

Federal Court



Cour fédérale

**Date:** 20250522

**Docket:** T-1555-23

**Citation:** 2025 FC 908

**Vancouver, British Columbia, May 22, 2025**

**PRESENT:** Justice Andrew D. Little

**BETWEEN:**

**AUSTIN JEWELLERS  
(GENERAL PARTNERSHIP: FRANK SUPPANZ AND LISA SUPPANZ, PARTNERS)**

**Appellant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS (Public Version)**

[1] Austin Jewellers appeals to this Court from a decision dated June 23, 2023, made by the Director of the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC” or the “Centre”) under subsection 73.15(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the “Act”).

[2] The Director concluded that the appellant committed two violations of subsection 9.6(1) of the Act and paragraphs 71(1)(b) and (c) of the *Proceeds of Crime (Money Laundering) and*

*Terrorist Financing Regulations*, SOR/2002-184 (the “Regulations”). The Director imposed two administrative monetary penalties (“AMPs”) totalling \$66,000 for the violations.

[3] This appeal concerns the AMPs. The applicant did not dispute the two violations in this appeal.

**I. Events Leading to the Director’s Decision**

[4] The appellant is a dealer in precious metals and stones. It is a reporting entity under section 5 of the Act and section 39.1 of the Regulations.

[5] The appellant’s business is located in Coquitlam, British Columbia. It is registered as a general partnership under the *Partnership Act*, RSBC 1996, c. 348. Frank Suppanz and Lisa Cardarelli-Suppanz are named as partners on the registration documents.

[6] On December 12, 2018, FINTRAC contacted the appellant by telephone to confirm that the appellant was subject to Parts 1 and 1.1 of the Act, as a dealer in precious metals and stones.

[7] On December 20, 2018, FINTRAC notified the appellant by telephone that it would be subject to an examination by FINTRAC to assess its compliance with Parts 1 and 1.1 of the Act.

[8] By letter dated December 21, 2018, FINTRAC confirmed the examination and requested that the appellant provide FINTRAC with certain documents and information by February 8, 2019.

[9] On January 16, 2019, the appellant called FINTRAC to discuss the information request in the notification letter.

[10] On February 8, 2019, FINTRAC did not receive any of the documentation requested by that date.

[11] On March 4, 2019, FINTRAC conducted the examination, which covered the period between February 1, 2018, and July 31, 2018. Because the requested documentation had still not been provided, the examination was conducted without it.

[12] By letter to the appellant dated June 13, 2019, FINTRAC provided its examination findings. FINTRAC identified deficiencies that constituted significant non-compliance with the Act and invited the appellant to submit any additional information with respect to the deficiencies. The letter also advised that FINTRAC was considering issuing an AMP.

[13] On July 16, 2019, and July 17, 2019, the appellant responded by email and provided several documents.

[14] By letter dated November 1, 2019, FINTRAC advised the appellant that no changes would be made to its findings letter because the appellant had not provided additional facts or information contesting that the deficiencies occurred.

[15] On February 19, 2021, FINTRAC issued a Notice of Violation to the appellants identifying two violations of the Act:

1. 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.
2. 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.

[16] The Notice of Violation proposed an AMP of \$33,000 for each violation, for a total of \$66,000.

[17] In correspondence dated April 29, 2021 (received by FINTRAC on May 12, 2021), the appellant made representations in relation to both violations and the penalty amount. Mr Suppanz and Ms Cardarelli-Suppanz each provided written representations and Mr Suppanz provided documents.

[18] By letter dated July 22, 2021, FINTRAC informed the appellant that it required additional time to assess the appellant's submission that the proposed AMP would punish it due to its small size of its business.

[19] By letter dated January 19, 2023, FINTRAC requested that the appellant provide additional documentation so the Director could assess Austin Jewellers' potential inability to pay the AMP. The letter stated that no financial information had been provided concerning Ms Cardarelli-Suppanz, only Mr Suppanz. The letter requested that the appellant provide certain documents related to both individuals.

[20] On February 18, 2023, the appellant emailed FINTRAC to provide copies of some of the documents it had mentioned in its representations. The appellant requested further time to provide some of the documents specified in the January 19, 2023, letter. The response also included representations on Ms Cardarelli-Suppanz's role in Austin Jewellers and the delays in the case.

[21] The Director heard nothing further from the appellant. She issued the decision under appeal on June 23, 2023.

## **II. The Director's Decision**

[22] In her 84-paragraph reasons for decision, the Director considered the following issues:

- a) Was Ms Cardarelli-Suppanz a partner of Austin Jewellers?
- b) Did Austin Jewellers commit the two violations?
- c) If Austin Jewellers committed the violations, should the proposed penalty, a lesser penalty or no penalty be imposed?

[23] This appeal only concerns the AMPs imposed by the Director. However, to understand the appellant's position on appeal, one must appreciate the Director's findings on the violations.

A. *Ms Cardarelli-Suppanz was a partner of Austin Jewellers*

[24] The appellant disputed that Ms Cardarelli-Suppanz was a partner of Austin Jewellers. During the examination process, Mr Suppanz characterized Austin Jewellers as a sole proprietorship. He provided tax documents to show his share of the partnership was 100%.

