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# Watchdog's refusal to name Canadian bank fined \$1.2M called 'unconscionable'

The Financial Transactions and Reports Analysis Centre of Canada, which continues to withhold the bank's name, tracked reaction to the decision — internally and online — and noted nearly unanimous criticism from experts, journalists and the public.

The country's major banks have all denied that they were the targets of the fine. (KEVIN FRAYER / CP FILE PHOTO)

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Canadians were furious last April over a decision by the country's money laundering watchdog to impose an **unprecedented \$1.2-million fine against a Canadian bank** — and then refuse to name the bank, according to documents obtained by the National Observer and the Toronto Star.

"I am outraged that you would withhold the name of the bank you recently fined for failing to report suspicious transactions," reads one public comment received by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and obtained through an access to information request.

The agency tracked public reaction to the decision — internally and online — and noted nearly

unanimous criticism from experts, journalists and the public.

“I would want to know if the bank where I do my daily banking transactions is involved in criminal activities,” reads another public response. “FINTRAC should be held accountable in disclosing all of the facts of this investigation and penalty.”

The agency’s online announcement drew 548 page views on the first day — a 243-per-cent increase over traffic compared with typical penalty releases, the document says.

Even within government, officials were quietly worrying about FINTRAC’s refusal to name the bank, fearing it would cause all banks facing penalties to expect anonymity and could taint the entire financial industry with the actions of one institution.

Internal emails between officials in the Office of the Superintendent of Financial Institutions (OSFI), which oversees more than 400 federally regulated institutions including the country’s banks, anticipated repercussions.

“As soon as the penalty is published with no name, all the banks will want the same treatment if they are penalized,” reads one of the emails shared between OSFI staffers trying to get a handle on the move by their colleagues at the anti-money laundering watchdog FINTRAC last April.

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One OSFI staffer dug up FINTRAC’s guidelines and wrote to her colleagues: “Looks like naming is not automatic . . . Does this imply that the (administrative monetary penalties) regime is even less effective/dissuasive because public naming is discretionary???”

It’s the same question journalists, financial experts, lawyers and many Canadians have asked

since FINTRAC announced the massive fine last April. The name of the penalized bank has been conspicuous in its absence ever since.

In December, the Star and the Vancouver-based National Observer published details of the events that triggered the fine, [including 1,200 suspicious transactions involving a convicted fraudster named Andrew Strempler](#), a Winnipegger who made millions in the online drug market.

“It’s unconscionable,” says Kenneth Rijock, a financial crime consultant in the U.S. who regularly investigates Canadian cases and trains law enforcement agencies here. “There’s no reason we shouldn’t know. It’s not just about Canadian banks. It’s about the financial industry everywhere needing this information if they’re conducting business in Canada. We need to know this.”

The “overemphasis” on privacy that “pervades” Canadian regulatory systems is in stark difference between Canada and the U.S., he says.

“Canadians are always more enlightened and less brutal. But that doesn’t mean you have to give criminals a pass. In the U.S. this exact set of facts would have resulted in tens of millions in fines and the bank itself would have been required to sign a deferred prosecution agreement, meaning if you don’t clean up your act you’re going to be charged with a felony or a number of felonies.”

OSFI officials confirmed in writing that the office discussed the fine with FINTRAC but said that it is “prevented by legislation from discussing the nature of those discussions publicly.”

In response to interview requests, FINTRAC repeated its earlier statement that its decision to withhold the name was made, “to send a timely message of deterrence” and that the reaction of the financial industry shows, “this message of deterrence was heard loud and clear.”

Based on FINTRAC statements, OSFI officials believed the secrecy would expire once the judicial process concluded and all appeals had been exhausted. “No name and shame until the dust settles, i.e. the appeal process has been exercised and completed,” reads a note from OSFI official Christine Ring. “At this point, it is all a waiting game.”

In December, FINTRAC officials confirmed that the legal process was complete and that the fine had been paid. But the name of the bank is still being withheld. The reasons remain unclear.

“A decision like this and the Orwellian doublespeak . . . ,” said Bill Majcher, a former RCMP financial crimes inspector who trained FINTRAC personnel. “FINTRAC is 100 per cent driven by bureaucrats with the bureaucrats’ mindset. It is not about functionality and it’s not about bottom line results . . . . The biggest joke is Canada is truly the soft underbelly of global financial crime and money movements.”

In documents obtained previously by the National Observer and the Star, FINTRAC lays out

three criteria for public naming. The mystery bank meets two: It committed a “very serious violation” and its penalty was greater than \$250,000.

“Nowhere in the emails was the public interest discussed,” says Richard Leblanc, a professor of corporate governance at York and Harvard universities. “Naming of the institution would cause media scrutiny, but the procedural rights of the bank would remain intact. If a person or firm is charged civilly or criminally, the name of the person or firm is almost always disclosed, as a matter of public interest and transparency, at the time the person or firm is charged, not after the sentence or appeal rights have been exhausted.”

In emails, OSFI officials lament that withholding the bank’s name casts suspicion across the entire industry.

After the country’s major banks denied that they were the targets of the fine, pressure mounted on smaller banks.

“Many of our small banks have come under considerable pressure to confirm that they do not have a . . . fine pending, either verbally or through a formal press release,” reads an April 16, 2016, email written by an OSFI staffer. “The media is determined, through elimination, to find out which bank has the FINTRAC penalty pending.”

The mystery bank also avoided potential stock price decline, loss of customer trust, “investor wrath,” and potential civil prosecution.

“Directors and officers of the unnamed bank may serve on other boards, be hired by other firms, without full knowledge of what transpired by these other firms under their watch. The unnamed bank has essentially, with regulatory consent, transferred this loss to the entire industry as a result of nondisclosure,” says Leblanc.

The day following the release, “the tone of media coverage became increasingly negative and critical,” FINTRAC’s internal review concludes.

The “key quotes” from public inquiries include this: “There has been an inordinate amount of bragging since 2008 about how safe and well-regulated and Canadian banking system is. You have much to do if you expect to repair the damage your action has done to this reputation.”

Experts agree the case cries out for action from the federal government.

“I suspect that there will never be another case for many years to come with such an egregious compliance record by a bank,” said Christine Duhaime, a legal expert on terrorism financing. “A banking licence is a privilege in Canada, not a right. Such disregard for the rule of law when it comes to maintaining the integrity of the financial system suggests that perhaps the bank ought not to have the privilege of a banking licence.”

Legislation should remove FINTRAC's discretion and clearly lay out the criteria for naming fined institutions, says James Cohen, interim executive director of Transparency International Canada.

"This is a case of gross negligence or wilfulness," Cohen says. "There should have been no sympathy for the bank ... In this specific case, transparency would have been the one and only decision."

Forensic accountant Charles Smedmor says it's time now the mystery bank to be given a clear choice: "Disclose, by an approved media release, the situation, or have your bank's name disclosed by us. Your choice."

*With additional reporting from Mike De Souza, National Observer*

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