



## **International Centre at UBC & the International Society for the Reform of Criminal Law**

**Money Laundering and Corruption Conference  
(UBC Media Centre)**

October 28<sup>th</sup>, 2016

***“The Enemy is Us: Understanding Corruption,  
Money Laundering and Organized Crime”***

**By  
Margaret E. Beare  
mbeare@osgoode.yorku.ca**

# THE TITLE... “THE ENEMY IS US”:

...the title of William Chambliss’s final chapter in On the Take (1978),

- “the ubiquitous system of payoffs and favors, back-scratching, stealing, illegal campaign contributions, and personal aggrandizement” that characterized the linkages between organized crime, politicians, law enforcement, and business people –all intimately involved in corruption.

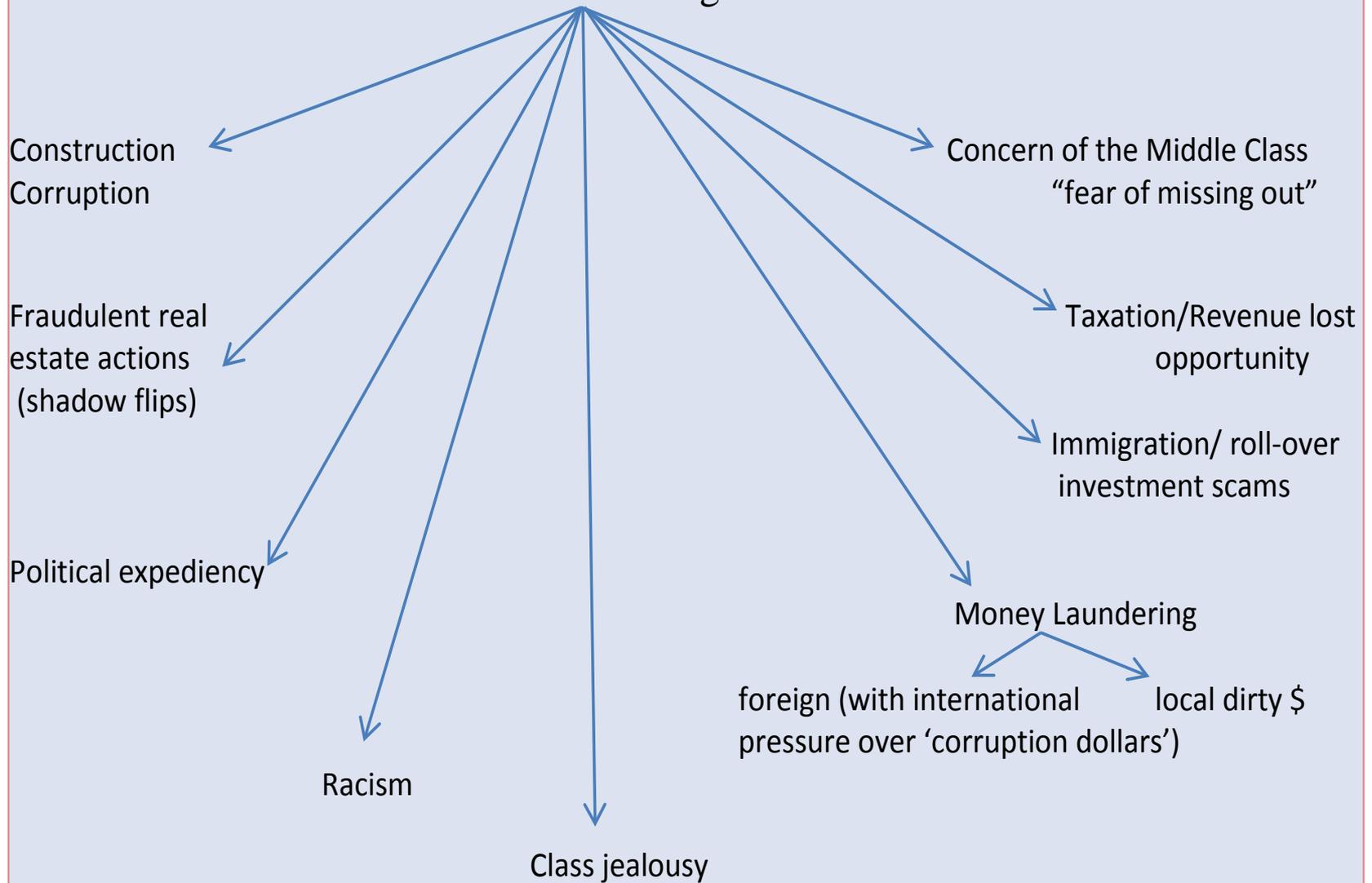
**Chambliss is quoting Pogo –daily cartoon strip drawn by Walt Kelly**

**“We have met the enemy and they is us”.**

**Note: *On The Take: Crime, Corruption And Greed In The Mulroneys Years* also the title of Stevie Cameron’s 1995 book.**

is

# The Vancouver Housing "Perfect Storm"



# MAIN THEMES OF THIS CONFERENCE...

## Corruption & Money Laundering

the bad news.....

MOST PEOPLE DO NOT  
CARE ABOUT EITHER!

# WE SHOULD CARE...

—and you will hear much more throughout the day about why we should care, what changes must be made, and how we might go about making these necessary changes.

**\*\*We are often dealing with crimes of the powerful—financially or in terms of political influence—and in those situations the rules of the game are often very different.**

**What is my evidence of this assertion...???**



# EVIDENCE THAT WE DON'T CARE ABOUT CORRUPTION...

**#1 How we define the behaviour of so called white-collar criminals: crimes of business and political corruption? Lessons from Charbonneau**

**#2 Policing corruption cases**

**#3 Investigating police corruption**

**#4 The Courts: Key US cases: *The Citizens United v. Federal Election Commission*. 558 US 310 (2010) and *Supreme Court of United States McDonnell v. US* (2016)**

**#5 Corruption cases—Canada**

# #1 WHO IS, OR IS NOT, A MEMBER OF AN ORGANIZED CRIMINAL CONSPIRACY?

## Re-thinking 'organized crime'

- **Focus on the 'amount of harm done' rather than 'who' did it.**
- **Apply the actual characteristics of organized crime to criminal behaviour i.e.**
  - on-going criminal activity,
  - involving some type of structure/ some degree of organization, and
  - capable of using intimidation and/or violence.
- **Result: in place of the stereotypical 'usual suspects' categories we can now see a more diverse cast of organized criminal participants.**

