

DIRTY

In a recent book entitled *Tainted Money*, author Avi Jorisch states: 'As Washington reaches out to financial and foreign ministries around the globe, policymakers and laymen alike should be keenly aware of the financial dangers we will need to counter – whether they stem from rouge regimes like Iran and North Korea, the Osama bin Laden's of the world, or criminals that are engaged in illicit activity. Unquestionably, one of the most serious public policy challenges that the United States will face in the foreseeable future will be the use of every tool in its arsenal to make progress against those who exploit tainted money.'

From the UK, in late November, Sir Hugh Orde, president of the Association of Chief Police Officers (ACPO), questioned if the policing set-up was fit for purpose in a world where the most dangerous threats came from international terrorism and cross-border organized crime.

Sir Hugh, former Chief Constable of Northern Ireland and a policeman for 33 years, said that the political debate on policing had been 'hijacked by the 'more cops on the street' brigade' which was fixated on 'antisocial behaviour, dog fouling and bicycles on the pavement.'

At home, as was noted in the *Globe and Mail* article dated August 1st, 2009; 'Our Government has been trying to strengthen the criminal justice system, including measures to toughen penalties not just for violent crime, but for these kinds of white-collar crimes as well.' (Prime Minister Harper).

Of course we have FINTRAC, the independent federal government agency with a mandate to assist in the detection, deterrence and prevention of money laundering and the financing of terrorist activities. This year, 556 case disclosures were provided by FINTRAC to law enforcement, other domestic partners and to foreign financial intelligence units. In their reports on money laundering and terrorist financing,




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FINTRAC's report on *Money Laundering and Terrorist Financing* indicated the following activities across the country last year (note the last one):

- **474** were for suspected money laundering.
- **52** were for suspected terrorist activity financing and/or threats to the security of Canada.
- **30** were for both suspected money laundering and suspected terrorist activity financing and/or threats to the security of Canada.

On a smaller scale, but answering similar concerns, the Canadian Association of Chiefs of Police established two committees specifically to address dirty money: the Counter Terrorism Committee, and an Electronic Crime Committee.

The threat appears real, persistent and effective. How effective then is our legislation? Are the resources that we dedicate to counter this double barreled criminal challenge working to deter potential criminals and, alternatively, to catch and punish the undeterred?

Two former RCMP officers who are still active in the security domain answered a few questions on the tainted money situation as they see it.

Garry Clement, the former Director of the RCMP's Proceeds of Crime Program, is now President and CEO of White Collar Consulting and Investigative Group. Denis Constant, the former Director General of the RCMP's Economic Crime unit, is currently President of Constant Corporate Security & Investigations Inc.

Q. What is tainted money... and how important is it to the safety, well being and security of Canadians? How are ordinary Canadians threatened?

Garry Clement: The term *tainted money* is slang for proceeds of crime and/or funds derived legally or illegally for the purpose of terrorist financing. The reality is that money laundering occurs as the result of criminal and/or terrorist financing activities. The impact is often swept under the carpet but estimates have been published that organized crime costs every Canadian as much as \$600. The best example, well known to

Canadians, are the outlaw motorcycle gangs (OMGs), primarily the Hell's Angels.

When I commenced my policing career in 1973, OMGs were on par with today's street gangs, and during my career I watched them become a multi-million dollar international criminal enterprise. To gauge the impact today, one only has to look at the hydroponic marijuana grow industry and realize that large amounts of investment capital is being put in the hands of criminals, some with terrorist leanings. This provides power and the ability to corrupt at all levels of society. Tainted money and white collar crime involves everything from straight financial fraud to money laundering, to identity theft, to stock market manipulation, to cyber crime and to terrorist fundraising and combinations of all of the above. These crimes are also committed by individuals, incident specific conspiracies, organized crime groups and terrorist supporting individuals and organizations, including (in some instances) co-operation with agencies from foreign governments.

Denis Constant: Tainted money can best be described as illicit profits generated in the course of criminal activities. The threat associated with money laundering is worldwide and Canada is no exception, however, in safeguarding the finance industry our sound financial system is better than most and is a reflection of the moral fabric of a society.

Q. What agencies monitor such money laundering schemes nationally and internationally? Can you give us examples of some successes and failures?

Denis: Several key agencies are monitoring money laundering schemes in Canada.

First and foremost, the Police community (predominantly the RCMP) plays a big role in defining new trends and schemes associated with money laundering. They have an opportunity, through several major investigations they undertake, to be at the leading edge of these new trends and schemes being developed or used by criminal organizations.

FINTRAC, our Financial Intelligence agency in Canada plays also a significant role in defining these trends since they experience first hand through their analysis, suspicious transactions being reported through the mandatory process. Of course there is FATF internationally since 1990 that

has updated in 2003 its 40 recommendations for its 53 permanent or associated members. These deal with national legal systems, measures to be taken by financial institutions and non-financial businesses and professions to prevent money laundering and terrorist financing, and institutional and other measures necessary in systems for combating such laundering and financing. Canada underwent an audit recently and was found wanting in some domains. Under the auspices of the Government of Canada, the Finance Department have also been monitoring new trends and schemes in order to assist them in the development of future policies.

