

May 17, 2018

Director General
Financial Systems Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa ON K1A 0G5

Subject: Review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)

Dear Director General:

We are writing on behalf of the 110,000 small- and medium-sized enterprises (SMEs) who are members of the Canadian Federation of Independent Business (CFIB) to provide feedback on the federal government's review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).

While our members recognize the importance of ensuring that funds stay out of the hands of criminal and terrorist groups, the government must also ensure that the PCMLTFA does not place an undue compliance and cost burden on SMEs conducting legitimate business transactions. While the vast majority of small businesses do their best to follow the rules and comply with their legal obligations, many small businesses struggle to understand the complex nature of the PCMLTFA and its requirements. In addition, there are concerns about FINTRAC's enforcement of monetary penalties for non-compliance among small businesses.

Compliance and reporting requirements under the PCMLTFA

The current compliance and reporting requirements under the PCMLTFA do not fully consider the realities of small businesses. Unlike the large financial institutions and larger retailers to which the PCMLTFA rules apply, small businesses such as independent jewellery retailers or real estate firms are not equipped with the same tools and resources to aid in their compliance. Whereas a larger company can invest time and money into implementing systems to manage their compliance requirements, in a small business, it is often left up to the owner to figure it out for themselves all while trying to run their business. Our members in the jewelry and real estate sectors have expressed that complying with PCMLTFA regulations was extremely complex and time-consuming for their business, and they did not believe that they should be given the same treatment as larger firms. In the words of one CFIB member

in Nova Scotia: “the process required for a small store like mine to comply is unbelievably time consuming, complex to navigate and unnecessary at this level for small jewellers. Without it, my bank could not lend funds nor open a line of credit which would cripple my business. I understand the principal behind the legislation; however, they require the same procedure for large corporations as they do for mom and pop small business.”

As such, we recommend that the government introduce a simplified regime that reduces the costs and complexities for small businesses which will ensure better overall compliance with the PCMLTFA.

Education before enforcement

CFIB encourages government departments and agencies to take an approach of education before enforcement when it comes to small businesses, as this is the most effective way to encourage compliance. Often, an emphasis on enforcement can make small business owners feel as though the government perceives them as criminals. Rather than relying on fines and penalties, FINTRAC should instead focus its resources on improving small business owners’ knowledge of their requirements under the PCMLTFA which will go a long way to ensuring better compliance.

Given the complexity of the rules, many business owners may not be fully aware or fully understand their requirements under the PCMLTFA as there is no guidance that is specifically targeted at small businesses. It is also unclear whether small businesses can directly contact FINTRAC for additional guidance or questions related to compliance with the PCMLTFA. As small business owners themselves are often solely responsible for their business’ compliance with the regulatory requirements, it is essential that the government provide them with accurate information that is in plain language and tailored to their needs. At the very least, FINTRAC should build tools and guidance documents with small business in mind and ensure there is a point of contact for them to assist them with reporting should they need it.

Moreover, the audit process itself should be an opportunity to educate, rather than punish, small business owners. We were concerned by witness testimony during the Standing Committee on Finance that described an incident where a small real estate firm was fined more than \$30,000 for failing to adequately train their employees. As FINTRAC continues to review its enforcement policies, we encourage the government to ensure that proper tools and guidance are first offered to small businesses rather than immediately assign penalties for their first instance of non-compliance.

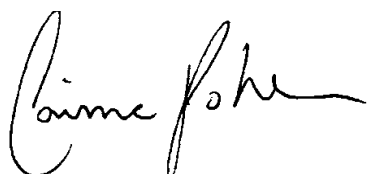
Where fines are appropriate, government should also consider the severity of contravention and the size of the business when determining the amount. There should also be a scale when calculating the penalty, where the amount is minimal for first-time offences and the fine is accompanied by tools and resources aimed at educating the employer on their requirements under the PCMLTFA. In cases of “good faith” type errors, the government should ensure that they do not impose hefty fines on small business owners. We also recommend that a maximum amount for penalties be set for small businesses.

In regards to naming offenders, we urge the government to use caution when applying this penalty to smaller firms. For many small businesses, upholding their reputation is essential to maintaining their business and attracting clients, therefore publically naming firms can have lasting and damaging effects. We therefore urge the government not to publicize the names of offenders for minor violations of the PCMLTFA. Further to this, we do not recommend that names be maintained on the public list for a prolonged period of time.

With the many constraints and challenges already facing smaller firms, the government must consider the unique circumstances facing Canadian small business owners. As the government moves forward with its review of the PCMLTFA, it is essential that its complexity and costs for small business are fully taken into account. Resources should be spent on awareness programs rather than a punitive approach to better ensure that small business owners are fully aware of their obligations. Small businesses are essential to Canada's economic growth and governments should not implement measures that would only increase their compliance burden and impede their ability to create jobs and be productive.

Should you have any questions or concerns, you can reach our office at 613-235-2373 or by email at Corinne.Pohlmann@cfib.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "Corinne Pohlmann". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corinne Pohlmann
Senior Vice-President
National Affairs & Partnerships