

CANADA'S LAWS ON MONEY LAUNDERING & PROCEEDS OF CRIME

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GOOD MORNING LADIES AND GENTLEMEN, my name is Tim Tapley. I am an investigator with the RCMP Proceeds of Crime section in Winnipeg, and have been investigating financial crimes since 1988. I was with the Commercial Crimes section for nine years before being transferred in 1997 to the Proceeds of Crime section, just shortly after it was formed here in Winnipeg.

Last May, I was transferred to the money laundering position, where I am the designated person who deals with FINTRAC (Financial Transactions and Reports Analysis Centre of Canada) disclosures when they come in, as well as the disclosure of information to FINTRAC. My duties now deal specifically with money laundering intelligence, and involve working with financial institutions and various business entities with respect to money laundering issues. Although I have only been targeting money laundering matters since May of 2002, I have followed laundering activities during proceeds investigations for six years. When we (investigators) start getting into bank documents and financial records, doing the investigations, and executing search warrants, we are able to see patterns of how money laundering has occurred.

In Manitoba, money laundering activities reported to police usually do not lead to specific charges of laundering. Instead, they act as pointers or indicators which lead us to persons that may be involved in criminal activity. The law requires that we connect any funds to a designated offence, so generally, the disclosures trigger an investigation. Typical laundering-type activities are referred to as "suspicious currency transactions," until they are substantiated through investigation. Keep in mind that not all suspicious transactions are related to criminal activity. Tax evasion is still prevalent, as we see transactions where contractors will do jobs for cash. Also, in cases of people going through marital break-ups, they will often liquidate their assets and convert them to cash, so as to not be found by the other partner.

The IPOC (Integrated Proceeds of Crime) program was borne out of the Canadian Government's need to deal with organized crime and their main activity, namely, drug trafficking. Drug trafficking, as opposed to other

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crimes, is most prevalent for organized crime because of the large core group of consumers that exists. It is an easy way to make money since there are always clients who want your product. Contrast this with other crimes such as robbery, or more specifically, vehicle theft.

The vehicle theft is also motivated by profit in that the stolen car can be shipped offshore at a high profit, however, the problem remains that you are taking something from somebody who does not want to give it up. Although the Winnipeg Proceeds of Crime unit is able to investigate proceeds of crime offences from any designated offence, all of its resources are focused on investigations connected with drug trafficking. Since 1997, I can recall only one non-drug case, which was a customs case involving commercial smuggling.

It is generally accepted that most criminals are motivated by greed, and certainly drug traffickers are no exception. To give you an idea of the profits that can be realized from a marijuana grow operation, a one hundred plant grow operation will produce a hundred pounds of marijuana in a year. Marijuana that is grown in Canada and sold in the United States is commanding two to three thousand dollars a pound in U.S. dollars. Therefore, a one hundred plant grow operation can generate \$300,000 to \$450,000, and it is considered a small operation. Within the last two weeks, we were able to take down a one thousand plant operation. The potential income generated from such an operation is enormous.

With cocaine, a kilo of powdered cocaine sells between \$35,000 and \$40,000 on the Winnipeg market, with the bulk being turned into crack cocaine. One kilo will yield about 880 grams of crack, which will sell on the street for between \$105,000 and \$140,000.

The issue of street level pricing is prevalent because ultimately all drug transactions flow down to the street level. This is where the problem is created for high level traffickers and money launderers. If crack cocaine sells for \$40 a rock, that can mean two twenty dollar bills or some other breakdown for the trafficker. If marijuana sells for \$15 a gram, the trafficker may receive a ten and a five dollar bill. Whatever the breakdown, dealing with small denominations causes difficulties for the drug trafficker. Cash is the most accepted medium of exchange in the criminal underworld; however, the problem it creates for the criminal is that it is bulky and heavy. One million dollars in twenty dollar bills weighs about 50 kilos or 110 pounds, and would be 21 linear feet in height when stacked. A million dollars in one hundred dollar bills is 10 kilos or 22 pounds, and would stack 4.2 linear feet high. It is recognized that refining - the conversion of small bills into larger bills - is a significant money laundering technique. It allows traffickers to better conceal their ill-gotten gains. A

million dollars in one thousand dollar bills weighs 2.2 pounds and stacks 5 inches high - a significant difference over the twenty dollar bill. For this reason, constant refining occurs in laundering activity. Drug dealers and money launderers are continuously trying to get one hundred dollar bills, in exchange for the small cash, to have the more portable larger bill. There are a couple of reasons why they do this; first, with a large amount of cash you are more likely to be detected by police and second, the chance increases that you will have your money stolen by another drug trafficker or someone else involved in crime.

