



National Library  
of Canada

Acquisitions and  
Bibliographic Services Branch

395 Wellington Street  
Ottawa, Ontario  
K1A 0N4

Bibliothèque nationale  
du Canada

Direction des acquisitions et  
des services bibliographiques

395, rue Wellington  
Ottawa (Ontario)  
K1A 0N4

*Your file - Votre référence*

*Our file - Notre référence*

## NOTICE

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

## AVIS

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30, et ses amendements subséquents.

An Assessment of Money Laundering Legislation  
in Canada and the United States

Caroline Danis

A Thesis  
in  
The Department  
of  
Political Science

Presented in Partial Fulfillment of the Requirements  
for the Degree of Master in Public Policy and Public Administration at  
Concordia University  
Montreal, Quebec, Canada

April 1996

© Caroline Danis, 1996



National Library  
of Canada

Acquisitions and  
Bibliographic Services Branch

395 Wellington Street  
Ottawa, Ontario  
K1A 0N4

Bibliothèque nationale  
du Canada

Direction des acquisitions et  
des services bibliographiques

395, rue Wellington  
Ottawa (Ontario)  
K1A 0N4

*Your file* *Votre référence*

*Our file* *Notre référence*

The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.

L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.

The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.

L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

ISBN 0-612-10837-6

Name CAROLINE DAVIS

Dissertation Abstracts International is arranged by broad, general subject categories. Please select the one subject which most nearly describes the content of your dissertation. Enter the corresponding four-digit code in the spaces provided.

POLITICAL SCIENCE - GENERAL

SUBJECT TERM

0615

U·M·I

SUBJECT CODE

## Subject Categories

### THE HUMANITIES AND SOCIAL SCIENCES

#### COMMUNICATIONS AND THE ARTS

Architecture ..... 0729  
Art History ..... 0377  
Cinema ..... 0900  
Dance ..... 0378  
Fine Arts ..... 0357  
Information Science ..... 0723  
Journalism ..... 0391  
Library Science ..... 0399  
Mass Communications ..... 0708  
Music ..... 0413  
Speech Communication ..... 0459  
Theater ..... 0465

#### EDUCATION

General ..... 0515  
Administration ..... 0514  
Adult and Continuing ..... 0516  
Agricultural ..... 0517  
Art ..... 0273  
Bilingual and Multicultural ..... 0282  
Business ..... 0688  
Community College ..... 0275  
Curriculum and Instruction ..... 0727  
Early Childhood ..... 0518  
Elementary ..... 0524  
Finance ..... 0277  
Guidance and Counseling ..... 0519  
Health ..... 0680  
Higher ..... 0745  
History of ..... 0520  
Home Economics ..... 0278  
Industrial ..... 0521  
Language and Literature ..... 0279  
Mathematics ..... 0280  
Music ..... 0522  
Philosophy of ..... 0958  
Physical ..... 0523

Psychology ..... 0525  
Reading ..... 0535  
Religious ..... 0527  
Sciences ..... 0714  
Secondary ..... 0533  
Social Sciences ..... 0534  
Sociology of ..... 0340  
Special ..... 0529  
Teacher Training ..... 0530  
Technology ..... 0710  
Tests and Measurements ..... 0288  
Vocational ..... 0747

#### LANGUAGE, LITERATURE AND LINGUISTICS

Language  
General ..... 0679  
Ancient ..... 0289  
Linguistics ..... 0290  
Modern ..... 0291  
Literature  
General ..... 0401  
Classical ..... 0294  
Comparative ..... 0295  
Medieval ..... 0297  
Modern ..... 0298  
African ..... 0316  
American ..... 0591  
Asian ..... 0305  
Canadian (English) ..... 0352  
Canadian (French) ..... 0355  
English ..... 0593  
Germanic ..... 0311  
Latin American ..... 0312  
Middle Eastern ..... 0315  
Romance ..... 0313  
Slavic and East European ..... 0314

#### PHILOSOPHY, RELIGION AND THEOLOGY

Philosophy ..... 0422  
Religion  
General ..... 0318  
Biblical Studies ..... 0321  
Clergy ..... 0319  
History of ..... 0320  
Philosophy of ..... 0322  
Theology ..... 0469

#### SOCIAL SCIENCES

American Studies ..... 0323  
Anthropology  
Archaeology ..... 0324  
Cultural ..... 0326  
Physical ..... 0327  
Business Administration  
General ..... 0310  
Accounting ..... 0272  
Banking ..... 0770  
Management ..... 0454  
Marketing ..... 0338  
Canadian Studies ..... 0385  
Economics  
General ..... 0501  
Agricultural ..... 0503  
Commerce-Business ..... 0505  
Finance ..... 0508  
History ..... 0509  
Labor ..... 0510  
Theory ..... 0511  
Folklore ..... 0358  
Geography ..... 0366  
Gerontology ..... 0351  
History  
General ..... 0578

Ancient ..... 0579  
Medieval ..... 0581  
Modern ..... 0582  
Black ..... 0328  
African ..... 0331  
Asia, Australia and Oceania ..... 0332  
Canadian ..... 0334  
European ..... 0335  
Latin American ..... 0336  
Middle Eastern ..... 0333  
United States ..... 0337  
History of Science ..... 0585  
Law ..... 0393  
Political Science  
General ..... 0615  
International Law and Relations ..... 0616  
Public Administration ..... 0617  
Recreation ..... 0814  
Social Work ..... 0452  
Sociology  
General ..... 0626  
Criminology and Penology ..... 0627  
Demography ..... 0938  
Ethnic and Racial Studies ..... 0631  
Individual and Family Studies ..... 0628  
Industrial and Labor Relations ..... 0629  
Public and Social Welfare ..... 0630  
Social Structure and Development ..... 0700  
Theory and Methods ..... 0344  
Transportation ..... 0709  
Urban and Regional Planning ..... 0999  
Women's Studies ..... 0453

### THE SCIENCES AND ENGINEERING

#### BIOLOGICAL SCIENCES

Agriculture  
General ..... 0473  
Agronomy ..... 0285  
Animal Culture and Nutrition ..... 0475  
Animal Pathology ..... 0476  
Food Science and Technology ..... 0359  
Forestry and Wildlife ..... 0478  
Plant Culture ..... 0479  
Plant Pathology ..... 0480  
Plant Physiology ..... 0817  
Range Management ..... 0777  
Wood Technology ..... 0746  
Biology  
General ..... 0306  
Anatomy ..... 0287  
Biostatistics ..... 0308  
Botany ..... 0309  
Cell ..... 0379  
Ecology ..... 0329  
Entomology ..... 0353  
Genetics ..... 0369  
Limnology ..... 0793  
Microbiology ..... 0410  
Molecular ..... 0307  
Neuroscience ..... 0317  
Oceanography ..... 0416  
Physiology ..... 0433  
Radiation ..... 0821  
Veterinary Science ..... 0778  
Zoology ..... 0472  
Biophysics  
General ..... 0786  
Medical ..... 0760

Geodesy ..... 0370  
Geology ..... 0372  
Geophysics ..... 0373  
Hydrology ..... 0388  
Mineralogy ..... 0411  
Paleobotany ..... 0345  
Paleoecology ..... 0426  
Paleontology ..... 0418  
Paleozoology ..... 0985  
Palynology ..... 0427  
Physical Geography ..... 0368  
Physical Oceanography ..... 0415

#### HEALTH AND ENVIRONMENTAL SCIENCES

Environmental Sciences ..... 0768  
Health Sciences  
General ..... 0566  
Audiology ..... 0300  
Chemotherapy ..... 0992  
Dentistry ..... 0567  
Education ..... 0350  
Hospital Management ..... 0769  
Human Development ..... 0758  
Immunology ..... 0982  
Medicine and Surgery ..... 0564  
Mental Health ..... 0347  
Nursing ..... 0569  
Nutrition ..... 0570  
Obstetrics and Gynecology ..... 0380  
Occupational Health and Safety  
Therapy ..... 0354  
Ophthalmology ..... 0381  
Pathology ..... 0571  
Pharmacology ..... 0419  
Pharmacy ..... 0572  
Physical Therapy ..... 0382  
Public Health ..... 0573  
Radiology ..... 0574  
Recreation ..... 0575

Speech Pathology ..... 0460  
Toxicology ..... 0383  
Home Economics ..... 0386

#### PHYSICAL SCIENCES

Pure Sciences  
Chemistry  
General ..... 0485  
Agricultural ..... 0749  
Analytical ..... 0486  
Biochemistry ..... 0487  
Inorganic ..... 0488  
Nuclear ..... 0738  
Organic ..... 0490  
Pharmaceutical ..... 0491  
Physical ..... 0494  
Polymer ..... 0495  
Radiation ..... 0754  
Mathematics ..... 0405  
Physics  
General ..... 0605  
Acoustics ..... 0986  
Astronomy and Astrophysics ..... 0606  
Atmospheric Science ..... 0608  
Atomic ..... 0748  
Electronics and Electricity ..... 0607  
Elementary Particles and High Energy ..... 0798  
Fluid and Plasma ..... 0759  
Molecular ..... 0609  
Nuclear ..... 0610  
Optics ..... 0752  
Radiation ..... 0756  
Solid State ..... 0611  
Statistics ..... 0463

#### Applied Sciences

Applied Mechanics ..... 0346  
Computer Science ..... 0984

Engineering  
General ..... 0537  
Aerospace ..... 0538  
Agricultural ..... 0539  
Automotive ..... 0540  
Biomedical ..... 0541  
Chemical ..... 0542  
Civil ..... 0543  
Electronics and Electrical ..... 0544  
Heat and Thermodynamics ..... 0548  
Hydraulic ..... 0545  
Industrial ..... 0546  
Marine ..... 0547  
Materials Science ..... 0794  
Mechanical ..... 0548  
Metallurgy ..... 0743  
Mining ..... 0551  
Nuclear ..... 0552  
Packaging ..... 0549  
Petroleum ..... 0765  
Sanitary and Municipal ..... 0554  
System Science ..... 0790  
Geotechnology ..... 0428  
Operations Research ..... 0796  
Plastics Technology ..... 0795  
Textile Technology ..... 0994

#### PSYCHOLOGY

General ..... 0621  
Behavioral ..... 0384  
Clinical ..... 0622  
Developmental ..... 0620  
Experimental ..... 0623  
Industrial ..... 0624  
Personality ..... 0625  
Physiological ..... 0989  
Psychobiology ..... 0349  
Psychometrics ..... 0632  
Social ..... 0451



## ABSTRACT

## An Assessment of Money Laundering Legislation in Canada and the United States

Caroline Danis

While the seizure and forfeiture of the proceeds of crime is a deterrent for some criminals, in reality, this option is not enough to fight money laundering effectively. This essay will examine the different programs, strategies, laws and regulations concerning money laundering and drug trafficking enacted in Canada and the United States.

In addition to defining money laundering, an overview of the structure, that is the methods available to criminals to launder money will be offered. Furthermore, the effects of money laundering on the economy will be touched upon briefly, to have a better understanding of why acting immediately is necessary if our living standards are to remain the same. Moreover, two case studies will be analyzed to have a better understanding of how the legislation from both Canada and the United States is applied.

It will be proven that although Canada and the United States are strongly committed to fighting money laundering, improvements are desperately needed. Solutions such as new legislation, additional resources for law enforcement agencies, education of key individuals, the creation of an international organization or multinational bank regulating the flow of money and its origins and, an increase in cooperation between financial institutions, law enforcement agencies, their respective governments and foreign states will be introduced.

## TABLE OF CONTENTS

INTRODUCTION.....	1
Chapter	
1. 1.1 Defining Money Laundering.....	3
1.2. Structure of Money Laundering.....	6
1.2.1. Financial institutions	
1.2.2. Casinos and gambling transactions	
1.2.2.1 Gambling on horses or dogs	
1.2.2.2 Lottery tickets	
1.2.3. Domestic laundromat	
1.2.4. Credit scheme	
1.2.5. Secret purchases of assets and shares	
1.2.6. Securities market and insurance industry	
1.2.7. Real estate and precious gems and metals	
1.2.8. Foreign currency exchange houses	
1.2.9. Transportation vehicles	
1.2.10. Armored and express couriers	
1.2.11. Travel agencies	
1.3. Laundering Offshore.....	17
1.3.1. Placement	
1.3.1.1 Underground banking system	
1.3.2. Layering	
1.3.3. Integration	
2. 2.1 Effects of Money Laundering on the Economy.....	24
3. 3.1 Combating Money Laundering in Canada.....	29
3.1.1 Drug abuse problems	
3.1.2 International arena	
3.1.3 Forfeiture and double jeopardy	
3.1.4 Detection of money laundering	
3.2. Canadian Legislation.....	35
3.2.1 Royal Bank of Canada v. Bourque et al	
3.2.2. Bill C-61	
3.2.2.1 Senator John Kerry	

3.2.3. Bill C-89	
3.2.3.1 Law enforcement authorities	
3.2.4. Bill C-123	
3.3 Case Study of The Queen v. Jean-Pierre Leblanc. No. 500-01-014472-945...	51
4. 4.1 Combating Money Laundering in the United States.....	53
4.2 Legislative Efforts Dealing with Drug Production and Trafficking.....	53
4.2.1 The Foreign Assistance Act	
4.2.2 The Trade Act	
4.2.3 The International Development Cooperation Act	
4.2.4 The Caribbean Basin Economic Recovery Act	
4.2.5 The International Narcotics Control Act of 1985	
4.2.6 The Narcotics Control Trade Act	
4.2.7 The International Narcotics Control Act of 1986	
4.2.8 The Anti-Drug Abuse Act	
4.2.9 The National Security Decision Directive No. 221	
4.3 Legislative and Executive Actions Relating to Money Laundering and Foreign Bank Secrecy.....	56
4.3.1 The Bank Secrecy Act	
4.3.2 Racketeer Influenced and Corrupt Organizations provisions of the Organized Crime Control Act	
4.3.3 The Continuing Criminal Enterprise provisions of Title II of the Comprehensive Drug Abuse Prevention and Control Act	
4.3.4 The Comprehensive Forfeiture Act and the Comprehensive Crime Control Act	
4.3.5 The Representative Mutual Legal Assistance Treaties	
4.3.5.1 The Treaty of Reciprocal Assistance with Switzerland	
4.3.5.2 The Italian-American Mutual Legal Assistance Treaty	
4.3.6 The Money Laundering Control Act	
4.3.7 The Omnibus Drug Initiative Act	
4.3.8 The Money Laundering Prosecution Improvements Act	
4.3.9 The Depository Institution Money Laundering Amendment Act	
4.3.10 The Money Laundering Suppression Act	
4.4 Case Study of U.S. v. \$405,089.23.....	71
CONCLUSION.....	76
BIBLIOGRAPHY.....	92

## INTRODUCTION

During the 1980's and 1990's, there developed quite rapidly an international focus on money laundering and the need to combat it with critical proceedings. One policy decision moved in the direction of 'targeting upwards' to remove the higher echelon criminals from circulation. A second policy decision recognized that the seizing and forfeiture of the proceeds of crime might be a greater blow to the criminal operation than the removal of key individuals. This essay will explore this last option and try to prove that although it is successful in deterring some criminals, in reality, it is not enough to fight money laundering effectively. Additional measures are desperately needed to eliminate this ever growing problem in today's society.

Money laundering is closely tied to the illegal drug trade which generates billions of dollars each year, the benefits of which are enjoyed not only by the drug users, but also by the people who profit from the laundering of money. "The real evil of money laundering is its power to allow dirty money - the instrument of crime - to enter the mainstream of economies undisturbed, to consume important sectors of those economies and transform them into *feudi* of an international criminal oligarchy beyond the reach of the law..."<sup>1</sup>

The following paper will describe how present-day Canadian and American legislation is inadequate in combating money laundering. This essay will be divided into four main sections. The first chapter will define money laundering, explain the various methods available to launder money and it will describe the three steps necessary to

---

<sup>1</sup> President's Commission on Organized Crime, Interim Report to the President and the Attorney General, The Cash Connection: Organized Crime, Financial Institutions and Money Laundering, 1984, p. 7.



launder money offshore. The effects of money laundering on the economy will be briefly explored in chapter two.

The following chapter will explore the numerous obstacles encountered when confronting this criminal activity as well as examine recent Canadian legislation such as Bill C-61, Bill C-89 and Bill C-123 dealing with money laundering. In addition, the case of *The Queen v. Jean-Pierre Leblanc* will be analyzed. The last chapter will examine American legislative and executive actions by the United States government regarding drug production and trafficking, money laundering and foreign bank secrecy. Finally, the case of *U.S. v. \$405,089.23* will be discussed.

## CHAPTER ONE

### Defining Money Laundering

There is no universal or comprehensive definition of money laundering. Prosecutors, police forces, business people, companies, developed and third world countries all have their own interpretation based on different priorities and perspectives.

Article 1 of the European Community Directive defines money laundering as:

The conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or distinguishing the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of his action, the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity, participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the actions mentioned in the foregoing paragraphs.<sup>2</sup>

More concisely, money laundering is: "The process by which one conceals or disguises the true nature, source, disposition, movement or ownership of money for whatever reason."<sup>3</sup> Its prime illegitimate purpose is to avoid detection by the government

---

<sup>2</sup> Margaret Samuel, "Non-Cash Alternatives and Money Laundering: An American Model for Canadian Consumers' Protection," American Business Law Journal 30 (S'92): 170.

<sup>3</sup> Brent Fisse, David Fraser and Graeme Coss, The Money Trail: Confiscation of Proceeds of Crime. Money Laundering and Cash Transaction Reporting (Sydney: The Law Book Company Limited, 1992), 258.

for failing to pay taxes or criminal law enforcement agencies for illegal activities such as narcotics trafficking, organized crime, terrorism and white collar crime. According to Jeffrey Robinson, the only objective of money laundering is to hide the true ownership and source of the money.<sup>4</sup>

Criminals, like all other rational wealth-maximizing capitalists, are in it for the money. Just as capitalism is permitted to flourish with the move to a corporate identity, the move to organized crime allows crime to flourish. Organized crime, epitomized by the drug trade, is a very lucrative business. The primary reason for this is that, at least in theory, it operates similarly to a monopoly or cartel,

the manufacture and distribution of a commodity, for example, cocaine, is controlled by a single entity (a firm, a 'family', a 'gang'), or a grouping of entities (the infamous Colombian or Medellin cartel) which can, because it is a monopoly, price in a fashion which allows enormous profits. In the case of a cartel, an agreement is entered into to engage in monopolistic price-fixing.<sup>5</sup>

The demand for drugs is likely to be highly price inelastic because of the addictive nature of the product, particularly cocaine and heroin.

Money laundering is the lifeblood of organized crime. It prevents the detection and punishment of those most responsible for controlling and financing the criminal organization. Authorities in the United States started using the term in the 1920s and 1930s referring to laundromats owned by the Mafia. This Mafia bought lawful businesses with unlawful profits from bootlegging, gambling and prostitution. The illicit cash was

---

<sup>4</sup> Felix Soh, "Three-steps process to money laundering,) The Strait Times : 6.

<sup>5</sup> Fisse et al., The Money Trail, 58.

then mixed with the profits earned from the legitimate businesses and was then declared licit money.<sup>6</sup>

The money trail represents the only connection between the bosses of the organization and the true crime; it is possibly the only chance prosecutors have to get a conviction. The money or paper trail is the “documentation which links an individual and/or organization to specified criminal activity to unexplained income/assets.”<sup>7</sup> It is the procedure used by investigators to show the connection between a crime and its financiers or beneficiaries. Therefore, following the money trail represents one of the most efficient ways to combat organized crime and thus, money laundering.

Money laundering allows organized crime to maintain illegal profits intact and to enjoy the fruits of their criminal activities. Direct penetration and grossly unfair competition threaten business and industry because the criminals who have made their money illegally are not going to be concerned about paying taxes or respecting laws that apply to law-abiding business people. The criminals enjoy access to interest-free money created outside the legitimate banking world. They deploy their funds without concern for the general credit and fiscal restraints operating in the economy.

The expansion of the underground economy and money laundering reduces the strength of the legitimate financial community. The huge amount of money available for laundering creates enormous corrupting influence. For example, business morality declines because both managers and employees of financial institutions are subject to

---

<sup>6</sup> Ibid., 258

<sup>7</sup> Ibid., 257.

overwhelming temptations. In addition, public servants and politicians can become corrupt, as well as the judicial authorities. In the worst possible scenario, money laundering distorts the economic and political system to such an extent that a country is 'hijacked' for the enrichment of criminals.

