the specific management of assets. In some parts of the profession, such as bankruptcy and insolvency, that work is routine; however, in her view, it "is not something that is … a core process of … the profession's work" in Canada.[19]

CPABC indicates that it is considering imposing a cash transactions rule similar to that in place by the Law Society of British Columbia.[20] In my view, a cash transactions rule is an important anti–money laundering measure that CPABC should adopt. In an

16 Ibid, para 54.

17 Evidence of E. Tanaka, Transcript, January 12, 2021, pp 43–44.

18 Transcript, January 13, 2021, pp 36–37.

19 Ibid, p 37.

20 Exhibit 403, CPABC McGuire Review, p 22.

era when much economic activity takes place electronically, there are inherent risks when a client provides a professional such as an accountant with large sums of cash. I therefore recommend that CPABC implement a cash transactions rule.

Recommendation 76: I recommend that the Chartered Professional Accountants of British Columbia implement a cash transactions rule limiting the amount of cash its members can receive in a single client matter.

Understanding of Members' Activities Relating to the *PCMLTFA*

CPABC and CPA Canada have largely not gathered information about the frequency with which their members engage in triggering activities under the *PCMLTFA*.[21] CPABC's December 2020 informal survey, discussed above, appears to have been its first effort to gather this information. Some 88 percent of respondents said they did not engage in triggering activities.[22] Importantly, however, the survey did not ask how often or for what purpose they engaged in these triggering activities, or the amounts involved.[23]

Again, I accept that the survey was meant to be high level. However, if this is as far as CPABC has gone to determine how many of its members engage in triggering activities and why they do, it is inadequate. In my view, CPABC must ascertain how often its members engage in triggering activities. While I leave the specifics to CPABC, it strikes me that a good option would be to require self-reporting on a member's annual declaration form.

Recommendation 77: I recommend that the Chartered Professional Accountants of British Columbia determine how often its members engage in the activities specified in section 47 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

Practice Reviews

As I discuss in Chapter 30, CPABC conducts practice reviews to ensure that members are complying with accounting standards. The practice review program does not currently address anti–money laundering. Ms. Liu testified that the mandate of the program is to ensure the firm's compliance with professional standards, and the program has focused on engagements to the public.[24] As CPABC explains:

21 Evidence of L. Liu, Transcript, January 12, 2021, p 31; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 36, 68.

22 Exhibit 400, CPA Education Memo, p 2.

23 Evidence of L. Liu, Transcript, January 12, 2021, pp 45–46.

24 Ibid, January 12, 2021, pp 96–98.

> The purpose of the practice review program (which includes practice inspection) is to ensure that firms are meeting professional standards; the program does not involve "audits" into any and all potential breaches of law. Practice inspections provide an opportunity for CPABC to engage with and educate its members and firms about enhancing their compliance with professional standards.
>
> If CPABC became aware of any type of unlawful activity (including a concern with money laundering or terrorist financing) during the course of a practice inspection or otherwise, CPABC would take any action considered necessary or appropriate within its regulatory mandate.[25]

In an internal memo dated September 11, 2020, CPABC concluded that it would not be desirable to include *PCMLTFA* compliance within its practice review program because doing so "would be getting into the management and internal practices of a firm, whereas our inspections have always focused on [*CPA Canada Handbook*] standards." The memo further expressed the view that doing so could overstep CPABC's authority, given that FINTRAC oversees compliance.[26] Ms. Liu testified that CPABC accordingly decided to focus on education and support instead.[27]

CPABC submits that "its practice review program [should] continue to focus on evolving professional standards, while supporting FINTRAC's work through increased awareness and education activities for its membership. CPABC sees no need to duplicate FINTRAC's regulatory compliance program regarding anti–money laundering."[28] CPABC also suggested that it could review its ability to provide FINTRAC with "regular access to a list of CPABC's registered firms, to assist FINTRAC to inform its own risk sensitive inquiries."[29]

Mr. Tanaka testified that an expansion of CPABC's mandate would likely require additional resources, including human resources with special expertise or knowledge, new technology, more resources, or more money.[30] Ms. Liu added that, as CPABC is self-funded, there could potentially be an impact on membership. She noted that the current practice review team does not have expertise in forensics, which they would need if the practice review program were to extend to anti–money laundering.[31]

As I discuss throughout these chapters on the accounting profession, I do not agree with CPABC that it would duplicate efforts by FINTRAC if it engaged in some form of anti–money laundering regulation. I have concluded that CPABC should conduct anti–money laundering regulation alongside FINTRAC.