In May of 2000, the Bank of Canada ceased issuing the thousand dollar bill after considerable pressure from the Solicitor General and the RCMP. In the early to late 1990s, there were significant numbers of thousand dollar bills seized because they were the most desired denomination by drug traffickers. The local casinos, being a cash-based business, were a ready source for thousand dollar bills. Drug traffickers could take their street level money to the casinos and exchange it for thousand dollar bills, making it much easier to look after and manage. The United States was a little quicker in dealing with large bills, as circulation of the 500, 1000, 5000, and 10,000 dollar bills was stopped in 1946. Since then, the largest bill in the United States has been the hundred dollar bill, a decision which was motivated, in part, by major tax evasion cases in the 1930s and 1940s throughout that country.

The common definition used for money laundering is the conversion of dirty money into clean money, which cannot be traced to the origin of the transaction, or to the criminal organization. It is most often associated with the financial activities of drug dealers who must launder their profits so that they can be enjoyed without the risk of detection, and subsequent seizure and forfeiture. Money laundering is a constant process as drug transactions happen on a continuous basis, creating an ongoing cycle of dirty money being placed into the system.

Money laundering is actually referred to as the laundering of the proceeds of crime. There is no reference to cash in s. 462.31 of the *Criminal Code*, but it deals with any property or any proceeds of any property which is intended to be concealed or converted. There must be knowledge or belief on the part of the person who is doing the concealing or converting that the property was obtained from an offence. It is very difficult (for police) to prove this knowledge and that is why there are not a lot of prosecutions with respect to laundering activities.

The legal definition of proceeds of crime from s. 462.3(1) of the *Criminal Code* is any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of a designated offence. The definition is very broad in that it could include the

trading of any item for drugs. I believe Parliament's intent was to cover every conceivable thing that could be traded in a drug transaction.

A criminal has three objectives in laundering money: First, to conceal the origin and ownership of the funds; second, to change the form of the money and recycle it into the economy; and third to control the movement of funds in order to avoid detection. Not all money launderers will conceal ownership of the funds. A sophisticated criminal who owns or has access to cash-based businesses can easily commingle his criminal proceedings with the legitimate funds made from the business. For example, a person with a cash-based business could inject \$500 a day through the till as false sales, laundering in excess of \$180,000 a year. Businesses that function on cash, such as restaurants and nightclubs, are susceptible to this kind of activity.

There are generally three stages in the money laundering process. The first stage is placement, the second is layering, and the third is integration. The placement process is where the proceeds derived from the illicit activity are entered into the financial system. This will occur at banks, remittance services, through lawyers' trust accounts, and currency exchanges. A lot of the activity that we see is through the currency exchanges and at the casinos. The new reporting regimes have had some impact, in that people involved in organized crime and the drug community are aware that banks are now required to file reports to FINTRAC. Therefore, criminals are now looking for other ways to launder money. Anyone in small business or associated with small businesses should be aware that there may be attempts by people in organized crime to have you aid them in their laundering schemes. It is at this placement stage that the drug trafficker is most vulnerable.

The second stage is layering. It involves the creation of complex layers of transactions to obscure any audit trail and sever any links to the origin of the money as it moves between various accounts and purchases of stocks and bonds, etc. The layering stage is where the drug trafficker is less likely to be detected because it is the point where the cash has been introduced into the system. Once the money is in the system, the possibilities are really endless – as there is a constant movement of the money away from the original source.

The integration stage is the final stage where legitimacy is attached to the proceeds of crime. At this point it is much easier for the organized criminal who has a cash-based business to "legitimize" their illegal funds. We have seen a number of cases where money is commingled and appears to be legitimate, but after conducting a more thorough analysis during the investigation, we discover that it was actually dirty money as opposed to legitimate income. This integration stage is successful if the prior

stages of placement and layering have gone undetected.

