

Federation of Law Societies
of Canada



Fédération des ordres professionnels
de juristes du Canada

MEMORANDUM

FROM: Richard J. Scott, Q.C., Chair
Public Affairs and Government Relations Committee

TO: Federation Council
Law Society Presidents and CEOs

DATE: July 30, 2018

SUBJECT: Anti-Money Laundering and Terrorist Financing – Engagement with the
Department of Finance

ISSUE

1. The Department of Finance wishes to engage with the Federation to explore options for collaboration on the anti-money laundering and terrorist financing file. This memorandum provides background information on engagement with the Department of Finance to date and sets out the recommendation of the Public Affairs and Government Relations Committee (the “Committee”) on next steps.

BACKGROUND

Redacted

3. Ensuring effective anti-money laundering and terrorist financing rules and regulations for the legal profession remains a priority for the Federation. In October 2016 the Federation Council asked the CEOs Forum to establish a working group of senior staff to review the Model Rules and their enforcement. This decision was made in response to a number of important developments on the anti-money laundering and

counter-terrorist financing landscape. These include amendments to federal anti-money laundering and terrorist financing regulations, a mutual evaluation report from the Financial Action Task Force (“FATF”) that was critical of aspects of Canada’s anti-money laundering and terrorist financing regime, including the fact that it does not apply to lawyers or Quebec notaries, and the possibility that the government would renew its efforts to extend the federal regime to members of the legal profession.

4. In October 2017 the Anti-Money Laundering and Terrorist Financing Working Group (the “Working Group”) released a consultation report seeking feedback on a number of amendments to the Model Rules. Over the last several months the Working Group has been reviewing feedback on the proposals and will release its final proposed amendments shortly for approval by Council at its October 2018 meeting.

5. In the spring of this year, the Federation made submissions to the House of Commons Standing Committee on Finance in connection with its review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and to the Department of Finance in response to a white paper looking at issues related to Canada’s anti-money laundering and anti-terrorism financing regime. In its appearance before the Standing Committee and its submission on to the Department of Finance the Federation stressed the need for the government to recognize the role that the law societies play in regulating the risks of money laundering and terrorism financing activities present in the practise of law and its willingness to engage with the government on these issues. The following excerpt from the submission to the Department of Finance capture this position:

22. For most of the past decade the dialogue about efforts to address the risks of involvement by legal counsel in money laundering and terrorism financing activities has been focused on the government’s attempts to include legal counsel in the scope of the federal regulatory regime. Since the 2015 decision of the Supreme Court, the focus has been on concerns about the exclusion of the legal profession from the federal framework and suggestions that renewed efforts to bring lawyers and Quebec notaries within the reach of the federal regulations would be coming. This focus is reflected in the Consultation Paper. The Department of Finance states that it “continues to believe that the application of the rules to the legal profession is important to maintain the integrity of Canada’s AML/ATF framework” and reiterates its “intention to develop constitutionally compliant legislative and regulatory provisions that would subject legal counsel and legal firms to the [Act].”

23. In the submission of the Federation, this dialogue ignores the very meaningful role that the regulators of the legal profession are playing in the fight against money laundering and terrorism financing. In our view it is time to change the nature of the dialogue. We look forward to engaging with the government on this important issue

RECENT DEVELOPMENTS

6. On May 14, 2018, at the request of the government, Federation CEO Jonathan Herman, and AMLTF Working Group Co-Chairs Frederica Wilson (Federation Executive Director, Policy and Public Affairs and Deputy CEO) and Jim Varro (Director, Office of

the CEO at the Law Society of Ontario) met with representatives of the Department of Finance and the Department of Justice to discuss the Federation's anti-money laundering and anti-terrorism financing work and the role of the law societies in regulating in this area. The meeting also provided an opportunity for a preliminary discussion about possible future engagement on the anti-money laundering and anti-terrorism financing file.

7. Although the tone of the meeting was very positive, the Federation representatives were left with the impression that, while recognizing the constitutional limitations on imposing regulations on members of the legal profession, the government remained interested in finding a way to integrate the profession into the federal legislative anti-money laundering and anti-terrorism financing framework. That impression was dispelled at a second meeting held on July 4, 2018.

8. In the course of the July 4th meeting Laurie Wright, Senior Assistant Deputy Minister in the Policy Sector of the Department of Justice (replacing Don Piragoff), made it clear that the government has no interest in repeating history by legislating to extend the scope of the federal regime to the legal profession and ending up in litigation. She also indicated that the government understands the unique position of the legal profession particularly in regards to the duties members of the profession owe to their clients. Representatives of the Department of Finance echoed that view, indicating a strong interest in working closely with the Federation to address any actual or perceived gaps in the regulatory regime resulting from the exclusion of legal counsel from the scope of the federal regulations.

9. Departmental officials spoke candidly about the reputational challenges Canada is facing as a result of the criticisms contained in the mutual evaluation report from the FATF. In addition to criticisms about perceived gaps resulting from the Supreme Court's confirmation that the federal legislation cannot extend to legal counsel, the FATF was highly critical of Canada's failure to have meaningful requirements related to disclosure of beneficial owners of corporations and other organizations. Associate Assistant Deputy Minister Annette Ryan indicated that Canada is under pressure to respond to those criticisms. She also advised that the report from the House of Commons Standing Committee on Finance, expected in the fall, will likely exhort the department to take quick action on a variety of issues, including rules related to beneficial ownership and may also address the issue of regulation of the legal profession.

10. The government officials acknowledged the Federation's ongoing work on the review of model rules and the development of guidance both for the profession and for the enforcement of the rules by the law societies. They also suggested that formally recognizing the role of the law societies in the federal regime might be one way to address the criticism from the FATF. Finally, they expressed an interest in sharing information that the RCMP has gathered on money laundering and terrorist financing typologies relevant to the legal profession.

PROPOSED ENGAGEMENT

11. It was clear from the meeting that the government recognizes that the regulators and the government share a common interest in working to mitigate the risks of money laundering and terrorist financing faced by members of the legal profession. The government representatives also expressed understanding for the need for any

engagement with the government to respect the role of the law societies as independent regulators of an independent legal profession.

12. Annette Ryan identified three specific areas for engagement and floated the idea of establishing dedicated working groups for each with representatives of the law societies, the Department of Finance, the RCMP and FINTRAC participating as appropriate. She indicated however, that the department is open to other suggestions. The three areas for discussion that were identified are:

- i. Evidence and typologies
- ii. Lawyer education and guidance
- iii. Best practices guidance for compliance and enforcement of the law society rules

13. In addition to determining how to structure the engagement between the government and the regulators, the government would like to discuss how to communicate that engagement to the public and to the FATF in a way that clearly demonstrates that the parties are working on the issues in a concrete and meaningful way.

NEXT STEPS

14. During the July 4th meeting the government representatives expressed a desire to move forward quickly and suggested that a small working group of representatives of the government and the Federation meet to flesh out the proposed engagement structure and develop terms of reference for any working groups to be established. The members of the Committee recommend that we agree to this approach on the understanding that the proposed engagement structure and terms of reference would be subject to approval by Council and the law societies. The Committee is of the view that given the expertise and broad law society representation reflected on the Federation's AMLTF Working Group, its members would be best placed to engage in discussions with the government. The involvement of AMLTF Working Group members also would ensure that their ongoing work would be directly informed by the discussions.

15. We invite Council members to advise by August 17, 2018 whether they have any objection to this recommendation.