# ORGANIZED CRIME...

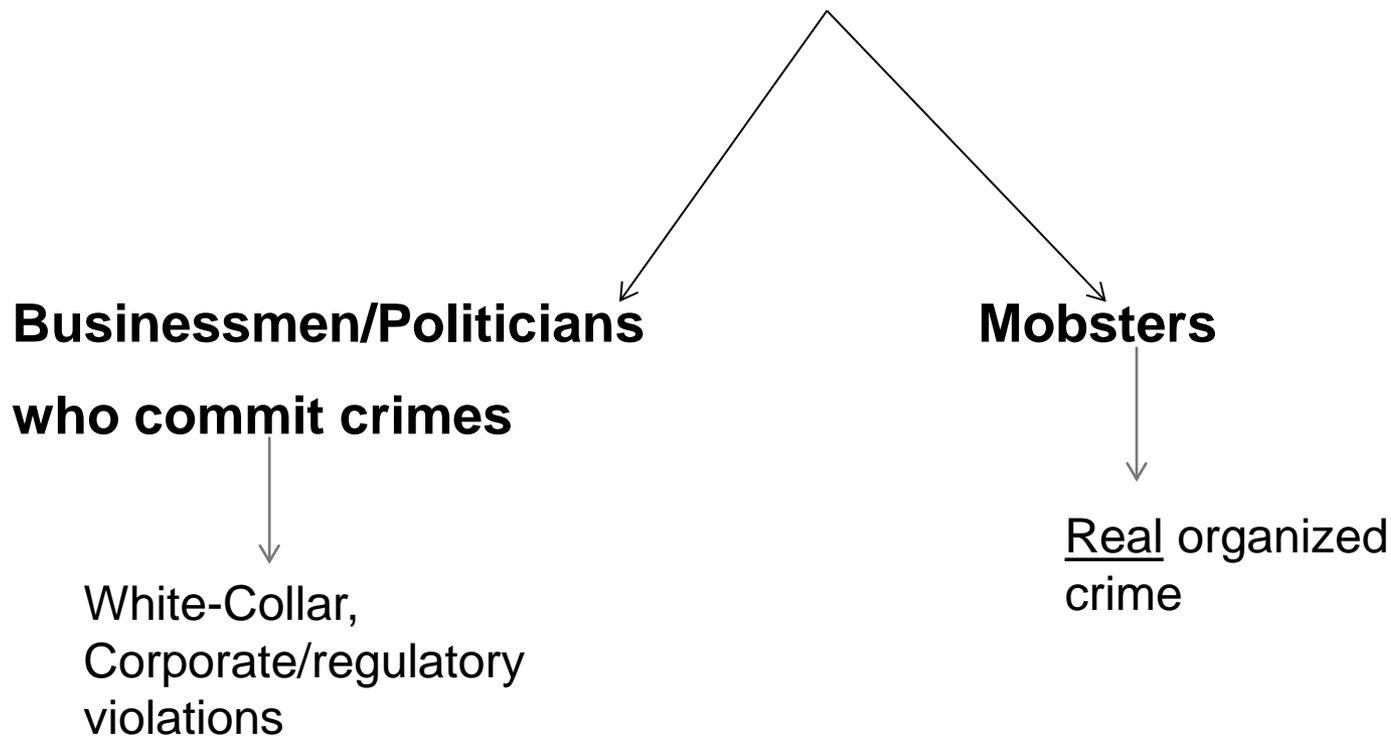
Three offences, now found under section 467.11, 12, and 13 of the *Criminal Code*

- **participating in activities of criminal organizations;**
- **commission of an offence for a criminal organization; and**
- **instructing the commission of an offence for a criminal organization.**

IS CORPORATE AND/OR POLITICAL  
CORRUPTION 'ORGANIZED CRIME'?

# CONSEQUENCE OF THE CREATION OF THE 'WHITE-COLLAR CRIME' CONCEPT ...(EDWIN SUTHERLAND: 1939)

## Separation of organized crime



# WHAT DID WE LEARN FROM THE CHARBONNEAU INQUIRY? WHO WAS IMPLICATED...THE CRIMINAL “PARTNERS” INCLUDED:

- **Politicians at the provincial and municipal level**
- **Bureaucrats**
- **Hells Angels**
- **union leadership**
- **Italian organized crime—the Rizzuto family in particular**
- **all of the major construction firms operating in Quebec and operating internationally through Quebec (the so-called “Fabulous 14”)**
- **City engineers and civil servants**



TO QUOTE LEONARD COHEN (OF COURSE!)

“Everybody knows –Everybody knows that the dice are loaded. Everybody rolls with their fingers crossed...Everybody knows the fight was fixed ...That's how it goes. Everybody knows.”

# JUSTICE CHARBONNEAU CONCLUDED...

**2016: “a culture of impunity”** took over a vast section of Quebec’s public tendering in construction in which organized crime, political figures and bureaucrats, political parties, unions and entrepreneurs worked together to skim public funds to illicit ends. (Liberal in power when Commission was called but mandate also covered PQ era—both parties were nervous!)

**2006: “a culture of entitlement”** had developed. A decade prior—the Gomery sponsorship inquiry concluded that the party in power (Liberals) engaged in bribery and collusion without remorse and perpetuated a partisan, corrupt contracting system that made friends rich and paid party bills.

# GOMERY FOLLOW-UP...

**1998--Liberal bagman Pierre Corbeil is charged by the RCMP with influence peddling—4 counts.**

**Plead guilty—sentenced to 100 hours of community service and has since received a pardon.**

**2016—testimony at trial of Jacques Corriveau for fraud, forgery, and \$ laundering revealed that after Corbeil was charged, he was paid \$40,000 to insure that he would plead guilty and not implicate other liberal officials. Quoting Corriveau: “If he does not plead guilty it will greatly affect the Liberal party”.**

**THEREFORE—after being charged with corruption, Corbeil asked for and accepted a corrupt (fake-invoiced) payment for his guilty plea!**

*(Globe & Mail, October 14, 2016)*

# WHO IS IMMUNE TO CORRUPTION...

# DURING THE CHARBONNEAU INQUIRY... REVENUE CANADA

**Some of that allegedly ‘corruption’ money that Revenue Canada was assisting to trace as part of the Charbonneau Inquiry was found to have flowed into the bank accounts of some of the Revenue officials!**

- two CRA auditors were found to be sharing a bank account in the Bahamas containing \$1.7million with one of the owners of a construction firm.
- the RCMP has laid 142 charges against eight former CRA officials and seven businessmen”

# DURING THE GOMERY SPONSORSHIP INQUIRY IN 2005-6

**RCMP were laying charges of fraud against many of the people caught up in the sponsorship schemes involving millions of dollars in kickbacks...when**

- the Auditor General discovered that the force was itself the recipient of 'highly inappropriate' federal dollars which were “laundered” through Quebec advertising firms and bank accounts set up by the RCMP.
  - RCMP in Quebec, “C” Division, opened a non-government bank account to accept these deposits and disburse payments in violation of the *Financial Administration Act* and s.3 of the Receipt and Deposit of Public Money Regulations (1997),



# G. ROBERT BLAKEY (WHO DRAFTED THE U.S. RICO STATUTE):

**“If officials operate like racketeers, then they *are* racketeers.**

## **Beyond the ‘usual suspects’ . .**

You may be dealing with a network of criminals who are involved in an ongoing criminal conspiracy, where everyone is profiting and everyone deserves the same ‘mobster’ or at least ‘criminal’ label.

# TO ILLUSTRATE BLAKEY'S ORIGINAL QUOTE: YOU CAN BE A RACKETEER REGARDLESS OF THE COLOUR OF YOUR COLLAR!

**May 2013 Canadian criminal association case that revealed the easy cross-over between high profile officials and racketeers.**

**Those convicted under Canada's organized crime legislation included:**

- **former Laval Mayor Gilles Vaillancourt (so called "King of Laval"),**
- **former city manager Claude Asselin, and**
- **former director of engineering Claude Deguise.**

**Vaillancourt was alleged to have headed an "organized and structured network" of corruption and collusion.**

- He was singled out for allegedly having "instructed others to commit offences for the benefit of a criminal organization", suggesting he was the ringleader. All were charged with gangsterism among other charges.

# ICELAND TO SENTENCE NINTH BANKER FOUND GUILTY OF MARKET MANIPULATION THAT HELPED CAUSED 2008 CRASH

*(INDEPENDENT, FRIDAY 7 OCTOBER 2016)*

**The Supreme Court in Reykjavik returned guilty verdicts for all nine defendants in the Kaupthing Bank market manipulation case.**

**“By allowing bankers to be prosecuted as criminals, Iceland opted for a different strategy in the wake of the financial crisis to rest of Europe and the US, where banks were fined, but chief executives escaped punishment.”**



# JUSTIN DINTINO AND FRED MARTENS

## **Markets and criminals may enter into ‘mutually exploitive relationships’**

- Descriptions of businesses caught in criminal activities often present a false dichotomy of two distinct sides—pure hearted businesspersons or politicians who are corrupted by evil, greedy criminals. This scenario is presented as a passive act whereby unsuspecting law abiding citizens are tricked or enticed into criminality. Not necessarily true.
  