[25] The Director concluded that Ms Cardarelli-Suppanz was a partner of the general partnership called Austin Jewellers and that, accordingly, FINTRAC was correct to include her in the Notice. Both Mr Suppanz and Ms Cardarelli-Suppanz were listed as partners of the general partnership on the registrations statement filed with British Columbia Registry Services. The Director found this was evidence under provincial law that the partnership exists and that the persons named are partners. In addition, Ms Cardarelli-Suppanz made representations referring to “our local small jewelry business”.

B. *Did Austin Jewellers commit the two violations?*

[26] The Director concluded that the appellant committed both violations identified by FINTRAC.

[27] The first alleged violation concerned subsection 9.6(1) of the Act and paragraph 71(1)(b) of the Regulations, under which a person or entity must develop and apply written compliance policies and procedures that are kept up to date, and in the case of an entity, approved by a senior officer.

[28] The Director noted FINTRAC's finding from the examination that the appellant had neither developed nor applied such policies or procedures. Mr Suppanz described a "procedure manual" of approximately 100 pages, but explained that he could not find it and never provided it to FINTRAC. Instead, in a response to the findings letter, Mr Suppanz provided a three-page document dated June 2019 titled "Fintrac Compliance for Austin Jewellers". The document contained high level statements about obligations under the Act. FINTRAC did not find any indication that the appellant was complying with the requirements of the Act.

[29] The Director was not satisfied that the 100-page document existed. In any event, the appellant would not have been able to apply it in practice nor keep it up to date because the document could not be located. The Director found that the first violation had occurred.

[30] The second alleged violation concerned subsection 9.6(1) of the Act and paragraph 71(1)(c) of the Regulations. Under those provisions, a person or entity must assess and document, in a manner that is appropriate for the person or entity, the risk of a money laundering or terrorist activity (sometimes called "ML/TF") financing offence in the course of their activities, taking into consideration the factors specified in subparagraphs 71(1)(c)(i) to (iv) of the Regulations.

[31] The Director noted that during the examination, FINTRAC determined that the appellant had not conducted such a risk assessment. Austin Jewellers did not provide any risk assessment documents. In addition, during a call on a January 19, 2019, Mr Suppanz stated that Austin Jewellers did not have a risk assessment.

[32] The Director concluded that the appellant did not provide any form of risk assessment document to FINTRAC during or after the examination process, nor did it provide any indication that it had assessed money laundering or terrorist financing risks during the time period in the Notice of Violation. FINTRAC had also come to the same conclusion. The appellant did not provide any materials relating to a risk assessment with its representations.

[33] The Director found that the second violation occurred. In her reasons, the Director noted that aspects of the appellant's clients and business relationships and its products, services and delivery channels may have posed a high risk. For example, the appellant had confirmed that some of its clients are members of the Hells Angels Motorcycle Club. The Director found open-source information that members of the club had been linked to organized crime and convicted of criminal offences in Canada.

[34] The Director also found that the obligation to assess and document money laundering and terrorist financing risk was a standalone requirement in paragraph 71(1)(c) of the Act, distinct from the obligation to develop and apply compliance policies and procedures in paragraph 71(1)(b). As such, the Director did not accept that including both violations in the Notice of Violation constituted imposing two violations for the same conduct.

[35] Lastly on liability, the Director concluded that the appellant had not established a defence of due diligence for either violation.

C. *Penalties imposed by the Director*

(1) Penalty for Violation #1

[36] The Director found that Violation #1 was a serious violation for which the range of penalties prescribed by paragraph 5(b) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Policy Regulations* (the “AMP Regulations”) was \$1 to \$100,000 per violation.

[37] The Notice of Violation issued by FINTRAC proposed a penalty of \$33,000 for the first violation. The Notice described how FINTRAC used its *Administrative monetary penalties policy* (“AMP Policy”) and the *Guide on harm done assessment for compliance program violations* (“Guide on Harm”) to determine the penalty amount. The Director described how FINTRAC came to the \$33,000 amount using these policies:

- a) FINTRAC first assessed the harm done by the violation and found that it represented total non-compliance with the Regulations. FINTRAC determined this was a Level 1 violation based on the Guide on Harm, which is associated with a base penalty of \$100,000.
- b) FINTRAC reduced the proposed penalty to 33% to take into consideration the applicant’s compliance history and non-punitive adjustments because this was the first violation of this type committed by the appellant.

[38] The Director disagreed with the appellant’s position that Violation #1 was a clerical error. The Director agreed with FINTRAC that the violation represented the appellant’s “total non-

compliance” with a regulatory obligation. The Director rejected the argument that no harm was done, noting that the appellant had missing transaction invoices without policies and procedures to assess whether record-keeping, client identification or reporting should have occurred for those transactions.

[39] The Director agreed with FINTRAC that the violation was one of “complete non-compliance that should incur a base penalty of the prescribed maximum of \$100,000, because it would have the greatest impact on the Act’s objectives and FINTRAC’s mandate”.

[40] The Director also considered the proposed reduction by FINTRAC of the penalty to 33% of the base penalty to be appropriate in this case, considering the compliance history and non-punitive criteria. The Director found no further reduction was warranted on account of those criteria. The Director noted that the appellant’s representations did not suggest that it had made any improvements to its compliance policies and procedures since the 2018 examination. The appellant therefore appeared to be still in total non-compliance of the regulatory obligation.

[41] The Director concluded that in light of Austin Jewellers’ representations concerning the total penalty, she would consider those representations before determining a penalty amount for Violation #1.