Garry: Nationally: Most of the intelligence flowing as a result of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* is directed to FINTRAC. Over time, they have developed expertise and systems that provide value added intelligence to law enforcement and CSIS. The RCMP also has a capacity to monitor some of the intelligence through its intelligence units and CISIS. The FATF [Financial Action Task Force – an inter-governmental body of 35 countries] plays a critical role in the development and promotion of policies associated with thwarting money laundering and terrorist financing.

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In its 2007 review, FATF singled out Canada for its lack of enforcement which I feel is a legitimate, and ongoing concern.

I have written and spoken extensively on the fact that white-collar crime investigations require a high level of investigative expertise garnered only through years of experience and training. Unfortunately, law enforcement promotion systems and frequent transfers of personnel reduce the institution's capacity to develop the expertise to effectively counter this sophisticated threat from organized crime.

It is my experience that law enforcement's high end investigative units are, first, understaffed and those in the discipline do not stay long enough to develop sufficient expertise and, second, they are underfunded since they cannot meet the requirements mandated through case law to complete a court-ready investigation requiring significant resources and funding.

Organized criminals and terrorists are for the most part 'lifers.' They have become experts at their trade. By contrast, we largely counter them with marginally experienced enforcement officers.

Internationally: FINTRAC, through various Memoranda of Understanding with

other Financial Intelligence Units throughout the world captures some of the financial intelligence. CSIS and the RCMP through their international liaison programs also capture some of the necessary intelligence.

What needs improvement is: 'Who responds most effectively and in a timely manner when intelligence is forthcoming?' For example, the value of FINTRAC is measured by the number of disclosures provided to law enforcement and CSIS. A more objective item to measure would be the number of cases that are brought before



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the courts as a result of the intelligence, and what organizations (criminal and/or terrorist) were weakened by this intelligence.

Q: Has the electronic transfer of funds in this wide world web increased the work for forensic auditors and policing agencies?

Garry: At present, I am reviewing a nationally recognized money service business. Many of their wire transfers originate from countries that fit one of these categories:

- Countries identified as lacking appropriate anti Money Laundering and Terrorist Financing laws, regulations and other measures;
- Countries identified as providing funding or support for terrorist organizations operating within them;
- Countries identified as having significant levels of corruption, or other criminal activity;
- Financial Action Task Force's Non-Cooperating Countries & Territories; and
- Countries identified by a credible source as narcotic source or transit countries.

This particular company has filed a multitude of suspicious transaction reports. This, in my view, is the norm within the financial sector which would indicate funds continue to flow for the most part unabated.

Denis: The electronic transfer of funds has been instrumental in facilitating commerce and trade worldwide; however, the potential for criminal use has presented a huge challenge to law enforcement and forensic auditors. The mere fact that only 50 countries (of which only 37 are members in their own right) have chosen to be represented as part of an international framework that provides worldwide standards in combating money laundering and terrorist financing, shows some weakness.

The speed with which electronic transactions occur, added to the fact that several countries (non-member participants of the FATF) have continued to pursue international investments by highlighting the secrecy of their bank operations, makes it extremely difficult to track transactions.

The lack of adherence worldwide to FATF standards in combating money laundering has created a void for investigators and financial auditors to track the money. We are only as strong as our weakest link. For instance, in the 2008-2009 FINTRAC report, 10 international banks, including British-based Lloyds, are suspected of laundering billions of dollars for Sudanese and Iranian banks and their clients, through banks in New York. While Lloyds has admitted to money laundering, the other nine banks remain under investigation. In order to hide the identity of its clients, Lloyds bank 'stripped' wire transfer information. This practice involves removing information that links payments to countries of origin, such as Iran or Sudan, which are barred from the American financial system.

Q. What are banks doing to protect themselves? What involvement do the IMF and World Bank have in reducing this threat? Does Interpol have a sound approach to this international threat?

Denis: Since the implementation of the program to combat money laundering in Canada (as a result of the 1989 G-7 meeting in Paris), there has been a great degree of cooperation between our commercial and government institutions, international governments and entities such as the IMF and Interpol. Over these last 20 years, several countries have adopted more aggressive policies in order to safeguard their financial institutions.

Cooperation at home between law enforcement and the Canadian Bankers Association (CBA) has been instrumental in ensuring that banks are aware of new trends, so they can conduct their own due diligence. Financial institutions will now not hesitate to hold back a cheque of \$5,000.00 for five days originating from a major corporation until they have had the opportunity to verify the authenticity of the cheque with said company. This is a significant step in the right direction.

Interpol plays a significant role. Under the Interpol charter, they have 185 signatory

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countries for which 70% of whom do not have a money laundering regime in their respective country. Under their leadership, they can exercise influence in their attempt to convince countries to adopt a money laundering regime that is comparable to International standards as established by the FATF... but it is a chore.