- (*Police Intelligence Systems in Crime Control: Maintaining a delicate Balance in a Liberal Democracy*)

# #2 POLICING CORRUPTION

# COULD THE RCMP HAVE MISSED THIS...?



Reputed former godfather of the Mafia in Montreal, Nicolò Rizzuto Sr., stuffs cash into his sock while Montreal construction entrepreneur Accursio (Alex) Sciascia watches ...

# ENFORCEMENT OF CORRUPTION

**Priorities of the RCMP are most dramatically illustrated in their single focused devotion to targeting the Rizzuto involvement in drug trafficking:**

Quoting RCMP Corporal Sebastiano at the Commission:  
“the tapes kept rolling but we weren’t listening”

# RCMP POLICE REFUSED TO SHARE THEIR INVESTIGATIVE FINDINGS WITH THE COMMISSION...

**...until ordered to do so...Madam Justice Guylène, in a 14-  
page decision, concluded:**

**“No privilege or restriction prevents the RCMP from  
giving the inquiry evidence from Project Coliseum,”  
(Canada (A.G.) v. Charbonneau; [2012] Q.J. No.  
3457).**

# POLICING PRIORITIES NOW DOMINATED BY ANTI- TERRORISM...

One can not expect these priorities to change---even if there is public pressure for the police to focus on corruption.

Resources remain an issue and Commissioner Paulson expresses his frustration that ‘even’ drugs and organized crime have lost essential resources to the required anti-terrorist initiatives.

Quote: “As of Jan. 5, 2015, it is estimated that almost 600 RCMP full-time equivalents have been reallocated from other priority areas (e.g., serious and organized crime, economic crime and other national security files) to the INSETs (Integrated National Security Enforcement Teams).”

(*Globe & Mail* repeated claim October 22, 2016: “RCMP shifts focus to fighting terrorism”)

***Toronto Star*. April 8<sup>th</sup> 2015. RCMP forced to shuffle cash, staff to meet terrorism duties, documents show: RCMP shuffle more cash and people into integrated terror teams as Ottawa’s contribution remains flat over last decade. <https://www.thestar.com/news/canada/2015/04/08/rcmp-forced-to-shuffle-cash-staff-to-meet-terrorism-duties-documents-show.html>**

# CORRUPTION RELATED POLICE INVESTIGATIONS...

## FEW IN NUMBER

**WHY?**

**Resource intensive,**

**Time consuming,**

**Difficult—may involve sophisticated paper trails, unravelling corporate structures, forensic auditing skills,**

**Targets are often ‘too powerful to prosecute’**

**Cases often fail—evidence lacking, *and*  
are occasionally political dangerous...**

**(and we wonder why the police don't do more of them!)**

# CORRUPTION INVESTIGATIONS...

## Quoting Frederick Martens:

- “Few events in the course of a career in law enforcement will be more lethal and career challenging than investigating political corruption. ...
  - They are able to mount public opinion defenses that shift the investigation away from themselves and turned against the investigating authority.
  - They are most adept at using their powers to dissuade others from cooperating with the investigating authorities.
- These investigations are time-consuming, complex, and require tenacity, skill, and political will—commodities often in short supply in most law enforcement agencies.”

**(Corruption case was undertaken by the Pennsylvania Crime Commission against Attorney General Ernest Preate—Preate went to jail but during that process the Pennsylvania Crime Commission was abolished!)**

# CORRUPTION IS AN INTERNATIONAL CONCERN: THULI MADONSELA...

**When fighting corruption is life threatening— South African, anti-corruption crusader—taking on the most powerful of officials (police chiefs, TV bosses, 2 cabinet ministers, most powerful business family):**

- **Assassination plot against her---Her response: “If it’s your time to go, it’s your time to go”**
- **Threatened with ‘peril’**
- **Media campaign against her with vicious propaganda**
- **Large newspaper ads calling her an ‘agent of white capital’**
- **Women’s league accused her of pursuing a ‘narrow politically motivated investigation’...etc etc...**

**(“Intrepid anti-corruption crusader most popular hero since Mandela”, *Globe & Mail*, October 17, 2016)**

# NIGEL HADGKISS...DIRECTOR OF THE FAIRWORK BUILDING AND CONSTRUCTION AGENCY (AUSTRALIA)

(FOLLOWING A CAREER AS ASSISTANT COMMISSIONER IN THE  
*AUSTRALIAN FEDERAL POLICE*, AND NATIONAL DIRECTOR,  
INTELLIGENCE IN THE *AUSTRALIAN CRIME COMMISSION*)

joked that in being brought back into the  
fray of helping to eliminate union  
corruption in the Australian construction  
industry, he was “leaving the tranquil  
world of organised crime for the  
construction industry”

*The Saturday Age*, Melbourne. 04 Oct 2014, by Simon Schluter.  
“Strike Back” ([www.copyright.com.au](http://www.copyright.com.au))

## NIGEL HADGKISS:

...called on police to get serious about investigating criminal conduct in the construction sector...

“years of police unwillingness to act on evidence and intelligence had allowed a “hell of a lot” of criminal activity to occur in the building industry”.

# #3 INVESTIGATING POLICE CORRUPTION

**The role of a police internal investigator...a quick way to end  
your policing career!**

# INVESTIGATING POLICE CORRUPTION...THE EXPERIENCE OF SOMEONE IN INTERNAL AFFAIRS (METRO TORONTO)

*When you are in Homicide --it is WIN! WIN!*

- **Chief/Service takes credit for solving murders;**
- **Positive family/community support;**
- **Support from Police Association;**
- **Support from politicians;**
- **Justice system well served with competent investigations;**
- **Praise for the investigators;**
- **Very good overall outcomes;**
- **The system works!**

# INVESTIGATIVE PERSPECTIVES....

## *Internal Affairs Investigations LOSE! LOSE!*

- **Chief/Service takes HEAT for corruption;**
- **Negative Community Support;**
- **No support from Police Association; Best Defence lawyers hired by Association with unlimited funding**
- **Political pressure from all sides;**
- **Justice system is victimized; Unravelling of previous cases involving subject officers**
- **Suspects had good performance reviews and of course, no criminal records;**
- **No appetite for convictions;**
- **Investigators under pressure from inside; Threats against police witness—including violence.**
- **History of sympathy from juries;**
- **Outcome subject to further reviews and/or changes;**
- **‘Blue Wall’ of silence;**
- **The system doesn’t work!**

## #4 DO THE COURTS 'CARE ABOUT CORRUPTION'?

**Zephyr Teachout in *Corruption in America* traces how the US moved from a position of seeing the acceptance of any gift of any size bestowed upon a public servant to be a criminal offense, to the current state of the controversial "super" political action committees (PACs)**

- She argues that the transition from an emotional moral/ethics-based obligation of public officials to serve the public good toward the wide acceptance of contributions to be largely due to the growth of lobbyists and the involvement of lawyers and court officials who had little understanding of how corruption actually works-- culminated in the 'corporation as citizen' decision.

(Zephyr Teachout. 2014. *Corruption in America*, Harvard University press. Cambridge Massachusetts. )

## U.S. CASE: *THE CITIZENS UNITED V. FEDERAL ELECTIONS COMMISSION. 558 US 310 (2010)*

- Exchanges became defined as corruption only when a *specific* gift was exchanged for a *specific* agreement i.e. ‘quid pro quo’ situations.
- Donations to political candidates in whatever amounts became ‘protected speech’ (hence the PACs).
- Quoting Justice Anthony Kennedy, in the *Citizen’s United Supreme Court* decision concluded:
  - **“Independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”**  
*Citizens United v. Federal Elections Commission. 558 US 310 (2010)*
- One critic characterized the Supreme Court’s comment this way:
  - “...a statement that I guess makes sense somehow in law-land but sounds to the layman’s ear like the patter of a man who has come unzipped from reality”. (Thomas Frank. *N. Y. Times* Sunday October 19, 2014. P.20)
- Clearly it is not the dollars per se—but why you received them.
- Not unlike: It’s not the guns that kill people –it’s the people who kill people.

