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Guide to FINTRAC's Administrative Penalty Policy

This paper summarizes FINTRAC's approach to administrative penalties it issues to Reporting Entities (RE) under its supervision, and includes insights from compliance-assurance.ca.

The purpose of FINTRAC's **administrative monetary penalties program** is to support efforts to ensure compliance with the PCMLTFA (the Act) and associated Regulations by providing a measured response to non-compliance issues.

Assessing non-compliance

In the normal course of FINTRAC's supervisory mandate, they identify instances of non-compliance through "assessment activities", meaning reviews, exams, or audits. The severity of each non-compliance issue is assessed by understanding both the extent and the root-cause of the non-compliance; and its adverse impact on FINTRAC's mandate and the achievement of PCMLTFA objectives.

Following the completion of an assessment activity, FINTRAC may decide to:

- Take no further action

- Conduct follow-up assessment activities
- Issue an administrative monetary penalty and publish the Notice of Violation on FINTRAC's website
- Disclose relevant information to law enforcement for investigation and prosecution of non-compliance offences under the Act and associated Regulations.

Violation penalties and severity

The Act lists non-compliance violations that could be the basis of an administrative monetary penalty. Administrative Monetary Penalty Regulations categorize violations by degree of importance and assign the following penalty ranges noted below.

Degree of importance	Penalty Range and Maximums
Minor violation	\$1 to \$1,000 per violation
Serious violation	\$1 to \$100,000 per violation
Very serious violation	\$1 to \$100,000 per violation for an individual \$1 to \$500,000 per violation for an entity

Multiple violations of the same type can result in a total amount that exceeds these limits. Regarding maximum penalty sizes, Bill C-12 (before the Senate of Canada at the time of publication) seeks to increase the penalties for Very Serious Violations by a factor of forty times, i.e. to \$4M per violation for an individual and \$20M for an entity.

Criteria for determining an administrative penalty amount

There are three criteria that must be considered when determining a penalty amount:

- The purpose of penalties, which is to encourage compliance and not to punish
- The harm done by the violation
- The RE's history of compliance.

Guidelines for penalty calculation

One - Assessment of harm

FINTRAC defines “harm” as the degree to which a violation interferes with achieving the objectives of the Act or with FINTRAC's ability to conduct its mandate. In assessing the harm done by a violation, FINTRAC considers both the potential and the resulting harm. “Resulting harm” means additional violations that come from the original violation.

The first step FINTRAC takes to assess the harm done when calculating a penalty is to determine whether the RE has **completely failed** to meet a requirement or **partly failed**. For some violations, this is clear; the requirement was met, or it was not met. Other violations require further analysis. For example, when policies and procedures are missing a component, the requirement is met in part.

When a RE has completely failed to meet a requirement, the maximum is applied. When a RE has partly failed with a requirement, the penalty is determined by the specific nature of non-compliance and the degree of the failure.

Two - Compliance history

The second step in a penalty calculation looks at both the compliance history of the RE and the administrative monetary penalty's purpose, which is to encourage compliance and not to punish. FINTRAC adjusts the penalty amount for each violation (determined in the assessment of harm) and if the violation has been observed as a previous deficiency.

Administrative monetary penalty process

The administrative monetary penalty process begins with the issuance of a “notice of violation” and can involve a review and appeal if the notice is challenged by the RE. Key elements of the penalty process are noted below:

One - Notice of violation

A RE subject to an administrative monetary penalty will receive a notice of violation that will include the following:

- The name and address of the RE that is subject to the administrative monetary penalty
- The penalty amount
- Payment instructions
- Information on the right to make written representations if the RE wishes to challenge the notice
- Instructions on how to make representations to FINTRAC
- A list of the violations committed
- Details of the penalty calculation
- A list of all the instances of the committed violations.

A notice of violation must be issued no more than 2 years from the date when the non-compliance became known to FINTRAC.

If a RE pays the penalty indicated in the notice of violation, the reporting entity is deemed to have committed the violations specified, and the administrative monetary penalty process ends, and the case is closed.

Two - Representations to FINTRAC's Director and CEO

REs can request a review of their case. This can be done by written representation to the Director and CEO of FINTRAC, within 30 days of receiving the notice of violation. A challenge usually requires expert legal representation to argue the case.

If a RE requests a review, FINTRAC will decide on the balance of probabilities if the reporting entity committed the violation or not; and may impose the penalty proposed in the notice of violation or a lesser penalty. A notice of decision will be issued to communicate FINTRAC's decision and the reasons behind it.

Three - Failure to pay or make representations

Failure to pay or make representations to FINTRAC within 30 days signals the end of the process; the violations will be upheld, and a notice of penalty will be issued.

Four - Notice of decision and right of appeal

An RE that receives a decision has 30 days to exercise its right of appeal to the Federal Court of Canada. The process ends when the RE pays the penalty imposed in the notice, or does not appeal FINTRAC's decision within 30 days.

Should FINTRAC not issue a notice of decision within 90 days, the RE may appeal the proposed penalty in Federal Court within 30 days. Federal Courts have the power to confirm, set aside or change a notice of decision issued by FINTRAC.

As long as the administrative monetary penalty is before the Federal Court, the Federal Court of Appeal, or the Supreme Court of Canada, the administrative monetary penalty process is considered to be ongoing.

Five - Public notice

FINTRAC must make public (press notice, post to website) the name of the RE, the nature of the violation, and the amount of the penalty imposed in the following cases when the RE:

- Pays the penalty issued in a notice of violation
- Neither pays the penalty issued in the notice of violation nor asks for a review
- Receives a notice of decision indicating that a violation has been committed
- Enters into a compliance agreement with FINTRAC
- Does not comply with a compliance agreement.

When publicizing the nature of the violation, FINTRAC may also include the reasons for its decision, including the relevant facts, analysis and considerations that formed part of the decision.

Six - Collection of penalties

The penalty amount is due 30 days after the notice of violation or notice of decision is received. Interest would begin to accrue on the day after the penalty was due. Any penalty that becomes payable is an outstanding debt to the Crown. FINTRAC will pursue outstanding administrative monetary penalty payments.

For more information on FINTRAC compliance, contact Mark Anderson: 647.300.1711 or mark@complianceassurance.ca