25 Exhibit 403, CPABC McGuire Review, pp 10–11.

26 Exhibit 402, Public Practice Committee Data Sheet, Pre-Reading #6, September 4, 2020, p 2.

27 Transcript, January 12, 2021, p 89.

28 Exhibit 403, CPABC McGuire Review, pp 20–21.

29 Ibid, p 21.

30 Transcript, January 12, 2021, pp 101–3.

31 Transcript, January 12, 2021, pp 103–5.

CPABC's position that it should not be engaging in money laundering–related, risk-sensitive inspection is notably at odds with the FATF's guidance. The guidance states that supervisors and self-regulatory bodies (of which CPABC is one) should "draw on a variety of sources to identify and assess [money laundering / terrorist financing] risks," including national and supranational risk assessments, domestic or international typologies, supervisory expertise, feedback from the financial intelligence unit, information-sharing, and collaboration with other supervisors.[32] The guidance further states that supervisors and self-regulatory bodies

> should understand the level of inherent risk including the nature and complexity of services provided by the accountant. Supervisors and [self-regulatory bodies] should also consider the type of services the accountant is providing as well as its size and business model (e.g. whether it is a sole practitioner), corporate governance arrangements, financial and accounting information, delivery channels, client profiles, geographic location and countries of operation. Supervisors and [self-regulatory bodies] should also consider the controls accountants have in place (e.g. the quality of the risk management policy, the functioning of the internal oversight functions and the quality of oversight of any outsourcing and subcontracting arrangements.[33]

The guidance goes on to make a number of points regarding the actions that supervisors and self-regulatory bodies should take, including:

- ensuring that their supervised populations are fully aware of and compliant with measures to identify and verify a client's identity and the client's source of wealth and funds, and measures designed to ensure beneficial ownership transparency;
- taking proportionate measures to mitigate and manage money laundering and terrorist financing risks. To that end, they must have a clear understanding of the risks present in a country and associated with the type of accountant, clients, products, and services;
- developing a means of identifying which accountants are at the greatest risk of being used by criminals;
- updating their risk assessment regularly; and
- supervising the implementation of the risk-based approach by members.[34]

It is not necessary for me to repeat the entirety of FATF's commentary on this matter. The point is that CPABC's view that it does not have a responsibility to engage in anti–

32 Exhibit 391: Overview Report on the Accounting Sector in British Columbia, Appendix B, FATF, *Guidance for a Risk-Based Approach: Accounting Profession* (Paris: 2019), para 137.

33 Ibid, para 140.

34 Ibid, paras 141–50.

money laundering regulation is at odds with FATF's view, which discusses the roles that should be played by *both* financial intelligence units such as FINTRAC and self-regulatory bodies such as CPABC.

I acknowledge CPABC witnesses' concerns about extending the ambit of practice reviews, and I have given those concerns due consideration. However, I am of the view that CPABC must take on a role of anti–money laundering supervision. FINTRAC is not the regulator of CPAs. It plays an important, complementary role, but it does not, and it should not, replace the in-depth regulation carried out by provincial CPA regulators.

CPABC is best placed to understand the activities in which its members are engaged. Whereas FINTRAC is tasked with receiving information from a variety of sectors in the economy, CPABC is mandated to focus on CPAs in British Columbia. It has significant powers to compel information, investigate members, and impose appropriate sanctions. It can also view all aspects of its members' practice, including confidential information.

CPABC has taken virtually no steps to monitor its members' compliance with the *PCMLTFA* or to understand how that regime is relevant to its membership. The December 2020 survey is a start but, as noted, its response rate was very low and the questions were posed too broadly to provide any meaningful information.

In my view, practice reviews are a prime opportunity for CPABC to ensure that CPAs are complying with their obligations. I recommend that CPABC expand its practice review program to include regulation focused on anti–money laundering. In particular, CPABC should ensure through its practice reviews that members are complying with the client identification and verification measures that I recommend in Chapter 32. It should also conduct audits of members' trust accounts and audit a sample of chartered professional accountants who report not operating a trust account, as I discuss above. Finally, CPABC should implement measures that are complementary to FINTRAC's role. Although FINTRAC is ultimately responsible for ensuring compliance with the *PCMLTFA*, CPABC is well placed to determine if its members have put in place a compliance program as required by the *PCMLTFA* and to inquire about members' practices and policies relating to record-keeping and transaction reporting required by the *PCMLTFA*.[35]

35 In this regard, it is useful to consider the complementary roles played by the British Columbia Financial Services Authority (BCFSA) and FINTRAC. In the course of examining provincially regulated financial institutions through operational risk assessments or prudential reviews, BCFSA considers issues including whether the institution has up-to-date anti–money laundering policies, whether there is ongoing anti–money laundering training, whether the institution does self-assessments of its anti–money laundering programs, and whether there is sufficient oversight of the anti–money laundering program. BCFSA also has semi-annual discussions with FINTRAC in which FINTRAC provides information to it on various provincial financial institutions about deficiencies it has identified, and BCFSA in turn includes those deficiencies in its own reviews. BCFSA also shares its concerns surrounding anti–money laundering training or policies with FINTRAC: Evidence of C. Elgar, Transcript, January 15, 2021, pp 23–25, 29–42, 49–54.