NOTE: During the various U.S. Presidential debates, we heard that after much pressure from Bernie, Hillary Clinton has declared that *if* she is President she will introduce a constitutional amendment to overturn that decision.

# MCDONNELL V. U.S. (JUNE 2016)

## GUILTY

former Virginia governor Robert F. McDonnell and his wife, Maureen—charged with 14 counts of public corruption. The allegation was that they lent the prestige of the governor’s office to Richmond area businessman Jonnie R. Williams Sr. in exchange for lavish gifts and money. The jury found Robert guilty on 11 corruption counts and Maureen guilty on eight corruption counts. (September 4, 2014)

**ONE YEAR ATER... REVERSAL** *Supreme Court of United States McDonnell v. US* (no.15-474, decided June 27 2016) [https://www.supremecourt.gov/opinions/15pdf/15-474\\_ljgm.pdf](https://www.supremecourt.gov/opinions/15pdf/15-474_ljgm.pdf)

## NOT GUILT -- Not guilty of bribery---no ‘quid pro quo’

“To convict the McDonnells, the Government was required to show that Governor McDonnell committed (or agreed to commit) an “official act” in exchange for the loans and gifts. ... the public official must make a decision or take an action on the question or matter, or agree to do so”.

**“There is no doubt that this case is distasteful; it may be worse than that. But our concern is not with tawdry tales of Ferraris, Rolexes, and ball gowns. It is instead with the broader legal implications of the Government’s boundless interpretation of the federal bribery statute.  
(Judgement of the Court of Appeals is vacated)**

\*\*\*As a result of this case, Virginia as well as other States , passed laws that are intended to put significant caps on gifts and intangible perks such as travel.

# DO WE CARE ABOUT WHAT HAPPENS IN THE U.S.? NO, BUT...

Corruption cases are equally hard to prosecute here in terms of meeting the standard of proof beyond a reasonable doubt of the element of the offense.

*Bribery of officers and judicial officers*

*Fraud against the government*

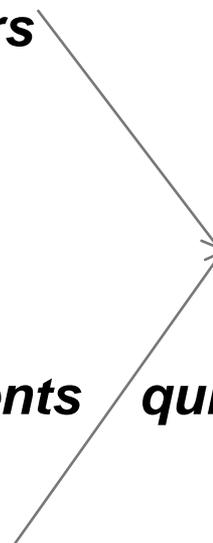
*Municipal corruption*

*Selling or purchasing office*

*Influencing or negotiation appointments*

*Secret commissions*

*All require  
some type of  
quid pro quo  
exchange  
(CC 119 -125)*



# CRITICISM BY A JOURNALIST OF THE CHARBONNEAU INQUIRY...

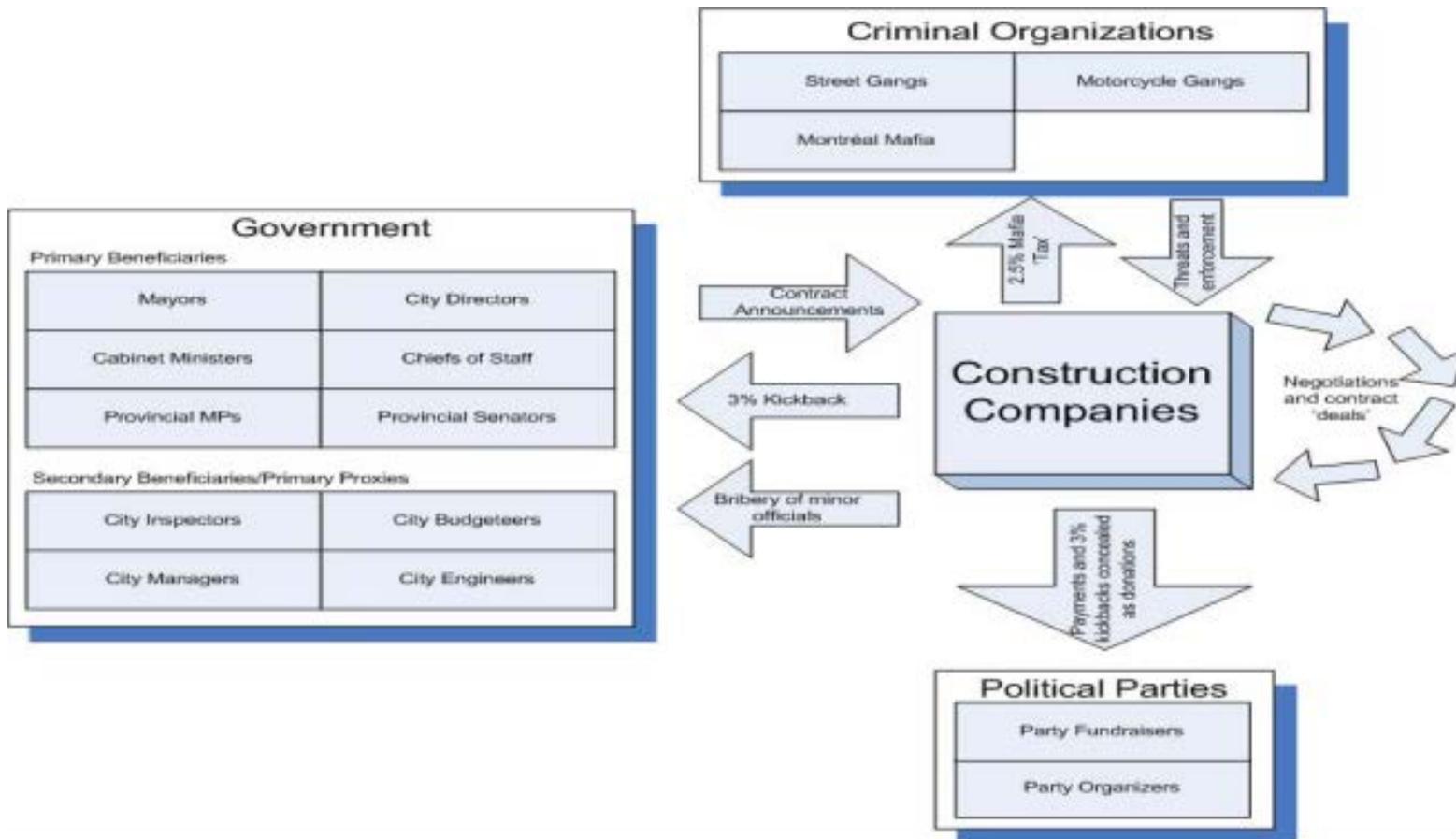
**“An Expensive Disappointment”**:...the Inquiry did not unveil a single case where *a specific contract was obtained in exchange for a specific political contribution*”.

**\*\*Continual misunderstanding of how corruption actually works.**

- What we see instead of one specific gift for one specific service, we see an on-going mutual exchange system. Business as usual!

# MONEY FLOW LINKAGES OF ON-GOING 'NORMALIZED' EXCHANGES

(CHARTS PREPARED BY MICHAEL CIFELLI)



# NORMALIZED EXCHANGE RELATIONSHIPS VS. QUID PRO QUO 'CORRUPTION'

**One must look for on-going patterns of exchange that reveal a corrupted industry rather than a one-off corrupted individual.**

## **Corruption as 'normal':**

- Construction boss Lino Zambito was accused by the Charbonneau Commissioner of paying protection money to the Mafia. His response:
  - "I saw it as more of a business. Entrepreneurs made money and there was a certain amount owed to people ...the Mafia".