(2) Penalty for Violation #2

[42] The Director found that Violation #2 was a serious violation, for which the range of penalties prescribed by paragraph 5(b) of the AMP Regulations was \$1 to \$100,000. FINTRAC proposed a penalty of \$33,000 for this violation.

[43] The Director noted the appellant's position was that the penalty for Violation #2 "seems harsh and extreme" because Mr Suppanz was aware of the FINTRAC Guidelines and knew to refer to the website if he had concerns.

[44] The Director found that the second violation represented a "total non-compliance with a regulatory obligation" and that the appellant had an "ongoing misunderstanding of the risk assessment requirement". The Director did not find that Mr Suppanz's awareness of the Act constituted a mitigating factor that warranted additional reduction of the penalty. Although the appellant argued that the proposed penalty calculations was arbitrary, the Director noted that the factors that went into calculating the proposed penalty were publicly available on the FINTRAC website and were explained to the appellant in the Notice of Violation.

[45] The Director found that the appellant's failure to document any analysis of money laundering and terrorist financing risk caused "considerable harm by creating the opportunity for the appellant to omit to identify high-risk clients and business relationships, and subsequently fail to apply risk mitigation measures". The Director noted that this was of particular concern because the appellant's business activities included transactions related to members of the Hells Angels and involving third parties, which may represent a higher risk.

[46] As with Violation #1, the Director found that that Notice's reduction of the base penalty to 33% of its original amount appropriately reflected the compliance history and non-punitive criteria. The Director stated that a significant penalty amount was needed to ensure the appellant's compliance with the risk assessment requirement of the Act, because the appellant's representations indicated:

... that it does not understand or accept its obligation to assess and document the ML/TF risk and is still in total non-compliance with the obligation. Austin Jewellers' representations continue to argue that the entity was not required to conduct a risk assessment because of the nature of its activities.

[47] The Director found the AMP Policy approach was reasonable, and that neither the representations nor other information she reviewed provided an indication that would lead her to deviate from this approach to the penalty.

[48] The Director concluded that in light of Austin Jewellers' representations concerning the total penalty, she would consider those representations before determining a penalty amount for Violation #2.

(3) The Director's Assessment of the Appellant's Arguments on the Total Penalty

[49] In the last substantive section of her reasons, the Director assessed the appellant's overall arguments to reduce the total penalty from the proposed amount of \$66,000. The Director summarized Austin Jewellers' position as follows:

- The ratio of the proposed penalty to Austin Jewellers' revenue is considerably higher than in other penalties, including several issued to other dealers in precious minerals and stones;
- Based on these ratios from previous penalties, the appropriate amount for the penalty to be imposed on Austin Jewellers is approximately \$500;
- The proposed penalty significantly exceeds Austin Jewellers' annual net income, which averaged \$26,976 in the six years prior to the issuance of the Notice, and inventory value of \$59,000;
- The proposed total penalty constitutes a punishment rather than a deterrent;
- Austin Jewellers permanently closed on April 30, 2021, as a result of local demographic changes and the impact of the COVID-19 pandemic;
- Certain other entities found by FINTRAC to have engaged in non-compliance did not receive penalties similar to that issued to Austin Jewellers;
- The process used by FINTRAC to determine the proposed penalty were not an equal and fair application of the law;
- Mr. Suppanz was seriously injured in an accident on July 16, 2020, rendering him largely unable to work and causing him to rely on pension income of \$1,500 per month; and
- The imposition of such a large penalty is a violation of natural justice.

[50] While the appellant argued that the ratio of the proposed penalty to the appellant's revenue was higher than other penalties that have been issued under the Regulations, the Director found that each case must be assessed on its circumstances and in accordance with the criteria in section 73.11 of the Act. Although Austin Jewellers submitted that a large dealer in precious minerals and stones was issued an AMP of under \$1,000 for several violations, the Director found that no such AMP had been issued by FINTRAC.

[51] The Director found that the appellant's proposed penalty of \$500 "was not at all aligned with the facts of this case". It would not reflect the seriousness of the harm done by the violations, which involved total non-compliance with two important requirements of the Regulations. The appellant had provided no documentation, "suggesting that none actually exists and indicating no desire to comply". The Director found that such a small penalty would not sufficiently encourage Austin Jewellers, or others, to comply with the Act.

[52] With respect to the appellant's position that Austin Jewellers permanently closed on April 30, 2021, as a result of changing demographics and the COVID-19 pandemic, the Director noted that it appeared the storefront had closed but the business continued online through an active website and Facebook page. The Director did not find on the evidence that the appellant had ceased business operations and declined to adjust the penalty on the basis that it had.

[53] The appellant submitted that an injury in 2020 had rendered Mr Suppanz largely unable to work and reliant on a pension income of \$1,500 per month. However, the Director found no supporting documents or information to show this.

[54] The Director rejected the argument that the proposed penalty was disproportionate to the appellant's income because the appellant did not provide a complete picture of its financial circumstances. While the appellant provided excerpts from tax returns for two years prior to the Notice of Violation, these excerpts related only to Mr Suppanz and not to the appellant's other partner, Ms Cardarelli-Suppanz. FINTRAC had specifically requested financial information related to all partners to assess its ability to pay the proposed penalty. Without such information,

the appellant had “not provided a sufficiently expansive scope of information regarding its financial status to allow assessment of its ability to pay a penalty”.