A common laundering method is the use of nominees. Criminals will use family members, friends, or trusted associates to conduct transactions on their behalf because they are less likely to attract attention. This facilitates concealment of the true source of ownership of the funds. The most popular way to do this is through bank accounts in the name of someone other than the drug trafficker. Modern banking really only requires one visit to the bank to set up an account, and once in place, a debit card allows for deposits and withdrawals, without ever having to go into the bank. Essentially, a debit card and a PIN (Personal Identification Number) gives anyone control over the account regardless of ownership.

This same technique is also used for titles to vehicles and real property. We see cases of organized criminals driving a Harley Davidson and a Corvette, with both vehicles registered to their grandmother. Chances are high that this is a nominee situation. With respect to real property, frequently it will be in the name of a parent, close associate, or a girlfriend, as an attempt to disguise the true ownership of the property. Typically, once an investigation is initiated, we are able to follow the paper trail.

Structuring is another common technique, also known as "smurfing." It involves inconspicuous persons doing transactions on behalf of the drug dealer, and then depositing funds into an account that can later be moved. Smurfing can involve the purchases of bank drafts, traveller's cheques, or any other monetary instrument. The term came out of South Florida back in the early 1980's. Elderly women with tinted hair were being used to do transactions, and the suggestion was that they appeared to be smurfs—the little blue characters from the television show. Unfortunately, the name stuck and is still used today as another term for structuring.

With respect to the development of the proceeds of crime legislation, prior to January 1989, there was significant pressure on Canada to deal with drug trafficking. There was absolutely no legislation that dealt with laundering activities, and no mandatory reporting of large and suspicious financial transactions. Police officers could only seize tangible and movable property related to specific offences, such as recovering property from thefts or finding someone in possession of property from a break-in. There was really no way to pursue money flowing in and out of bank accounts. Even if it could be shown that funds flowed into the bank account resulting from a crime, because it was intangible, there was no vehicle within the *Criminal Code* to allow for seizure or restraint and forfeiture of the proceeds of crime.

Bill C-61 provided several provisions. It established the offence of

laundering the proceeds of crime. It developed procedures for the pre-trial seizure and restraint of property by a special search warrant and restraint orders, as well as provided for the forfeiture of seized and restrained property upon conviction. It provided a means for police access to income tax information to further investigations related to drug trafficking. In addition, it allowed for the use of net worth inference in prosecutions and forfeiture of seized and restrained property if the accused absconded or died. Bill C-61 also established procedures for fines in lieu of assets that could not be recovered. A fine could be assessed and then a term of imprisonment could be imposed.

The proceeds of crime initiative was launched in 1996 by the Solicitor General, the RCMP, and the Department of Justice to foster partnerships and to integrate resources in the fight against organized crime. At the time, it was estimated that drug trafficking alone generated about \$2 billion a year in illegal income, and it was recognized internationally that the most effective way to deal with criminal organizations was to take their profits and assets. The IPOC initiative was created as a result of a memorandum to the Cabinet. The program is unique within the Canadian Government in that this law enforcement program was funded by a loan from the government, with an initial loan for a five-year period. The loan is paid down from the net proceeds that flow from seizures once they are disposed of after forfeiture. The IPOC program is a partnership between various agencies; the units are composed of members from various police agencies, the Department of Justice Council (IPOC Council), the Seized Property Management Director (SPMD), the Forensic Account Management Director, and Canada Customs and Revenue Agency (CCRA) positions.

The Department of Justice IPOC Council is integral to the functioning of the units. They provide legal services and advice on various aspects of investigations, particularly the preparation of information and the obtaining of affidavits that are required to support court documents that are used to pursue the assets of criminals. They act on behalf of the Attorney General in making applications for restraining orders, special search warrants, management orders, and also provide undertakings. With a search warrant, police can make an application directly to a judge. The special search warrants, management orders and restraining orders must be presented to the Court of Queen's Bench by the Attorney General, as the police cannot do that directly.

Although the IPOC counsel is attached to the proceeds of crime units, they do not prosecute. Their role is to deal with the issues that surface due to the complexity of the investigations. A considerable amount of their time is spent negotiating with the accused or other interested third

parties with respect to the various issues related to restrained and seized property. The proceeds of crime cases are all generated from designated offences, hence, once drug charges are laid, the proceeds of crime investigation begins, and the property is seized and restrained. Thereafter, the negotiation typically starts between the Crown and the accused. Agreements are frequently reached with respect to the disposition of the property before it is forfeited by the court.

