

T-1555-23

FORM 301 Rule 301
Notice of Application

ACTION

FEDERAL COURT

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F I L E D	FEDERAL COURT COUR FÉDÉRALE
26-JUL-2023	
Alastair Ling	
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BETWEEN:

Austin Jewellers (General Partnership: Frank Suppanz and Lisa
Suppanz, partners)

Applicant

AND:

The Attorney General of Canada
and
Financial Transactions and Reports Analysis Centre of Canada
("FINTRAC")

Respondents

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court located 701 W Georgia St, Vancouver, BC V7Y 1K8 in person.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: July 25, 2023

Issued by: *(Registry Officer)*

Address of local office:

TO: FINTRAC (Review and Appeals Unit)

24th floor, 234 Laurier Avenue West
Ottawa ON K1P 1H7
CANADA

AND: The Attorney General of Canada

British Columbia Regional Office
Department of Justice Canada
900 - 840 Howe Street
Vancouver, British Columbia V6Z 2S9

Application

This is an application for judicial review in respect of:

The decision of Sarah Paquet, Director and Chief Executive Officer of the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”), received by Frank Suppanz of Austin Jewellers by registered mail on Wednesday June 28th, 2023 (the “Decision”)

The Decision indicated that on February 19, 2021, FINTRAC issued a Notice of Violation (the “Notice”) to Austin Jewellers, pursuant to section 73.13 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”). The Notice identified two violations that FINTRAC believed on reasonable grounds had been committed and proposed a total administrative monetary penalty of \$66,000.

The alleged violations set out in the Notice were the following:

- i. Failure of a person or entity to develop and apply written compliance policies and procedures that are kept up to date and, in the case of an entity, are approved by a senior officer, that occurred during the period of February 1, 2018, to July 31, 2018, contrary to subsection 9.6(1) of the Act and paragraph 71(1)(b) of the Regulations.
- ii. Failure of a person or entity to assess and document the risk referred to in subsection 9.6(2) of the Act, taking into consideration prescribed factors, that occurred during the period of February 1, 2018, to July 31, 2018, contrary to subsection 9.6(1) of the Act and paragraph 71(1)(c) of the Regulations.

In correspondence dated April 29, 2021, Austin jewellers through both Frank Suppanz and Lisa Suppanz made representations and provided several documents in relation to both violations and the penalty amount.

On July 22, 2021, FINTRAC informed Austin Jewellers by letter that additional time would be required to assess its submission that the proposed penalty would punish Austin Jewellers due to the entity’s small size.

On January 19, 2023, FINTRAC requested Austin Jewellers provided additional financial documentation to assess the potential inability to pay.

On January 30, 2023, and February 18, 2023, Austin Jewellers provided documentation and requested additional time (a total of 60 days) to submit additional documentation with the assistance of their accountant.

FINTRAC decided on a balance of probabilities that Austin Jewellers committed the two violations and imposed a total administrative monetary penalty of \$66,000.

The Applicant makes application for:

1. The Decision by FINTRAC be quashed; or
2. the monetary penalty be substantially reduced; or
3. further relief be granted as the honourable Court deems just.

The grounds for the application are:


1. The Director in their Decision made a palpable and overriding error in administering a \$66,000 monetary penalty contrary to section 73.11 of the Act; and
2. The Director's Decision was procedurally unfair
 - a. The Decision contained bias with reference to Hell's Angels as clients of Austin Jewellers
 - b. The reasons provided with respect to the monetary penalty were inadequate
 - c. The investigative process breached principles of fairness by failing to investigate further into Ms. Suppanz's income, which was crucial for their final determination on the ability to pay
 - d. FINTRAC caused a substantial amount of delay throughout the investigation

This application will be supported by the following material:

1. Affidavit of Frank Suppanz
2. Affidavit of Lisa Suppanz
3. Correspondence and documents provided by Austin Jewellers, Frank Suppanz, and Lisa Suppanz to FINTRAC
4. Case law
5. Such other material to be provided that the honourable Court permit

The applicant requests FINTRAC to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the FINTRAC to the applicant and to the Registry: all correspondence and documents provided by FINTRAC to Austin Jewellers, Frank Suppanz, and Lisa Suppanz including the Decision rendered.

July 26, 2023



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