[55] The Director found that the Notice of Violation took into account the non-punitive nature of penalties when it reduced each of the proposed penalties from \$100,000 to 33% (\$33,000). The Director considered this approach to have been appropriate in the circumstances of the case. The Director concluded that the appellant had not demonstrated that paying the proposed penalty would have a punitive effect, nor that the total penalty was not in keeping with the statutory criteria.

[56] The Director imposed a fine of \$33,000 for the first violation and \$33,000 for the second violation, for a total penalty of \$66,000.

### **III. The Appeal**

[57] The appeal to this Court arises under section 73.21 of the Act. I agree with the parties that the appellate standards of review apply: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235, at paras 10, 19 and 26-37. The appellate standard of review for questions of fact and questions of mixed fact and law is palpable and overriding error. For questions of law, and for questions of mixed questions of fact and law where a legal question is readily extricable, the appellate standard of review is correctness.

[58] The palpable and overriding standard is a highly deferential standard of review: *Benhaim v St. Germain*, 2016 SCC 48, [2016] 2 SCR 352, at para 38. For the Court to intervene, an error

must be both obvious and overriding in that it affects the outcome of the case: *Steelhead LNG (ASLNG) Ltd. v. ARC Resources Ltd.*, 2024 FCA 212, at para 9; *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 FCR 344, at paras 61-64. Unlike the correctness standard, the court applying the palpable and overriding error standard cannot substitute its own opinion or decision in place of the original or its own conclusions on questions of fact or factually-suffused mixed law and fact: *Steelhead*, at paras 2-3.

[59] Both parties agreed that in order to succeed on this appeal, the appellant must show that the Director made a palpable and overriding error, owing to the questions of mixed law and fact involved in the imposition of the AMPs: *Montecristo Jewellers Inc. v. Canada (Attorney General)*, 2024 FC 309, at para 72, 206, 215; *Re/MAX All-Stars Realty Inc. v. Financial Transactions and Reports Analysis Centre of Canada*, 2022 FC 598, at paras 49-53, 93-94, 99. The appellant did not identify any error of law in the Director's reasons nor an extricable question of law in the Director's analysis of penalty arising from the violations.

[60] The appellant raised two grounds of appeal, arguing that the Director made palpable and overriding errors:

- a) By failing to consider whether other compliance actions short of imposing AMPs, such as a compliance agreement, would have accomplished the same goals and been more consistent with the Act and FINTRAC's policies; and
- b) By imposing substantial AMPs relative to the nature of the violations and the size, scale and ability of the appellant to pay.

A. *Appeal Ground #1*

[61] The appellant based the position on appeal on FINTRAC's Administrative Monetary Penalties Policy, which states that AMPs are not issued "automatically" in response to non-compliance, but are:

one tool that is available to FINTRAC and are used to address repeated non-compliant behaviour. AMPs may also be used when there are significant issues of non-compliance or a high impact on FINTRAC's mandate or on the objectives of the Act and its regulations. An AMP is generally used when other compliance options have failed.

[62] The appellant argued that the AMPs Policy contemplates a lesser, more cooperative approach to non-compliance with the Act and that before issuing an AMP, there should be a consideration of other compliance measures short of AMPs unless those options have failed. The appellant argued that the Director should have specifically considered a compliance agreement contemplated by paragraph 73.13(2)(b) of the Act.

[63] In my view, it was not a palpable and overriding error for the Director not to consider a compliance agreement or other non-penalty remedial options in this case.

[64] First, the appellant did not ask the Director to do so. The appellant's submissions to the Director did not raise the possibility of a compliance agreement. On penalty, the submissions focused on the alleged lack of severity of the violations and argued that a small AMP of \$500 would be appropriate. The appellant's submissions to the Court did not criticize the Director's

summary of the arguments made by Austin Jewellers (listed in paragraph 71 of her decision).

The summary did not mention any non-pecuniary remedies.

[65] Second, as the respondent observed, the AMPs Policy contemplates that “AMPs may also be used when there are significant issues of non-compliance or a high impact on FINTRAC's mandate”. That is what the Director found in this case: total non-compliance with the provisions at issue in the statute and regulations. The Director's reasons were clear that the violations were serious. She referred expressly to their impact on the Act's objectives and FINTRAC's mandate when assessing the first violation, and found a significant penalty was needed for the second violation because the appellant's representations indicated that it did not understand or accept its obligation to assess the relevant risk and was still in total non-compliance. In this context, imposing no penalty or attempting other remedial alternatives were not realistic options for the Director in this case. Even the appellant argued for a small pecuniary penalty.

[66] Third, it was not an obvious legal error not to consider a compliance agreement in this case. As the respondent observed, the present appeal is against a decision of the Director under subsection 73.15(2). A compliance agreement is an express statutory option for FINTRAC under the Act, at a stage before the Director makes a decision under that provision. The Director's decision concerned assessment of possible penalties. There is no express statutory option for the Director to impose a compliance agreement in that provision.

[67] To explain, in the process leading to the Director's decision, FINTRAC issued a notice of violation under subsection 73.13(2), which provides:

**Notice of violation or compliance agreement**

**73.13(2)** If the Centre believes on reasonable grounds that a person or entity has committed a violation, the Centre may

**(a)** issue and cause to be served on the person or entity a notice of violation; or

**(b)** issue and cause to be served on the person or entity a notice of violation with an offer to reduce by half the penalty proposed in the notice if the person or entity enters into a compliance agreement with the Centre in respect of the provision to which the violation relates.