### Structure of Money Laundering

Money laundering techniques have no limits. They are so various and abundant that they are restricted only by the creative imagination and expertise of the entrepreneurs who devise such schemes. The appropriateness of a laundering technique is influenced by the criminal's objectives, his personal consumption patterns, his willingness to take financial risks, his level of secrecy desired and the circumstances concerning the crime. The success of a laundering scheme will ultimately depend on whether it provides a believable and apparently honest justification for the derivation of money.

It must be noted that there are still a few criminals who prefer to sit on their money rather than launder it. This can be the cause of frustrations for law enforcement officials because of the lack of an audit trail or pattern of suspicious spending which can not be explained by legitimately earned income. One reason which might explain this, is the fact that the cost of laundering money can range between 3 and 26 percent of the total amount of money to be laundered. Naturally the cost is dependent on the difficulty level and the notoriety of the trafficker. For a 26 percent commission, the client can expect the initial money in cash to be collected, then transferred to various banks, while at the same time being combined with legitimate money to finally be invested.<sup>8</sup>

---

<sup>8</sup> David Andelman, "The drug money maze." Foreign Affairs 73 (July/August 1994): 98.

Today, drug cartels and major organizations prefer to use people specializing in the laundering of money. These specialists can be businessmen, lawyers, bankers or accountants whose commodity is money itself. For example, if a drug cartel wants to launder one million dollars, that is to move it somewhere in the world and then bring it back as legitimate money, it will ask for bids. Usually for the one million in question, the specialist in the laundering of money will offer the cartel a guarantee of \$900,000 or whatever the amount that was agreed upon in the bid. They will then keep the difference, or in this case the \$100,000 less their expenses which will be their profit.

To accomplish the transaction, the money launderer will deliver the \$900,000 or the fixed amount to a given destination. More often than not, when dealing with drug traffickers, the destination in question will be Colombia. The money delivered there can be in the form of Colombian pesos or it can be commodities that can later be sold for pesos. When this is completed, the launderer then takes ownership of the money. Hence, to secure his money, he only needs to take the full one million dollars out of the country without being caught.<sup>9</sup>

#### Financial Institutions

Using financial institutions is one money laundering technique. One of the reasons why Canada is an inviting target for international money laundering is its stable financial system. Inspector John Neily said "Transactions coming through a Canadian institution may have a lot more credibility at the ultimate end destination than they would if they had come through some smaller country or some country whose financial situation is not

---

<sup>9</sup> Ibid., 99.

as stable”.<sup>10</sup> In addition, financial institutions are attractive because they have branches in other countries which can be used to transfer funds.

Two other reasons why Canada is appealing are its proximity to the United States and its reputation as being lax in its requests for financial reports. Commenting on Canada, Jack Blum, a Washington attorney and expert on global money laundering stated: “it is a place where it’s easy to take money to, and where American money is widely accepted ...It’s a great place to ship [money] to other destinations - there’s not a great deal of scrutiny.”<sup>11</sup>

Despite being an inviting target for money launderers, banks are now rejecting a greater amount of transactions which appear suspicious due to an awareness of the money laundering problem. This in turn explains the increase in the use of exchange houses by money launderers.

Since large organizations or cartels move fairly quickly, they cannot afford to lose time due to the weight and volume of the cash they generate. The simplest and most common method used to eliminate this problem is the refining of money. Refining is defined as the process of converting small denomination bills into larger denomination bills.<sup>12</sup>

Beside abolishing the physical taint identified with cash used or produced by illicit activities, refining decreases the mass and weight of the money, facilitating its transport out of the country. For example, cash is extremely heavy and bulky since only

---

<sup>10</sup> Jill Vardy, “Canada ‘inviting target’ for money launderers,” Financial Post.

<sup>11</sup> Mark Clayton, “Where world’s crooks go to do their dirty laundry.” The Christian Science Monitor. (September 20, 1995) 1.

450 paper bills weight one pound. Moreover, the weight of small denomination bills such as \$10 and \$20 is at least 15 to 30 times the weight of its comparable worth in cocaine and, in denomination bills of \$100 dollars, cash is three times the mass of the narcotics that generate it.<sup>13</sup>

In addition to refining, banks offer other services that can be used to launder money. The six chartered banks existing in Canada offer practically every service they might need. In addition to the conversion of foreign currency, these banks can exchange illicit money for a bank deposit in a false name or a money order. The advantages of money orders from American Express, Western Union, Thomas Cook or Travelers Express, consists in their being cashable almost anywhere in the world in most financial institutions, as well as being very easy to conceal and transport to a foreign destination because they consist of a single piece of paper which can be worth millions of dollars.<sup>14</sup>

Banks can also hide illicit money in safe deposit boxes or they can transfer funds to other countries since they monopolize the access of the electronic financial system permitting their clients to take advantage of this opportunity. The main advantage of the wire transfers is that money can be transferred instantly to a bank anywhere in the world. On the other hand, records are kept by financial institutions. Furthermore, automatic tellers are also very convenient since they are available throughout the world. These

---

<sup>12</sup> Fisse et al., The Money Trail, 264.

<sup>13</sup> Andelman, "The drug money maze." 94.

<sup>14</sup> Dr. Margaret E. Beare and Stephen Schneider, Tracing of Illicit Funds: Money Laundering in Canada (No. 1990-05) for Ministry of the Solicitor General of Canada. (Ottawa: Minister of Supply and Services Canada, 1990), 243.



banks also have computers interlinking different companies thereby making money laundering easier. Lastly, the banks can fail to report suspicious transactions.<sup>15</sup>

David Andelman explains an example of a five-stage process used by money launderers using financial institutions discovered in 1992 by the Drug Enforcement Agency: "The first step is the initial deposit, which must be made to a bank in a country where the launderer knows he and his associates will not be arrested within 24 hours and the money cannot be frozen quickly. ... In the second stage, the money is transferred to a bank controlled by a non-Latin, usually Spanish, company. Next, it is transferred to an account in the name of a Japanese or West European company. Then, once processed there, it can be put either in a working account, most frequently in Colombia or in a savings or investment account in Europe or the United States. In Colombia, the final stage is conversion into Colombian pesos."<sup>16</sup> This example of the numerous transactions proves clearly that once the money has been integrated in the financial system and mixed with legitimate funds, it is practically impossible to find the owner of the funds that were used to begin the multiple transactions. To accomplish this, all that was necessary was the creation of a complex paper trail.

Drug dealers are increasingly seeking the assistance of dishonest bank employees for laundering money in the international arena. This is the case of Ivan Cheddie, who was a manager for the Canadian Imperial Bank of Commerce in the Toronto metropolitan area. Cheddie was accidentally discovered when he was seen in the company of drug

---

<sup>15</sup> Mario Possamai, Le blanchiment de l'argent au Canada: Duvalier, Ceausescu, Marcos, Carlos et les autres. (Laval: Guy Saint-Jean Editeur Inc., 1994), 73.

<sup>16</sup> Andelman, "The drug money maze." 99-100.

dealers who were under surveillance in Florida. It was uncovered that he had been changing large amounts of Canadian dollars to American dollars without any questions being asked. In addition, he would open trust accounts for the drug traffickers, which he would then reinvest in real estate. In the end, Cheddie was convicted in 1993-94 of numerous charges of drug trafficking and money laundering and sentenced to 9 1/2 years in jail.<sup>17</sup>

In 1994, a settlement of 32 million dollars was reached by the American Express Bank International in an American federal civil money-laundering case which involved the notorious Juan Garcia Abrego, one of most powerful drug dealers in Mexico. The American Express Bank admitted responsibility for its employees' actions, after two of its bank's directors were convicted. They agreed to pay back \$25 million which had been laundered; in addition they had to pay a \$7 million penalty and invest an additional \$3 million to improve a compliance program. Under the settlement, the Government agreed not to seek criminal charges against the bank.<sup>18</sup>

One of Juan Garcia Abrego's operation consisted of smuggling the cash earned in the United States to a Mexican currency exchange. Couriers would then bring back the money to the United States, where it would be deposited in the exchange's bank account in Texas. Then the two corrupted bank directors from the American Express Bank would

---

<sup>17</sup> Philip Mathias, "When gifts become graft: Banking on corruption: The degree of temptation faced by bank officers is not widely appreciated". The Financial Post. (January 17, 1995) 7.

<sup>18</sup> Allen Myerson, "American Express unit settles laundering case". The New York Times. (November 22, 1994) D2.

wire the funds to the Manhattan accounts of Cayman Islands holding companies, or they would simply invest it.<sup>19</sup>

To avoid the \$10,000 reporting requirements, criminals have devised another technique called smurfing which consists of having people run from one bank to another making transactions avoiding the reporting requirements. These people became known as smurfs because, (like their little blue cartoon characters) many of them were running around everywhere. Smurfs have many variables to play with to avoid being reported to the authorities. These include the number of banks, branch offices, accounts at each offices, persons involved, what instruments are chosen for each transaction and, the time span between each transaction.

#### Casinos and Gambling transactions

Another technique consists of using casinos and gambling transactions. Casinos attract money launderers because they function similarly to banks. For example, casinos also accept deposits, cash checks, provide safe deposit facilities and transfer funds offshore. Typically, casino customers deposit small denomination bills and are paid out in \$100 bills or casino checks. In turn casinos are required to make deposits of small bills at their banks and to withdraw \$100 bills. This pattern of bank and casino transactions, small bills in and large bills out, provides an ideal cover for anyone desiring to refine a large volume of money. The main purpose of a casino as a laundering vehicle is to provide criminal launderers with opportunities to claim the proceeds of crime as legitimate winnings

---

<sup>19</sup> Kevin Fedarko, "The capture of America's most wanted; How Mexico nabbed a notorious druglord - and shipped him to a U.S. jail." *Time*. (January 29, 1996): 19.

### Gambling on Horses or Dogs

Gambling on horses or dogs is still another method of laundering money. The criminal may launder the money by generating documentation (either a winning ticket or a check from the bookmaker) which proves that he has won it at a race meeting. To accomplish this, the criminal has only to find a person who possesses a winning bet, pay that person for the ticket and then claim the winning bet as his own. Another method consists of contacting the bookmaker and making an alleged bet on the winning horse after the race is finished, creating the illusion of a winning bet.

### Lottery Tickets

Lottery tickets are also another method to effectively launder money. This basically applies the same principle as the previous method. Legitimate lottery winners are often interested in selling their ticket on the black market for a profit. Naturally criminals are attracted since the winning ticket allows them to have a lawful source of income.

### **Domestic Laundromats**

The domestic laundromat is still another technique, that is buying a high cash flow business and sifting illicit cash through it. The illicit funds are disguised as part of business turnover and may even be declared as taxable income so as to ensure complete legitimization. This can be accomplished by rearranging the books by using one of these three methods: overstating the amount of revenue, overstating reported expenses, and creating assets or inflating asset values. For example, export and import companies are

used to create an international network of transactions to safely move illicit funds as payments are settled.<sup>20</sup>

#### Credit Scheme

Another method consists of setting up a credit scheme. First, a contracting company is set up. Then this company borrows money from a local trust company to finance the business. It then uses the borrowed money to buy drugs from the wholesalers, which it then sells to customers. Payment is in the form of a check payable to the contracting company, which endorses it to the finance company to pay off the loan. The contracting company then carries the surplus on its books as profits. It then uses the resulting good credit rating to borrow more money and so the circle begins again.

#### Secret Purchases of Assets and Shares

Secret purchase of assets and shares are another technique. Professionals such as stock brokers and financial advisors can assist in the acquisition of particular commodities. Accountants, lawyers and bankers are the professionals who contribute the most to money laundering either knowingly or unknowingly. Accountants provide services to money launderers such as bookkeeping and advising them on what to do to avoid detection. Lawyers and bankers can help in acquiring companies and even industries in perfectly legal ways, in which the control of, or ownership is obscured, or sometimes completely hidden. In addition to this, lawyers can offer investment and tax advice and, they can even take possession of the unlawful profits.<sup>21</sup> Bankers on the other

---

<sup>20</sup> Beare and Schneider, Tracing of Illicit Funds, 267 and Fisse et al., The Money Trail, 268-269.

<sup>21</sup> Beare and Schneider, Tracing of Illicit Funds, xxii-xxiii.

hand, can use nominees, proxies, options, voting trusts and concert parties in takeover battles.<sup>22</sup> These companies operating for criminals have the advantage of providing three things: employment, a source of 'legitimate' earnings and respectability.

The stock market is often used in what is called wash trading which represents the buying under the table, in cash, of large amounts of shares for a dollar each from a broker. In reality, the criminal bought the shares using one of his many offshore companies. Following this transaction, the first offshore company then sells the shares in question to a second company also belonging to the criminal, registering this sale at the exchange. Registering the transaction which in reality never occurred adds to the paper trail, thereby making it more difficult for law enforcement authorities to prove that money laundering has taken place. This pattern of selling the shares to different companies while increasing their prices continues until the price is high enough for the money launderers to make a substantial profit. When this occurs, the company sells its shares to the public. Should that last company be a Canadian company, then it declares the capital gain as income or, should the company have decided to sell to the public, it will be forced to pay to the federal government a Canadian withholding tax of 15%. At last, the money has been laundered.<sup>23</sup>

#### Securities Market and Insurance Industry

Using the securities market is another method to launder money. One technique available consists of buying or selling securities through a brokerage firm; a second

---

<sup>22</sup> Fisse et al., The Money Trail, 269.

<sup>23</sup> Diane Francis, Contrepreneurs. (Toronto: Macmillan of Canada, 1988), 251.

technique would be to invest the proceeds of illegal activities in a private company which would then go public and then issue shares. This method is attractive to launderers because the result is a highly liquid asset, in addition to having the ability to remain anonymous in the transaction. The insurance industry because it has the capacity to act as a financial investment intermediary provides still another mechanism to launder money <sup>24</sup>

#### Real Estate and Precious Gems and Metals

Two additional methods include the buying or selling of real estate and precious gems and metals such as gold. While the first method has the advantage of creating a legitimate source for future revenue for the money launderer, the second one has the benefit of converting a large quantity of money into a small quantity of gems which can then be converted back to cash at the chosen destination.<sup>25</sup>

#### Foreign Currency Exchange Houses

Foreign currency exchange houses are popular because they offer numerous services similar to banking institutions. They can, for example, intervene between a bank and a client wanting negotiable instruments; in addition, they also offer currency exchange and denomination exchange.

#### Transportation Vehicles

Another method available to money launderers consists of buying transportation vehicles such as cars, boats and airplanes with the proceeds of crime. In addition to being an investment, this method proves to be useful in smuggling substances such as drugs or cash. The main advantage of smuggling the illicit funds across national boundaries is that

---

<sup>24</sup> Beare and Schneider, Tracing of Illicit Funds, xvi.

<sup>25</sup> *Ibid.*, xix.

a paper trail is nonexistent. On the other hand, it is one of the riskiest ventures available to money launderers.

#### Armored and Express Couriers

A supplementary method used by money launderers consist of using armored courier services. This method has the advantages of having no requirements regarding what can be transported as well as having the ability to pass through customs without being checked. Express couriers are also used because of the rapidity of the service and the small chance of having the package opened. This is a small inconvenience that money launderers are willing to risk.

#### Travel Agencies

Travel agencies are also used because they can transfer large quantities of money to another travel agency without any suspicions being raised. The agencies only have to prove that a service was accomplished and that payment is due.

#### Laundering Offshore

##### Placement

Laundering money offshore involves three basic steps: placement, layering and integration. First, money will be smuggled offshore by various methods. When criminals move the dirty money out of the country, they have a choice of using financial institutions or not using them. If they do decide to use financial institutions, to avoid the reporting requirement they can get on the exemption list, they can use smurfs, or they can bribe employees. Also, they have the option of filing out the forms anyway and risking detection or they can use a corporate cover. If the criminals decide not to use financial institutions, they can carry out the cash, they can use foreign currency exchange houses,



professional couriers, small service industry, precious gems and metals, high value collection items or any other object which is easier to hide, diplomatic passports, or they can use the informal banking system.

### Underground Banking System

An example of the informal method of moving money is the Chinese underground banking system also known as chop-shop, chitti banking, flying money and fei-ch'ien. This system of underground banking owes its existence to a need. During the T'ang dynasty, due to the ever increasing trade between provinces and their capitals, the usual form of payment, that is gold and silk, was becoming a serious burden since it had to be transported long distances across China. A new form of payment had to be created. And thus the Chinese underground banking system was created.<sup>26</sup>

A second underground banking system now common is the Hawala banking system existing in northern India and Pakistan. Hawala is an Arabic word meaning transfer, deposit or amount allocated. A third but also common banking system, the Hundi system, is found in middle or southern India. The name Hundi is a local term for a bank draft.<sup>27</sup>

Instead of using traditional international wire transfers, cash transactions reports and stable banks causing law enforcement agencies a difficult task in uncovering the money or its estimated value, these systems operate through gold shops, trading companies, commodity houses, travel agencies and money changers located throughout the world and almost entirely owned by the same family.

---

<sup>26</sup> Possamai, Le blanchiment de l'argent au Canada, 80.

<sup>27</sup> Ibid., 81.

Clients using the underground banking systems are recognized when they show a voucher, known as “Chits” or “chops” which is supposed to be impossible to copy. This voucher can take many forms such as a bus ticket, a postal card ripped a certain way, or a stamp made with special signs. It can also be a piece of paper with either a specific picture or a number written on it. In one instance, a single piece of paper with a picture of an elephant represented \$3 million. This chop system possesses the advantage of moving money instantaneously and anonymously since the value and identity of the holder of the chop is a secret between the parties.<sup>28</sup>

The results of a study initiated by the United States and the United Kingdom concluded that the underground banking systems were attractive because they offered their clients confidentiality and discretion, in addition to reasonable rates. For example, in Great Britain, the underground banking system known as Hawala offers better exchange rates in addition to charging less than official banks. Another example is the Chinese system where every transaction, whatever the volume, is charged the same amount.<sup>29</sup>

All three underground banking systems are based on granting credit and settling accounts at the end of the year, usually by Lunar New Year. In these three systems, the money is given to a broker who then gives the customer a chop with a name and address in the country the customer wants the money sent to. The customer will then go to the address specified and after presenting the chop, will be given the money.<sup>30</sup>

---

<sup>28</sup> Fisse et al., The Money Trail, 279.

<sup>29</sup> Possamai. Le blanchiment de l'argent au Canada, 81-82.

<sup>30</sup> Anthony DeStefano, “Kidnappings reveal secret cash flow; system common in Asian immigrant communities” Newsday, (February 23, 1995) : A46.

The ability of the underground bankers to move large amounts of money without leaving paper trails that may be discovered is what frightens law enforcement agencies and discourages Third World governments because they miss out on taxes and have less hard currency on hand. An officer attached to the assets tracing team of No. 9 regional Crime squad said: "as an investigator you are chasing a paper trail when looking at the finances of drug dealers and then you hit a dead end, a void - and you know you have hit Hawala."<sup>31</sup>

Although no one knows exactly the amount of money going through all three systems, Chinatown's ancient underground banking system is suspected of moving millions of dollars a year outside government scrutiny. And the delegates at an Interpol conference were told that the Hawala system processes between \$10 billion and \$20 billion a year.

#### Layering

The second step consists of agitating the money through one or more laundering cycles offshore. This can be accomplished by having the money travel across many countries, passing through many hands, banks accounts and legitimate businesses, which will increase the secrecy.

#### Integration

Thirdly, a legitimate source will be created in a foreign country through which the now clean money may be safely brought back onshore or maintained offshore for

---

<sup>31</sup> Christopher Elliott, "Banking on faith and dope Christopher Elliott investigates how the underground system of Hawala banking is being used for illicit money-laundering by international organised crime" The Daily Telegraph. (July 14, 1991) : 10.

investment or other purposes. The means by which money is repatriated is very similar to those through which it is exported, including monetary instruments, precious metals, use of couriers, wire transfers and travel agencies but the methods that are most used by money launderers to repatriate their money are the following:

The first method is called a loan-back arrangement which consists of borrowing money from one offshore bank account of a foreign company and giving it to a second Canadian company both owned by the criminal. What the criminal is actually doing is borrowing his own money and bringing it back to the country. A second method makes a foreign investment in a company in Canada. A third method is to have a landed immigrant come to Canada with funds originating from money laundering. Another popular method consists of purchasing a company already owned by the money launderers. The last method is called double invoicing. This is where a foreign company owned by the money launderer gives an order to its foreign subsidiary in Canada also owned by the criminal. The sale is concluded and payment is sent to the bank account of the Canadian subsidiary. The payment sent was actually money being repatriated in Canada.