Recommendation 78: I recommend that the Chartered Professional Accountants of British Columbia (CPABC) expand its practice review program to address anti–money laundering issues including, at a minimum:

- compliance with client identification and verification measures implemented by CPABC;
- audits of trust accounts or confirmation that a member does not operate a trust account; and
- assessment of the adequacy of the anti–money laundering policies and programs in place by the member to ensure compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Education

The December 2020 survey indicated that the "complexity of the [*PCMLTFA*] legislation and regulations appear to be one of the areas of concern for those practitioners who responded to the survey."[36]

Ms. Liu testified that, since the survey, CPABC has launched a webpage focused on anti–money laundering, on which it intends to add guidance and support for members.[37] Mr. Tanaka added that CPABC offers ethics and other courses that, while not focused on anti–money laundering, nonetheless address it. He added that the 2020 member engagement tour also included a presentation on anti–money laundering.[38] In addition, an advisory services line is available for members to address various matters.[39]

CPABC notes that, between 2017 and 2020, it offered 10 professional development courses and seminars focused on money laundering, with further courses planned.[40] CPABC provided the Commission with a list of courses that it and CPA Canada have offered on anti–money laundering.[41] Such courses are relevant and useful educational resources. I encourage CPABC and CPA Canada to continue anti–money laundering education to their members, ensuring that the courses include a focus on the requirements under the *PCMLTFA*, given the apparently limited understanding of the topic and levels of compliance among CPAs.

CPABC has also published a document called CAS (Canadian Auditing Standard) 240, "The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements."[42]

36 Exhibit 400, CPA Education Memo, p 2.

37 Transcript, January 12, 2021, p 48.

38 Transcript, January 12, 2021, pp 48–50.

39 Transcript, January 12, 2021, p 50.

40 Exhibit 403, CPABC McGuire Review, pp 14–15.

41 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, Appendix F, Anti–Money Laundering CPD Programs, compiled by CPABC and CPA Canada.

42 Ibid, p 95.

This document provides guidance for where an auditor encounters circumstances that suggest money laundering activities and, consequently, an increased risk of misstatement in financial statements and other forms of fraud. Auditors who believe that financial statements are false or misleading should request information. If that information is not forthcoming, they should consider not releasing the financial statements and resigning.[43]

Ms. Wood-Tweel further testified that mandatory continuing professional development requirements do address ethics and that CPABC and CPA Canada are working to incorporate information relating to money laundering within the mandatory ethics courses.[44] When asked whether there would be merit in requiring those who engage in triggering activities to take continuing education on anti–money laundering reporting requirements, she noted that it is left to a CPA's professional judgment to determine which professional development programs are relevant to one's practice. In her view, incorporating information on money laundering into the mandatory ethics education also achieves that goal.[45]

While I appreciate that there will soon be a component of the ethics education that deals with money laundering, it is important to include further information with respect to money laundering. In line with my recommendation to the Law Society that it implement a requirement for education focused on anti–money laundering for members in high-risk areas, I believe the same is desirable for accountants. This mandatory education need not be an annual requirement but should occur at regular intervals.

Recommendation 79: I recommend that the Chartered Professional Accountants of British Columbia implement a mandatory continuing professional education requirement focused on anti–money laundering that applies, at a minimum, to chartered professional accountants who engage in the following activities:

- the activities specified in section 47 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*;
- preparing for and providing advice with respect to financial transactions, including real estate transactions;
- preparing for and providing advice with respect to the use of corporations and other legal entities; and
- private-sector bookkeeping.

43 Exhibit 391, Overview Report on the Accounting Sector in British Columbia, para 96.

44 Transcript, January 13, 2021, pp 88–89.

45 Ibid, pp 89–90.

Engagement with CIFA-BC

CPABC notes that it has recently joined the Counter Illicit Finance Alliance of British Columbia (CIFA-BC) and "intends to continue to work collaboratively with CIFA-BC's stakeholders and the RCMP in their joint efforts to prevent and combat money laundering in BC."[46] This is a promising step and is in line with my view that CPABC has a mandate relating to anti–money laundering regulation. I expect that CPABC will continue its engagement with CIFA-BC and consider how else it may involve itself in money laundering efforts with links to accountants.

CPA Canada Engagement

CPA Canada has been actively involved in anti–money laundering activities both in Canada and internationally. Below, I review the working groups in which CPA Canada has participated, as well as educational and other materials they have produced.

CPA Canada's AML/ATF Committee

CPA Canada's Anti–Money Laundering and Anti–Terrorist Financing Committee (CPA Canada AML/ATF Committee) was created in 2014–15 as an internal committee devoted to anti–money laundering and counterterrorist financing issues in the accounting profession.[47] Ms. Wood-Tweel testified that, although this was the first committee created following the unification of the professions, others existed before it.[48]

The committee's objectives were as follows:

a. Assist CPA Canada in contributing, on behalf of the CPA profession and in the public interest, to the more effective and efficient fight against money laundering and terrorist financing.

b. Assist CPA Canada in continuing to develop a trusted reputation for the CPA profession in the area of AML/ATF.

c. Provide CPA Canada with input into the impact on individual CPAs and CPA firms of AML/ATF legislation and related governmental consultations and initiatives.

d. Support CPA Canada's efforts in the area of AML/ATF by identifying, prioritizing and analyzing issues that may have an impact on CPAs and CPA firms.

e. Assist CPA Canada with the development of timely and relevant guidance and resources that will assist CPAs and CPA firms in

46 Closing submissions, CPABC, para 89.

47 Exhibit 406, Background Report on CPA Canada's Anti–Money Laundering Activities (with appendices) [CPA Canada Background Report], para 3.

