

Writer's Direct Number: (416) 598-5863
E-mail: dan.pinnington@lawpro.ca

May 16, 2018

Via email to fin.fc-cf.fin@canada.ca

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

Dear Director General:

RE: Request for Submissions on “Reviewing Canada’s Anti-Money Laundering & Anti-Terrorist Financing Regime” (the “Discussion Paper”)

Thank you for the opportunity to make submissions in response to the Discussion Paper. This submission is being made by Lawyers’ Professional Indemnity Company (LAWPRO). Consent is given to disclosure of the whole of the within comments. As you will read below, our particular focus is on the potential role of title insurers in combatting money laundering and terrorist financing.

Executive Summary

LAWPRO has reviewed the Discussion Paper with interest and is supportive of the efforts of the Department of Finance to combat money laundering and terrorist financing. Having said that, in LAWPRO’s view:

- (1) there is no value to be gained by requiring Canadian title insurers to participate in the PCMLTFA regime because they have no information that is not duplicative of that held by others in the process;
- (2) it would cause delay and add costs with little or no overall benefit; and
- (3) it is difficult to envision how title insurance *per se* could be used for anti-money laundering purposes.

Background on LAWPRO

LAWPRO is an Ontario-incorporated insurance company, licensed to sell title insurance and lawyers’ professional liability insurance. A subsidiary of The Law Society of Ontario, LAWPRO was incorporated in 1990 to insure the professional liability insurance program for all lawyers in private practice in Ontario. LAWPRO later obtained a license to provide title insurance in Ontario and in 1997, launched the TitlePLUS[®] program, a comprehensive title insurance product. TitlePLUS title insurance is now available in all Canadian jurisdictions.

LAWPRO holds an “A” (Excellent) rating from A.M. Best Co, the world’s oldest and most authoritative insurance rating and information source. TitlePLUS insurance is the only all-Canadian and only Bar-related title insurance program in Canada.

LAWPRO’s TitlePLUS insurance is distributed exclusively through lawyers (or notaries in Quebec). These lawyers, who are not compensated by LAWPRO, apprise clients about the existence and nature of title insurance in the course of providing legal services and assist and advise the client if title insurance is to be obtained as part of a real estate transaction. The TitlePLUS program currently has more than 2700 national subscribing and participating lawyers (and notaries in Quebec) whom we have preapproved to submit the necessary information on behalf of clients in the course of their legal work, if desired. Any lawyer, or notary in Quebec, in good standing, may apply to participate in the program. TitlePLUS insurance is accepted by approximately 100 confirmed lenders across the country. All of the major banks and other national lenders accept TitlePLUS coverage to protect their interests.

Background on title insurance

There are various title insurance business models in operation in North America:

- (a) A traditional model in the United States (the “American” model): The title insurer (or its agent) conducts the entire real estate transaction or mortgage financing, preparing closing documents, meeting with the party(ies), acting as escrow agent for funds and documents, and ultimately disbursing closing proceeds;
- (b) The “contact with insured” model: In this model, the insurer does not handle the entire real estate deal (for example, the insurer will not typically handle closing funds), but does have some direct contact with the insured in the course of the title insurance application. For example, the title insurer may accept applications for existing owner title insurance online, directly from property owners (i.e., where no transaction is pending, because the insurance applicant already owns the property). As a further example, the title insurer may interact directly with a lender who is obtaining mortgage only title insurance at the time of a mortgage transaction (whether refinance or new mortgage);¹ or
- (c) The “no contact with insured” model: The title insurer only accepts applications initiated by a lawyer (or notary, especially in Quebec), who orders the title insurance policy on behalf of a purchaser and/or lender client at the time of the transaction. In this model the title insurer has no contact with the ultimate policyholder and handles no funds for the transaction. The premium for the insurance is delivered to the insurer by the lawyer’s office.

LAWPRO’s TitlePLUS business is entirely the “no contact with insured” model. There is likely one other title insurer in Canada whose business is also model (c) exclusively, whereas two other title insurers are believed to use model (b) to some extent.

¹ It is the lender in turn who deals directly with the borrower, including disbursing mortgage proceeds.

We are not aware of any title insurers in Canada using the American model, where the title insurer often controls the entire transaction including the receipt and transmission of funds. That is likely why, as noted on page 26 of the Discussion Paper, American title insurers are more strictly regulated from an anti-money laundering/anti-terrorist financing perspective.