RCMP intelligence collected in 1992 suggests a number of key trends and developments in the way drug trafficking organizations launder proceeds of crime in Canada. Examples include: "a greater sophistication, the use of professional launderers specifically hired to move illicit funds, an expansion of laundering operations to all sectors of the Canadian economy, and the growing internationalization of cases."<sup>32</sup>

---

<sup>32</sup> Government of Canada, Bureau of Dangerous Drugs, Royal Canadian Mounted Police, Drugs: RCMP National Drug Intelligence Estimate 1993 with Trend Indicators through 1995, (Ottawa: Minister of Supply and Services Canada, 1994) 50.

Furthermore, in order to achieve a more efficient output in the laundering of money, Canadian and foreign drug traffickers will cooperate amongst each other in the sharing of expertise. For example, they will share their money laundering networks to improve the concealment of their proceeds of crime from law enforcement authorities.

Today, drug traffickers try to distance drugs proceeds from any drug trafficking activity as much as possible. Parallel money networks are established to channel payments and to launder illicit funds. In some instances, professional money launderers will set up companies in different parts of the world to facilitate the movements of proceeds via loans, investments or the purchase of goods and services. In other cases, they will pick up large sums of cash and forward checks, money orders or letters of credit to bank accounts without knowing the source and the ultimate destination of the funds. The purpose is to make it difficult for law enforcement authorities to link suspicious funds to a specific drug offense, a process which gives them sufficient grounds to seize.

As they grow in complexity, money laundering operations may be carried out simultaneously in a number of different countries. For example, during the fall of 1992, the RCMP in cooperation with the United States Drug Enforcement Administration in Operation GREEN ICE, traced \$3 million and seized \$1 million in cash in Toronto. This money was part of a major international Colombian drug money laundering operation. Colombia, Spain, Italy, Costa Rica, the Cayman Islands, the United Kingdom and the United States were simultaneously raided. In the end, more than US \$47 million were seized throughout the world and 140 bank accounts were frozen in various countries.<sup>33</sup>

---

<sup>33</sup> Ibid., 51.

Colombian drug traffickers remain the dominant force in the Canadian money laundering of drug profits. Their laundering operations easily surpass those of other groups. It is expected, however, that other organizations will eventually increase the amount of money laundering and will aim to attain the same amounts as the Colombians. Those who have the potential for such enormous amounts in illicit funds are the Asians and the Italians.<sup>34</sup>

---

<sup>34</sup> Ibid., 7.

## CHAPTER TWO

### Effects of Money Laundering on the Economy

Money laundering in recent years has primarily come from drug trafficking. Traditionally, associated with organized crime involved in the rackets, protection, prostitution, extortion, illegal gambling, etc., today's drug trade may be described as a multinational commodity business with a fast-moving top management, a widespread distribution network and relatively price-insensitive customers.

Because criminologists cannot estimate precisely the value of drug trafficking, organized crime or white collar crime, it is difficult to estimate accurately the amount of money produced by those crimes and consequently the extent of money laundering. For example, the International Monetary Fund (I.M.F.) and the Bank for International Settlements (B.I.S.) find it impractical to make direct estimates of the international drug money flow.<sup>35</sup> Having mentioned that, some experts believe that a total of one trillion dollars a year globally is being laundered.<sup>36</sup> According to Dilwyn Griffiths, director of the FATF "No one really knows how much money is being laundered... A figure I think is plausible is \$300 Billion (US) a year - we think it goes on in virtually every country in the world."<sup>37</sup>

According to Charles Intriago, publisher for Money Laundering Alert, drug dealers generate \$80 billion a year in revenues. If other illegal methods that create illicit

---

<sup>35</sup> Fisse et al., The Money Trail, 260.

<sup>36</sup> Anonymous, "The buck never stops" The Banker, (November 1994).

<sup>37</sup> Dominic Evans, "Dirty money global threat" Calgary Herald, (May 21, 1995) : 3.

money are taken into consideration, such as prostitution, gambling, fraud, estimates suggest that about 100 billion dollars is being laundered every year in the financial system of the United States which is one of the preferred locations of money launderers.<sup>38</sup>

Although, according to an RCMP report “no accurate statistical base is available to evaluate with any precision the overall value of laundered proceeds in Canada ... case-generated information indicates the numerous drug trafficking groups have the capability and willingness to carry out multi-million dollar laundering operations in Canada on a routine basis.”<sup>39</sup> Estimates suggest that drug proceeds laundered in Canada could well exceed \$10 billion.<sup>40</sup>

The monopolistic nature of the drug trade causes lower output and higher prices than in a competitive situation. Thus, trade in a monopoly situation is coercive and not naturally beneficial. Therefore, an overall loss of efficiency occurs as the fundamental norms of the free market are violated. Consequently, organized crime is extracting exorbitant profit. Until these profits are laundered, they are not subject to taxation. Therefore, in the absence of an effective asset forfeiture mechanism, drug monopolies are subsidized by the general tax market; “the ‘externalities’ are not internalized by the cartel, they are simply passed along to third parties and the monopolistic profit is further increased as real costs of the transaction are made irrelevant to the profit taker.”<sup>41</sup>

---

<sup>38</sup> Clayton, “Where world’s crooks go to do their dirty laundry,” 1 and Robert Douglas, “Follow the money: Dirty \$ may lead to clean business.” The Palm Beach Post. (January 26, 1996) : 8B.

<sup>39</sup> Government of Canada, RCMP, Drugs, 50.

<sup>40</sup> Sarah Davison, “Canada regulators at odds over national securities commission” Reuter News Service, May 3, 1995.

<sup>41</sup> Fisse et al., The Money Trail, 59.



In addition to the effects of money laundering at the national level, economic implications are also felt at the international level. Secret money movements are responsible for major inter-country capital transfers including the flight of capital, tax evasion and ordinary criminal flows. Undoubtedly, these transactions have adverse balance of payments consequences if a nation is attempting to maintain a fixed exchange rate, "A number of countries, including Mexico, Venezuela and the Philippines in the recent past, have found capital flight to be among their most troublesome economic problems. So have their bankers and other creditors, since the capital flight hemorrhage has often been compensated for by massive external borrowing."<sup>42</sup> Inevitably, the citizens of those nations have had to pay the consequences through increased exports or reduced imports of goods and services, thereby causing a reduction in the standard of living.

In the case of countries that have maintained a realistic, market-oriented exchange rate, money laundering will cause its currency to depreciate in the foreign exchange market and produce an adverse shift in its terms of trade (price of imports will rise while price of exports will fall). Thus, its exports will buy fewer imports and "once again, the secret money outflows will be 'paid for' by more exports and fewer imports, leaving a smaller amount of goods and services available for absorption by domestic residents in their consumption and investment activities."<sup>43</sup>

Consequently, in both cases, the rate of national economic growth will tend to be slower. Moreover, adverse economic effects may be felt in terms of a decrease in the

---

<sup>42</sup> Ingo Walter, The Secret Money Trail (New York: Harper & Row Publishers, 1990), 301.

<sup>43</sup> *Ibid.*, 302.

quality of the labor force and the pace of technological advancement as skilled manpower and entrepreneurs depart, sending their money abroad ahead of them.

For countries that are the recipients of secret money, the economic consequences, by and large, tend to be far happier ones. While it may be argued that organized crime is an evil presence in the economy, it must be recognized that crime, organized or not, often serves a valuable economic function. For instance, at the basic level, organized crime supplies goods and services for a demand which exists in the marketplace. Also, a service may be provided at a lower cost than supplied by the market or a state monopoly, i.e. black market gambling. Moreover, organized crime, notwithstanding the problem of monopolization and cartelization, often brings certain attributes and skills to the market which the market values, "Criminals are often non-risk averse, that is, they possess entrepreneurial verve and skill and are willing to take chances for the possibility of profit."<sup>44</sup>

Furthermore, the activities run by organized crime create employment and may often keep legitimate enterprises in operation which might otherwise be forced out of business by predatory market forces, i.e. leverage buy outs, etc. Similarly, these cash-rich crime groups may be capable of entering the legitimate market at a time when other actors may be prevented from doing so by market forces or monetary policy, i.e. high interest rates, recession, etc. Because of the illegal origin of organized crime capital, some argue that steps must be taken to prevent it from entering the legitimate market, "such an argument, however, has little to do with efficiency criteria. The capital, whatever its source, may be put to efficient use, even if it has been originally gained

---

<sup>44</sup> Fisse et al., The Money Trail, 60.

through illegitimate means. There is little difference here between illicit organized crime capital and that obtained through licit tax avoidance schemes or inheritance."<sup>45</sup>

Thus, money laundering may be an economic and financial plague for some countries, while being a blessing for others. The economic consequences of secret money influence national, international and even global economic development,

Unfortunately, in order to quantify its effects one would have to run the world twice - once as it *is* and once as it *would have been* in the absence of secret money. Since this is obviously impossible to accomplish, and since reliable data on the actual secret money flows are virtually non-existent, all we can do is speculate that the economic impact of secret money is indeed rather significant.<sup>46</sup>

---

<sup>45</sup> *Ibid.*, 61.

<sup>46</sup> Walter, The Secret Money Trail, 305.

### CHAPTER THREE

#### Combating Money Laundering in Canada

##### Drug Abuse and Trafficking Problems

To effectively combat money laundering, the drug problem has to be dealt with at the same time. According to the United Nations Commission on Narcotics Drugs (CND), the annual volume of the drug trade is estimated at around \$500 billion, of which 70 percent was available for laundering.<sup>47</sup> Canada in its fight against drug abuse has not only implemented laws regarding this problem, it has focused on education, treatment, rehabilitation, setting up guidelines regarding drug testing, law enforcement and research. Canada has focused its fight against drug abuse by reducing both the supply and the demand, although emphasis is being put on the latter.

While legislation and enforcement against drug abuse and trafficking have been in place for a long time, Canada's new National Drug Strategy was announced in May 1987. By November of the same year, a report entitled 'Booze, Pills, and Dope: Reducing Substance Abuse in Canada' was completed by the House of Commons Standing Committee on National Health and Welfare. In addition to offering solutions to this problem, it offered 31 recommendations. A year later, Bill C-264 and Bill C-143 were passed. While the former made it illegal to sell instruments and literature for illicit drug

---

<sup>47</sup> Senthil Ratnasabapathy, "Drugs: U.N. urges greater control on global money laundering" Inter Press Service (March 21, 1995).

use, the latter created the Canadian Centre on Substance Abuse. Canada's Drug Strategy Secretariat was created in 1990 and it was renewed for an additional five years in 1992.<sup>48</sup>

### International Arena

Internationally, Canada is seen as an active participant in the fight against the drug trade and money laundering. It has signed Mutual Legal Assistance Treaties (MLATs) with a number of countries and is in the process of negotiating with others. For example, in 1985 Canada signed the Mutual Legal Assistance in Criminal Matters Treaty with the United States which came into force in January 1990.

Although Canada began negotiating bilateral mutual legal assistance treaties in 1983, Parliament passed Bill C-58 on July 28, 1988. It is an act to provide for the implementation of treaties for mutual legal assistance in criminal matters to facilitate the international exchange of information in the investigation of offenses, including drug trafficking.<sup>49</sup> A witness at a Senate Subcommittee on Bill C-58 made the following statement: "Canada, like its partners on the international scene, is committed to fighting crime within its borders whether that crime be purely Canadian or whether it has an international dimension. It is indispensable for Canada to be able to cooperate with other countries in order to attack effectively such international crimes as drug trafficking, organized crime, transborder offences committed electronically, laundering of money, and so on."<sup>50</sup>

---

<sup>48</sup> Government of Canada, Political and Social Affairs Division. Helen McKenzie, Drugs Problems: The Social and Economic Implications for Government of Canada. (Ottawa: Minister of Supply and Services Canada, 1989), 14.

<sup>49</sup> McKenzie, Drugs Problems, 14.

<sup>50</sup> Mollie Dunsmuir, Drug Laws and Trafficking Patterns in Canada for Government of Canada (Ottawa: Minister of Supply and Services Canada, 1990), 34.

In addition, Canada has signed three United Nations Conventions on illicit drug use. The first one is The Single Convention on Narcotic Drugs, 1961 which came into force on December 13, 1964. This convention was signed by Canada on March 30, 1961 and was ratified on October 11 of the same year. The second convention consists of the Convention on Psychotropic Substances, 1971 that came into force on August 16, 1976 and was finally signed by Canada on September 10, 1988. The last convention is the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was both concluded and signed by Canada on December 20, 1988. This last convention was more aggressive and productive in the fight against the drug trade than the first two because it demanded that countries criminalize money laundering and related activities, which Canada did in 1989 with Bill C-61.<sup>51</sup> The criminalization of money laundering was necessary because seeing that it was very lucrative, criminals had nothing to lose if they tried it and something to gain if they succeeded. Governments had to criminalize it to keep it from reaching extraordinary proportions.

Laws to combat the drug industry, including mandatory death penalties have not been successful in deterring drug traffickers. The Financial Task Force set up in 1989 by the Group of Seven Industrial Nations to encourage countries to fight money laundering together postulated that in the United States and Europe the market for heroin, cocaine and cannabis amounted to U.S. \$122 billion per year, of which 50 per cent to 70 per cent or as much as U.S. \$85 billion was profits.<sup>52</sup> Thus, the only effective means of deterring

---

<sup>51</sup> Andelman, "The drug money maze."104.

<sup>52</sup> Fisse et al., The Money Trail, 261.

this industry, and its violations on the rules of the market, is to engage in trust-busting economic sanctions like asset forfeiture.

Furthermore, Canada is working to implement the Forty Recommendations of the Financial Action Task Force made only eight months after its creation. In its 1992-93 annual report issued on June 29, 1993, the FATF came to the conclusion that Canada was in 'substantial compliance' with its recommendations, but to further strengthen its efforts to combat money laundering, it suggested a plan of action already considered by the Canadian government. First it suggested a mandatory reporting requirements and secondly, an increase in security at the borders to prevent questionable money from entering the country was indicated.<sup>53</sup>

In addition, since non-bank financial institutions are often a favorite choice for money launderers in Canada, the FATF report described four mechanisms to rectify the situation. The first and more important is the requirement that owners of such non-bank financial institutions register with the government. The second and third mechanisms consist of using external audits and undercover operations on a more frequent basis. The last mechanism proposed by this report was the establishment of certain measures to prevent money launderers from using cash in large amounts to conduct their business without being detected by law enforcement authorities.<sup>54</sup>

A new task force dedicated to tackling international crime and money laundering will be set up by the Group of Seven industrial nations and Russia, that is according to the

---

<sup>53</sup> Ibid., 48.

<sup>54</sup> Anonymous, "FATF warns of laundering through securities." Money Laundering Alert. Vol. 6, No. 11. (August 1995), 1.

Halifax Summit held in mid-June of last year. During this summit, politicians suggested increased vigilance and cooperation and even perhaps an international secretariat to oversee money laundering in addition to a tightening of international laws.<sup>55</sup>

### Forfeiture and Double Jeopardy

Criminal forfeiture and money laundering statutes are economic measures intended to remove valuable assets from criminals in order to make crime an economically unviable occupation. The goals of asset forfeiture include making the criminals operate at a loss, making marginal cost exceed marginal profit, and consequently putting criminals out of business; and secondly, law enforcement officials hope to be able to retrace the money which cannot be explained by legitimate sources, in the hopes of discovering the original source of the crime, that is the criminal operation which produced the money in the first place.

As well, the availability of legal coverage is likely to be an important factor in any criminal's cost/benefit analysis. Under Canadian and American legislation, all proceeds of crime, including cash paid to attorneys, may be seized. Consequently, the legislation has been criticized since, "this deprives accused persons of representation of counsel of their choice and therefore of a fundamental right."<sup>56</sup> However, in response to this criticism it may be said that the legislation does not deprive the accused of representation, simply of "Rolls-Royce" representation. Thus, the rationale for confiscation legislation has been variously described as including deterrence, attacking the economic base of

---

<sup>55</sup> Larry Elliott and Clare Trevena "Halifax Summit/Cracking down on global crime" The Guardian, June 17, 1995. 37.

<sup>56</sup> Fisse et al., The Money Trail, 63.



criminal enterprises and, engendering public confidence in the criminal justice system by demonstrating that crime does not pay.

Furthermore, as will be demonstrated later on, some people believe that forfeiture legislation may constitute a form of double jeopardy or disproportionate punishment for the crime and therefore should only be limited to the net profits instead of all the proceeds. However, it is debatable whether or not drug industry expenses such as the purchase price of heroin, airplane fuel used in smuggling, laboratories, etc., should be deductible, "One could argue...that *no* deduction for expenses should be permitted so that the defendant must eat her or his loss, thereby, in good market fashion, being forced to calculate the cost/benefit ratio on the basis of fully internalized costs."<sup>57</sup>

#### Detection of Money Laundering

One of the most difficult tasks law enforcement authorities face is the identification of money laundering. Since in most criminal investigations involving money laundering there is no identifiable victim, complaints are not reported and therefore, no investigations are launched. Moreover the fact that the few witnesses that exist to such dealings are sometimes more interested in not revealing the information they possess for fear of reprisals, or they could also be subject to duties of confidentiality.

The best approach is for law enforcement agencies to focus on cash transactions at the beginning of the criminal money laundering cycle because it is the weakest link. The time that money launderers are most likely to be exposed is when they bring substantial amounts of cash into a bank and attempt to exchange it for high denomination

---

<sup>57</sup> Ibid., 71.

bills or monetary instruments, because the money appears of questionable origin and the money exchange may be observed by third parties.

Detection of money laundering usually occurs when suspicious transactions are reported by financial institutions.<sup>58</sup> A second method used is the mandatory cash transaction reporting requirements found in legislation, as shall be discussed. Thirdly, informants and undercover operations by police are also used to detect money laundering.<sup>59</sup> Financial investigations and financial analysis consist of a fourth method. Lastly, the tracing of assets also leads to the detection of money laundering. Once money laundering has been detected, the freezing, seizing and confiscating of assets takes place.<sup>60</sup>

#### Canadian Legislation

The legal powers of Canadian law enforcement to combat organized crime activities through anti-crime profiteering were limited prior to 1989. Until then, technically, money laundering was not a criminal offense. Law enforcement powers to seize proceeds of crime were severely limited. Prior to the Forfeiture Act of 1880, later incorporated into the 1892 Criminal Code, forfeiture was part of common law. A criminal who was convicted of crime forfeited his lands and chattels to the offender. Preceding Bill C-61, the Criminal Code, the Narcotic Control Act and numerous federal statutes provided forfeiture powers to the government, but only the instruments that were used to

---

<sup>58</sup> Helen Sinclair, "Battling dirty business," 97 Canadian Banker (May-June 1990) : 7.

<sup>59</sup> Michael A. DeFeo, "Depriving International Narcotics Traffickers and Other Organized Criminals of Illegal Proceeds and Combating Money Laundering." Denver Journal of International Law and Policy. 18 (Spring 1990): 414.

<sup>60</sup> Fisse et al., The Money Trail, passim.

commit a crime or the contraband items could be seized.<sup>61</sup> An example would be section 354 of the Criminal Code, amended in 1976 to prohibit the possession and laundering of proceeds derived from the commission of an indictable offense.

Royal Bank of Canada v. Bourque et al

The limitation of these powers to seize and forfeit the proceeds of crime was demonstrated in the 1985 Supreme Court decision in *Royal Bank of Canada v. Bourque et al* [1984] 38 C.R. (3d), “which denied the RCMP the power to seize over \$400,000 (US) of drug profits contained in a Canadian bank account.”<sup>62</sup>

Luis Pinto, a Colombian and money launderer from the United States, was arrested in 1983 by the FBI for money laundering. He was sentenced to jail and fines in the United States. While cooperating with officials in the United States, he declared that he had a bank account under the name Agropecuria Patasia Ltd. in Montreal at the Royal Bank of Canada with a total of \$400,000 U.S. which the FBI could prove was money was from drug trafficking.

The RCMP went to court to try and seize the money after trying unsuccessfully to deal directly with the Royal Bank which refused to hand over the money. The Royal Bank’s main argument in court was that “bank deposits were not tangible assets but rather the bank’s IOU to the depositor.” The court decided in favor of the Royal Bank and ruled that the RCMP could not seize it. The judge ruled that a credit balance in a bank

---

<sup>61</sup> Patricia Donald, “A Commentary on the Provisions of C-61 Canada’s New Proceeds of Crime Legislation (S.C. 1988, c.51).” *The Advocate*, 47 no. 3 (May 1989): 424-425.