48 Transcript, January 13, 2021, pp 40–41.

> understanding their obligations under the AML/ATF legislation and improving their level of compliance.[49]

Mr. McGuire testified that part of the committee's mandate involved considering and commenting on substantial changes to the legislation.[50]

In 2014, the committee prepared a webinar entitled "Compliance with Canada's Amended AML and ATF Legislation."[51] This webinar was "designed to help CPAs determine whether and what AML obligations apply to them and their firm, recognize changes to AML obligations and update their compliance programs; and become familiar with CPA Canada's new guide for AML compliance."[52] Shortly after the webinar, CPA Canada released its updated *Guide to Comply with Canada's Anti–Money Laundering (AML) Legislation*.[53] This guide "set out recent changes to Canada's AML legislation and provided practical guidance for AML compliance to accountants and accounting firms."[54] I discuss CPA Canada's webinar and guide in greater detail below.

In May 2014, Mr. McGuire (then chair of the committee) made representations to the federal government's Standing Senate Committee on Banking, Trade and Commerce and the House of Commons Standing Committee on Finance on proposed amendments to the *PCMLTFA*.[55]

In early 2015, the committee invited FINTRAC to make a presentation on the obligations of CPAs and accounting firms under the *PCMLTFA*. As I note in Chapter 32, FINTRAC's presentation stated that there were deficiencies in CPAs' compliance with the *PCMLTFA* and that the level of awareness appeared to be low. Following that presentation, the committee considered ways to raise awareness of anti–money laundering issues among the profession and ultimately decided to issue an alert to the profession in July 2015 (discussed below).

The committee was wound down in 2016 as CPA Canada refocused its anti–money laundering efforts on engagement with the federal government.[56] In particular, it joined the Advisory Committee on Money Laundering and Terrorist Financing (discussed below).

49 Exhibit 407, Anti–Money Laundering and Anti–Terrorist Financing Committee of the Chartered Professional Accountants of Canada, Terms of Reference (February 2015), p 1.

50 Transcript, January 11, 2021, p 9.

51 Exhibit 406, CPA Canada Background Report, Appendix B.

52 Exhibit 406, CPA Canada Background Report, para 4.

53 Exhibit 393, CPA Canada, *Guide to Comply with Canada's Anti–Money Laundering (AML) Legislation*, prepared by MNP LLP (2014) [*CPA Compliance Guide*].

54 Exhibit 406, CPA Canada Background Report, para 5.

55 Transcripts to these submissions can be found in Exhibit 406, CPA Canada Background Report, Appendices D and E.

56 Exhibit 406, CPA Canada Background Report, para 9.

CPA Canada's *Guide to Comply with Canada's AML Legislation*

Mr. McGuire testified that CPA Canada increased its focus on education and produced its anti–money laundering guide when it realized that compliance with FINTRAC was exceptionally low.[57] The guide set out recent changes to legislation and provided practical guidance for compliance. It contained questionnaires, checklists, copies of forms from FINTRAC, and practical guidance on how to complete the forms.[58] Mr. McGuire wrote the guide with contributions from CPA Canada's AML/ATF Committee.[59]

As I discuss in Chapter 32, the guide contains what Mr. McGuire described as a "waterfall diagram" outlining when CPAs and accounting firms are subject to the regime (which, in his view, is complicated to determine, given the various exceptions and limited triggering activities). The guide also refers to FINTRAC's guidance on indicators of suspicion, noting:

> The presence of an indicator is one factor which may lead to the consideration of a suspicious transaction report, but by itself is not definitive. Contextual information about the client, the transaction(s) and historical behaviour will assist in determining whether there are sufficient grounds to suspect the transactions are relevant to a money laundering or terrorist financing offence.[60]

The list of suspicious indicators includes but is not limited to the following:

- Client appears to be living beyond his or her means.
- Client has cheques inconsistent with sales (i.e., unusual payments from unlikely sources).
- Client has a history of changing bookkeepers or accountants yearly.
- Client is uncertain about location of company records.
- Company carries non-existent or satisfied debt that is continually shown as current on financial statements.
- Company has no employees, which is unusual for the type of business.[61]

Ms. Wood-Tweel testified that although these indicators are helpful, CPA Canada trains for a "very high level of professional skepticism" in general.[62]

57 Transcript, January 11, 2021, pp 9–10.
58 Exhibit 406, CPA Canada Background Report, para 5.
59 Transcript, January 11, 2021, pp 13–14.
60 Exhibit 393, *CPA Compliance Guide*, pp 23–24.
61 Ibid, p 24.
62 Transcript, January 13, 2021, pp 51–53.

The guide is currently being revised and updated to reflect recent changes to the *PCMLTF Regulations*. CPA Canada indicated that it intended to issue the revised version in the spring of 2021.[63] At the time of writing, it does not appear to have been released yet.