# #5 CORRUPTION CASES CLOSE TO HOME...DO WE CARE??

York University in Toronto received a \$20 million donation for the creation of the Dahdaleh Institute for Global Health.

The Panama Papers confirm, as long suspected, that Victor Phillip Dahdaleh served as ‘the mystery middleman’ known as "consultant A" in a series of U.S. court documents that lay out a decades-long kickback scheme involving global aluminum giant Alcoa and government officials in Bahrain.

The role of the Royal Bank of Canada is scattered amount the Panama paper documentation on these cash exchanges.

The U.S. officials allege that Dahdaleh ‘enriched himself’ with \$400 million in markups via the paying of bribes.

\*\*\*York gave him an honorary doctorate and in his address to the graduates at commencement (2016) he advised the graduates to: “appreciate the power of trust, staying true to one's values and giving back to the community”.

# INFRASTRUCTURE AND CORRUPTION...

- **In the March 2016 federal budget the Canadian government announced a \$120 Billion infrastructure plan.**
- **Likewise, Ontario is making the largest investment in public infrastructure in the province's history -- about \$160 billion over 12 years.**
- **BC, in fiscal 2016/17, the Ministry of Transportation and Infrastructure will invest \$894 million in infrastructure projects.**
- Many of these large- scale projects are public-private partnerships (P3s) rather than one-directional contracts.
- The Auditor General's 2014 Report on P3s in Ontario found among other damaging discoveries that there's very little competition among the large P3 general contractors—5 contractors did 80% of the projects and where there was a maintenance component two of the facility management companies were awarded the majority of the P3 projects.
- The large-scale re-development projects involving Health Centres/Hospitals appear to be particularly negligent in there procurement dealings.
- Brings us to...

# THE STRANGE CASE OF HEALTH CENTRES AND HOSPITALS!

## MR. ARTHUR THOMAS PORTER...

- **Prime Minister Harper appointee to chair the Canadian Security Intelligence Review Committee (SIRC), which oversees CSIS.**
- Appointed as the Director General and CEO of the McGill University Health Centre in Montreal, Quebec. He oversaw the construction of one of Canada's largest academic health centres—costing \$1.3 B.
- **2012 ---police have alleged that Porter received \$11.25 million in secret commissions for rigging the hospital contract in SNC-Lavalin's favour. His wife was convicted, and Porter fled to Panama, where he died.**
- **Revelation that \$22.5 million in alleged kickbacks had been paid by the winning contractor, SNC-Lavalin.**

## HOW TO EXPLAIN THIS DEGREE OF CORRUPTION OF MUHC CHIEF EXECUTIVE PORTER AND THE SNC CEO PIERRE DUHAIME

**Michel Nadeau, head of the Institute for Governance of Private and Public Organizations in Montreal stated that they got away it for so long because no one stopped them—he referred to the *‘cult of personality’*:**

**“It’s the problem where you have these types of executives – who are seen like half-Gods,” Mr. Nadeau said. “It is extremely difficult to challenge them, to say ‘Hey boss, are you doing the right thing? Tell us the truth.’”**

# MR. VASOS GEORGIU

- **2004 Vas Georgiou, was vice-president and later interim CEO at St. Joseph's Hospital in Toronto. But outside of his day job, he was working for a private family construction**
- **in 2005---described as being one of the most powerful and most connected members of the hospital. Georgiou took a top position in Ontario's procurement agency—Infrastructure Ontario**
- **In 2011 Georgiou, admitted to creating false invoices that were used in a kickback scheme at York University. York University concluded it had been the victim of a \$1.2-million fraud. Georgiou was not charged criminally and reached a settlement with the University.**
- **Within a year, Georgiou got a top job at St. Michael's Hospital, where he presided over the construction of a \$300-million patient tower.**
- **Nov. 2015 Georgiou was terminated 'with cause' from his position as vice president of St Michael's Hospital—but only following a media investigation**
- **His colleague at St Joseph's, Ms. Bahl, hired Georgiou's construction firm after he left that hospital. She became a senior executive overseeing a \$400 Million re-development project at Markham Stouffville Hospital—where she hired her husband and her uncle's businesses.**

# WHERE IS THE ACCOUNTABILITY...

Dahdaley did not deny he paid bribes (inducements) to Bahraini officials but, under a U.K. criminal doctrine known as "principal's consent," said the payments weren't corrupt or illicit because they were known about and approved by the Bahrain government and were part of normal business practice at the time in the country.

Porter was not denied a series of high profile and well-reimbursed positions even after the Dean of Medicine at Wayne State University in Michigan warned head hunters about hiring Porter as early as 2003.

York University did not charge Georgiou and even with the verbatim transcripts of his interviews, the head of Infrastructure Ontario still insisted that we really didn't know whether Georgiou was guilty.

# DOREEN MCBARNET:

**"To suggest then that the key to staying on the right side of the line is `not what you do but the way that you do it', is not to imply simply a distinction in style, a matter of cleverness or moral choice, but to underline the significance of opportunity and resources. Manipulating the law to escape control yet remain legitimate is an option more readily available to large corporations and 'high net worth' individuals than to the mass of the population".**

# WHEN DO WE CARE... ABOUT CORRUPTION?

When:

- **it links to political expediency i.e.**
  - ‘being seen to be doing something’ **after media publicity** over an issue; OR
  - **political opportunism of party out of power** (Critics during the Charbonneau Inquiry referred to the ‘Gomery Effect’ as serving to warn the Charbonneau Commission of the consequences of digging too deep.) OR
  - the slanted concern over the voting of **one’s constituency**
- **racism and/or elitism** causes the public, media or politicians to react i.e. ‘specific’ people with money abusing the system
- there is exposed crime among a segment of an **industry that can be easily understood by the media and the public —i.e. the real estate brokers—that puts the ‘normal citizen’ at a disadvantage and the media responds.**
- **International pressures put at Canada for failing to live up to international anti-corruption obligations.**

# WHO IS MOST INFLUENTIAL IN COMBATTING CORRUPTION???

**High profile media exposé and public awareness**

**---not the police, not the courts, and  
seemingly often not the regulators!**



# WHY SHOULD WE CARE ABOUT CORRUPTION...ROLE OF CORRUPTION IN ORGANIZED CRIME

**One common variable in almost every organized crime market is the role played by corruption—and this corruption, at some stage in the criminal process, most often involves a so-called ‘legitimate participant’.**

- ***Russian organized crime was/is all about corruption...***
- ***Human smuggling* evidence suggests that any significant operation, benefits from corrupt officials along the route...**
- ***Human trafficking* carried out by recognizable ‘criminals’ OR by government policies, corporate forms of enslavement...**
- ***Child pornography*, the market i.e. the clients, are as much a part of the criminal network as are the producers and distributors...**
- ***Money laundering*: professionals—lawyers and accountants and in some case front-line officials are essential to the most sophisticated of schemes. ..**
- **Link between *illicit drugs, gambling, and corruption* is well documented...**
- ***Police corruption* involving the illegal drug markets. ..**
- ***Financial frauds, political corruption, corporate conspiracies* all generate ‘dirty’ proceeds that are then laundered.**

# PART 2: MONEY LAUNDERING



# EVIDENCE WE DON'T CARE ABOUT MONEY LAUNDERING

**#1 Lawyers**

**#2 Bankers in Canada**

**#3 Revenue Canada**

**#4 FATF—Canada's failings**

**#6 Policies that enable laundering— beneficial ownership  
processes**

# PROCEEDS OF CRIME... (CC 462.31)

Every one commits a 'laundering proceeds of crime' offence who:

- **Uses**
- **Transfers the possession of**
- **Sends or delivers to any person or place**
- **Transmits**
- **Alters**
- **Disposes of...**
  - any property or any proceeds with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or those proceeds was obtained as a result of the commission of a designated offence...