<sup>62</sup> Beare and Schneider, *Tracing of Illicit Funds*, 413.

account was not tangible proof because it only proved that the bank received some sort of deposit.<sup>63</sup>

During this time, the United States Treasury Department filed a suit in Canada against Luis Pinto's in-laws because the money in the bank account was under their names. After Luis Pinto was murdered in 1985, his in-laws settled out of court with the United States Treasury Department. Unfortunately for Canada, the agreement did not leave it any money.<sup>64</sup>

#### Bill C-61

This case led to the drawing up of Bill C-61 which was introduced on May 29 1987, by the then Minister of Justice and Attorney General of Canada, the Honorable Ray Hnatyshyn. He mentioned that the Bill was part of "... comprehensive approach with respect to the problem of illicit drugs in Canada. One of the initiatives that we are taking in this whole area involves amendments to our Criminal Code to allow forfeiture and seizure of the realization of illicit proceeds of crime. While this Bill is not restricted to the area of drugs, it is a Bill which addresses crime motivated by the desire to accumulate wealth and generate profit from the commission of criminal activity..."<sup>65</sup>

Ray Hnatyshyn stated at the committee meeting on Bill C-61: "the bill will provide a tough, effective new tool in the investigation and prosecution of drug trafficking offenses and other enterprise crimes. The legislation is the result of intensive

---

<sup>63</sup> *Royal Bank of Canada v. Bourque et al.* [1984] 38 C.R. (3d) 363-374 and *Possamai, Le blanchiement de l'argent au Canada*, 49 and 99-100.

<sup>64</sup> Francis, *Contrepreneurs*, 263.

<sup>65</sup> Marvin R. V. Storrow and Lindsay Batten. "The New Proceeds of Crime Legislation or 'Caveat Advocatus'." *The Advocate*, 49 (January 1991) : 53.

review and consultation. In this connection I have considered and studied similar legislation in other jurisdictions, including the United States and the United Kingdom. Extensive consultation with my provincial counterparts has also taken place."<sup>66</sup> In addition, he believed that the enactment of Bill C-61 was not implemented due to an external request from the United States as some authors believe.<sup>67</sup>

While this bill was opposed by many organizations during the committee stage, it was enacted without any opposition from the opposition party.<sup>68</sup> Representatives from the Canadian Bar Association, the Canadian Lawyers' Association, the National Action Committee on the Status of Women, the Canadian Organization for the Rights of Prostitutes, the Canadian Bankers' Association, the Canadian Association of Chiefs of Police, and the Royal Canadian Mounted Police presented their assessment of the bill in question at the legislative committee on Bill C-61. They all commented on the bill, both negatively and positively. For example some argued that it abused civil and economic rights. In addition, some suggested steps that could be taken to improve the Bill in question.

Even before the Luis Pinto case, the Canadian government had already discussed the issue of economically motivated crimes. For example, Bill C-19 introduced in the beginning of 1984 dealt with this subject, but it died on the Order Paper. In December of the same year, Bill C-18, a modified version of Bill C-19 was introduced but was never

---

<sup>66</sup> Government of Canada. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 1, November 5, 1987, Second Session of the Thirty-third Parliament, 1986-87, (Ottawa: Minister of Supply and Services Canada, 1987) 1:8.

<sup>67</sup> M. Ray Hnatyshyn, phone interview by author, Boucherville, Quebec, 28 September 1995.

<sup>68</sup> Ibid.

passed.<sup>69</sup> Unfortunately, it was only in 1988 that Bill C-61 was consented and 1989 that it came into force.

In 1989, precisely January 1, Bill C-61 came into force. This bill named the Proceeds of Crime Act, consisted mainly of four parts: an addition to the Criminal Code, amendments to the Food and Drugs Act, the Narcotic Control Act and the Income Tax Act. It provided a major tool for Canadian courts and enforcement agencies to use in the battle against organized crime because it created the offense of laundering the proceeds of crime. The elimination of money laundering was becoming necessary because the government was losing revenues derived from taxes and also because it was losing the war against drug trafficking.

Bill C-61 emanated from “an initiative that began...a decade ago in response to a growing realization that the existing provisions of the Criminal Code and other legislation did not provide adequate tools to combat the more sophisticated forms of economically motivated criminal activity conducted by criminal organizations.”<sup>70</sup> In addition, this bill was introduced to bring Canada into compliance with the United Nations Convention against the Illicit traffic in Narcotic Drugs and Psychotropic Substances.

The Proceeds of Crime Act added a new section to the criminal code. Part XII.2 comprising sections 462.3 to 462.5 defined two classes of offenses designated drug offenses and enterprise crime offenses. The first one, the Designated Drug Offense consists of “trafficking in controlled, restricted and narcotic drug offenses, the

---

<sup>69</sup> Donald, “A Commentary on the Provisions of C-61 Canada’s New Proceeds of Crime Legislation (S.C. 1988, c.51),” 423.

<sup>70</sup> Ibid.

importation and cultivation of narcotic drug offenses, and the crimes of possession and laundering of proceeds of these drug offenses found in the Narcotic Control Act and the Food and Drugs Act".<sup>71</sup> The second offense contains of "a list of 24 profit-motivated offenses that one associates with organized criminal activity."<sup>72</sup> The offense of money laundering may be prosecuted on indictment, with a maximum sentence of ten years imprisonment, or by summary conviction, with a maximum sentence of six months imprisonment, a \$2000 fine or both.<sup>73</sup>

Section 462.31 of the Proceeds of Crime Act Part XII.2 states: "(1) Every one commits an offense who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds and knowing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of (a) the commission in Canada of an enterprise crime offense or a designated drug offense; or (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offense or a designated drug offense. (2) Every one who commits an offense under subsection (1)(a) is guilty of an indictable offense and liable to

---

<sup>71</sup> Dr. Margaret E. Beare, "Efforts to Combat Money Laundering: Canada." Commonwealth Law Bulletin. 18 (October 1992): 1440.

<sup>72</sup> Ibid.

<sup>73</sup> Richard Parlour, Butterworths International Guide to Money Laundering: Law and Practice. (London, Butterworths, 1995), 55.

imprisonment for a term not exceeding ten years; or (b) is guilty of an offense punishable on summary conviction.”<sup>74</sup>

In addition to making the laundering of the proceeds of crime a crime, Bill C-61 allowed the forfeiture of the proceeds in 24 profit-motivated offenses. Special search warrants and restraint orders were also available only with the application of the Attorney General. Third parties were also considered and they were given the right to ask that special search warrants, restraint or forfeiture orders be reconsidered. The Attorney General was given the power to order Revenue Canada Taxation to divulge information. Also, Bill C-61 permitted a judge to impose a fine on the defendant as opposed to forfeiture in special circumstances.

After a criminal has been convicted for an enterprise crime or a designated drug offense, the court can order forfeiture based on two different standards. The first one is if the court is satisfied on a balance of probabilities that the criminal did commit the offense in question and that there is a link between the offense and the proceeds of crime. The second one is if the link between the offense in question and the property is missing, forfeiture can still occur if the court is satisfied beyond a reasonable doubt that the property is proceeds of crime.

As mentioned previously, property is subject to forfeiture where it is found to be the proceeds of crime. The forfeiture powers are set out in ss. 462.37 and 462.38 of the Proceeds of Crime Act. Section 462.37 of this act mentions: “(1) Subject to this section and sections 462.39 to 462.41, where an offender is convicted or discharged under

---

<sup>74</sup> Government of Canada. Martin's Annual Criminal Code 1995. (Aurora: Canada Law Book Inc. 1993), 631.



section 736 of an enterprise crime offense and the court imposing sentence on the offender, on application of the Attorney General, is satisfied, on a balance of probabilities, that any property is proceeds of crime and that the enterprise crime offense was committed in relation to that property, the court shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.”<sup>75</sup>

In addition, section 462.37 of the same act states: “(3) Where the court is satisfied that an order of forfeiture under subsection (1) should be made in respect of any property of an offender, but that that property or any part thereof or interest therein cannot be made subject to such an order and, in particular, (a) cannot, on the exercise of due diligence, be located, (b) has been transferred to a third party, (c) is located outside Canada, (d) has been substantially diminished in value or rendered worthless, or (e) has been commingled with other property that cannot be divided without difficulty, the court may, instead of ordering that property or part thereof or interest therein to be forfeited pursuant to subsection (1), order the offender to pay a fine in an amount equal to the value of that property, part or interest.”<sup>76</sup>

Although Bill C-61 succeeded in seizing and confiscating approximately \$25 million within the first six months of its existence,<sup>77</sup> this Bill had many weaknesses. For example, it was too territorial. Criminals could continue to launder their money overseas and by the time the authorities had the time to do the paperwork necessary, they could

---

<sup>75</sup> Ibid., 639.

<sup>76</sup> Ibid., 639-640.

<sup>77</sup> Dunsmuir, Drug Laws and Trafficking Patterns in Canada, 6.

have easily have disposed of it. In addition, this bill was very strict. The Toronto police soon discovered this when it located a network that brought in immigrants from Asia illegally. While the network was dismantled, millions of dollars were sitting in Hong Kong banks. The money could not be touched because this infraction of the immigration law was not included in the limitations of Bill C-61.<sup>78</sup>

The Proceeds of Crime Act will have an impact on the laundering operations of criminal organizations which are using currency exchange establishments to move cash, "Fearing they will now leave a paper trail by using currency exchange establishments, some drug trafficking organizations will alter the way they dispose of large sums of cash."<sup>79</sup> It is difficult to overestimate the importance of this legislation since "these provisions are not just of concern to those who might intentionally violate its provisions or the criminal law, but these provisions will impact on virtually every sector of the business and professional community."<sup>80</sup>

#### Senator John Kerry

On September 27, 1989, American Senator John Kerry Chairman of the Foreign Relations Subcommittee on International Terrorism and Narcotics, accused Canada of having too flexible laws that permitted millions of dollars coming from the drug trade with the United States to be laundered in Canada. Kerry based his allegations on the 1988 RCMP and DEA confidential report 'Money laundering and the Illicit Drug Trade' to support his claims. He argued that the best solution would be for Canada to implement a

---

<sup>78</sup> Possamai, Le blanchiment de l'argent au Canada, 56-57.

<sup>79</sup> Government of Canada, RCMP, Drugs, 52.

system similar to that of the United States, where reporting of large cash transactions by banks is mandatory.<sup>81</sup>

Surprised, the Canadian government was put on the defensive by Senator John Kerry's allegations. Governmental officials tried to reduce the prominence of the report and the comments made by Senator Kerry, but unfortunately, they failed. The Canadian government did not try to deny the conclusions of the report and the allegations made by Kerry. Instead attempts to discredit Kerry's accusations were made by the Canadian ministers who would criticize minor issues. Their main argument was that these allegations were made before Bill C-61 which criminalized money laundering in 1989. Canadian authorities claimed that this law would resolve all irregularities that had previously existed. This was confirmed by Finance minister Gilles Loiseleur in the House of Commons. However, some police officers did feel that a great portion of the report was true.<sup>82</sup>

What truly frustrated the Canadian government and the bankers was Kerry's proposition that they adopt laws similar to those of the United States where cash transactions require mandatory reporting to authorities. Canadian authorities had in the past considered such policies, but had rejected them. They had made such a decision based on extensive discussions with law enforcement authorities in the United States, on visits to the Currency Transaction Reporting Headquarters, on a study of the different mechanisms used in other countries, on the realization that the Canadian banking system

---

<sup>80</sup> Alan D. Gold, Proceeds of Crime: A Manual with Commentary on Bill C-61 (Toronto: Carswell Co. Ltd., 1989), 2.

<sup>81</sup> Possamai, Le blanchiment de l'argent au Canada, 87.

is unlike the one in the United States, and finally on the fact that according to Canadian authorities, the American CTR system was ineffective and costly.<sup>83</sup>

Kerry could not find any concrete proof. However, he did find some embarrassing information. For example, Canadian banks were sending back to the United States twice as much American money than they were receiving from legitimate sources. From January to September 1989, Canadian banks sent back 4 billion dollars in American currency to the United States, but they only received 1.2 billion dollars from the United States. Kerry suggested that the difference of 2.8 billion dollars represented the laundering of dirty money and its introduction in the banking system.<sup>84</sup>

In February of 1990, Kerry's sub-committee on narcotics, terrorism and international activities published a report based on the 1989 hearings. The conclusions of the report enraged Canadian politicians because they just spent months trying to repair the damage done by Kerry and unfortunately for them they could not deny the numbers or conclusions of the report.<sup>85</sup>

The adoption of the Kerry Amendment to the United States Anti-Drug Abuse Act of 1988 enumerated eighteen countries believed to be laundering U.S. proceeds of crime with which the Secretary of the United States Treasury would enter into negotiations.<sup>86</sup>

---

<sup>82</sup> Ibid., 89-90.

<sup>83</sup> Ibid., 90 and Beare, "Efforts to Combat Money Laundering: Canada," 1446.

<sup>84</sup> Possamai, Le blanchiment de l'argent au Canada, 90.

<sup>85</sup> Ibid., 91.

<sup>86</sup> Beare, "Efforts to Combat Money Laundering: Canada," 1446.

### Bill C-89

In October 1990, Bill C-89 later changed to Bill C-9, named An Act to Facilitate Combating the Laundering of Proceeds of Crime, was tabled as a mandatory-reporting approach to combating money laundering. It came into force on June 21, 1991. Under the Bill, detailed records of all transactions totaling of C\$10,000 or more made by or for the same person in the same day, must be kept by all financial institutions, life insurance companies, trust and loan companies, securities and foreign exchange dealers as well as businesses and individuals involved in currency transactions. People who do not comply face a summary conviction with maximum penalty of six months imprisonment and a C\$50,000 fine or, a conviction by way of indictment which carries a maximum \$500,000 fine and/or a maximum of five years in prison.<sup>87</sup>

In conformity with this bill, new legislative measures have been adopted in order to facilitate the implementation of Canada's anti-laundering legislation. For instance, the regulations pursuant to the Proceeds of Crime (money laundering) Act were adopted march 27, 1993. The new record-keeping requirements such as the identification of each customer who makes a suspicious transaction, will simplify the investigation and therefore lead to more arrests by making proper documentation available to law enforcement authorities.<sup>88</sup>

Since banking and financial institutions are primarily susceptible to cash transaction reporting offenses, their compliance with the legislation may be to their benefit in several ways. For instance, banks may avoid potential losses due to adverse

---

<sup>87</sup> Parlour, Butterworths International Guide to Money Laundering, 55.

<sup>88</sup> Government of Canada, RCMP, Drugs, 52.

publicity and they may benefit from the positive publicity associated with participation in the “war on drugs”. Also, certain industry leaders may market their expertise in compliance systems and management training to other banks and financial institutions, “Thus, while money laundering legislation may not prove to be successful against “organized crime”, it may well serve as yet another money-maker for the banks, and, after all, what’s good for the banks is good for us all.”<sup>89</sup>

#### Law Enforcement Authorities

In 1992, in Vancouver, Toronto and Montreal, three Anti-Drug Profiteering Integrated Units funded by Canada’s Drug Strategy were created in order to counter money laundering effectively and better support major enforcement initiatives in a five-year \$5 million project. This project’s goal was to establish coordination efforts across the country. These centers are composed of employees from the RCMP, the Canadian Department of Justice, Revenue Canada, forensic accountants and various support personnel. An additional 200 investigators from local and regional police forces assist this core group. The enhanced coordination of enforcement resources brought by the Integrated units, resulted in an increase in the amounts of cases that were resolved. For example, just after its implementation, it cooperated with the United States in solving a case that resulted in a one million dollar seizure.<sup>90</sup>

This effort complemented the creation, within the Department of Justice, of a team of prosecutors who oversee federal money laundering prosecution throughout the country. The consequences of money laundering in Canada have also been investigated

---

<sup>89</sup> Fisse et al., The Money Trail, 69.

<sup>90</sup> Government of Canada, RCMP, Drugs, 52.

by the Department of Finance and the Solicitor General. Two years prior to the establishment of the Anti-Drug Profiteering Unit, the Minister of State (Finance) established an Advisory Committee on Money Laundering. This committee has representatives from the public and private sectors and its goal is to monitor and recommend improvements to Canada's measures for combating money laundering.<sup>91</sup>

In addition to all these efforts, three federal regulatory bodies (Customs, Immigration and Investment Canada) are involved in the battle against money laundering with law enforcement agencies. First, Customs Canada has sole jurisdiction over all points of entry into Canada. Furthermore, although it has the same powers that law enforcement authorities have, unfortunately, overseeing and controlling the flow of cash is not part of Customs' duties.<sup>92</sup>

One of the more strenuous problems facing law enforcement authorities is due to the vastness of the Canadian-American border. This causes practical problems when it comes to monitoring the border. For example, small planes and boats can land at various tiny airports or marinas which are dependent on the honor system to fill out appropriate customs documents. Jim Johnston, Canada's director of customs investigations and interdiction stated: "We don't even know where all the airports or landing strips in Canada are. Let's face it, you can land an airplane filled with drugs on a highway or lake in some isolated area up north."<sup>93</sup>

---

<sup>91</sup> Parlour, Butterworths International Guide to Money Laundering, 47-48

<sup>92</sup> Beare and Schneider, Tracing of Illicit Funds, 281

<sup>93</sup> Francis, Contrepreneurs, 241.

Second, in order to ascertain that immigrants possess necessary wealth, so as not to be in a situation of dependency on the Canadian social system, officers of Immigration Canada are entitled to inquire as to how much money will be brought in Canada. Yet they are not permitted to investigate the nature of the funds.<sup>94</sup>

Third, Investment Canada is given as a mandate to encourage and investigate the legitimacy of foreign investments coming into Canada. This is a counter-productive situation since the department cannot at the same time encourage investment, while making it more difficult for investors to bring their funds into Canada, hence the different organs of the department are working against each other.<sup>95</sup>

#### Bill C-123

Bill C-123 came into force on 1 September 1993. This Seized Property Management Act declares that the Seized Property Management Branch (SPMB), within Supply and Services Canada, will hold all proceeds of crime assets until they are brought to the justice system.

Although anti-money laundering schemes may be partially successful in deterring criminals, they may in fact exacerbate the problem, that is according to only a few. For instance, these laws may operate as barriers to entry or to eliminate competition so that monopoly or cartel situation may result. They believe that "If money laundering legislation operates against only some criminals, that is, those whose activities are

---

<sup>94</sup> Beare and Schneider. Tracing of Illicit Funds, 283-4.

<sup>95</sup> Ibid., 285-8



detected, it might simply decrease competition and increase profits, thereby increasing the amount of money being laundered.”<sup>96</sup>

Thus, because of the effects of the drug trade on the economy (both beneficial and detrimental), policy makers must recognize the long and short term efficiency and welfare consequences of asset forfeiture legislation and practice. Policy makers’ decisions, “can only be justified if their program reaches the level of marginal profit.”<sup>97</sup> Asset forfeiture practiced against organized crime activities must be justified on a broader efficiency basis if such activities bring valuable skills to the market and if they are not illegal activities once in the market, “Asset forfeiture of legitimate businesses must be shown to affect adversely the marginal profit/cost ratio of the illicit activities.”<sup>98</sup> To date, no evidence exists that anti-money laundering legislation is effective in reducing the profit/cost margin of crime. Moreover, “there is some evidence to support the argument that some social benefit might arise from the insertion of laundered funds into the economy.”<sup>99</sup>

In the end, the purpose of asset forfeiture legislation is simply the increase of the Crown’s coffers. Thus, “a fundamental motivation, if not *the* fundamental motivation, behind asset forfeiture as a part of criminal law has been and remains, economic.”<sup>100</sup> Interacting with this first motivation is that protection of the market. Thus, buyers and

---

<sup>96</sup> Fisse et al., The Money Trail, 67.

<sup>97</sup> *Ibid.*, 61.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*, 68.

<sup>100</sup> *Ibid.*, 51.

sellers whose commodities are subject to customs duties are protected against being undercut by buyers and sellers of smuggled goods, "The market is restored to, and remains at, an equilibrium. Those who would circumvent the level playing field of a properly regulated market are punished by forfeiture and deterred from future illicit economic activity."<sup>101</sup>

#### Case study of Jean-Pierre Leblanc

The RCMP in an undercover operation opened a currency exchange house in Montreal, in the hopes of catching money launderers. Jean-Pierre Leblanc, a haschisch dealer from Trois-Rivieres was one of the leader of one of the organizations that was caught.

According to the authorities, Leblanc imported between two and a half and three and a half tons of haschisch from Jamaica between 1985 and August 1994. To accomplish this, Leblanc bought the haschisch in Montego Bay, then had it transported through the United States to its final destination of Montreal. To transport it, Leblanc paid vacations in Jamaica to couriers who would bring back the haschisch. The profits from the sales were then returned to Jamaica to begin the circle again.