2015 Alert to the Profession

Following FINTRAC's presentation to the CPA Canada AML/ATF Committee in 2015, CPA Canada issued an alert to the profession in July 2015.[64] The alert was shared by CPA Canada and provincial CPA regulators with their members.[65]

The alert noted that FINTRAC had informed CPA Canada that compliance by CPAs and firms with the *PCMLTFA* required improvement. It reminded CPAs and firms that, as reporting entities, they have obligations when they engage in triggering activities. It also pointed them toward FINTRAC's guidance and policy interpretations, as well as the CPA Canada guide.[66] The alert notes that the accounting sector "plays a very important role" in anti–money laundering and counterterrorist financing, given the nature of its work. Ms. Wood-Tweel testified that the sector plays two critically important roles:

> One is obviously sculpted under the legislation as reporting entities under the legislation. We have responsibilities to comply with the triggering activities, et cetera, so clearly we're there because we matter. So that's one of the ways in which we are important to the battle. But the other way is because … obviously in the public interest [we work] towards the security of the financial system in Canada at large and the capital system. That's part of our role in the work that we do every day in our craft.[67]

Finally, the alert highlighted the requirements to implement a two-year effectiveness review as well as risk assessment and mitigation plans. As I discuss in Chapter 32, these were areas in which FINTRAC compliance examinations found compliance to be particularly low.

Federal Advisory Committee on Money Laundering and Terrorist Financing

The Federal Advisory Committee on Money Laundering and Terrorist Financing is the successor to the federal government's former Public-Private Sector

63 Exhibit 406, CPA Canada Background Report, para 5.

64 Exhibit 397, CPA Canada, Alert: Proceedings of Crime (Money Laundering) and Terrorist Financing – Know Your Obligations (July 2015).

65 Transcript, January 13, 2021, pp 147–48.

66 Exhibit 406, CPA Canada Background Report, para 8; Exhibit 393, *CPA Compliance Guide*.

67 Transcript, January 13, 2021, pp 61–62.

Advisory Committee.[68] It brings together Finance Canada, FINTRAC, and industry representatives.[69] CPA Canada has participated as a member since 2016, represented by Mr. Hernandez.[70] Ms. Wood-Tweel represents CPA Canada on two working groups relating to legislation and policy.[71]

CPA Canada notes that its representatives attend meetings of the committee; take part in discussions; receive information; and provide input and feedback, including with respect to FINTRAC guidance.[72]

Input on FINTRAC Guidance and Legislative Reform

CPA Canada has made numerous submissions to federal government departments, committees, and officials on money laundering issues affecting CPAs. It has made 12 such submissions since 2014 on matters ranging from regulatory amendments to the *PCMLTFA*, the need to improve the availability of beneficial ownership information, and its view that a whistle-blower framework is needed.[73] It also regularly participates in information sessions, consultations, meetings, and discussions with federal government officials and representatives.[74]

A CPA Canada submission from March 13, 2017, is illustrative. It made a series of recommendations regarding three "pillars": beneficial ownership; enforcement and prosecution; and whistle-blowing. Mr. Hernandez explained that beneficial ownership is important to help clients do their due diligence and avoid becoming inadvertently involved in activities in which they should not engage.[75] As for enforcement and prosecution, he explained that there needs to be "a real deterrence factor"; a need to file a suspicious transaction with "consequences … a cost of crime."[76] Finally, whistle-blowing is important to encourage individuals to speak up and then allow law enforcement to bring matters to a close.[77]

CPA Canada has also provided comments to FINTRAC on its Risk-Based Approach Guidance for Accountants.[78]

68 Exhibit 406, CPA Canada Background Report, para 9.

69 Evidence of J. Hernandez, Transcript, January 13, 2021, pp 23–24.

70 Exhibit 406, CPA Canada Background Report, paras 9, 18.

71 Ibid, para 18.

72 Ibid, para 19.

73 Closing submissions, CPA Canada, para 28; these submissions are outlined in detail in Exhibit 406, CPA Canada Background Report, paras 20–53.

74 Exhibit 406, CPA Canada Background Report, para 54.

75 Transcript, January 13, 2021, pp 83–84.

76 Ibid, pp 84–85.

77 Ibid, p 85.

78 Exhibit 406, CPA Canada Background Report, para 20. These comments are included in Exhibit 406, Appendix T.

Engagement with International Anti–Money Laundering Efforts

CPA Canada is a member of the International Federation of Accountants (IFAC), which has been engaged as an anti-corruption partner in the B20, the official business community engagement forum for the G20.[79]

In December 2020, CPA Canada and the International Ethics Standards Board for Accountants (IESBA) issued an alert to the profession on COVID-19 and evolving risks concerning money laundering, terrorist financing, and cybercrime.[80] CPA Canada also provided comments on IFAC's Point of View document, *Fighting Corruption and Money Laundering*.[81]

In May 2019, Mr. Hernandez and Ms. Wood-Tweel attended the FATF Private Sector Consultative Forum on behalf of CPA Canada. This forum considered an updated draft of the FATF 2019 guidance on the accounting profession (released in June 2019).[82] CPA Canada representatives also participated in the 2020 FATF Private Sector Consultative Forum on November 24, 2020.[83]