**Procès-verbal ou transaction**

**73.13(2)** Le Centre peut, s'il a des motifs raisonnables de croire qu'une violation a été commise :

**a)** soit dresser un procès-verbal qu'il fait signifier à l'auteur présumé;

**b)** soit dresser un procès-verbal qu'il fait signifier à l'auteur présumé avec une offre de réduire de moitié la pénalité qui figure au procès-verbal si celui-ci accepte de conclure avec lui une transaction visant l'observation de la disposition enfreinte.

[68] In response, the appellant had two options under the Act: pay the penalty, or make representations to the Director. The appellant chose to make representations to the Director with respect to the violation and the proposed penalty, as contemplated by paragraph 73.14(1)(b).

[69] The Director's role was then to make a decision under subsection 73.15(2):

**Representations to Director**

**73.15(2)** If the person or entity makes representations in accordance with the notice, the Director shall decide, on a balance of probabilities, whether the person or entity committed the violation and, if so, may, subject to any regulations made under

**Présentation d'observations**

**73.15(2)** Si des observations sont présentées conformément au procès-verbal, le directeur détermine, selon la prépondérance des probabilités, la responsabilité de l'intéressé. Le cas échéant, il peut, sous réserve des règlements pris en vertu de

|                                                                                           |                                                                                                                                          |
|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <p>paragraph 73.1(1)(c), impose the penalty proposed, a lesser penalty or no penalty.</p> | <p>l'alinéa 73.1(1)c), imposer la pénalité mentionnée au procès-verbal ou une pénalité réduite, ou encore n'imposer aucune pénalité.</p> |
|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|

[70] As is apparent, the provision under which the Director made the decision under appeal does not refer to a compliance agreement. As the Director's decision expressly recognized, the provision refers only to penalties: imposing the penalty proposed, a lesser penalty or no penalty. Penalties are monetary amounts imposed for violations: see Act, sections 73.1, 73.25 to 73.3; AMP Regulations, section 5.

[71] By contrast, subsection 73.13(2) contemplates that the Centre (i.e., FINTRAC) may issue a notice of violation or, alternatively, a notice of violation with an offer to reduce the penalty by half if the person or entity enters into a compliance agreement with FINTRAC. That provision, and sections 73.16 to 73.18 which concern the contents of compliance agreements, refer to the Centre (FINTRAC) – not the Director – offering and entering into a compliance agreement with a person or entity. There is a separate review process for possible violations of a compliance agreement in section 73.19, leading to a decision by the Director that is subject to an appeal to this Court.

[72] I therefore conclude that the appellant has not demonstrated a reviewable error in the Director's decision dated June 23, 2023, on the grounds of failing to consider alternative remedies, such as a compliance agreement, instead of AMPs, under the statutory scheme.

B. *Appeal Ground #2*

[73] The second ground of appeal concerns the calculation of the quantum of the AMPs. In sum, the appellant's position was that the Director made a palpable and overriding error because the AMPs were imposed to punish and did not respect the purposes of AMPs found in section 73.11 of the Act:

| <b>Criteria for penalty</b>                                                                                                                                                                                                                                                                                                                        | <b>Critères</b>                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>73.11</b> Except if a penalty is fixed under paragraph 73.1(1)(c), the amount of a penalty shall, in each case, be determined taking into account that penalties have as their purpose to encourage compliance with this Act rather than to punish, the harm done by the violation and any other criteria that may be prescribed by regulation. | <b>73.11</b> Sauf s'il est fixé en application de l'alinéa 73.1(1)c), le montant de la pénalité est déterminé, dans chaque cas, compte tenu du caractère non punitif de la pénalité, celle-ci étant destinée à encourager l'observation de la présente loi, de la gravité du tort causé et de tout autre critère prévu par règlement. |

[74] The appellant argued that the Director made a palpable and overriding error by not adjusting the AMPs downwards based on “non-punitive” factors in the record. The appellant submitted that this would ensure that the AMPs were to encourage compliance and not to punish the appellant. The appellant also relied on the steps for the determination of a penalty set out in the AMPs Policy. The appellant argued that there was no separate, or “proper or thorough” consideration of non-punitive factors in the Director's decision.

[75] To support this position, the appellant identified the following alleged errors in the Director's reasons:

- a) wrongly classifying the violations at the highest level of harm (“Level 1”);
- b) inaccurately and disingenuously finding that the appellant had not made “any improvements to its compliance policies and procedures since the 2018 examination” and was still in total non-compliance with its obligations under subsection 9.6(1) of the Act and paragraph 71(1)(b) of the Regulations;
- c) erroneously finding that the appellant did not understand or accept its obligations under the Act to assess and document the money laundering and terrorist financing risks and was still in total non-compliance with its obligations under subsection 9.6(1) of the Act and paragraph 71(1)(c) of the Regulations;
- d) failing to analyze whether an amount higher than the appellant’s proposed \$500 AMP, but less than the total of \$66,000 imposed, could not meet the requirement of encouraging compliance without being punitive;
- e) ignoring other facts in the record or failing to give them proper weight, including information gathered by FINTRAC during the examination phase and information found in representations by the appellant, particularly (a) that Mr Suppanz was a sole proprietor and owned 100% of Austin Jewellers and Ms Cardarelli-Suppanz’s had 0% ownership and was partner “in name only”, and (b) the financial position of the appellant in relation to the \$66,000 AMPs;
- f) failing to explain why lower AMPs would not achieve the objectives of the AMPs Policy and the Act.