It was proven that Leblanc was involved because during the court case, it was demonstrated that Leblanc spent 29 weeks out of the country in 1991, 27 weeks in 1992, 29 weeks in 1993 and several days in the first months of 1994. In addition, Leblanc and his colleagues visited the Montreal International Monetary Center a total of 98 times during the RCMP operation. Between 1991 and August 1994, Leblanc himself visited the center twenty-four times to launder money.

---

<sup>101</sup> Ibid., 52.

Judge Jean-Pierre Bonin from the Quebec court sentenced Jean-Pierre Leblanc to eight years for traffic and importation, six years for laundering three and a half million dollars and two years for selling articles derived from profits of illegal activities all to be served concurrently, which means that he will be eligible for parole at a third of the eight years sentence.

Judge Bonin ordered the seizure by the federal government of assets bought from the drug profits belonging to Leblanc worth approximately one million dollars. Leblanc's fortune consisted of a farm and 500 live-stock, numerous lots, fifteen apartment buildings in Trois-Rivieres, numerous bank accounts, \$25,000 cash in \$20 bills, computers, etc.

In a plea bargain agreement with the Crown, the indictments against Leblanc's wife, Rachel Dodon were dropped and the RCMP agreed not to interfere in Leblanc's release from prison. In addition, Leblanc could keep specific lots and buildings, the GMC Blazer truck, a 1988 Nissan King Cab truck, certain tools, personal items such as a video camera, a knife with its case, a caliber 30-06 rifle and a semi-automatic .22Lr caliber rifle.

## **CHAPTER FOUR**

### **Combating Money Laundering in the United States**

Since the United States is a major player in the fight against money laundering, its strategy to combat it will be examined in more details. In addition to its legislation on drug production and trafficking, its legislative and executive actions relating to money laundering will be explored.

#### **Legislative Efforts Dealing with Drug Production and Trafficking**

##### **The Foreign Assistance Act**

In the United States, legislative efforts to cease the international drug production and trafficking have been in place for a long time. The Foreign Assistance Act of 1971 authorized the President of the United States to take part in agreements with other countries, with the possibility of contributing support to them provided they assisted in the control and regulation of the manufacture, transportation and distribution of narcotics.

##### **The Trade Act**

Secondly, in 1974, the Trade Act was enacted. This act authorized the President to provide duty free treatment to third world countries hence assisting them in their economic growth.

##### **The International Development Cooperation Act**

Thirdly, the International Development Cooperation Act of 1979 in section 110 mentioned that “The success of any effort to eliminate illicit narcotics production depends upon the availability of alternative economic opportunities. ...”. As a solution,

the United States Congress recommended that its agencies give priority attention to programs which encourage extensive development possibilities.<sup>102</sup>

#### The Caribbean Basin Economic Recovery Act

Then, the Caribbean Basin Economic Recovery Act again authorized the President to provide duty free treatment, but only on certain specified products, made by the specified countries included in the Act which had signed an extradition treaty for American citizens. This act excluded the countries which manifested their unwillingness to cooperate with the United States.<sup>103</sup>

#### The International Narcotics Control Act

Next came the International Narcotics Control Act of 1985 which amended the Foreign Assistance Act of 1961 “to allow the presence of United States officers and employees during anti-narcotics police actions in a foreign country”. This act also targeted Jamaica, Bolivia, Peru and Cuba since these countries were perceived to be extremely involved in the manufacturing trafficking of narcotics.<sup>104</sup>

#### The Narcotics Control Trade Act

The Narcotics Control Trade Act amended both the Trade Act of 1974 and the Caribbean Basin Economic Recovery Act. It required the President to prove that all those countries which had received aid under the Trade Act and the Caribbean Basin Economic

---

<sup>102</sup> United States Government. Legislation aimed at combating international drug trafficking and money laundering, 2-4.

<sup>103</sup> Ibid., 4.

<sup>104</sup> Ibid., 5-6.

Recovery Act from the United States, were indeed cooperating or, at a minimum had taken necessary precautions to stop narcotics from entering the United States.<sup>105</sup>

#### The International Narcotics Control Act

Then came the International Narcotics Control Act of 1986. Its goal was “to promote international cooperation in the elimination of narcotics production and trafficking through the continued use of foreign aid sanctions and any other available means.” Unlike previous acts, no restrictions were placed on the states that can suffer from foreign aid restrictions.<sup>106</sup>

#### The Anti-Drug Abuse Act

During the same year, the Anti-Drug Abuse Act was passed. This act contained two titles relating to the interdiction of illicit drugs: The National Drug Interdiction Improvement Act of 1986 and the National Anti-Drug Reorganization and Coordination Act.

The Anti-Drug Abuse Act defined the different jurisdiction of the various federal agencies, that is the Coast Guard, Customs, Drug Enforcement Agency, Border Patrol and Department of Defense, involved in the problem of illegal drug smuggling. Although it had as a primary focus the increase in resources for interdiction, the act did not rectify the situation since cooperation amongst the agencies involved is not completely achieved.

The National Anti-Drug Reorganization and Coordination Act did not suggest any precise solution to the drug problem. What it did, was require the President to rearrange

---

<sup>105</sup> Ibid., 7.

<sup>106</sup> Ibid.

the executive branch of the United States government to combat the drug trade more efficiently.<sup>107</sup>

#### The National Security Decision Directive No. 221

Again in that same year, the President of the United States signed the National Security Decision Directive No. 221 which made drug enforcement a national security priority, thereby placing the drug problem on the international agenda.<sup>108</sup>

#### Legislative and Executive Actions relating to money Laundering and Foreign Bank Secrecy

The United States has taken both legislative and executive actions relating to money laundering and foreign bank secrecy. As mentioned previously, they were the Caribbean Basin Economic Recovery Act, the International Narcotics Control Act of 1985 which granted the President the authority of negotiating agreements with countries that provided confidential banking services and, the Narcotics Control Trade Act together with the International Narcotics Control Act of 1986. While the Narcotics Control Trade Act tied the efforts to combat the drug trade and the elimination of money laundering with trade benefits, the International Narcotics Control Act of 1986 tied the receiving of economic assistance to efforts to eliminate money laundering.<sup>109</sup>

The Bank Secrecy Act, the Organized Crime Control Act of 1970, the Comprehensive Drug Abuse Prevention and Control Act of 1970 with its Continuing

---

<sup>107</sup> United States Government. Legislation aimed at combating international drug trafficking and money laundering, 12-13.

<sup>108</sup> Andelman, "The drug money maze." 96.

<sup>109</sup> United States Government. Legislation aimed at combating international drug trafficking and money laundering, 15 and 19.

Criminal Enterprise (CCE) provisions of Title II, the Comprehensive Forfeiture Act of 1984, and the Comprehensive Crime Control Act of 1984, the Representative Mutual Legal Assistance Treaties, the Money Laundering Control Act of 1986, the Omnibus Drug Initiative Act, the Money Laundering Prosecution Improvements Act of 1988, the Depository Institution Money Laundering Amendment Act of 1990 and the Money Laundering Suppression Act of 1994 are other legislative and executive actions relating to the drug trade, money laundering and foreign bank secrecy taken by the United States government.

#### The Bank Secrecy Act

The 1970 Bank Secrecy Act was first enacted by the United States Congress to assist the government in tracking funds that were being hidden in tax evasion schemes in secret bank accounts in foreign countries. It did not prohibit money laundering per say, but it did impose reporting and record-keeping requirements for banks and individuals. In theory, non-compliance of these regulations resulted in severe penalties.

This act regulated the flow of money by requiring all banks to report cash transactions over \$10,000 per day by the same individual by having them fill out Currency Transaction Reports (CTRs) with the United States Internal Revenue Service. Other financial institutions doing business with the bank or certain clients who had legitimate reasons such as possessing a company where large transactions were the norm and where they had a bank account which proved this were exempt from this requirement.



Although it was now illegal for banks not to report transactions over \$10,000, the majority of them did not respect the regulations. Some bankers even suggested to individuals dividing the amount of money in deposits of \$9,900 if it did surpass the legal limit to avoid the hassle of filling out the required forms.<sup>110</sup>

In addition, this act regulated the flow of money by having individuals filling out Currency and Monetary Instruments Reports (CMIRs) with the United States Customs Service if they were carrying or causing the transport, in or out of the United States or, if they received monetary instruments over the \$5,000 limit.

Thirdly, this act required individuals under the jurisdiction of the United States to fill a Foreign Bank Account Report (FBAR) divulging the balance of the account in question with the Treasury Department if they owned such an account in a foreign country.

The Bank Secrecy Act faced many administrative problems from the start. As mentioned previously, although in theory non-compliance resulted in severe penalties, rarely did the government act on this provision. Secondly, ambiguity existed when dealing with transactions from businesses that were exempt from the reporting requirements. Thirdly, financial institutions were not obliged to keep records of the businesses that were on the exempt list. In addition, the issue of dividing large deposits to avoid filling out the required forms was not solved. Moreover, penalties imposed on financial institutions or individuals were not uniformed throughout the country. Lastly,

---

<sup>110</sup> Andelman, "The drug money maze." 96.

not only was coordination missing from law enforcement agencies, but a lack of resources also existed.<sup>111</sup>

Not only did the Bank Secrecy Act face problems, so did the Internal Revenue Service. This was primarily due to the fact that it took four years after the legislation had been passed and two years after it was enacted for the IRS to have the authority to implement the CTR reporting requirements. Furthermore, since the Right to Financial Privacy Act (RFPA) was enacted in 1978, the IRS saw its access to financial institutions and more precisely, specific bank accounts limited because the banks could now notify their clients that their bank accounts were being investigated to give them a chance to contest it openly in court.<sup>112</sup>

The Bank Secrecy Act also caused problems for the department of Customs. One example is the fact that over the years, the United States judicial system held that Customs officers had to prove beyond a reasonable doubt that the individual who committed the offense of bringing in the United States or leaving it with funds over \$5,000 without declaring it, knew that a currency reporting requirement existed, in addition to possessing the intent to commit this particular crime. A second problem faced by Customs is that its officers have no authority to search for money without first obtaining a search warrant indicating probable cause. A last problem encountered by

---

<sup>111</sup> Patrick T. O'Brien, "Tracking narco-dollars: the evolution of a potent weapon in the drug war." *Inter-American Law Review*. Vol. 21, No. 3. (1990): 641-644.

<sup>112</sup> *Ibid.*, 645-646.

Customs was that attempting to transport over the border funds in excess of \$5,000 did not qualify for criminal penalties.<sup>113</sup>

The early 1980s saw an improvement in the fight against money laundering in the United States. Law enforcement authorities there, decided to use more combative means to enforce the Bank Secrecy Act. For example, in 1980, the Treasury Department lowered the filing time for CTRs from 45 to 15 days for financial institutions as well as ordering them to keep copies of the CTRs for at least five years. In addition, the government created task forces such as the IRS and Customs Financial Task Forces and the Organized Crime Drug Enforcement Task Forces. This last task force was composed of investigators from the Internal Revenue Service, Customs, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Agency, the Federal Bureau of Investigation, in addition to attorneys from United States Attorney's offices.

In 1984, the President's Commission on Organized Crime came to the conclusion that money laundering was the lifeblood of organized crime. This commission found that drug traffickers and money launderers took advantage of weaknesses in the Bank Secrecy Act to launder their illegal profits. To rectify the situation, it proposed new legislation with tougher currency reporting requirements, giving law enforcement authorities more powers to investigate crimes of an economic nature and, creating a new money laundering offense.<sup>114</sup>

---

<sup>113</sup> *Ibid.*, 648.

<sup>114</sup> Paul G. Wolfeich, "Making criminal defense a crime under 18 U. S. C. Section 1957." *Vanderbilt Law Review*. 41 (1988) : 842-843.

Then, in 1985 the government implemented regulations for casinos since they were used more and more by money launderers. By then, law enforcement authorities were also beginning to successfully prosecute criminals as well as banks for money laundering resulting in major fines against both individuals and banks. The Bank of Boston case was the first successful investigation against a major bank that resulted in the bank admitting its failure to report large deposits totaling over one billion dollars between 1980 and 1984 and filing appropriate CTRs. In this particular case, the bank was fined \$500,000 for not complying with the reporting requirements. Consequently, financial institutions started implementing the regulations and began adhering to the reporting requirements<sup>115</sup>

During this time, the Organized Crime Drug Enforcement Task Forces investigated numerous cases, but none as famous as what the "Pizza Connection" investigation revealed. It exposed a scheme whereby the Cosa Nostra and Italian Mafia laundered profits from heroin trafficking through leading financial institutions such as banks and investment houses. This case involved three different methods of laundering the dirty money. The first method used couriers who would transfer the money in small denominations bills through financial institutions to Switzerland and Italy. A second method consisted of having it sent to Bermuda in a private jet and the last method involved brokerage houses in Switzerland that transferred the money in different accounts. To complete the money laundering circle, the funds in Switzerland and Bermuda were transferred back to Italy to buy more opium to continue the circle.

---

<sup>115</sup> O'Brien, "Tracking narco-dollars," 650-655.

Racketeer Influenced and Corrupt Organizations provisions of Title IX of the Organized  
Crime Control Act

The initial purpose of the Racketeer Influenced and Corrupt Organizations (RICO) provisions of Title IX of the Organized Crime Control Act of 1970 was to eliminate the corrupt influence existing in the American economy that is coming from organized crime. Congress revealed that RICO's purpose was "to seek the eradication of organized crime in the United States ... by providing enhanced sanctions to deal with the unlawful activities of those engaged in organized crime."<sup>116</sup>

This legislation dealing with organized crime was not the first bill proposed in this field. The first bill presented was the Organized Crime Control Act introduced in 1969. In that same year, the forerunner to the RICO Act enacted a year later, the Corrupt Organizations Act was introduced in the legislation.<sup>117</sup>

Although the legislation was aimed at organized crime figures, it was worded in such a way as to be applicable to any individual. For example, according to section 1964 of Title 18 of the United States Code, either the government or a private party may bring RICO civil action. This structure gives federal prosecutors considerable discretion to decide whether or not to press charges against an individual. If the criminal or civil defendant in question is found guilty, then that person faces heavy penalties which can range from prison sentences to fines and forfeiture of one's assets. Federal district courts

---

<sup>116</sup> Linda Koenig and Doris Godinez-Taylor. "The need for greater double jeopardy and due process safeguards in RICO criminal and civil actions." California Law Review. 70 (1982) : 724.

<sup>117</sup> Karla R. Spaulding, " 'Hit them where it hurts': RICO criminal forfeitures and white collar crime." The Journal of Criminal Law and Criminology. Vol. 80, No. 1, (1989) : 199-200.

also have the authority to order divestiture of a defendant's interest in an enterprise, in addition to making other orders intended to isolate him from the enterprise in question.

According to section 1963 of Title 18 of the United States Code, a defendant convicted under section 1962 may be imprisoned no more than twenty years (or for life if convicted of a racketeering activity which includes a maximum sentence of life imprisonment), or fined no more than \$25,000, or both. In addition, the property which the defendant has acquired or maintained in violation of section 1962 may be forfeited to the United States.<sup>118</sup>

Under the RICO statute, three classes of forfeitable property exist. The first class includes the interests acquired or maintained through racketeering, while included in the second class are the interests in or providing a source of influence over the racketeering enterprise, and finally, the proceeds of racketeering activity make up the third class.<sup>119</sup>

The Continuing Criminal Enterprise (CCE) provisions of Title II of the Comprehensive  
Drug Abuse Prevention and Control Act

Both the Racketeer Influenced and Corrupt Organizations provisions of Title IX of the Organized Crime Control Act and the Continuing Criminal Enterprise (CCE) provisions of Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 reintroduced a type of in personam asset forfeiture that, although it had not been

---

<sup>118</sup> Government of Canada. Documents et Autorites de la poursuite. Sa Majeste La Reine contre Jean-Pierre Leblanc. No. 500-01-014472-945. Section.11, 587.

<sup>119</sup> Spaulding, " "Hit them where it hurts": RICO criminal forfeitures and white collar crime," 244.

used since the Civil War, had ancient roots. Biblical, Greek, Roman and English law all had a form of forfeiture or another.<sup>120</sup>

Mandatory separation of the convicted criminal from the business or enterprise which he corrupted and from the profits of his illegal activities is the primary purpose of the RICO forfeiture provisions. In addition, these strong measures were designed to discourage others from thinking that the enormous monetary profits possible from these criminal activities outweigh the risks of being convicted of this crime. As a result, Congress adopted a broad 'hit them where they hurt' philosophy when it enacted the RICO Act forfeiture provisions.<sup>121</sup>

In 1984 and 1986, the criminal forfeiture provisions of the RICO Act were amended to improve procedures for implementing the forfeiture provisions of the Act and to clarify the broad scope the statute was always intended to have.

#### The Comprehensive Forfeiture Act and the Comprehensive Crime Control Act

In 1984, the Comprehensive Forfeiture Act and the Comprehensive Crime Control Act were enacted. Under the first act, the government asserts its ownership of the property obtained in violation of the Racketeering Influenced and Corrupt Organizations Act (RICO) and the Continuing Criminal Enterprise Act (CCE).<sup>122</sup>

Under the Comprehensive Crime Control Act, Customs officers were given the authority to search for currency without first obtaining a search warrant. They only

---

<sup>120</sup> Herbert E. Alexander and Gerald E. Caiden (ed.). The Politics and Economics of Organized Crime. (Lexington: Lexington Books, 1985), 128.

<sup>121</sup> Spaulding, " "Hit them where it hurts": RICO criminal forfeitures and white collar crime." The Journal of Criminal Law and Criminology, 197-198.

<sup>122</sup> Wolfeich, "Making criminal defense a crime under 18 U. S. C. Section 1957," : 851.

needed reason to believe that currency was hidden. Furthermore, the United States government in an attempt to solve the ambiguity that existed in the 1984 Act added the sentence "attempt to transport or have transported" to the Bank Secrecy Act. Unfortunately that effort did not resolve the problem and Congress had to amend it again in 1986 with "transports, is about to transport, or has transported." Moreover, the 1984 Act authorized Customs and the International Revenue Service to reward informants who contributed information that lead to convictions with seizures and forfeitures. The amount of the reward depended on the amount of assets forfeited and seized with a limit of 25% of the total value of the assets seized in the particular case which was solved because of the informant. Ultimately, the Act increase from \$5,000 to \$10,000 the filing requirements for Currency and Monetary Instruments Reports.<sup>123</sup>

#### The Representative Mutual Legal Assistance Treaties

The Representative Mutual Legal Assistance Treaties have mainly two goals. The first one is designed to help in penetrating the foreign bank secrecy laws that are in place in certain countries, while the second goal is multiplying the links available to foreign law enforcement authorities and their governments in finding the proceeds of crime. This is now necessary since practically all operations involving money laundering are established at an international level.

#### Treaty of Reciprocal Assistance with Switzerland

For example, in 1976, the United States agreed to a Treaty of Reciprocal Assistance with Switzerland. Under this treaty, Swiss law enforcement authorities possessed more investigative and judicial powers to determine the origin of funds.

---

<sup>123</sup> O'Brien. "Tracking narco-dollars," 657-658.



Although its use requires that certain conditions exist, it is still effective to some degree. For example, after being supplied with evidence from American law enforcement authorities, Swiss authorities have seized and forfeited criminally derived profits from Swiss bank accounts.<sup>124</sup> But the world had to wait until 1989 for the Kopp scandal which led to the criminalization of money laundering by the Swiss Federal Parliament. This was the beginning of the end of the concept of bank secrecy that existed prior to this in Switzerland.

#### The Italian-American Mutual Legal Assistance Treaty

The Italian-American Mutual Legal Assistance Treaty is a second and remarkable example since it grants both the Italian and the American government the authority to immobilize assets in emergency situations and, after proper judicial proceedings, to forfeit the assets on behalf of the requesting state. Secondly, this treaty with Italy was unprecedented in the archives of international law since it authorized both countries to issue an 'international subpoena' for a person living in the other country to appear and testify with or without the person's consent in the country issuing the subpoena.<sup>125</sup>

#### The Money Laundering Control Act

The Money Laundering Control Act of 1986 amended and substantially improved the Bank Secrecy Act by creating several new laws, one of which was making money laundering itself a crime. Section 1352 of this act created new offenses of money laundering adding sections 1956 and 1957 to Title 18 of the United States Code.

---

<sup>124</sup> Michael A. DeFeo, "Depriving International Narcotics Traffickers and Other Organized Criminals of Illegal Proceeds and Combating Money Laundering." Denver Journal of International Law and Policy. 18 (Spring 1990) : 408-409.