Presentations

CPA Canada has also organized and given presentations on money laundering–related issues. In February 2019, it hosted a session where members of provincial CPA bodies joined several panellists to discuss the role of CPAs in combatting money laundering.[84] On September 2, 2020, Ms. Wood-Tweel gave a presentation to CPA Saskatchewan. Entitled "Anti–Money Laundering and Terrorist Financing Update,"[85] the presentation explained the *PCMLTFA* regime and provided an overview of beneficial ownership, new amendments to the *PCMLTF Regulations*, and how COVID-19 was creating evolving money laundering risks.[86] Ms. Wood-Tweel testified that she was encouraged by the quality of questions from practitioners and members of industry about how they could assist in the anti–money laundering fight.[87]

CPA Canada advised in its closing submissions that additional presentations have been made for the Nova Scotia and Manitoba CPA associations, and that its webinar is available for a broader audience online.[88]

79 Ibid, para 55.

80 Ibid, para 56 and Appendix GG.

81 Ibid, para 56.

82 Ibid, para 57.

83 Ibid.

84 Exhibit 406, CPA Canada Background Report, para 12. The panellists were Carol Bellringer (CPA, former BC auditor general and past member of the B20 task force on integrity and compliance); Geneviève Motard (CPA, president and CEO of the Quebec CPA Order, and chair of CPA Canada's Public Trust Committee); Michele Wood-Tweel; and Russell Guthrie (USCPA, executive director of external affairs, and CFO, International Federation of Accountants).

85 Exhibit 406, CPA Canada Background Report, Appendix L.

86 Ibid, para 13.

87 Transcript, January 13, 2021, p 113.

88 Closing submissions, CPA Canada, para 25 and footnote 40.

Other Resources

CPA Canada regularly publishes information on anti–money laundering developments and issues on its website, in its magazine for the profession, and through other media channels.[89] It also has a webpage dedicated to anti–money laundering policy developments, including its submissions to government and its work on beneficial ownership.[90]

As well, CPA Canada's Practitioner's Toolkit contains a module on regulatory and risk management. However, it does not reference anti–money laundering legislation or standards. Ms. Wood-Tweel testified that including this information is under consideration.[91]

Follow-up on Compliance with the *PCMLTFA*

Ms. Wood-Tweel testified that CPA Canada has not received further information from FINTRAC about members' compliance since issuing the 2015 alert.[92] She acknowledged, however, that CPA Canada has not followed up "in a direct way" to assess whether its members have improved their compliance, focusing instead on education and collaborating with federal committees.[93] In her view, it is important to have a "feedback loop" with members to hear about their experiences and questions, but FINTRAC, as the regulator, should be playing an important role, too.[94]

CPA Canada has not conducted surveys or the like to obtain data about members' compliance, including whether there are a significant number of transactions that ought to be but are not reported; however, it is considering doing so.[95] Ms. Wood-Tweel explained that such data would be relevant for several purposes, including *PCMLTFA* compliance, a better understanding of the nature of members' work, and determining what continuing professional development to offer.[96]

The above review demonstrates that CPA Canada has generally been active in preparing educational materials and engaging with government initiatives relating to anti–money laundering. However, CPA Canada must do more to ensure that its members understand their obligations under the *PCMLTFA*. Following FINTRAC's presentation in 2015 and the July 2015 alert, CPA Canada has not followed up directly with FINTRAC to determine if its members' compliance or understanding has improved. I recommend that CPA Canada acquire and maintain insights into its members' compliance with the *PCMLTFA*.

89 A list can be found in Exhibit 406, CPA Canada Background Report, para 14.

90 Exhibit 406, CPA Canada Background Report, para 15. A copy of the webpage can be found in Exhibit 406, Appendix S.

91 Exhibit 394, *Report on Accountants, Money Laundering, and Anti–Money Laundering*, prepared by the amISHOP (October 31, 2020, updated December 31, 2020), para 67; Evidence of M. Wood-Tweel, Transcript, January 13, 2021, p 80.

92 Transcript, January 13, 2021, pp 65–66.

93 Ibid, pp 63–64.

94 Ibid, p 65.

95 Ibid, p 74.

96 Ibid, pp 102–3.

Recommendation 80: I recommend that the Chartered Professional Accountants of Canada follow up with the Financial Transactions and Reports Analysis Centre, on an ongoing basis, to acquire and maintain insights into the level of reporting and compliance of its membership with the requirements of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Confidentiality Obligations and a Potential Whistle-blower Regime

As I explain in Chapter 30, the CPA Code contains provisions on confidentiality. CPABC and CPA Canada witnesses expressed concern that their members' duty of confidentiality prevents them from disclosing confidential information, and that even in circumstances where disclosure is permitted, members could still face civil liability for breach of the duty. For this reason, CPA Canada has advocated for a whistle-blower regime that would allow CPAs to report their suspicions while being protected for the breach of confidentiality.

Concerns were also raised before me regarding CPABC's duty to maintain confidentiality under section 69 of the *CPA Act* and whether it is permissible to share information with law enforcement or others.

I address both issues in turn.