# MONEY LAUNDERING...

## WHAT IS MONEY LAUNDERING?

Money laundering is the process used to disguise the source of money or assets derived from criminal activity.

There are three recognized stages in the money laundering process:

**#1 Placement involves placing the proceeds of crime in the financial system.**

•

**#2 Layering involves converting the proceeds of crime into another form and creating complex layers of financial transactions to disguise the audit trail and the source and ownership of funds. This stage may involve transactions such as the buying and selling of stocks, commodities or property.**

•

**#3 Integration involves placing the laundered proceeds back in the economy to create the perception of legitimacy. The money laundering process is continuous, with new “dirty” money constantly being introduced into the financial system.**

# WHAT HAPPENS TO DIRTY MONEY: AMATEURS VS. THE MORE SOPHISTICATED

**Some is simply spent!**

**Jimmy Buffett...(not Warren)**

**“I’ve done a bit of smuggling  
I’ve run my share of grass  
Made enough money to buy Miami  
But I pissed it away just as fast”.**

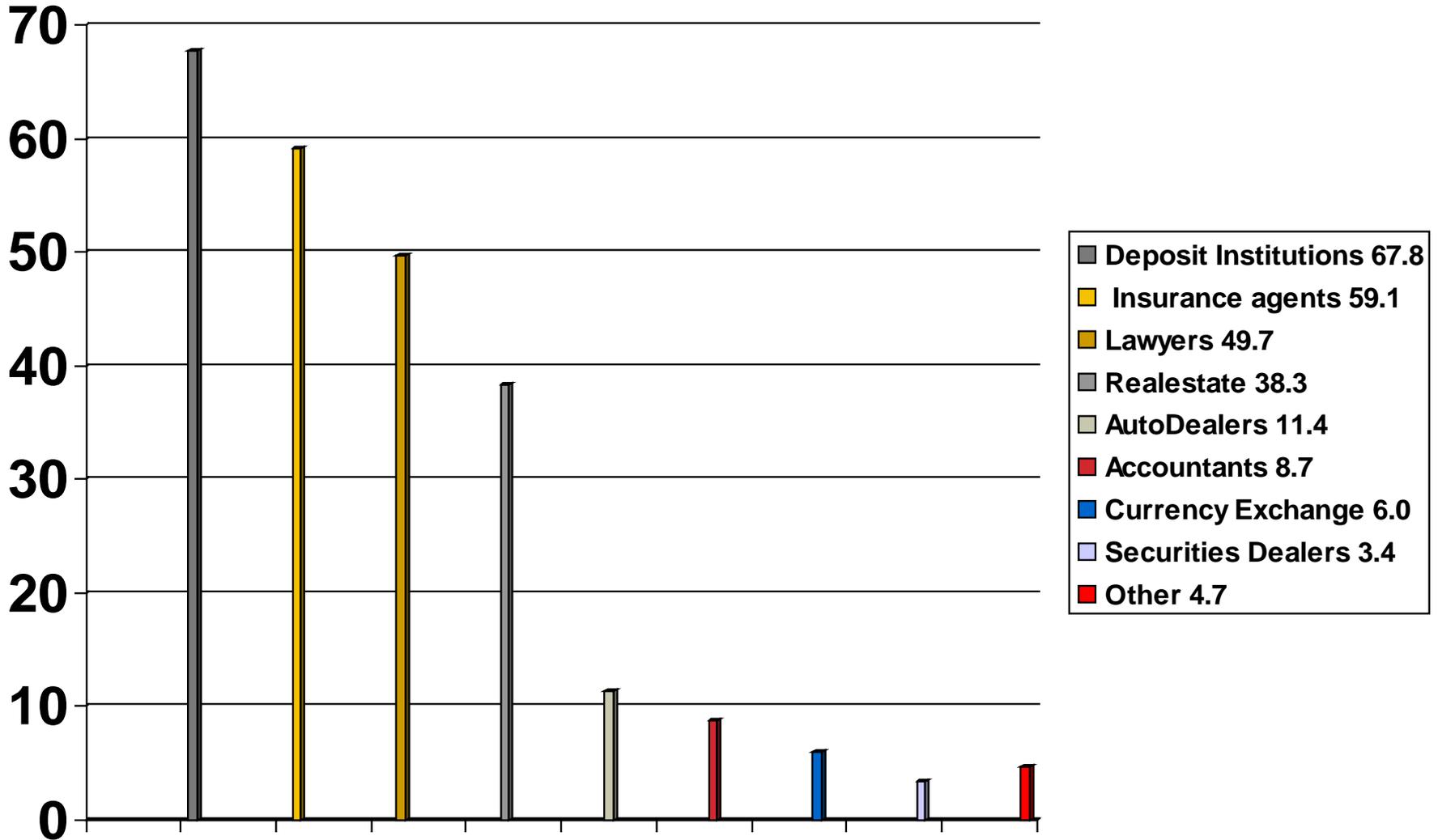
***A Pirate looks at Forty (now 70!)***

# #1 ROLE OF PROFESSIONALS AS 'ENABLERS' IN SOPHISTICATED LAUNDERING SCHEMES—FOCUS ON LAWYERS

**Role played by legitimate businesses in the operations of criminals—i.e. lawyers, accountants, bank officials.**

Money laundering would be more difficult and potentially impossible without the help of these 'services'.

# PROFESSIONALS IN LAUNDERING



# DEPOSIT/FINANCIAL INSTITUTIONS...

**The majority of these cases were simple deposits into financial institutions and only a minority of the ‘laundering’ cases actually involved ‘laundering’:**

- our empirical analyses of police cases reveal that the proceeds of crime are usually ‘used’ in the exact same manner as other people spend their pay cheques.
- The large sophisticated schemes, usually included a critical role played by white-collar professionals including accountants and lawyers.

# LAWYERS: THREE EXAMPLES FROM *CRIMINAL CONSPIRACIES...*

#1 The suspect in one of the RCMP cases (*Project Omerta*) was caught on police tape specifying that **all they really needed was the lawyer's letterhead paper** since the paper would provide legitimacy and credibility to their banking transaction. (Beare & Schneider 2007, p. 203)

#2 Over dinner at a restaurant in Miami in 2002, an RCMP undercover officer, posing as a representative of a Colombian drug cartel, handed **Simon Rosenfeld** a US\$1 bill and asked if that meant they now had a solicitor–client relationship; Rosenfeld said it did. The officer then laid out what he wanted: the cartel needed to move \$3 million a month in illegal drug proceeds into the banking system so it would appear to be legitimate income.

Rosenfeld offered to do it for a 12 per cent commission. The officer offered 5 per cent and they settled on 8 per cent. He appealed his 3-year sentence and got 2 additional years—jail for 5 years. (*National Post*, 20 April 2009, “Judge adds two years”)

#3 In 2003, Toronto lawyer **Peter Shoniker** was caught on police wiretaps boasting that “there wasn’t a f—ing judge” who would authorize a wiretap on his conversations. “I’m untouchable, untouchable, untouchable by police. . . Not a cop in this country would dare burn me, question my integrity.” In 2006, he was sentenced to 15 months in jail for laundering \$750,000 and for one count of stealing \$50,000 from an undercover Mountie (*National Post*, 7 September 2006).