The Seized Property Management Director (SPMD) was established in 1993 and deals with all seized property resulting from our investigations. From 1989, when the legislation was first passed, up until 1993, police were responsible for seizing and maintaining custody of all restrained property. This did not work well for the police as we found we were not equipped to deal with the management of houses, vehicles, boats, and herds of cattle, for example. Maintaining this property became impossible for police to manage, and as a result, the government established the Seized Property Management Director to take over that responsibility. Their mandate is to manage seized and restrained property under the proceeds of crime legislation and other federal statutes only, as they do not have a mandate to manage property seized under the *Criminal Code* for offences that are not prosecuted by the Federal Crown. SPMD look after the management of the assets until they are forfeited, and provide procedural advice to police as well. For example, in reference to the herd of cattle, we actually had a case where it seemed like a good idea to restrain a herd of cattle (that we had established was purchased with the proceeds of crimes), until we discovered over a period of about eighteen months just how complicated that could be. How do you deal with new calves that are born, or cows that die, or if the accused (farmer) says he cannot feed them any more even with a restraining order that states that he is obliged to feed them? There are all kinds of issues that can surface; seized property management was created to look after all of those concerns.

Seized property management also settles third party claims with respect to property. Frequently, particularly with real property, there exist outstanding third party interests. Banks frequently get caught in this process unintentionally and, as a result, the SPMD and the Department of Justice deal directly with the banks to ensure that they do not suffer losses through the process.

The sharing of net proceeds is based on the gross revenue less the direct cost to manage the assets. Direct costs include any costs that are incurred with respect to the seizure and the maintaining of the asset and SPMD operational costs. The whole SPMD program is funded from the gross revenues from our seizures, and sharing between the federal and

provincial governments is based on investigative responsibility. An investigation conducted primarily by the Proceeds of Crime section would mean that 90% of the net revenue would flow back to the federal government and 10% to the province of jurisdiction. Joint forces (an investigation shared with the Winnipeg City Police) would see a 50/50 split in revenues between the provincial and federal governments, and when provincial investigators or the Winnipeg City Police are predominantly involved in the investigation, 90% of net revenues would flow to the provincial government and 10% to the federal government. Forensic accountants are relied on extensively for net worth preparation. The proceeds of crime legislation has allowed for the completion of net worth analysis and the courts can infer that unexplained increases in net worth are the proceeds to crime. This is done when it is established that the value of all property belonging to the accused after the commission of a criminal offence exceeds the value of all property before the commission of the offence, and the court is satisfied that the legitimate income of the accused cannot reasonably account for the increase in value or net worth. The inference is that the increase has come from illegal activities.

The net worth inference is relied on heavily during investigations. We will seize documents and evidence related to a specific period of time, which is typically in excess of a three year block. We will try and cover off the year before the criminal activity, the year of the criminal activity, and the current period to determine the difference based on all known sources of income. It is for this reason that we require access to income tax information. We assume that the accused person has complied with the requirements of the law and has declared all income from legitimate sources, but we still actively seek and try to locate other possible sources of income. It would be very damaging to our case if there was a legitimate source of income that was not detected, and therefore, a lot of time is spent in this area. We look for lottery winnings, gifts, and inheritances and even search public records and other sources to determine if there could have been any legitimate source of income that flowed to an accused person. The net worth analysis is then prepared for us by the forensic accounts and is submitted to court.

The Canada Customs and Revenue Agency has an income tax representative in our office, where we take a two-pronged approach to the pursuit of the criminals. We pursue the criminal activity and go after assets, and at the same time, the criminals should pay their share of taxes. Therefore, we refer cases to Revenue Canada to do an audit and prepare an assessment. Cases in which there is significant income that cannot be shown to have come from a legitimate source, and where we cannot establish grounds to lay a charge, are also referred to Revenue Canada for assessment.

The proceeds of crime initiative was launched in order to foster partnerships and to integrate resources in the fight against organized crime. Money laundering intelligence has involved the RCMP working with financial institutions, various business entities, and government organizations in an attempt to curb money laundering and the criminal activities associated with it. As these organizations continue to work together, each does their part in the effort to diminish and eliminate the ease with which criminal activity and money laundering takes place.