The Duty of Confidentiality Under the CPA Code

Section 208.1 of the CPA Code states that a member "shall not disclose any confidential information concerning the affairs of any client, former client, employer or former employer." Ms. Wood-Tweel testified that the rules of confidentiality exist in relation to current and former clients, and current and former employers. They allow for full disclosure from the client, which in turn allows the accountant to do his or her job.[97]

Section 208.1 contains some exceptions. Specifically, a member can disclose confidential information when

> (a) properly acting in the course of carrying out professional duties;
>
> (b) such information should properly be disclosed for purposes of Rules 101, 211 or 302 or under the [CPA] Act or Bylaws;
>
> (c) such information is required to be disclosed by order of lawful authority or, in the proper exercise of their duties, by the Board, or a committee, officer or other agent of CPABC;

97 Ibid, pp 29–30.

(d) justified in order to defend the registrant or any associates or employees of the registrant against any lawsuit or other legal proceeding or against alleged professional misconduct or in any legal proceeding for recovery of unpaid professional fees and disbursements, but only to the extent necessary for such purpose; or

(e) the client, former client, employer or former employer has provided consent to such disclosure.

The duty is also overridden when information is provided to CPABC for the purpose of a practice review or investigation.[98]

CPABC submits that although the duty of confidentiality is different from the legal concept of privilege, it would not consider members to have committed professional misconduct or a breach of the CPA Code if they disclosed confidential information in circumstances that are equivalent to those for which the law recognizes an exception to solicitor-client privilege.[99] These circumstances would include:

- disclosure to appropriate authorities of communications from a client or employer that are themselves criminal or made with a view to obtaining advice to facilitate the commission of a crime;[100] and
- other disclosure that a CPA has reasonable grounds to believe is necessary to prevent a crime involving death or serious bodily harm to any person.[101]

However, CPABC notes that although these circumstances might be exceptions to the duty of confidentiality, "they do not necessarily shield a CPA from civil liability for breach of an express or implied duty of confidence, or other possible legal consequences over which CPABC has no authority."[102] In this regard, Mr. Hernandez testified that a CPA who breaches confidentiality in a situation where there is no duty to report could be held civilly liable or terminated by their employer.[103]

Without deciding the issue, CPABC's position on the above exceptions appears logical. It would seem to be an anomalous result if the exceptions to solicitor-client privilege (which, as I discuss in Chapter 27, is a constitutionally protected right with stringent protections and few exceptions) would not exist for the non-

98 *CPA Act*, ss 51(9), (10).

99 Closing submissions, CPABC, para 72.

100 Closing submissions, CPABC, para 72, citing *Solosky v the Queen*, [1980] 1 SCR 821 at 835–36 and *Descôteaux v Mierzwinski*, [1982] 1 SCR 860 at 881. CPABC further notes that, in line with *McDermott v McDermott*, 2013 BCSC 534, it would consider that communications in which a client deliberately uses the CPA to facilitate unlawful conduct does not come within the scope of the duty of confidentiality: Closing submissions, CPABC, footnote 73.

101 Closing submissions, CPABC, para 72, citing *Smith v Jones*, [1999] 1 SCR 455 at paras 74–86.

102 Closing submissions, CPABC, para 74.

103 Transcript, January 13, 2021, p 34; see also Evidence of M. Wood-Tweel, Transcript, January 13, 2021, pp 135–37, 151–52.

constitutionally protected duty of confidentiality owed by CPAs. Nonetheless, I would encourage CPABC or CPA Canada to seek a legal opinion if they consider it necessary to definitively determine what exceptions to the duty of confidentiality exist. This opinion could be particularly useful with respect to CPABC's suggestion, as I understand it, that CPAs might still be liable for breaching confidentiality, even when an exception applies.

Mr. Hernandez testified that the above issues related to the duty of confidentiality are the reason that CPA Canada has been advocating for a whistle-blower regime since 2017. Such a regime would allow CPAs with suspicions to provide information to law enforcement, prosecutors, or regulators and be protected for the breach of confidentiality.[104] Indeed, several of CPA Canada's submissions to the federal government have dealt with the whistle-blower proposal. Ms. Liu testified that CPABC is also supportive of a whistle-blower regime.[105]

In this regard, the International Ethics Standards Board for Accountants has developed the Non-Compliance with Laws and Regulations (NOCLAR) framework. Ms. Wood-Tweel explained that NOCLAR is a framework by which accountants can determine their steps in response to known or suspected non-compliance with laws or regulations. It was designed with anti–money laundering in mind.[106]

Ms. Wood-Tweel testified that Canada has no single legislative infrastructure for public disclosure and whistle-blowing, a problem that makes it difficult to implement NOCLAR. Whistle-blowing provisions exist in various statutes, including the *PCMLTFA*, environmental legislation, and securities legislation.[107]

CPA Canada accordingly submits, and CPABC agrees, that a national whistle-blowing framework is important so that CPAs need not navigate a complex patchwork system of reporting governed by discrete legislative frameworks."[108] It points to the United Kingdom's *Public Disclosure Act* and the US *Bank Secrecy Act*.[109] CPA Canada submits:

> A national whistleblowing framework would be an important mechanism for those professionals who may encounter money laundering activities in circumstances that, for example, do not meet the requirements for a [suspicious transaction report], and where the CPA is not able to resolve the issue within the organization according to professional standards. It is an important consideration for the potential adoption of the NOCLAR international standard in the Canadian CPA profession … is currently under review.[110]

104 Transcript, January 13, 2021, p 33.

105 Transcript, January 12, 2021, p 51.

106 Transcript, January 13, 2021, pp 137–38.

107 Ibid, pp 138–39, 120–21.

108 Closing submissions, CPA Canada, para 87.

109 Closing submissions, CPA Canada, paras 88–89; Closing submissions, CPABC, para 76.

110 Closing submissions, CPA Canada, para 90.

I strongly endorse the work being done by CPA Canada toward implementing a national whistle-blower framework for chartered professional accountants. I encourage CPA Canada to continue its work in this regard.

CPABC's Duty of Confidentiality Under the *CPA Act*

Although CPABC supports a whistle-blower framework, it has concerns about any recommendation that would contemplate CPABC disclosing to FINTRAC confidential information about its members' clients. In CPABC's view, such disclosure would raise serious concerns about privacy and confidentiality and would also be incompatible with CPABC's regulatory role:

> The disclosure of identifiable client information to FINTRAC could be harmful to CPABC's ability to carry out its regulatory functions under the *CPA Act*, which depends on registrants providing CPABC with access to client information on a confidential basis when it is relevant in both practice reviews and investigations, on the understanding that CPABC will be required to maintain the confidentiality of that information.[111]

Mr. Tanaka testified that section 69 of the *CPA Act* and the CPABC *Code of Professional Conduct* contain strong protections with respect to confidentiality. Section 69 states in part:

> **69**(1) A person acting under this Act must keep confidential all facts, information and records obtained or provided under this Act or under a former enactment, except so far as the person's public duty requires or this Act or the bylaws permit the person to disclose or to report or take official action on the facts, information and records.

Mr. Tanaka testified that, in part because of section 69, CPABC would "very rarely" refer a matter to law enforcement:

> Q: Appreciating that CPABC is not a criminal court and it's not a prosecuting body, … what would CPABC do if it uncovered activity that it suspected might be associated with criminality? … Would CPABC ever refer something to the police?
>
> A: Very rarely. I mean, we're an independent organization. We're not an agent of the state. And … we have strict confidentiality requirements in [the CPA] Act in section 69 and so we have to respect that and in addition there's privacy legislation as well, so it would be very rare.[112]

Interestingly, however, the Law Society of British Columbia, which has a similar limitation in section 88(3) of the *Legal Profession Act*, has implemented rules permitting the executive director to provide information to law enforcement in certain

111 Closing submissions, CPABC, para 99.

112 Transcript, January 12, 2021, pp 55–56.

circumstances upon obtaining consent from the Discipline Committee (see Chapter 28). Section 88(3) reads:

> **88**(3) A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person *except for a purpose contemplated by this Act or the rules*. [Emphasis added.]

It strikes me that the italicized portion of section 88(3) is similar to the exception in section 69 of the *CPA Act*; namely, "except so far as the person's public duty requires or this Act or the bylaws permit." In the same way that the Law Society has enacted rules allowing for disclosure to law enforcement in certain situations, it appears that CPABC could enact rules or bylaws permitting it to disclose confidential information to law enforcement in certain situations. The reference to a person's "public duty" is particularly interesting, as this seems to contemplate disclosing information for a public interest purpose.

CPABC, as a regulator, has unique access to everything in a CPA's file, including confidential information. Further, through practice reviews, it may very well come across situations in which a member was, wittingly or unwittingly, potentially involved in money laundering or other illegal activity. It is important that CPABC be able to share this information with law enforcement in appropriate circumstances. I therefore recommend that CPABC enact bylaws or rules addressing situations in which it can disclose information to law enforcement.

Recommendation 81: I recommend that the Chartered Professional Accountants of British Columbia pass bylaws or rules enabling it to share information with law enforcement in appropriate circumstances.

Conclusion

My discussion of the accounting sector has revealed that much work remains to be done. While there is, unfortunately, a relative shortage of evidence on the precise nature and extent of the involvement of accountants in money laundering in this province, I am satisfied that the nature of their work presents a significant money laundering vulnerability. Anti–money laundering regulation in this sector is crucial and must be strengthened.

As a regulator with a public interest mandate, CPABC has an important role to play in anti–money laundering regulation. This regulation is especially important considering the apparently low compliance rate by CPAs and firms with the *PCMLTFA* and the relatively few compliance examinations carried out by FINTRAC. I trust that

CPABC will consider my recommendations seriously and begin regulating its members for anti–money laundering purposes.

As I discuss further in Chapter 8, I have recommended the creation of an AML Commissioner. The commissioner's role would include a reporting function in which he or she would report to the provincial government on progress being made in various sectors with respect to anti–money laundering regulation. The commissioner will be well placed to monitor CPABC's progress in implementing anti–money laundering measures and report on this progress to the provincial government.