[76] The respondent provided both written and oral submissions that responded to the appellant’s position and demonstrated why the Director’s decision did not contain any palpable

and overriding error. The respondent emphasized the separate section near the end of the Director's reasons that addressed the appellant's representations on the total penalty, which responded to appellant's arguments that the proposed penalties were punitive rather than aimed at encouraging compliance. The respondent observed the Director had already found, with respect to Violation #1, that the reduction to 33% of the original amount was appropriate to account for compliance history and non-punitive criteria, that no further reduction was warranted, and that the appellant had not taken steps to get into compliance with the Act and Regulations since the examination in 2018. On Violation #2, the Director employed similar reasoning and found that Austin Jewellers' most recent representations indicated that it did not "understand or accept its obligation to assess risk and document ML/TF [money laundering/terrorist financing] risk" and was still in total non-compliance with its regulatory obligation to assess its risks. The Director noted that Austin Jewellers' representations also continued to argue that it was not required to conduct a risk assessment because of the nature of its activities.

[77] In my view, the appellant has not shown that the Director made a palpable and overriding error, nor any error in an extricable question of law, in her analysis of penalty.

[78] The Director made no error in determining that the harm was at Level 1, the highest level. I find no merit in the appellant's allegation that the violations were misclassified under the AMP Regulation. The Director's analysis also aligned with FINTRAC's Guide on Harm, which states:

"Complete" or "widespread" non-compliance is when a requirement has not been met because an RE has not put in place measures to meet the requirement to any degree, or what is in place is too rudimentary. This poses the highest

harm to the achievement of the objectives of the Act and FINTRAC's mandate. For example, an RE [reporting entity] is in complete violation of the requirement under paragraph 71(1)(b) the Proceeds of Crime Money Laundering and Terrorist Financing Regulations (PCMLTFR) if there are no policies and procedures whatsoever documented or put into practice. This poses the highest harm because there would be no measures in place to comply with any of the requirements under the Act and its regulations.

[Emphasis added].

[79] The appellant has not demonstrated a palpable and overriding error in the Director's finding that the appellant had not made "any improvements to its compliance policies and procedures since the 2018 examination" and was still in total non-compliance with its obligations under the Act and Regulations.

[80] During the examination phase, the appellant claimed that it had a 100-page document prepared to comply with the Act and Regulations, but was unable to locate it either in paper form or electronically. The Director did not accept that the document existed, a finding entirely open to the Director on the evidence. I observe that Mr Suppanz's awareness of the Act and Regulations and having them accessible as bookmarks on his computer browser did not constitute compliance with the requirements at issue, as the appellant argued to the Director.

[81] During oral argument, appellant identified two specific statements in the Director's reasons. The first was the Director's statement (in paragraph 58) that Austin Jewellers' "representations, including its February 18, 2023, response, do not suggest that it has made any

improvements to its compliance policies and procedures since the 2018 examination”. However, this statement is accurate; the presentations did not do so.

[82] The appellant also challenged the Director’s statement (in paragraph 73) that Austin Jewellers had “still not provided any [compliance] documentation, suggesting that none actually exists and indicating no desire to comply”. The Director made this statement when assessing the total penalty and the \$500 AMP proposed by the Austin Jewellers.

[83] In my view, the Director made no palpable and overriding error with respect to the statement in paragraph 73, nor the broader proposition that Austin Jewellers had made no improvement in its compliance and risk assessment policies and procedures.

[84] As alleged improvements, the applicant pointed to two documents dated June 2019 – a year after the review period of January to June 2018 – as evidence of the improvement of its compliance policies.

[85] The first document dated June 2019 was three pages in length and entitled “Fintrac Compliance program for Austin Jewellers”. It partly responded to FINTRAC’s examination findings, partly set out information obtained from FINTRAC’s website, and partly argued that as a sole proprietor, Mr Suppanz was aware of the requirements in the Act and the Regulations and had nothing to report. It stated that Austin Jewellers’ written compliance policies and procedures were the document itself and FINTRAC’s website. The three-page document also purported to constitute Austin Jewellers’ training program report as it had no employees other than Mr

Suppanz. Mr Suppanz acknowledged that since the examination in March 2019, “I have been made aware of the need for a written Compliance Program” but since he was “fully aware” of FINTRAC this was a “straightforward undertaking” and required him to be ever vigilant of all monies that come into the business and the types of customers that might want to use large sums of cash or request odd things, which would have to be documented.

[86] The second document, entitled “Deficiency #2 Risk assessment”, was a two-page letter from Mr Suppanz to the FINTRAC officer who conducted the examination in March 2019. The letter sought to correct “miscommunications” between Mr Suppanz and the officer and to respond to FINTRAC’s findings. Mr Suppanz advised that the Hells Angels was a “motorcycle club not a criminal organization” and confirmed he was a member. He advised that Austin Jewellers repaired or made jewellery for members and that it had been a community-based jewellery repair shop for 18 years. The letter did not assess the risk as required by paragraph 71(1)(c) of the Regulations in light of subsection 9.6(2) of the Act. Instead, it argued that the appellant had no risk.

[87] Based on the contents of these two documents and the submissions provided by Austin Jewellers, the Director made no obvious or overriding error in finding that the appellant had not made any improvements to its compliance policies and procedures since the March 2018 examination. This conclusion is consistent with the Director’s finding that Austin Jewellers’ alleged 100-page compliance document did not exist.