# CANADIAN LAWYERS...

**The exclusion of lawyers from mandatory suspicious reporting and the right of defense lawyers to benefit from criminal proceeds throws into question the sincerity of those in government who push the anti-money laundering initiative.**

- *(Yes—negotiations have taken place regarding alternative accountability processes but, still basically exempt from the requirements that are placed on other professional and business operations.)*

# FEBRUARY 2015...

## SOLICITOR-CLIENT PRIVILEGE IS SAFE

In considering the positions raised by both the federal government and that of the Federation in [Canada \(Attorney General\) v. Federation of Law Societies of Canada, 2015 SCC 7](#), all seven Supreme Court justices (in a rare 'by the Court' decision) found the Federation's arguments to be more persuasive, and ruled in its favour.

**...five members of the Court also found that a *lawyer's duty of commitment to his or her clients' interests was a principle of fundamental justice, and that requiring lawyers to report on their clients' activities, or permit state agents to access confidential information without proper legal authority, would violate that principle.***

<http://www.shk.ca/solicitor-client-privilege-is-safe-scc-confirms-that-lawyers-files-are-exempt-from-unconstitutional-searches/>

# LAWYERS CAN PLAY A KEY ROLE...

- **lawyers can come into contact with the proceeds of crime through their role in facilitating a real property transaction for a criminal**
- **they can conceal the true source of funds provided to them by offenders through the use of legal trust accounts**
- **solicitor-client privilege is powerful and restricts the ability of law enforcement to gather information from law offices;**
- **they can conceal criminal ownership of assets by registering titles in the names of nominees and, in some cases, their own names;**
- **they can transfer funds derived from criminal activities to “tax haven countries,” including establishing shell companies in these countries;**

# FATF: ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING MEASURES IN CANADA – 2016

## *Key Findings:*

“All high-risk areas are covered by Anti-money laundering & Combatting the financing of terrorism (AML/CFT) measures except legal counsels, legal firms and Quebec notaries. This constitutes a significant loophole in Canada’s AML/CFT framework.”

“Legal persons and arrangements are at a high risk of misuse, and that risk is not mitigated”.

“special concern regarding nominee shareholding arrangements’

## *Priority Actions:*

“Ensure that legal counsels, legal firms, and Quebec notaries engaged in the activities listed in the standard are subject to AML/CFT obligations and supervision. “

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf>

# TOO POWERFUL TO CHANGE...TOO DIFFICULT TO CHARGE???

**Lawyers have responded that they now have developed their own anti-money laundering rules:**

- limit the amount of cash lawyers can accept to \$7,500, with some exceptions, (excludes the payment of legal fees)”
- lawyers will try to verify the identification of their clients

# #2 BANKERS IN CANADA (AND ELSEWHERE)

**Why might banks not care about money laundering** (beyond meeting their minimum legal requirements) ?

- Profit orientation of banks,
- share-holder obligations,
- the ‘neutrality’ of the appearance of dirty money---all work against a focus on money laundering.
- The difficulty in identifying suspicious ‘dirty’ money and the impossibility of identifying ‘good legitimate money that might be used for terrorist activities’.

**Answer has been big fines vs. criminal sanctions...** “Punish them with fines” has been the response while ignoring:

- that in the wake of quite spectacular fines, in 2014 the ‘big 6’ US banks made \$152 billion in profit – claimed to be the most profitable year on record.
- Three of the four largest financial institutions are 80% bigger today than they were before they were bailed out.

(Issues--Reforming Wall Street. <https://berniesanders.com/issues/reforming-wall-street/>)

## U.S. FINES:

Company	Total settlements	Sums paid (\$billions)
Bank of America	34	\$77.09
JPMorgan Chase	26	\$40.12
Citigroup	18	\$18.39
Wells Fargo	10	\$10.24
BNP Paribas	1	\$8.90
UBS	8	\$6.54
Deutsche Bank	4	\$5.53
Morgan Stanley	7	\$4.78
Barclays	7	\$4.23
Credit Suisse	4	\$3.74

# 'OFF-SHORE' IS VERY OFTEN VERY MUCH 'ON-SHORE'

**1999: Russian mafia `laundered \$10bn at Bank of New York'**

Billions of dollars have passed through the bank in the past year in what could be the biggest money-laundering operation detected in the United States. The bank, one of the oldest in America, acknowledged that the funds originated in Russia, where organised crime is rife in banking circles.

**\*\*Bank paid \$26 Million 'non-prosecution fine and \$12 Million to others affected by the laundering.**





"Can I recommend putting your money into 25 tons of Mexican cocaine?"

**2012 & 2015:** The US government decided not to pursue criminal charges against HSBC for allowing terrorists and drug dealers to launder millions of dollars. Regulators intervened to warn that prosecuting Britain's biggest bank could lead to a "global financial disaster" ...

**\*\*Instead of pursuing a prosecution, the bank agreed to pay a record \$1.92bn fine.**



**Barclays : Fined \$109 Million for trying to hide “the deal of the century”. (Barclays earned £52 million commission on the deal.**

- **fined for trying to keep a huge deal with super rich clients so secret it bought a new safe just to store the documents.**
- **The U.K. Financial Conduct Authority fined Barclays £72 million (\$109 million)**
- **‘special’ clients were described as "politically exposed people," in a position to abuse their public position for private gain.**

# 'RED FLAGS'

- 1. Did not sufficiently corroborate the clients' stated source of wealth and source of funds for the transaction.**
- 2. Omitted client names from internal systems, meaning the bank could not carry out crosschecks against international sanctions and court order lists.**
- 3. Relied on public Internet pages to verify the clients' sources of wealth.**
- 4. Rushed the deal through so quickly the bank had received the cash before it had any assurance as to the source of the funds.**
- 5. Opened and closed offshore accounts quickly just to process this transaction.**
- 6. Installed a 'secret' safe to store these specific documents—neither Barclays nor FCA knew where it was located.**

*(CNN Money November 26, 2015)*



## 2016 DEUTSCHE BANK CRISIS...

\*\* U.S. DOJ SEEKING \$14 BILLION SETTLEMENT

\*\* BANK PAID \$9.5M TO U.S. SECURITIES AND EXCHANGE COMMISSION "WITHOUT ADMITTING OR DENYING FINDINGS". (OCTOBER 13, 2016)



# WELLS FARGO— AGREED TO PAY \$185 MILLION (USD)



**In order to meet ‘internal sales targets’ low level employees opened approximately 2 million accounts without the clients knowledge.**

- CEO Stumpf –tells panel that selling multiple accounts was about deepening the bank's relationships with its customers. – said a goal was 8 accounts per customer because: **“eight rhymes with great.”**
- **Stephen Colbert:** “That’s how you teach white-collar crime does not pay ---Stumpf’s income= \$200 Million .”
- **Elizabeth Warren:** “Your definition of accountability is to push this on your low-level employees,” (referring to the 5,300 employees fired for opening sham accounts to meet sales figures). “This is gutless leadership.”

# YOU REMEMBER: ICELAND SENTENCING 9 BANKERS FOUND GUILTY OF MARKET MANIPULATION THAT HELPED CAUSED 2008 CRASH

*(INDEPENDENT, FRIDAY 7 OCTOBER 2016)*

**The Supreme Court in Reykjavik returned guilty verdicts for all nine defendants in the Kaupthing Bank market manipulation case.**

**“By allowing bankers to be prosecuted as criminals, Iceland opted for a different strategy in the wake of the financial crisis to rest of Europe and the US, where banks were fined, but chief executives escaped punishment.”**



# CANADA:

REGISTERED COMPANIES

RBC 847

CIBC 632

SCOTIABANK 481

(TORONTO STAR SEPT. 22 2016)



# PANAMA PAPERS...

**Data was obtained from Panamanian law firm Mossack Fonseca**

**The consortium estimates there are 1,352 corporate “officers” linked to Canada in the documents. We don’t know their nationalities, and these are a combination of corporations and individuals. There are also 912 offshore entities, 242 “intermediaries” and 1,312 addresses linked to Canada.**

# FINTRAC: THEY HAVE FINED ONLY 1 CANADIAN BANK, THE FIRST (APRIL 2016)

- **Name of bank was kept secret**—with each bank claiming ‘it wasn’t them’!
- Fintrac’s home page shows the name of many smaller violators i.e. companies such as jewelry stores, independent securities dealers and real estate brokerages—not the bank.
- Explanation for confidentiality: Fintrac’s Gibb said the legislation is not meant to be punitive, but aimed at changing non-compliant behaviour.
  - Again, this does not apply to those without the resources to fight Fintrac. Crimes of the most powerful are treated differently.
- A better explanation: an agreement struck between Fintrac and the institution that in exchange for anonymity, the institution may have agreed to forgo a lengthy appeal process in the courts and pay the \$1,154,670 fine.