In addition to the fact that Canadian title insurers do not traditionally handle funds and often have no contact with the insured, the data that a Canadian title insurer collects is extremely limited. Typical information would largely mirror what is already available on registered title, such as:

Name of purchaser, borrower and/or lender (with no knowledge of beneficial ownership or interests, because they are not insured)

Legal description of property

Municipal address of property

Assessment Roll No.

Policy amount (which is typically the purchase price or the mortgage amount, depending on the type of policy), and

Exceptions to coverage related to the state of the title and/or property.

LAWPRO's reasons for this submission

LAWPRO has reviewed the Discussion Paper with interest and is supportive of the efforts of the Department of Finance to combat money laundering and terrorist financing. Having said that, in LAWPRO's view:

- (4) there is no value to be gained by requiring Canadian title to participate in the PCMLTFA regime because they have no information that is not duplicative of that held by others in the process;
- (5) it would cause delay and add costs with little or no overall benefit; and
- (6) it is difficult to envision how title insurance *per se* could be used for anti-money laundering purposes.

No value to be gained

Contrary to what is suggested in the Discussion Paper, Canadian title insurers are not necessarily in a unique position to gather and report information related to money laundering and terrorist financing. We do not handle any funds for closing and in terms of funds provided for a deal by a purchaser or a private lender, we have no way of knowing the source of the funds.

In the issuance of Canadian title insurance for a purchase transaction (and certainly for all model (c) title insurers), the title insurer has no contact with the proposed insured and

therefore has limited opportunity to collect information from the insured. This may seem surprising, but one must remember the role of title insurance in a real estate transaction: it replaces the lawyer's opinion on title, so it has a very narrow, legal focus,

Furthermore, if consideration is being given to seeking information from the land registration system, it would be redundant to also include the title insurer, as the title insurer would not likely have information beyond that available on registered title. After all, the state of registered title is predominantly what title insurers insure (not the underlying beneficial ownership).

Real estate agents and lenders are in a much better position to have insight into the deal and how it is being financed, since they are much more likely to have early and direct contact with the parties to the transaction.

For the above reasons, in LAWPRO's view it is unlikely that there would be any valuable insights gained by the government requiring title insurers to be under special obligations regarding PCMLTFA.

Added delay and costs

Because title insurance cannot typically be ordered until the title search is completed and mortgage details are received from the lender, it is common for coverage applications to be received in the 24 to 48 hour period before closing (even on the day of closing in some cases). This gives a title insurer very little time to undertake any inquiries when there is no reasonable prospect of the title insurer having any actual contact with the prospective insured. This further limits any likelihood of the title insurer being able to ensure the accuracy and completeness of any information that could be acquired from the prospective insured.

This may be contrasted, for example, with life insurance (often a form of "deposit" product), where there is an expectation of an ongoing and (hopefully) long term relationship between the insured and the insurer, with the opportunity to collect information directly from the insured.

So requiring title insurers to try to collect information that is not needed for underwriting, from policyholders with whom they have no direct contact would be contrary to the stated goal of minimizing the compliance burden and cost, when balanced against what could likely be achieved here that could not be achieved elsewhere.

Title insurance is not itself a likely vehicle for laundering money

It is hard to envision how title insurance itself could be of assistance in laundering money. Contrary to life insurance (which is already specifically regulated), there is no "deposit" or investment feature to title insurance: the policyholder pays a relatively modest premium on a one time basis (the current average premium in the TitlePLUS portfolio is \$270), in exchange for being insured against a variety of legal risks related to title to the property, or in the case of TitlePLUS legal services coverage, the legal sufficiency of the work done by the lawyer acting on the transaction.

The policy amount is typically equal to the purchase price or the mortgage amount, depending on the type of policy. Before a claim would be paid the title/legal issue would have to have manifested itself at the property and been verified by a claims adjuster or engineering/surveying expert, or in a legal opinion/decision related to registered title. The claims settlement process is considerably slower than in some other types of personal lines insurance, and often involves many experts. The risk of fraudulent claims is considered low.

Conclusions

Thank you for the opportunity to make these submissions in response to the Discussion Paper.

Please do not hesitate to contact us if you have any questions. We would be happy to meet with you if additional information about the operation of title insurance in Canada is needed.

Yours truly,

LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO®)

per:



Daniel E. Pinnington
President & CEO

/jrm

c.c. Paul B. Schabas, Treasurer, Law Society of Upper Canada
Diana Miles, CEO, Law Society of Upper Canada
Susan T. McGrath, Bencher and Chair, LAWPRO