Garry: Banks have spent millions to implement elaborate software programs in an effort to thwart money laundering. The reality is that banks today are engaged in all aspects of finance and therefore they are as vulnerable to money laundering as any other financial infrastructure.

All of the world's focus on money laundering has not diminished the levels of organized crime activity. For every loophole we fix, organized crime finds other means. Organized crime and terrorist groups have the resources and skills to engage subject matter experts and put infrastructures in place which mirror any multinational corporation. For example, one of

the last outlaw motorcycle investigations I was involved in uncovered around 800 business registrations which served to highlight the sophistication of organized crime and the lengths they will go to hide their illicit activities. What is worthy of note is that the group in question, had co-opted professionals from all disciplines which highlights the fact that money laundering cannot occur without assistance from the professional bodies.

The value of the IMF and World Bank has been their ability to name and shame through FATF and oversee country audits relative to ensuring they have viable anti money laundering and terrorist funding regimes. Without a doubt this has helped open up the capacity of enforcement agencies to seek financial intelligence.

Interpol is, in my view, a great vehicle for some developing countries but, in my experience, most developed countries prefer to deal directly with their own enforcement agencies.



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Q. What policy initiatives would you propose for Canada?

Garry: Canada needs to adopt a holistic and systemic approach whereby the entire spectrum of weaknesses in this area are identified and addressed. [Similar to the] reasons espoused in the UK by Sir Hugh Orde, I am convinced the RCMP needs to become solely a Federal Force and leave contract/uniform policing to provinces. We need to develop expertise if we are to keep up with the advances in technology upon which organized crime and terrorist organizations definitely capitalize.

The Government needs to recognize the complexity of these cases and fund accordingly, ensuring that crown prosecutors are available and assigned to these units.

We need to change the measurement tool for success of our money laundering and terrorist funding program to measure any significant impact on a given organized crime group or organization flowing from FINTRAC disclosures.

Consider, for instance, the complexities involved in this case reported by FINTRAC:

'In a joint RCMP-FBI investigation, Rosenfeld was caught on tape agreeing to launder large quantities of 'coke money' for an undercover RCMP officer posing as a representative of a Colombian cocaine cartel. Rosenfeld also informed the undercover RCMP agent that he was able to set up a meeting with Vito Rizzuto, head of the Rizzuto organization, to discuss the sale of 3,000 kilograms of cocaine, and arrange a collaborative agreement with the Hells

Angels Motorcycle Club. Rosenfeld used solicitor-client privilege, the legal professional privilege which protects all communications between a professional legal advisor and his or her clients from being disclosed, to conceal the activities of his criminal associates. The National Post notes that 'lawyers are the only financial intermediaries exempted from the currency-reporting requirements in the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, an exemption that lawyers won in a series of court challenges by law societies against the government.'

Other recommendations I would make to government to consider are:

- Investigate the creation of a National White-Collar Crime Investigative (Agency or Task Force) similar in nature to the Integrated Market Enforcement Teams (IMETS) of investigative experts dedicated to corporate and market fraud cases.
- Amend *Seized Assets Management Act* to direct assets forfeited back to the Task Force with defined expenditure criteria;
- Fund a white-collar investigative certification course, similar in nature to the Certification program offered by the Certified Fraud Examiners, thereby increasing expert capacity.

Denis: As much as significant progress has been done by the Government to protect the life savings of Canadians, major gaps continues to exist. For instance... Businesses associated with ATM machines remain unregulated by the Government. This self

regulated industry has provided opportunity for organized crime groups to utilize the services of ATM machines to launder their illicit profits where they can unload their cash, charge a fee to any citizen seeking access to cash and legitimize it through a business entity that will not raise scrutiny.

Another policy change that would be welcome deals with a greater harmonization of the Intelligence agency (FINTRAC) and law enforcement community. When FINTRAC was instituted, it was deemed important that the agency remain at arms length from the law enforcement community to prevent fishing expeditions on the part of the police seeking information at large from FINTRAC. This approach has been highly criticized through the FATF 2008 evaluation of Canada's financial system, since it leaves major gaps in the system.

For instance, a proactive disclosure cannot be contemplated by FINTRAC unless the police formulate a specific and prior request for this same information. As well the Intelligence agency is significantly under-resourced to deal with the analysis of the large volume of suspicious transactions.

Last but not least, I remind you of the complexity of investigation in dealing with malfeasance/fraud by major corporations. As I indicated to you, our legislative system associated with Securities is continuously compared to that of the US. Drawing such comparisons does not do justice to the tremendous effort of investigators engaged in pursuing these cases. One of the significant tools investigators lack deals with the absence of a law compelling witnesses (I say witness not potential accused) to provide evidence in a case where a corporate fraud has taken place. When a fraud of great magnitude takes place, the board of directors of the company quickly replace the old management team. In most cases, the new team then directs all employees not to speak to police in order to protect shareholders value. Investigators in Canada need this critical tool in their toolbox. **S**

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