[88] It seems incongruous for the appellant to allege it had prepared a 100-page compliance document (that could not be located in any form), and then rely on these two brief documents (which in part argue that there is no need to comply) as proof its improvement since the examination and its desire to comply.

[89] Similarly, it was not an error for the Director to conclude that the appellant's representations implied that it did not understand its obligations under the Act and Regulations to assess its money laundering and terrorist financing risk. The appellant's position was that it was not required to assess the risk at all because of the nature of its business. The Director recognized the position and rejected it with reasons, noting that the FINTAC examination found one transaction in excess of \$10,000 and that Austin Jewellers business included transactions with members of the Hells Angels. It was not an obvious or overriding error to conclude that the risks arising had to be assessed in accordance with the Act and Regulations and that the appellant's representations did not understand its obligations to do so.

[90] During the examination, Austin Jewellers confirmed that it had not developed or applied a documented risk assessment, and the examination found no such documents nor any risk-based approach in practice. In assessing penalties, the Director noted the nature of the harm, and her finding of total non-compliance with the applicable regulatory obligations for both Violation #1 and Violation #2, and the risks arising in respect of each violation. For Violation #1, there were missing transaction invoices, with no policies in place in respect of record keeping, client identification or reporting for the transactions. For Violation #2, the Director found harm due to the failure to document any analysis of the "ML/TF" (money laundering/terrorist financing) risks

and that Austin Jewellers' business activities included transactions related to members of the Hells Angels and third parties, which may represent higher risk. Considering the most recent submissions from Austin Jewellers dated February 18, 2023, the Director found that the appellant appeared to be still in total-non-compliance with both regulatory obligations and, with respect to Violation #2, that it did not understand or accept its obligations to assess risk.

[91] The Director properly confirmed that she assessed each case on its individual circumstances and addressed the appellant's arguments comparing its case to others' cases. The Director assessed the appellant's position that a \$500 penalty was appropriate and that \$33,000 was too much. The Director linked the penalty to the harm and the statutory objective of compliance rather than punishment. The appellant has shown no palpable and overriding error in the analysis.

[92] The Director also appreciated the arguments about proportionality to the appellant's "income" and its ability to pay. Again, the appellant has not shown a palpable and overriding error in the analysis. FINTRAC asked for specific information to address the appellant's alleged inability to pay. The appellant provided excerpts from tax returns of one partner (Mr Suppanz) reflecting amounts self-reported to Canada Revenue Agency with some added handwritten comments, but declined to provide financial information about the other partner in the general partnership (Ms Cardarelli-Suppanz). While the appellant argued that Ms Cardarelli-Suppanz was a partner "in name only", that is not quite accurate. Both are presumed in law to be responsible in law for the partnership's financial obligations (a proposition not contested by the appellant). From a financial perspective, it appears (as the Director noted in her reasons) that Mr

Suppanz received 100% of the money taken from the appellant by the two partners during certain tax years.

[93] The Director found that “[o]n their own, Mr Suppanz’s tax documents might indeed suggest that a lower penalty amount would be warranted.” However, the documents did not provide “a complete picture of Austin Jewellers’ financial circumstances” because they only related to one of the partners. The Director found that financial information related to all partners was required to assess the appellant’s ability to pay the proposed penalty and that without such information, the appellant had not provided a “sufficiently expansive scope of information regarding its financial status to allow assessment of its ability to pay a penalty”. I find no reviewable error in the Director’s conclusion that the appellant’s financial information was incomplete.

[94] The Director found that the reduction of the proposed penalty in the Notice of Violation accounted for the “non-punitive nature of penalties” and was appropriate in the circumstances of this case. The Director’s reasons on this particular point were short. The Director stated that the Notice of Violation took into account the non-punitive nature of penalties when it reduced each of the two penalties to 33% of their original amounts. The Director’s reasons concluded that the appellant had not shown that paying the proposed penalty would have a punitive effect on Austin Jewellers nor that the penalty was not consistent with the statutory criteria.

[95] The appellant submitted at the hearing that there should be a reduction for compliance history and then a separate reduction for so-called “non-punitive” factors (i.e., to ensure a

penalty is imposed to encourage compliance with the Act and is not punitive). As summarized above, the respondent submitted that the Director considered all of the appellant's arguments on this issue, particularly in the separate section of her reasons on the overall penalty.

[96] The appellant's legal submission has merit. In this Court's very recent decision in *Norwich Real Estate Services Inc. (RE/MAX Kelowna) v. Financial Transactions and Reports Analysis Centre of Canada*, 2024 FC 1996 (released to the public on May 5, 2025), Norris J. held that it was a legal error for the Director to fail to give separate consideration to the non-punitive purpose of the penalty after making an appropriate adjustment based on compliance history, and that in so concluding, the Director in *Norwich* failed to consider whether the adjusted penalty was actually necessary to encourage compliance with the Act or whether a lower penalty would be sufficient to meet this objective: *Norwich*, at paras 79-80. Justice Norris stated at paragraph 80:

... A penalty that exceeds what is necessary to meet the objective of encouraging compliance is inconsistent with section 73.11 of the Act and may well be punitive, which would also be contrary to section 73.11 (*Guindon v Canada*, 2015 SCC 41 at paras 75-77). What is necessary to encourage compliance must be determined in light of all the circumstances of the case, including why the violation occurred, the violator's insights into what it did wrong, and whether the violator had taken meaningful steps to ensure that a similar violation does not happen again. All of these factors were present in the appellant's case but the Director did not consider them in any way. Instead, she relied entirely on the adjustment based on the appellant's compliance history, which is a separate factor, in concluding that the penalty is not punitive. She failed to give meaningful – or, indeed, any – consideration to what is necessary to encourage compliance with the Act, a factor she was required to consider in its own right under section 73.11. This is an error of law warranting the Court's intervention.