# FINTRAC ADMINISTRATIVE MONETARY PENALTIES IMPOSED

...(DETAILS FOUND AT [HTTP://WWW.FINTRAC.GC.CA/PEN/4-ENG.ASP](http://www.fintrac.gc.ca/pen/4-eng.asp)--  
EXCEPT FOR THE BANK)

Listed below are the total numbers of administrative monetary penalties that FINTRAC has imposed from December 30, 2008 to date.

<b>Persons or entities subject to the PCMLTFA</b>	<b>Number of AMPs imposed to date</b>	<b>Total amount of AMPs imposed to date</b>
<b>Bank</b>	1	\$1,154,670
<b>Casino</b>	1	\$56,700
<b>Credit unions / Caisses populaires</b>	16	\$683,615
<b>Dealers in precious metals and stones</b>	4	\$62,250
<b>Life insurance</b>	1	\$6,750
<b>Money services businesses</b>	36	\$814,805
<b>Real estate</b>	12	\$113,100
<b>Securities dealers</b>	8	\$643,660
<b>Total</b>	<b>79</b>	<b>\$3,535,550</b>

# #3 REVENUE CANADA & KPMG: THE OFFSHORE TAX "SHAM" ON THE ISLE OF MAN

**A tale that should enrage the public...the Canada Revenue Agency offered a secret amnesty deal to multi-millionaire clients of KPMG**

- CBC was leaked a copy of the confidential agreements that went first to KPMG who then passed them on to their high net worth clients.
- If they self-identified, in lieu of fines and penalties—or conviction—for their involvement in the controversial scheme, ‘high net worth’ clients, and only the wealthy clients, simply had to agree to pay their back taxes and in some cases a modest interest on these offshore investments.
- Revenue Canada stated that the agreements could be terminated by the CRA if the KPMG clients spoke to others about the secret offer.

# DEMOCRACY AT WORK...

**As Revenue Canada acknowledged: it would not be advantageous for the tax paying public to learn that there were different systems of accountability at work!**

**Why did Revenue Canada do this?**

The self-identification of the wealthy clients would result in some tax revenue. The amnesty process would free up Revenue Canada to go after the smaller clients who would not have the resources to engage in long court battles with high-priced lawyers.

**Similar to FINTRAC, Revenue Canada appears to have made the decision to avoid the expensive legal battle with high-net worth individuals i.e. the crimes of the powerful.**

# SHOULD KPMG BE CHARGED???

- **KPMG charged \$100,000 per client to set up their account under the Isle of Man plan—earning KPMG between \$1.5 million and \$1.6 million.**
- **KPMG admitted that they changed their practices regarding this scam in part because of charges laid against it in the U.S with it paying \$456 million in fines.**
- **Currently a gag order on tax experts summoned to Ottawa to testify about a KPMG offshore tax dodge at the Commons finance committee –“case in before the courts”.**

# AMNESTY PROGRAMMES AND MONEY LAUNDERING

**Does the amnesty process facilitate money laundering?**

- **These dollars now return from places such as the Is. of Mann 'legitimized' via the tax system---at likely a rate lower than the rate charged by a 'criminal' money launderer (30%).**
  - Question may also apply to the wide-spread use of the deferred prosecution strategies in combatting foreign corrupt practices *and*
  - the Independent Private Sector Inspectors General (IPSEGS)/integrity monitors set up in the US to combat corruption and organized crime in large corporations.

# #4 FATF—PEER REVIEW ON CANADA 2016...WEAKNESSES

## In addition to the issues with the lawyers...

- supervision of real estate (low numbers of suspicious transaction forms submitted by real estate sector—many agents appear to be unaware of their obligations.)
- dealers in precious metals and stones
- regulations related to politically exposed persons (PEPs)
- the identification of beneficial ownerships—procedures have been strengthened but problem remain. Businesses and professionals who are obligated to comply with AML/CFT obligations do not have to identify the beneficial ownership nor take special measures with respect to PEPs.

# GETTING BEHIND THE CORPORATE WALL...BENEFICIAL OWNERSHIPS



# #5 WORLD ECONOMIC FORUM'S REPORT ON 'ENABLERS' OF ORGANIZED CRIME AND MONEY LAUNDERING

In 2012 they identified the role of “professionals” and “beneficial owners” as two of the main enablers of money laundering.

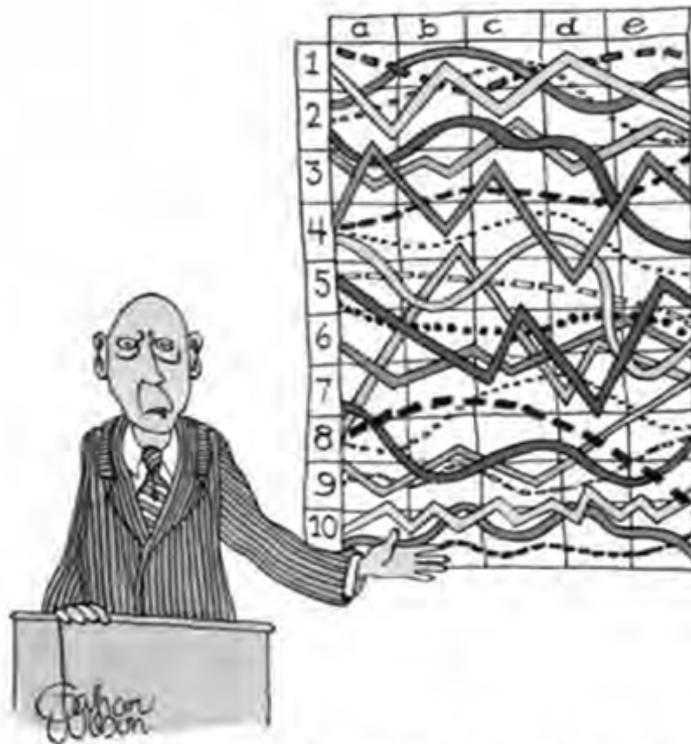
**#1 Professionals—lawyers and accountants have been discussed**

**#2 Beneficial ownership—criminals and criminal organizations make use of the complex cross-border schemes of the corporate mechanisms that serve to hide the identities of those behind the corporation and hide their criminal (or tax evading) proceeds.**

# WHEN DO WE CARE ... ABOUT MONEY LAUNDERING

## When...

- Canada receives international pressure regarding our failure to meet their various agreed requirements i.e. the FATF peer reviews.
- the funds are exposed as being the laundering of international corruption dollars (recent extradition discussions).
- funds point toward “terrorist financing”---but then we handle it as if it were money laundering i.e. responsabilization of front line tellers etc.
- when it is ‘really’ tax evasion—issue becomes missing revenue—(unless the client is too big to jail i.e. KPMG’s clients).



*"I'll pause for a moment so you can  
let this information sink in."*

THE END...  
THANK YOU

MARGARET E. BEARE

[mbeare@osgoode.yorku.ca](mailto:mbeare@osgoode.yorku.ca)