Section 1956 of title 18 adopted fines and prison time for practically any dealings with the profits of specific unlawful activities when those dealings were aimed at furthering some unlawful activity, or at concealing the source or ownership of the funds. It also made it a crime for anyone to conduct or attempt to conduct a financial transaction with the proceeds of some unlawful activity. In addition, it was now a crime for anyone to transport or attempt to transport a monetary instrument or funds between the United States and another country with the intent of furthering some unlawful activity or concealing its source or ownership. This section also made possible extraterritorial jurisdiction if the transaction contained assets totaling over \$10,000, and if the money laundering was organized either by an American citizen, or a foreign citizen on United States territory.<sup>126</sup>

On the other hand, section 1957 of title 18 made it illegal to be involved in transactions connected with criminally derived property. In addition, section 1354 of the Money Laundering Control Act created in an attempt to stop the smurfing loophole, produced the new offense of structuring transactions to evade the federal currency reporting requirements. Also, section 1366 added the new chapter 46 to title 18 of the United States Code which authorized civil and criminal forfeitures when dealing with money laundering. Other amendments included an increase in criminal penalties from five years to ten years and an increase in civil penalties from \$10,000 to \$25,000 of the total amount of the transaction without surpassing a \$100,000 limit. Moreover, it was

---

<sup>125</sup> United States Government. Legislation aimed at combating international drug trafficking and money laundering. 20.

<sup>126</sup> O'Brien, "Tracking narco-dollars," 661-662.

mentioned that civil penalties were supplementary to criminal penalties received by the offender.<sup>127</sup> Additionally, the Money Laundering Control Act added the considerable resources of the FBI and DEA to the Government's efforts. It granted them overall responsibility for investigating the newly established crime of money laundering.

#### The Omnibus Drug Initiative Act

On November 18, 1988 the President of the United States signed the Omnibus Drug Initiative Act amending the Bank Secrecy Act. Amendments included expanding the term financial institution as well as, requiring additional record-keeping and reporting by financial institutions. For example, according to section 5325 of title 31, financial institutions were required to provide new identification and record-keeping requirements for sales of certain monetary instruments such as bank checks, cashier's checks, traveler's checks or money orders in excess of \$3,000.<sup>128</sup> Furthermore, section 5326 of Title 31 gave the Secretary of Treasury power to order a specific or group of financial institutions in a particular geographic area to obtain information and maintain a record about transactions involving the bank and any other person participating in the transaction.

#### The Money Laundering Prosecution Improvements Act

With the 1988 Money Laundering Prosecution Improvements Act, Congress made some significant improvements to the Government's effort to counter money laundering. It amended the Right to Financial Privacy Act and eliminated the requirement that individuals be notified if the government uncovers accounts that look suspicious while it

---

<sup>127</sup> United States Government. Legislation aimed at combating international drug trafficking and money laundering. 17-18 and O'Brien, "Tracking narco-dollars, 660-661.

<sup>128</sup> O'Brien, "Tracking narco-dollars," 667.

was carrying out its routine functions. This act also provided a 'good faith' defense for financial institution employees that divulged information leading to an investigation by the government. In addition, it excluded attorneys fees from the Money Laundering Control Act provisions which prevented any dealing that contained a touch of criminally derived funds and it included wire transfers in its coverage. Moreover, this act included income tax violations in its definition of unlawful activities.<sup>129</sup>

#### The Depository Institution Money Laundering Amendment Act

Then on April 25, 1990 a giant step in the fight against money laundering was taken with the passage of the Depository Institution Money Laundering Amendment Act because this act gave the United States government the right to take over the administration of any bank convicted of money laundering.<sup>130</sup>

Combating money laundering was still a preoccupation of the United States government during the first half of the 1990's. Although less legislation was passed on the subject during this period, improvements still have been made. For example, serious changes to the money laundering policy and supervisory function of the United States Department of Justice have occurred. At first, it was only added to the narcotics and dangerous drugs section in the Department's Criminal Division. Then in 1991, it was a complete section of that division by itself. Finally, in December 1995, the Justice Department created a new section dealing with asset forfeiture and money laundering

---

<sup>129</sup> Ibid., 667-668.

<sup>130</sup> Anonymous, "Flushing funny money into the open." 315 The Economist. (May 5, 1990) : 91.

only. This latest change increased its importance since now, that section answers directly to the deputy assistant attorney general of the United States.<sup>131</sup>

Again the 1990s have brought the unveiling of a new suspicious transaction reporting system in the United States. The Treasury Department's Financial Crimes Enforcement Network with the Federal Reserve Board enacted guidelines on what is expected from financial institutions when dealing with suspicious activities relating to the Bank Secrecy Act or money laundering legislation.<sup>132</sup>

#### The Money Laundering Suppression Act

On September 23, 1994, President Clinton signed the Money Laundering Suppression Act of 1994. While this act augmented the role of the federal government in supervising the transmission of money, it further amended the Bank Secrecy Act by decreasing the banks regulatory compliance requirements regarding certain exemptions. For example, transactions between banks and other banks, federal, state or local government agencies, or businesses which the reports would be of no value to law enforcement agencies would not have to be reported. Furthermore, this act gave banks added discretion in exempting certain customers which met certain conditions.<sup>133</sup>

Released in February of this year, the report entitled "Money laundering: Rapid growth of casinos make them vulnerable" by the General Accounting Office found that this rapid increase in casinos left unprepared the regulatory bodies that are supposed to

---

<sup>131</sup> Anonymous. "Justice Department creates asset forfeiture, money laundering section." Money Laundering Alert. Vol. 7, No. 3. (December 1995), 7.

<sup>132</sup> Anonymous, "Major new suspicious activity reporting duties announced." Money Laundering Alert. Vol. 6, No. 12. (September 1995), 1.

<sup>133</sup> Parlour, Butterworths International Guide to Money Laundering, 240-241

supervise the gaming industry. According to this report, an increase of over 240% occurred in the last ten years in money gambled in casinos. It also mentioned the increase in riverboat casinos as well as Indian gaming facilities. This supervision of casinos is important because of the amount of revenues they generate. For example, the largest Indian casino, Foxwoods Resort Casino in Connecticut has an annual revenue of \$480 millions.<sup>134</sup>

Speaking on this report, Senator Nunn remarked "The extraordinary growth of the gaming industry in recent years -- especially riverboat and Indian gaming -- may create new scenarios for money laundering for which we are not prepared. We must ensure that we do not create new methods and techniques for criminals to launder their ill-gotten gain. Based upon this GAO report, I am even more concerned that we do not have adequate resources in place to regulate these rapidly growing areas of the legal gaming industry to prevent illegal money laundering. I hope the Administration and Congress review these findings to assess the adequacy of the current regulatory strategies."<sup>135</sup>

#### Case Study of U.S. v. \$405,089.23

In the case of the United States of America v. \$405,089.23 U.S. Currency, et al., a panel of three judges from the Ninth Circuit Court of Appeals (Cecil F. Poole and Stephen Reinhardt, Circuit Judges, and Jack E. Tanner, District Judge) ruled in September 1994 that prosecuting drug offenders whose property has been seized in drug raids constitutes double jeopardy. Then in May 1995, a San Francisco federal appeals court rejected the Clinton administration's request to reconsider the ruling. "The panel

---

<sup>134</sup> William Roth, "Money Laundering." Congressional Press Releases, February 13, 1996.

<sup>135</sup> Ibid.

held that the government could not convict a drug dealer of trafficking in drugs and then seek civil forfeiture of the proceeds of the illegal transactions. It reasoned that to do so "punishes" - or prosecutes - the dealer twice for the same offense and thus runs afoul of the Double Jeopardy Clause."<sup>136</sup> Since then, over one hundred appeals have been filed to overturn convictions, return forfeited property or dismiss charges on the basis of the Ninth Circuit's ruling alone.

According to Stefan D. Cassella, deputy chief of the Justice Department's asset forfeiture section in Washington, "For some, it's a get-out-of-jail-free card." He and other federal prosecutors believe that this judgment will affect the government's efforts on the war on drugs.<sup>137</sup>

The case in question began in June 1991, when the United States government pursued civil action only five days after a grand jury indicted the claimants James Wren, Charles Arlt and Payback Mines on counts of conspiracy and money laundering. Then in March 1992, Wren, Arlt and their codefendants were convicted in the criminal case. Both Wren and Arlt were sentenced to life in prison without parole after being convicted on numerous counts of narcotics trafficking and money laundering. Eight months later, the government filed a motion for summary conviction in the civil case. The government wanted to seize \$405,089.23 in a Security Pacific Bank account, \$123,000 in cash, \$8,929.93 in Bank of America accounts, 138 bars of silver bullion, a Bell 47 G-2 helicopter, a Piper 6 Cherokee airplane, two seagoing vessels, including a shrimp boat,

---

<sup>136</sup> United States of America v. \$405,089.23 U.S. Currency. United States Court of Appeals for the Ninth Circuit. (Filed May 30, 1995), 5869.

and 11 cars, including Porsches and Jaguars. The government based its forfeiture action on two grounds: first, the items were the proceeds of illegal narcotics dealings, and secondly, the items were "involved in" money laundering violations.

In April 1993, the district court granted the government's motion and ordered the property to be forfeited to the government. The district court held that "the convictions of Arlt, Wren and Hill of conspiracy to aid and abet the manufacture of methamphetamine, conspiracy to launder monetary instruments, and money laundering are sufficient for probable cause by themselves."<sup>138</sup> In addition, the court noted several other factors that helped them reach their decision.

While in prison, Arlt and Wren appealed to the Ninth Circuit Court to reclaim possession of their property. They appealed the decision on many grounds, one of which was the double jeopardy clause which offers protection against successive prosecutions for the same offense whether the first prosecution resulted in a conviction or an acquittal. In this case, on appeal, the court found that the "civil forfeiture action and the claimants' criminal prosecution addressed the identical violations of the identical laws; the only difference between the two proceedings was the remedy sought by the government."<sup>139</sup> Thus, the double jeopardy clause was violated. The government could have prevented this from happening. It just had to include a criminal forfeiture count in the indictment which led to the conviction of the claimants. The government by acting on two separate fronts,

---

<sup>137</sup> Davan Mahara, "Court extends hope to jailed drug dealers; appeals: Hundreds of convicts seek sentence reversals or return of property after ruling. It found that prosecution and seizure in separate proceedings amounts to double jeopardy." Los Angeles Times. (February 5, 1996), A3.

<sup>138</sup> United States of America v. \$405,089.23 U.S. Currency. United States Court of Appeals for the Ninth Circuit. (Filed September 6, 1994), 10460.

<sup>139</sup> *Ibid.*, 10462.



was at an advantage because, if it won in the criminal case, then it would only have to get a summary judgment based on the conviction, and if it lost, it could still ask for forfeiture under the more lenient standards of the civil court.

Today, the government has two options: including a criminal forfeiture count in the indictment and secondly, pursuing only the civil forfeiture action. The first option has the disadvantage of having to prove beyond a reasonable doubt, whereas in civil matters, authorities need only prove that they had probable cause to believe that the assets were connected to a criminal enterprise. Once this standard has been met, the burden shifts to the property owner to disprove the government's case. On the other hand, the second has the disadvantage of losing any chance of prosecuting the claimant in a criminal proceeding.

Circuit Judge Reinhardt stated in his opinion in the U.S. v. \$405,089.23 that "The question is whether the government violated the Double Jeopardy Clause of the Fifth Amendment by obtaining convictions in the criminal case and then continuing to pursue the forfeiture action. We answer the question in the affirmative and reverse the order of forfeiture."<sup>140</sup>

Last May, the Ninth Circuit Court refused to review the case en banc over the dissent of seven judges. Judge Pamela Rymer, writing for the seven dissenters stated: "If the Supreme court has changed its mind [on forfeiture], it is up to that court to say so."<sup>141</sup>

---

<sup>140</sup> Ibid., 10459.

<sup>141</sup> Scott Graham, "Supreme Court Takes UP 2 Key Forfeiture Cases; Double jeopardy ruling led to flood of defense motions." The Recorder. (January 16, 1996), 1.

Then in January of this year, the United States Supreme Court agreed to review this ruling in the case of *U.S. v. \$405,089 in U.S. Currency* in addition to another controversial ruling in the *United States v. Ursery*, in which the Sixth Circuit Court in Cincinnati overturned last year Guy Jerome Ursery's criminal conviction and 63 months prison sentence for growing marijuana because he had agreed to pay the government his net worth of \$13,250. The court said the conviction was "a second punishment" for the same offense. Oral arguments in which the Supreme Court will have to decide if civil forfeiture constitutes punishment and if forfeiture and prosecution are punishments for the same crime are expected to be set for April of 1996, while a decision is expected in late June.<sup>142</sup>

---

<sup>142</sup> Linda Greenhouse, "Justices to Decide Legality Of Drug Property Seizures." The New York Times. (January 13, 1996), 8 and Anonymous. "Supreme Court Proceedings; Summary of Cases Granted and Review and Summary Judgment." U.S. Law Week. The Bureau of National Affairs, Inc., (January 18, 1996).

## CONCLUSION

In conclusion, not only are the economy, civil and criminal laws affected by money laundering, but in addition, money laundering does not differentiate between the regional, provincial and national boundaries of the countries. In summary, numerous elements of society are affected by money laundering.

The major conclusion this paper has reached is that many weaknesses are present in the efforts to combat money laundering. In order to successfully battle the issue of money laundering, there must be a commitment to recognize and combat the problem. Every level must have sufficient resources to fight adequately, in addition to being adequately trained and educated. Once this process is instituted, effective policies and procedures must be implemented. Although some levels have instituted policies to deal with money laundering, still others are lagging behind. Once these policies and procedures are created, it is still essential to institute legislation to guarantee their application.

While policies and procedures are necessary, their usage is even more important. For example, since the provincial governments possess the authority to prosecute criminals on money laundering charges, they should take advantage of it and use it more often. Even though there has been an increase in money laundering cases and money recovered over the years, there are still numerous cases that could be prosecuted but are not.

For example, in 1992, \$21.5 million in cash and assets were seized by the RCMP or referred to other agencies for seizure, "This represents a 41 per cent increase from

1991, when \$15.2 million were seized."<sup>143</sup> Canadian courts also ordered during the same year the forfeiture of \$5.3 million in cash and assets and imposed fines totaling \$442,185 in drug proceeds of crime cases. Real property accounted for 64 per cent of all 1992 seizures while cash accounted for 23%. Various other assets, including stocks and jewelry, represented 10% of seizures while vehicles accounted for 3%.<sup>144</sup> Throughout 1994, 37 million dollars of laundered money was intercepted and during the first half of 1995, 22 million dollars were seized.

Paul Kennedy, the head of the Canadian Justice Department's national strategy for drug prosecutions, views the provincial prosecutions as disappointing. He believes that "Provincial prosecutors have little experience with the new legislation and worry about being sued in civil court for damages if the money launderers and drug traffickers are acquitted of criminal charges." To prevent this, he suggests the creation of a contingency fund in case of civil suits.<sup>145</sup>

Complete cooperation between banks, law enforcement agencies and governments is required to eliminate money laundering not only in Canada, but in the international arena as well. This requirement was demonstrated by the case of the Bank for Credit and Commerce International (BCCI), which closed down all operations in 1991. The investigations have demonstrated that the bank had handled billions of illegal dollars through its worldwide network. Money laundering operations were permitted to proceed unobstructed for many years, due to a failure to coordinate the regulation of

---

<sup>143</sup> Government of Canada, RCMP, Drugs, 50.

<sup>144</sup> *Ibid.*

<sup>145</sup> Clayton, "Where world's crooks go to do their dirty laundry," 1.

BCCI's activities, and also to the fact that rumors of the bank's illicit activities were not investigated.

It is important to remember that once a bank like the BCCI accepts the added revenue of a money laundering scheme, it is practically impossible for another bank to do anything once it has received the money. Once the funds are integrated in the financial system, it is hopeless.

Since we live in a community of nations, government officials increasingly believe that it is in their country's interest as well as their own, in addition to being a responsibility, to cooperate fully with other nations to combat and control effectively not only the drug trade but related accumulation of power and wealth, such as money laundering. Every country must do its best to try and eliminate these problems since they affect the entire world and not only the country it is taking place in. Although not all countries have the ability to fight these problems on a large scale, they have an obligation to do the best they can. The more people are educated about these problems the easier it will be to come up with effective and practical solutions.

In addition, cooperation in the international scene can be improved with conferences and international forums discussing the problems experienced by different countries thereby helping others dealing with this crisis. For example, President Clinton addressed the issue of money laundering at the United Nations General Assembly in October 1995.

In December of the same year, a ministerial money laundering conference was held in Buenos Aires where the United States and 33 other nations of the Western hemisphere adopted a 'Plan of Action' for a coordinated hemispheric response to money

laundering. This plan included the implementation of all legislative and administrative measures deemed essential by the group. The Buenos Aires Action Plan contains legal, regulatory and enforcement elements covering a range of subjects that, if implemented, will affect all businesses, including the entire financial sector of every participating nation.

Legislators from the United States, Canada and three Latin American countries met again in the beginning of February of this year to discuss a common strategy to fight the drug trade, which in turn will affect the laundering problem. They decided to hold a formal meeting in January 1997 in Miami.<sup>146</sup>

Foreign cooperation between nations is now more and more common. For example, the Committee on Banking Regulations, composed of the Group of Ten industrialized nations, adopted a statement of principles aimed at preventing international money laundering back in 1989. A disadvantage of relying on cooperation of foreign nations is that they are not obliged to act against money laundering. Increasing pressure on nations to amend their secrecy and extradition laws could prove useful, since criminals would have less countries to choose from, thereby making money laundering more obvious to law enforcement authorities. Keeping pressure on those nations concerned would eventually lead to more and more nations refusing dirty money and this could eventually lead to only a few select nations that would willingly accept to launder

---

<sup>146</sup> Anonymous. "Western countries agree to fight drugs together." The Orlando Sentinel. (February 5, 1996), A8.

money. When this occurred, financial transactions with those few countries could be prohibited, leaving them with the options of refusing dirty money or going bankrupt.<sup>147</sup>

As mentioned previously, cooperation between nations is essential in solving the money laundering problem. During the first half of the 1990s, the United States shared with Canada, over \$2 million from its asset forfeiture fund for its help in resolving American cases. Prior to the Seized Property Management Act, Canada did not have any laws regulating the sharing of funds between countries. If funds were shared with the United States, they had to be negotiated under the United States - Canada Mutual Legal Assistance Treaty. Then in March of 1995, Canada signed an agreement with the United States regarding the sharing of funds in cases where both countries provided assistance to the investigation. This agreement specifies that funds from the Seized Property Management Directorate will be distributed at the end of each year only on a 90/50/10 basis. Participation in the case will decide the percentage of the assets the country is going to get. For example, if the United States is the 'lead investigator' in solving a Canadian case, then it would receive 90%, as opposed to 10% if it only provided a tip to Canadian authorities.<sup>148</sup>

In addition to this, a better enforcement of the legislation, perhaps new legislation closing the loopholes and prevention are the best solutions to stop this increasing problem which is money laundering.

---

<sup>147</sup> O'Brien, "Tracking narco-dollars," 675-676.

<sup>148</sup> Anonymous, "Canada returns favor, signs asset-sharing agreement with U.S.; Canada; Canada to open forfeiture-sharing spigot with U.S." Money Laundering Alert. (June 1995), 7.

Regarding an improved enforcement of the legislation, law enforcement officers acknowledge already that the amount of cases they must examine, is too great to investigate each one thoroughly. In addition, a lack of financial support as well as trained experts in specialized fields such as accounting, is placing additional burdens when faced with complicated operations.

Although the Clinton administration is pushing for the elimination of money laundering in addition to the complete eradication of the drug trade, it is still taking actions counterproductive to these two goals. For example, although in theory, combating money laundering and the drug trade is a priority; in practice, it has been depriorized. In addition to lowering money laundering investigations in the priority list, the DEA has decreased its number of agents assigned to investigating them.