[97] The parties advised by letter that neither one proposed to make submissions about *Norwich* to supplement their prior arguments.

[98] To make a decision on penalty, the Director had to consider three criteria under section 73.11 of the Act and section 6 of the Regulations: the purpose of a penalty to encourage compliance rather than punish, the harm done by the violation, and compliance history. The Director's reasoning in this case considered harm separately and referred to the other two criteria, relying in part on the assessment of them in the Notice of Violation. In the Notice, FINTRAC accounted for compliance history and non-punitive factors together to reduce the quantum of the AMPs from \$100,000 to 33% (\$33,000) each. Although the Director found that the Notice of Violation took into account the non-punitive nature of penalties when it reduced each of the proposed penalties 33% of their original amounts, the sole reason stated in the Notice was that Austin Jewellers was a first-time violator (i.e., due to compliance history). The Notice did not separately identify or describe the non-punitive factors related to Austin Jewellers that were taken into account for either violation.

[99] However, in contrast to *Norwich*, the Director's reasons also had a separate section that addressed the applicant's representations on the total proposed penalty. Those representations offered numerous arguments to reduce the quantum of the AMPs for reasons other than the harm caused by the violation and the appellant's compliance history – i.e., to account for “non-punitive” factors. In that section of her reasons, the Director summarized Austin Jewellers' position and assessed its various submissions, including the specific argument that the total proposed penalty constituted a punishment and Austin Jewellers' specific proposal for an AMP.

The Director was not persuaded by any of the arguments, and the appellant has not shown a palpable and overriding error in her analysis of them.

[100] The Director's separate analysis of the overall penalty recognized that she had to apply the statutory criteria in section 73.11 and assessed all of the appellant's arguments to reduce the quantum of the AMP due to "non-punitive" factors. While the Director's analysis should not be too closely tethered to FINTRAC's assessment in the Notice of Violation, the reasoning did not make the same legal error identified in *Norwich* at paragraph 79. In addition, the Director's overall analysis of penalty considered the factors stated in paragraph 80 of *Norwich* – namely, that what is necessary to encourage compliance must be determined in light of all the circumstances of the case, including why the violation occurred, the violator's insights into what it did wrong, and whether the violator had taken meaningful steps to ensure that a similar violation does not happen again.

[101] Taking the Director's reasoning as a whole, I find no legal error, or palpable and overriding error, in relation to the assessment of "non-punitive" factors as the appellant contended.

[102] Finally, the Director's reasons were sufficiently responsive to the appellant's arguments concerning the quantum of the AMPs. The reasons adequately described why the quantum of the AMPs was appropriate in light of the statutory factors and considered the appellant's arguments. The absence of a specific analysis of other, hypothetical AMP amounts higher than \$500 and lower than \$33,000 does not constitute a reviewable error based on unresponsiveness in this case,

given that the appellant proposed a specific quantum and did not advance alternative submissions to the Director to support any other (higher) penalty amount. It is hard to conclude that the Director erred by unresponsive to something that was not raised by the appellant.

#### **IV. Conclusion**

[103] For these reasons, the appeal must be dismissed.

[104] The respondent requested costs. A costs award follows the outcome of the appeal. The respondent has succeeded. The appellant will be ordered to pay costs to the respondent, which I fix in the amount of \$2,000.

[105] The parties filed their submissions and the appeal book in this proceeding on a confidential basis under an order of this Court dated August 25, 2023. The hearing of this appeal was conducted *in camera* under an order issued on February 16, 2025, under subsection 73.21(4) of the Act, having regard to paragraph 55(1)(f) and the Court's prior order.

[106] The Registry will provide the confidential version of these reasons to the parties to obtain their input on possible redactions, prior to releasing a public version. The parties are directed to confer and provide their views, hopefully jointly but separately if necessary, within 21 days of this Judgment.

**JUDGMENT in T-1555-23**

**THIS COURT'S JUDGMENT is that:**

1. The appeal is dismissed.
2. The appellant shall pay the respondent costs in the amount of \$2,000.
3. The parties are directed to provide their input on possible redactions for confidentiality in accordance with the Reasons.

"Andrew D. Little"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1555-23

**STYLE OF CAUSE:** AUSTIN JEWELLERS (GENERAL PARTNERSHIP:  
FRANK SUPPANZ AND LISA SUPPANZ,  
PARTNERS) v THE ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** FEBRUARY 12, 2025

**REASONS FOR JUDGMENT  
AND JUDGMENT:** A.D. LITTLE J.

**DATED:** MAY 22, 2025

**APPEARANCES:**

|                  |                    |
|------------------|--------------------|
| Jordan Allingham | FOR THE APPLICANT  |
| Ashley Gardner   | FOR THE RESPONDENT |
| Maria Oswald     |                    |

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| Attorney General of Canada  | FOR THE RESPONDENT |
| Vancouver, British Columbia |                    |