A solution suggested and already in place in Canada and the United States to increase successful prosecutions is for the government to offer incentives to individuals for offering information about violations of money laundering laws. For example, in the United States, individuals that provide information leading to a criminal fine, a civil penalty or forfeiture over \$50,000 relating to the Bank Secrecy Act are eligible to receive up to \$150,000. Under a 1992 statute, individuals who give information concerning violation of money laundering laws or currency reporting requirements can be rewarded directly from the asset forfeiture fund of the Department of Justice.<sup>149</sup>

Unfortunately, the measures enacted to deal with the money laundering problem do not go to the root of the problem, instead they deal with the consequences. The root of

---

<sup>149</sup> Anonymous, "U.S. lures laundering whistleblowers with rewards, protection." Money Laundering Alert. Vol. 6, No. 9. (June 1995), 2.



the problems can be found in the colossal drug trade. With the absence of new effective laws, there is not much that can be done to reduce the amount of drug trafficking which has created money laundering and made it into a multi-billion dollar industry. Canada and the United States need new laws to disrupt and destroy the narcotics' industry to finally eliminate money laundering. For example, although President Clinton implemented a new drug policy consisting of fighting the drug problem by reducing its demand across the streets of America, it does not address the root of the problem. This new drug policy is not an effective solution to the problem since it does not possess long term goals which would help to effectively combat the seriousness of this problem.

There has been a multitude of suggestions to solve the problem of drug trafficking which is the major source of money laundering. Some people believe that "tough sentences against traffickers decrease the supply of the drug; lenient ones for usage enhance demand. The result is that the commodities, which are in this case narcotics, fetch extraordinary prices. If users were severely punished, demand, and prices, would drop. That would discourage many crooks because risks would be higher and rewards lower."<sup>150</sup> Solutions extend from tougher sentences for drug users and dealers to the legalization of drugs.

Some suggest that focusing law enforcement officials on the money laundering problem is only a 'fourth-level defense strategy'. The money laundering problem occurs after the first three defense mechanisms are unsuccessful. Law enforcement officials had the cultivation, the manufacture and the smuggling of the drug in question to eradicate the problem. As a result, they suggest that it may be unjust to anticipate that focusing on

---

<sup>150</sup> Francis, Contrepreneurs, 295.

the laundering problem will make up for the lasting failure of previous efforts to decrease the unlawful activities that inevitably lead to laundering. In the end, they believe that the problem of money laundering will continue as long as illegal cash and assets succeed in surviving the efforts made by law enforcement agencies.<sup>151</sup>

Another conclusion reached is that seeing the numerous methods by which criminals can launder money, it is evident that they will switch from one method to another if the risks keep increasing. Combating this by targeting only certain aspects of the problem is ineffective because as said previously, the criminals will simply choose another method. This is true even when talking about countries. If one country prohibits money laundering and is serious about it, then criminals will look elsewhere to launder because they will know that if they get caught, the punishment will be severe.

Both the creation of money laundering laws and the government and industry comprehension of the effects of money laundering and the roles they play on the war on drugs have had many excellent results. However, some believe that the increases in reporting of transactions will prevent the bankers from actually stopping the laundering of money because they will be too busy filling out forms. Still, others assume that by having bankers filling out forms for every major transaction, criminals will be deterred from using financial institutions and will then have to find other ways to launder their dirty money.

A solution to the back up generated by all the forms that have to be filled out, would be to consider the adoption of a system similar to the one in Australia which is computerized and makes reporting all transactions mandatory. This would not only

---

<sup>151</sup> Alexander and Caiden The Politics and Economics of Organized Crime, 42-43.

increase the chances that law enforcement authorities have of catching the criminals, but it would also augment their chances of recovering the money since the suspicious transactions would be reported without delay and the criminals would not have the capability of transferring it to another place.

The drug and money laundering problems have caused so many problems, that citizens are now accepting extremely intrusive legislation and regulation. If these problems are to be eliminated, all segments of society will have to make concessions and comply with the legislation in place. For example, although believed by a minority of the population to be beneficial to the world economy, the secrecy and privacy of the banking system must be sacrificed in order to guarantee more efficient investigations by law enforcement authorities, thereby decreasing the amount of money launderers and drug dealers which in turn will benefit the world. However, it must be remembered that if a major source of income (ex.: drug trade) for criminals is eradicated, another one will certainly take its place (ex.: arms trading or smuggling of high technology items) since criminals are easily adaptable to any environment.

Money launderers working for international cartels who deposit large sums of money in banks of a particular country hope to realize their goal of ruling the country in question not only by taking over the bank with its operations but by also controlling its environment. Their success has enormous and horrible social and political costs not only for the country in question, but also for the entire world. These costs include the "corruption of judicial, police and government officials at the highest levels, bribery of

entire parliamentary blocs and ultimately the corpses of judges, prosecutors and journalists.”<sup>152</sup>

One solution would be to have an international organization or a multinational bank regulating the flow of money and the origins of funds, by the implementation of a convention regarding the laundering of illicit proceeds. This convention could include things such as what is allowed and what is prohibited in dealings with funds in terms of actions and practices for attorneys, accountants and bankers. In addition, it could be applicable to every thing that produces these illegal proceeds, such as drug trafficking, arms trading, counterfeiting and terrorism.

This solution is already being implemented to a certain degree by the Bank of International Settlements and the Basel Committee on Banking Regulations and Supervisory Practices. For example, this bank now requires that the financial institutions it is doing business with apply the principle of knowing their customers before accepting any of their funds.<sup>153</sup> While both these organizations are important on the international scene, they do not cover every financial institution in the world, thereby leaving ample opportunities for money launderers.

Presently there is a system which, although lacks universality and an enforcement mechanism, is effective and could be transformed into an international method of policing financial institutions. It is called the Financial Action Task Force. The starting point would be for the Financial Action Task Force to send to all international financial institutions, a memo describing that from now on, they would be required to make sure

---

<sup>152</sup> Andelman, “The drug money maze.” 103.

<sup>153</sup> Beare and Schneider. Tracing of Illicit Funds. 29

that the source of the money they would be accepting was legitimate. This would then be followed by a formal codification with enforcement mechanisms in place to deal with non-compliance.<sup>154</sup>

Although this system would be ideal, few nations would approve of it because it would mean giving up sovereignty over their banking system. In addition, since financial institutions in most countries possess significant political power, they are very unlikely to give it up to an organization which they have no control over. Still, the Financial Action Task Force is convinced that by 1998 or 1999, it will have created an international regulatory and enforcement mechanism stricter than the existing one.

Another solution anticipated is the rejection of transactions coming from or passing through 'black-listed' nations to 'white listed' nations. Black-listed nations include those whose financial institutions accept or turn a blind eye to funds originating from illegal sources, while 'white-listed' nations consist of those nations that forbid the concealment of the origin of funds. The international community and especially the United States must be prepared to play a dominant role in this war. The United States must be willing to use its diplomatic, political and financial leverage against those countries that still accept dirty money.

Another crucial factor in the elimination of money laundering is called 'bottom-up pressure' from important individual depositors or companies using financial institutions. They must insist that they will not tolerate any transaction done by their financial institution with investors bringing in money that cannot be accounted for in a

---

<sup>154</sup> Andelman, "The drug money maze," 105.

legitimate manner. According to some, this is the only way that bankers will begin to take action, that is if they start losing money from their legitimate clients.

Additional problems starting to emerge include the use of companies on the exempt list, boutique banks, international wire transfers and the smuggling of currency. The companies on the exempt list are a major source of money laundering since their transactions are not scrutinized by the government and therefore patterns of suspicious activity cannot be detected. Solutions include abolishing the exempt list altogether or, relying on the financial institutions to know their customers.

Secondly, boutique banks which are more common in the United States have the opportunity to use and manipulate all of the financial services available to banks. These services even include exempt lists, wire transfers, and large denomination bills, all that is necessary to launder money effectively. A solution would be to require the larger banks that are in close contact with these boutique banks to apply the same principle applicable to their clients, that is 'know your customer' before doing any business with them. Another solution would be for the government to scrutinize every transaction from the boutique banks records.

Options considered to eliminate the international wire transfers problem include requiring all financial institutions to report international wire transactions, including the names of the individuals or corporations and the account numbers involved. In addition, a statement signed by the individual making the transaction should mention if additional payments relating to the transaction are unknown to the financial institution. A second solution would be to require all international wire transfers to include all relevant third

party information. A last solution would be to apply again the principle 'know your customer' to individuals sending wire transfers.

Since the United States tightened their reporting requirements in the early 1990's, drug dealers now face a new problem, that is how to smuggle huge amounts of cash outside the country undetected. Methods used by drug dealers range from putting cash in suitcases, flying the cash out in private planes, slipping the money through tunnels under the Mexico border, exporting items bought with drug proceeds, to using unregulated Mexican dollar exchange houses and even legitimate banks to launder their dirty money. Mexico is attractive to money launderers because money laundering is not a criminal offense but a tax violation and, banks and exchange houses do not have to report large transactions.<sup>155</sup>

Numerous examples of smuggling money out of the country exist. For example, in the beginning of this year, law enforcement officials in the United States seized \$4 million in cash at Kennedy Airport. In this particular case, three brothers from Colombia were indicted for violations of the Bank Secrecy Act. If they are found guilty, they face a maximum of 20 years in prison and a fine of up to \$8 million.<sup>156</sup>

"It's clear that drug organizations are physically transporting their money to a greater extent," said Thomas Smith, deputy special agent in charge of investigations at Kennedy Airport for the U.S. Customs Service. He added: "We expect to see more of this type of money smuggling, not only at JFK, but at various other ports of exit and entry into

---

<sup>155</sup> Anthony DePalma, "Drug Traffickers Smuggling Tons of Cash From U.S. Through Mexico." The New York Times, (January 25, 1996), A10.

<sup>156</sup> Joseph W. Queen, "\$ 4M Stash at JFK Points to Trend In Smuggled Cash." Newsday, (February 17, 1996), A14.

the United States." A special taskforce was established by Customs to look into the problem of money smuggling by drug dealers.<sup>157</sup>

With regards to the smuggling of currency problem, the government should consider the elimination of large denomination bills since they reduce the mass of the currency to be smuggled, and it should make greater use of confidential informants as well as undercover operations.

Today, what is of great concern to law enforcement authorities is the increase in 'cybercash'. This is now a big concern since experiments are now taking place throughout the world using smart cards which contain an electronic chip that can be loaded or emptied with the equivalent of cash. "The nightmare of it is that there is no registration of every transaction, the way there is if you use a Visa or Mastercard," said Stanley E. Morris, who heads the financial crimes enforcement network, a \$24 million-a-year operation buried in the Treasury Department that tracks the movement of money around the world."<sup>158</sup>

The significant weakness inherent in the overall efforts to combat money laundering is that thus far efforts have been fractionalized. The success or failure of asset seizure and forfeiture is dependent on a very complex efficiency analysis based on profits, losses, costs, benefits, risk-preference, risk-aversion, insurance, etc. It is most unlikely that, given the enormous profits to be made and the incentive to entrepreneurial skills and monopolization or cartelization within illegal markets, and given the enormous

---

<sup>157</sup> Ibid.

<sup>158</sup> David E. Sanger, "Money laundering is big business." The Commercial Appeal. (December 24, 1995), 4A.



costs of detection, prosecution and forfeiture, *any* asset forfeiture program will put an end to the profitability of any market. Those who contend that organized crime is primarily an economic evil will continue to try to obliterate it through asset forfeiture legislation so that the forces of the free market may continue to dominate. Those who believe that the “free market” is itself a form of organized crime will stand in awe as capitalist versus capitalist struggles are portrayed as battles between good and evil,

The real nature of the war on drugs and of legislation dealing with assets seizure and forfeiture and money laundering is nothing more complex than a battle over control of the market. The struggle is not one of good against evil, but of capitalist against capitalist. In some instances, it is a conflict over the very existence of a market (for example, the ‘black market’ in drugs). In others, it is simply an attempt to regulate activities to ensure that the market functions in a neutral and fair way.<sup>159</sup>

In this sense, as many advocate, battling money laundering through the confiscation of proceeds of crime is indeed a form of cruel and unusual punishment as criminals are punished twice for the same crime. The money laundering crisis will likely remain unsolved until these two polar views iron out their differences. Future efforts must strive for a coordinated effort by all those bodies being used by money launderers and initiatives must recognize the importance of prevention and awareness efforts, in addition to enforcement and regulations.

Successful investigations and prosecution serve as examples that the war on drugs and money laundering is being fought more and more effectively by the governments involved. However, there is still a need for improvements which have been recognized and are being implemented, or, at least, carefully considered. While this fight against

---

<sup>159</sup> Fisse et al., The Money Trail, 50.

drug traffickers and money launderers is costly, it is well worth the price since if it continues to flourish, it poses a threat to our economic well being.

Finally, although both Canada and the United States are strongly committed to fighting money laundering and drug trafficking, this paper has proven that improvements are necessary. Their commitment was demonstrated in the development of extensive programs and strategies to prevent and detect money laundering and drug trafficking. Examples included laws and regulations prohibiting these offences; active prosecution of cases dealing with money laundering or drug trafficking; aggressive efforts to locate, seize and forfeit the assets following convictions; and cooperation in the international arena for investigations, prosecutions, extraditions or the sharing of funds. While these efforts did succeed to a certain level, money laundering and drug trafficking still exist and continue to flourish. To effectively combat both problems, a solution would be to increase the penalties associated with these crimes. For example, in Canada money launderers can be charged by way of indictment which carries a maximum of 10 years imprisonment, or by way of summary conviction which has a maximum of 6 months imprisonment, a fine of \$2,000, or both. It is clear, that money laundering offences in Canada will not decrease since the profits generated by the drug trade are well worth the chance of getting caught and being convicted, since the penalties involved are not much of a deterrent.

In the end, improving the legislation as well as devoting more resources to law enforcement authorities will be a challenge, but the payoff will be well worth the effort. After all, catching money launderers means stopping drug dealers!

## SELECTED BIBLIOGRAPHY

Books:

Alexander, Herbert E. and Gerald E. Caiden (eds.). The Politics and Economics of Organized Crime. Lexington: Lexington Books, 1985.

Beare, Dr. Margaret E. and Stephen Schneider. Tracing of Illicit Funds: Money Laundering in Canada (No. 1990-05) for Ministry of the Solicitor General of Canada. Ottawa: Minister of Supply and Services Canada, 1990.

Braithwaite, John and Philip Pettit, Not Just Deserts: A Republican Theory of Criminal Justice. Oxford: Clarendon Press, 1990.

Feldman, David. Criminal Confiscation Orders the New Law. London: Butterworths. 1988.

Fisse, Brent, David Fraser and Graeme Coss. The Money Trail: Confiscation of proceeds of Crime, Money Laundering and Cash Transaction Reporting. Sydney: The Law Book Company Limited, 1992.

Francis, Diane. Contrepreneurs. Toronto: Macmillan of Canada, 1988.

Gold, Alan D. Proceeds of Crime: A Manual with Commentary on Bill C-61. Toronto: Carswell Co. Ltd., 1989.

Government of Canada, Bureau of Dangerous Drugs. 1990 Narcotic, Controlled and Restricted Drug Statistics - Analysis Report. Ottawa: Minister of Supply and Services Canada, 1990.

\_\_\_\_\_. Helen McKenzie, Political and Social Affairs Division. Drug abuse in Canada. Ottawa: Minister of Supply and Services Canada, 1987. Revised April 1994.

\_\_\_\_\_. Helen McKenzie, Political and Social Affairs Division. Drug problems: The social and economic implications. Ottawa: Minister of Supply and Services Canada, 1989.

\_\_\_\_\_. Mollie Dunsmuir, Law and Government Division. Drug laws and trafficking patterns in Canada. Ottawa: Minister of Supply and Services Canada, 1989.

\_\_\_\_\_. Royal Canadian Mounted Police. Drugs: RCMP National Drug Intelligence Estimate 1993 with Trend Indicators through 1995. Ottawa: Minister of Supply and Services Canada, 1994.

- Grondin, Rachel. Les Infractions contre la personne et contre les biens (deuxieme edition). for Faculte de Droit, Section de Droit Civil, Universite d'Ottawa. Montreal: Wilson & Lafleur Ltee., 1990.
- Hodgson, Sir Derek. Profits of Crime and Their Recovery. London: Heinemann Educational Books Ltd., 1984.
- Levi, Michael. Regulating Fraud: White-Collar Crime and the Criminal Process. London: Tavistock Publications, 1987.
- Naylor, R.T. Hot Money ou l'argent blanchi. Montreal: Editions Quebec/Amerique, 1989.
- Parlour, Richard (ed.) Butterworths International Guide to Money Laundering: Law and Practice. London: Butterworths, 1995.
- Perlman, Bruce J. Cruel and Unusual Punishment: Inflictions and Forfeitures. Claremont: Faculty of Claremont Graduate School, 1980.
- Possamai, Mario. Money on the Run: Canada and How the World's Dirty Profits are Laundered. Toronto: Viking, 1992.
- Possamai, Mario. Le blanchiement de l'argent au Canada: Duvalier, Ceausescu, Marcos, Carlos et les autres. Laval: Guy Saint-Jean Editeur Inc., 1994.
- President's Commission on Organized Crime, Interim Report to the President and the Attorney General. The Cash Connection: Organized Crime, Financial Institutions and Money Laundering, 1984.
- United States Government. Legislation aimed at combating international drug trafficking and money laundering. A staff report prepared for the use of the Senate Caucus on International Narcotics Control. Washington: U.S. Government Printing Office, 1987.
- Usunier, Jean-Claude and Gerard Verna. La Grande Trichee: Ethique, corruption et affaires internationales. Paris: Editions La Decouverte, 1994.
- Walter, Ingo. The Secret Money Market: Inside the dark world of tax evasion, financial fraud, insider trading, money laundering, and capital flight. New York: Harper & Row Publishers, 1990.
- \_\_\_\_\_. The Secret Money Trail. New York: Harper & Row Publishers, 1990.
- Ziegler, Jean. La Suisse lave plus blanc. Paris: Editions Du Seuil, 1990.

Periodicals:

- Anonymous. "Cleaning up whose act?" The Economist 322 (February 22, 1992) : 79.
- \_\_\_\_\_. "Dirty money; Closing down the launderette." The Economist 317 (October 27, 1990) : 90.
- \_\_\_\_\_. "Drugs: Follow the money." The Economist 313 (October 21, 1989): 29.
- \_\_\_\_\_. "Flushing funny money into the open." The Economist 315 (May 5, 1990) : 91-92.
- \_\_\_\_\_. "Laundering drug money; Whitewash-- or crakedown ?" The Economist 310 (March 4, 1989) : 76.
- \_\_\_\_\_. "Dirty money; Money-launderers on the line." The Economist 331 (June 25, 1994) : 81-82.
- Andelman, David A. "The drug money maze." Foreign Affairs 73 (July/August 1994) : 94-108.
- Beare, Dr. Margaret E. "Efforts to Combat Money Laundering: Canada." Commonwealth Law Bulletin 18 (October 1992) : 1435-1457.
- Biskupic, Steven and Eric J. Klumb "Ten things to know about the federal money laundering law." Wisconsin Lawyer (July 1994) : 12-15.
- Brantley, Steve. "Ratzlaf v. United States: Sometimes Ignorance of the Law is an Excuse." Mercer Law Review 45 (1994) : 1465-1473.
- Brindle, Derek. A. "Solicitor-Client confidentiality and the Implications of the *Proceeds of Crime(Money Laundering) Act* and Regulations." The Advocate 52 (July 1994) : 543-559.
- Cameron, Stevie. "Offshore billions; Canadians are finding new ways to hide their money from the tax man." Macleans's (October 9, 1995) : 55-60.
- Carpenter, Kelly Neal. "Money Laundering." American Criminal Law Review 30, no. 3 (Spring 1993) : 813-845.
- Coffee Jr., John C. ""No soul to damn: No body to kick": An unscandalized inquiry into the problem of corporate punishment." Michigan Law Review 79 (January 1981) : 386-459.

- Coffee Jr. , John C., Richard Gruner and Christopher D. Stone. "Standards for organizational probation: A proposal to the United States sentencing commission." Whittier Law Review 10 (1988) : 77-124.
- DeFeo, Michael A. "Depriving International Narcotics Traffickers and Other Organized Criminals of Illegal Proceeds and Combating Money Laundering." Denver Journal of International Law and Policy 18 (Spring 1990) : 405-415.
- DiBiagio, Thomas M. "Money laundering and drug trafficking: A question of understanding the elements of the crime and the use of circumstantial evidence." University of Richmond Law Review 28 (April 1994) : 255-285.
- Donald, Patricia. "A Commentary on the Provisions of C-61 Canada's New Proceeds of Crime Legislation (S.C. 1988, c.51)." The Advocate 47, no. 3 (May 1989): 423-431.
- Evans, Christine. "Bill C-61: Forfeiting the Proceeds of Crime." Review of International Business Law 1, no. 3 (Nov. 1987) : 425-431.
- Fedarko, Kevin. "The capture of America's most wanted; How Mexico nabbed a notorious druglord - and shipped him to a U.S. jail." Time (January 29, 1996) :18-19.
- Fisse, Brent. "Confiscation of Proceeds of Crime: Discretionary Forfeiture or Proportionate Punishment." Criminal Law Journal 16 (1992) : 138-159.
- \_\_\_\_\_. "Confiscation of Proceeds of Crime: Funny Money, Serious Legislation." Criminal Law Journal (December 1989) : 368-402.
- Gruner, Richard. "To let the punishment fit the organization: Sanctioning corporate offenders through corporate probation." American Journal of Criminal Law 16 (1988) : 1-106.
- Harris, Ron. "United Kingdom Legislation: Money Laundering and Confiscation of Drugs Trafficking Assets and Proceeds of Other Crime." Commonwealth Law Bulletin (October 1993) : 1976-1983.
- Johnson, D. Randall. "The criminally derived property statute: Constitutional and interpretive issue raised by 18 U. S. C. 1957." William & Mary Law Review 34 (1993) : 1291-1366.
- Kent, Christopher J. "The Canadian and International War Against Money Laundering: Legal Perspectives." Criminal Law Quarterly 35 (November 1992): 21-56.

- Keyser-Ringnaldi, Fleur. "European Integration with regard to the Confiscation of the Proceeds of Crime." European Law Review 17, no. 6 (December 1992) : 499-515.
- Koenig, Linda and Doris Godinez-Taylor. "The need for greater double jeopardy and due process safeguards in RICO criminal and civil actions." California Law Review 70 (1982) : 724-785.
- Litke, Stephen W. "Ratzlaf v. United States: Prosecuting money launderers gets tougher." Tulsa Law Journal 30 (1994) : 447-460.
- Lynch, Gerard E. "RICO: The Crime of Being a Criminal, Parts I & II." Columbia Law Review 87, no. 3 (May 1987) : 661-764.
- Mays Jr., Joseph B. "The Mens Rea requirements in the money laundering statutes." Alabama Law Review 44, no. 3 (1993) : 725-861.
- McClellan, David. "Seizing the Proceeds of Crime: The State of the Art." International and Comparative Law Quarterly 38 (April 1989) : 334-360.
- O'Brien, Patrick T. "Tracking narco-dollars: the evolution of a potent weapon in the drug war." Inter-American Law Review 21, no. 3 (1990) : 637-677.
- Posner, Richard A. "An economic theory of the criminal law." Columbia Law Review 85, no. 6 (October 1985) : 1193-1231.
- Probert, John and Brendan T. Hewson. "Financial Investigation and the Confiscation of Assets." Commonwealth Law Bulletin 19 (October 1993) : 1984-1986.
- Racine, Denis. "L'Etat et le secret bancaire au Canada." Les Cahiers de Droit. 33 no. 4 (Decembre 1992) : 1235-1276.
- Samuel, Margaret. "Non-Cash Alternatives and Money Laundering; An American Model for Canadian Consumers' Protection." American Business Law Journal 30 (S'92) : 169-222.
- Sinclair, Helen. "Battling dirty business." Canadian Banker 97 (May-June 1990) : 7-15.
- Spaulding, Karla R. "'Hit them where it hurts': RICO criminal forfeitures and white collar crime." The Journal of Criminal Law and Criminology 80, no. 1 (1989) : 197-292.
- Storrow, Marvin R. V. and Lindsay Batten. "The New Proceeds of Crime Legislation or 'Caveat Advocatus'." The Advocate 49 (January 1991) : 53-61.

Stuart, Don. "Four Springboards from the Supreme Court of Canada: Hunter, Therens, Motor Vehicle Reference and Oakes - Asserting Basic Values of our Criminal Justice System." Queen's Law Journal 12 (1987) :130-154.

Vallance, Peter. "UK & US National Perspectives: Money Laundering and Asset Forfeiture - An Update." Commonwealth Law Bulletin 19 (October 93) : 1852-1865.

Wolfteich, Paul G. "Making criminal defense a crime under 18 U. S. C. Section 1957." Vanderbilt Law Review 41 (1988) : 843-869.

Wood, David. "Dangerous Offenders, and the Morality of Protective Sentencing." Criminal Law Review (1988) : 424-433.

Lexis-Nexis:

Anonymous. "Bankers unite to fight Michigan court's forfeiture ruling." Money Laundering Alert. 7, no. 1 (October 1995) : 4.

\_\_\_\_\_. "Cambodia emerging as laundering center." Money Laundering Alert. 6, no. 12 (September 1995) : 7.

\_\_\_\_\_. "Camouflage passports alarm UK bankers." Money Laundering Alert. 6, no. 12 (September 1995) : 2.

\_\_\_\_\_. "Canada returns favor, signs asset-sharing agreement with U.S.; Canada; Canada to open forfeiture-sharing spigot with U.S." Money Laundering Alert. (June 1995) : 7.

\_\_\_\_\_. "Citicorp suffers first "cyberheist" as regulators show alarm." Money Laundering Alert. 7, no. 1 (October 1995) : 1.

\_\_\_\_\_. "Conversations between DEA agent Robert Mazur and Frank Greene, Merrill Lynch stockbroker." Money Laundering Alert. 7, no. 1 (October 1995) : 6.

\_\_\_\_\_. "Customs begins inquiry on laundering by international trade." Money Laundering Alert. 6, no. 11 (August 1995) : 3.

\_\_\_\_\_. "DEA scales down laundering pursuit; Money laundering cases drop in priority at DEA." Money Laundering Alert. 6, no. 11 (August 1995) : 8.

\_\_\_\_\_. "Dirty money: Money launderers on the line". The Economist. (June 25, 1994) : 81.



- \_\_\_\_. "FATF begins scrutiny of non-drug cash". Money Laundering Alert. (July 1994).
- \_\_\_\_. "FATF looks to expand as it concludes review of members' efforts." Money Laundering Alert. 6, no. 11 (August 1995) : 7.
- \_\_\_\_. "FATF warns of laundering through securities." Money Laundering Alert. 6, no. 11 (August 1995) : 1.
- \_\_\_\_. "FBI says lottery ticket was used to launder crime proceeds." Money Laundering Alert. 6, no. 11 (August 1995) : 3.
- \_\_\_\_. "G-7 Nations form group to "fill gaps" in world laundering controls." Money Laundering Alert. 7, no. 1 (October 1995) : 11.
- \_\_\_\_. "Hancock stockbrokers easy prey in sting." Money Laundering Alert. 6, no.12. (September 1995) : 6.
- \_\_\_\_. "Hong Kong requires STRS Hong Kong makes suspicious activity reporting mandatory." Money Laundering Alert. 6, no. 11 (August 1995) : 8.
- \_\_\_\_. "In brief: Keeping tabs on money laundering curbs." The American Banker. (April 6, 1995) : 17.
- \_\_\_\_. "IRS CID implements new field suspicious activity guidelines." Money Laundering Alert. 7, no. 1 (October 1995) : 3.
- \_\_\_\_. "Justice Department creates asset forfeiture, money laundering section." Money Laundering Alert. 7, no. 3 (December 1995) : 7.
- \_\_\_\_. "Justice, sentencing unit in rift over laundering sentences." Money Laundering Alert. 6, no. 9 (June 1, 1995) : 3.
- \_\_\_\_. "Launderers profile: more females, better-educated, older, more foreigners." Money Laundering Alert. 6, no. 12 (September 1995) :2.
- \_\_\_\_. "Major new suspicious activity reporting duties announced." Money Laundering Alert. 6, no. 12 (September 1995) : 1.
- \_\_\_\_. "MLATS close dirty money's international escape routes". Money Laundering Alert. 6, no. 1 (October 1994) : 11.
- \_\_\_\_. "Monday highlights; United Nations Package." Federal News Service. (March 28, 1995).

- \_\_\_\_\_. "Money laundering threatens world's monetary system, conference told". United Press International. (September 28, 1992).
- \_\_\_\_\_. "NAFTA could aid drug money laundering, RCMP says". Reuters. (December 21, 1994).
- \_\_\_\_\_. "New OCC exam rules for small banks target BSA, laundering." Money Laundering Alert. 7, no. 1 (October 1995) : 1.
- \_\_\_\_\_. "New U.K. guidance notes advise on stockbroker accounts." Money Laundering Alert. 6, no. 12 (September 1995) : 7.
- \_\_\_\_\_. "N. Y. bank pays large criminal fine, penalty." Money Laundering Alert. 6, no. 12 (September 1995) : 6.
- \_\_\_\_\_. "OTA says wire transfers defy money laundering controls." Money Laundering Alert. 7, no. 1 (October 1995) : 5.
- \_\_\_\_\_. "Plan of Action of the Buenos Aires Money Laundering Conference." Money Laundering Alert. 7, no. 3 (December 1995) : 6.
- \_\_\_\_\_. "Prepared testimony of Peter Andreas research fellow the Brookings Institution before the House Judiciary Committee Subcommittee on Crime does free market reform unintentionally undermine drug market prohibition? The U.S.-Mexico experience." Federal News Service. (January 25, 1996).
- \_\_\_\_\_. "Press conference for international conference of proceeds of crime investigators - Toronto, Ontario 95-10-02/05." Canada NewsWire. (September 29, 1995).
- \_\_\_\_\_. "South Asia; U.S. State Department report: India becoming drug money-laundering centre." The British Broadcasting Corporation. (April 13, 1993).
- \_\_\_\_\_. "State laundering laws now number 27." Money Laundering Alert. 6, no. 11 (August 1995) : 2.
- \_\_\_\_\_. "Supreme Court Proceedings; Summary of Cases Granted and Review and Summary Judgment." U.S. Law Week. The Bureau of National Affairs, Inc., (January 18, 1996).
- \_\_\_\_\_. "Switzerland to redraft money-laundering bill." The Reuter European Business Report. (January 23, 1995).
- \_\_\_\_\_. "Swiss banks report money laundering cases." AFX News. (May 30, 1995)
- \_\_\_\_\_. "The buck never stops". The Banker. (November, 1994).

- \_\_\_\_\_. "Treasury report provides first glimpse at its forfeiture fund." Money Laundering Alert. 6, no. 11 (August 1995) : 4.
- \_\_\_\_\_. "Treasury seeks help in its missions from intelligence agencies." Money Laundering Alert. 7, no. 1 (October 1995) : 10.
- \_\_\_\_\_. "UK bankers challenge gaps, coverage of FATF recommendations; European bankers not pleased with FATF policies, procedures." Money Laundering Alert. 7, no. 3 (December 1995) : 7.
- \_\_\_\_\_. "U.S. lures laundering whistleblowers with rewards, protection." Money Laundering Alert. 6, no. 9 (June 1995) : 2.
- \_\_\_\_\_. "U.S. obtains pledge to act from 33 nations." Money Laundering Alert. 7, no. 3 (December 1995) : 1.
- \_\_\_\_\_. "U.S. State Department views on money laundering". Money Laundering Alert. 6, no. 7 (April 1995) : 5.
- \_\_\_\_\_. "Western countries agree to fight drugs together." The Orlando Sentinel. (February 5, 1996) : A8.
- \_\_\_\_\_. "What the proposed new "SAR" will require." Money Laundering Alert. 6, no. 12 (September 1995) : 4.
- \_\_\_\_\_. "Wire rules amended; now effective April 1." Money Laundering Alert. 6, no. 12 (September 1995) : 1.
- Barger, Brian. "War on the Cali Cartel, Part 1 - The Cartel." CNN, Show: News 8:58pm ET. Transcript # 671-1. (January 7, 1996).
- Beard, David. "Island poverty is the grease for drug traffickers' wheels for small Caribbean states, there are few alternatives business opportunities." The Toronto Star. (March 27, 1995) : A17.
- Clayton, Mark. "Gulag gangs find Canada soft touch." The Christian Science Monitor. (September 8, 1995) : 1.
- \_\_\_\_\_. "Where world's crooks go to do their dirty laundry." The Christian Science Monitor. (September 20, 1995) : 1.
- Davison, Sarah. "Canada regulators at odds over national securities commission". Reuter News Service. (May 3, 1995).

- Deen, Thalf. "United Nations: U.S. shoots down proposal for drug summit." Inter Press Service. (January 11, 1996).
- DeGeorge, Gail. "Confessions of a money launderer." Business Week. (May 30, 1994) : 119.
- DePalma, Anthony. "Drug Traffickers Smuggling Tons of Cash From U.S. Through Mexico " The New York Times. (January 25, 1996) : A10.
- DeStefano, Anthony. "Kidnappings reveal secret cash flow; System common in Asian immigrant communities". Newsday. (February 23, 1995) : A46.
- Dixon, Alan. "Fight drug war on several fronts tools to target money laundering, boost drug; education also needed." St. Louis Post-Dispatch. (November 20, 1989) : 3B.
- Douglas, Robert. "Follow the money: Dirty \$ may lead to clean business." The Palm Beach Post. (January 26, 1996) : 8B.
- Elliott, Christopher. "Banking on faith and dope Christopher Elliott investigates how the underground system of Hawala banking is being used for illicit money-laundering by international organised crime." The Daily Telegraph. (July 14, 1991) : 10.
- Elliott, Larry and Clare Trevena. "Halifax Summit/Cracking down on global crime". The Guardian. (June 17, 1995) : 37.
- Evans, Dominic. "Dirty money global threat". Calgary Herald. (May 21, 1995) : C3.
- Follain, John. "Monaco's ways make for money laundering." Calgary Herald. (March 8, 1995) : D4.
- Gonzalez, Gustavo. "Latin America - Drugs: U.N. pulls Southern Cone together." Inter Press Service. (December 21, 1995).
- Greenhouse, Linda. "Justices to Decide Legality Of Drug Property Seizures." The New York Times. (January 13, 1996) : 8.
- Hahn, Norbert. "Switzerland makes it a little tougher on money launderers". Central European Time. (April 26, 1995).
- Handelman, Stephen. "Nations fail to uphold pledges in anti-drug war". The Toronto Star. (March 5, 1995) : E5.

- Krauss, Clifford and Douglas Frantz. "Drug cartel grow more inventive with money laundering; Houston connection revealed." The Houston Chronicle. (October 30, 1995) : 1.
- Liden, Jon. "Hong Kong launches effort to weed out dirty money". International Herald Tribune. (May 18, 1995).
- Mahara, Davan. "Court extends hope to jailed drug dealers; appeals: Hundreds of convicts seek sentence reversals or return of property after ruling. It found that prosecution and seizure in separate proceedings amounts to double jeopardy." Los Angeles Times. (February 5, 1996) : A3.
- Mathias, Philip. "When gifts become graft: Banking on corruption: The degree of temptation faced by bank officers is not widely appreciated". The Financial Post. (January 17, 1995) : 7.
- Myerson, Allen. "American Express unit settles laundering case". The New York Times. (November 22, 1994) : D2.
- Naqvi, Jawed. "India says economic crime rising, plans crackdown". The Reuter European Business Report. (October 24, 1994).
- Nullis, Clare. "Problems are smaller in tiny Liechtenstein". The Toronto Star. (April 8, 1995) : H12.
- Press Trust of India news agency. "U.S. State Department report: India becoming drug money-laundering centre". The British Broadcasting Corporation. (April 3, 1993) : A1.
- Queen, Joseph W. "\$ 4M Stash at JFK Points to Trend In Smuggled Cash." Newsday. (February 17, 1996) : A14.
- Ratnasabapathy, Senthil. "Drugs: U.N. urges greater control on global money laundering." Inter Press Service. (March 24, 1995).
- Roth, William. "Money Laundering." Congressional Press Releases. (February 13, 1996).
- Sanger, David E. "Money laundering is big business." The Commercial Appeal. (December 24, 1995) : 4A.
- Soh, Felix. "Three-step process to money laundering". The Strait Times (Singapore). (January 8, 1995) : 6.
- Taipei Correspondent. "Buried treasure". The Economist. (November 6, 1993).

U.S. State Department of State. "Charting a Transatlantic Agenda for the 21st Century". 1995 U.S. Department of State Dispatch. 6, no. 23 (June 5, 1995).

Vardy, Jill. "Canada 'inviting target' for money launderers". The Financial Post. (June 1, 1995).

Wyman, Ray. "Virtual cash: Internet figures to be E-cash medium; Future smart money may bypass banks." Puget Sound Business Journal. 16, no. 19 (September 2, 1995) : 28.

#### Others:

##### AUSTRALIA:

Government of Australia. Proceeds of Crime Legislation Amendment Act 1991. No. 120 of 1991.

Government of Australia. Proceeds of Crime Act 1987. No. 87 of 1987.

Government of Queensland. Crimes (Confiscation of Profits) Act. No. 60 of 1989.

Government of South Australia. Crimes (Confiscation of Profits) Act 1986. No. 17 of 1986.

Government of Western Australia. Crimes (Confiscation of Profits) Act 1988. No. 47 of 1988.

##### CANADA:

Government of Canada, Bureau of Dangerous Drugs. Statistics Canada and Canadian Centre for Justice Statistics. Juristat: Service Bulletin, Vol. 10#11, July 1990. Ottawa: Minister of Supply and Services Canada, 1990.

\_\_\_\_\_. Statistics Canada and Canadian Centre for Justice Statistics. Juristat: Service Bulletin, Vol. 10 #9, June 1990. Ottawa: Minister of Supply and Services Canada, 1990.

\_\_\_\_\_. Statistics Canada and Canadian Centre for Justice Statistics. Juristat: Service Bulletin, Vol. 12 #9, March 1992. Ottawa: Minister of Supply and Services Canada, 1992.

\_\_\_\_\_. Statistics Canada and Canadian Centre for Justice Statistics. Juristat: Service Bulletin, Vol. 12 #13, June 1992. Ottawa: Minister of Supply and Services Canada, 1992.

- \_\_\_\_\_. Statistics Canada and Canadian Centre for Justice Statistics. Juristat: Service Bulletin, Vol. 11 #9, May 1991. Ottawa: Minister of Supply and Services Canada, 1991.
- \_\_\_\_\_. Statistics Canada and Canadian Centre for Justice Statistics. Juristat: Service Bulletin, Vol. 10 #6, April 1990. Ottawa: Minister of Supply and Services Canada, 1990.
- Government of Canada. Martin's Annual Criminal Code 1994. Aurora: Canada Law Book Inc. 1993.
- Government of Canada. Documents et Autorites de la poursuite. Sa Majeste La Reine contre Jean-Pierre Leblanc. No. 500-01-014472-945.
- \_\_\_\_\_. Double jeopardy, pleas and verdicts. Working paper 63. Ottawa: Law Reform Commission of Canada, 1991.
- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 1, November 5, 1987, Second Session of the Thirty-third Parliament, 1986-87, Ottawa: Minister of Supply and Services Canada, 1987.
- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 2, April 12, 1988, Second Session of the Thirty-third Parliament, 1986-87-88, Ottawa: Minister of Supply and Services Canada, 1988.
- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 3, April 14, 1988, Second Session of the Thirty-third Parliament, 1986-87-88, Ottawa: Minister of Supply and Services Canada, 1988.
- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 4, April 26, 1988, Second Session of the Thirty-third Parliament, 1986-87-88, Ottawa: Minister of Supply and Services Canada, 1988.
- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 5, May 10, 1988, Second Session of the Thirty-third Parliament, 1986-87-88, Ottawa: Minister of Supply and Services Canada, 1988.

- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 6, May 11, 1988, Second Session of the Thirty-third Parliament, 1986-87-88
- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 7, May 18, 1988, Second Session of the Thirty-third Parliament, 1986-87-88, Ottawa: Minister of Supply and Services Canada, 1988.
- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 8, May 26, 1988, Second Session of the Thirty-third Parliament, 1986-87-88
- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 9, June 1, 1988, Second Session of the Thirty-third Parliament, 1986-87-88, Ottawa: Minister of Supply and Services Canada, 1988.
- \_\_\_\_\_. Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-61: An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Act. Issue No. 10, June 2, 1988, Second Session of the Thirty-third Parliament, 1986-87-88, Ottawa: Minister of Supply and Services Canada, 1988.

#### UNITED STATES:

Government of the United States of America. United States of America v. \$405,089.23 U.S. Currency. United States Court of Appeals for the Ninth Circuit. No. 93-55947 D.C. No. CV 91-3264-AWT. 33 F. 3d 1210. Lexis 24048. Opinion. Appeal from the United States District Court for the Central District of California, A. Wallace Tashima, District Judge, Presiding, Submitted July 12, 1994. Pasadena, California, Filed September 6, 1994.

Government of the United States of America. United States of America v. \$405,089.23 U.S. Currency. United States Court of Appeals for the Ninth Circuit. No. 93-55947 D.C. No. CV 91-3264-AWT, 56 F. 3d 41. Lexis 12946. Filed May 30, 1995.