MONEY LAUNDERING INVESTIGATIONS: PRACTICES OF INTEREST TO THE ASIA/PACIFIC REGION

A component study of the project

Money Laundering in the Asia/Pacific Region

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Executive Summary

Effective money-laundering investigations can be carried out by making use of common police practice, with some extensions for financial investigations. Most successful cases begin with investigations of the predicate crimes that generate criminal proceeds in the first place. Most police forces and their partners in law enforcement will have information and intelligence on likely targets. These targets can be investigated in the normal way, with additional attention to financial dealings. Criminal proceeds are most vulnerable at the placement stage of money laundering, when the funds are closest to the predicate crimes.

Money-laundering investigations also depend on the legislative and regulatory regime in place and the investigative techniques that are allowed by the law. The present paper reviews several models in the Asia/Pacific region to allow States considering changes to learn from the examples provided by other Jurisdictions. The jurisprudence related to money laundering in the United States and Canada are canvassed to provide examples of the operation of money-laundering legislation and a range of investigative techniques. As well, the legislation in Hong Kong is examined, with particular attention to the guidelines published for the financial, securities and insurance industries. Austrac, the Financial Investigation Unit in Australia is also presented to demonstrate the kind of intelligence that can be generated from analysis of financial data generally.

The bulk of criminal proceeds is generated by organized crime and world-wide experience demonstrates that special investigative techniques are required to penetrate the barriers that organized crime presents to investigations. This is true both for investigations of the predicate crimes and the subsequent money laundering. Investigative techniques that have proven effective are therefore reviewed. Many of these techniques have been more often used in common-law jurisdictions, although many civil-law countries, particularly in Europe, are adapting their codes of criminal procedure to allow more intrusive techniques.

Successful investigations also require international co-operation. Criminals operate in a border-less world and take advantage of the international financial system and the barriers that State sovereignty presents. Several international instruments provide

assistance in international co-operation. The 1988 Vienna Convention has been the pre-eminent international agreement in furthering the fight against money laundering and organized crime. The majority of countries in the United Nations has now ratified the Convention and has made money laundering a crime and adjusted their legal systems to assist in both domestic and international investigations. The Convention has made significant progress in mutual legal assistance and extradition, for example. Moreover, the United Nations has made available a set of model laws for States to consult as they improve their mutual legal assistance and extradition laws. The United Nations is now drafting a proposed new convention against transnational and organized crime which promises to extend the Vienna Convention, particularly by including more serious crimes and be improving international co-operation.

Given the developments in criminal organization and in international efforts to counter crime, several options for technical assistance are proposed for States wishing to take advantage of international experience in combating money laundering and organized crime. These include assistance with drafting laws and treaties, improving investigative capabilities and organizational structures for more effective law enforcement.

INTRODUCTION[1]

Those who profit from crime seek to disguise the origins of the resources they have acquired. Except when dealing with other criminals it is essential to have money legitimized; it must seem to have been acquired legally. Tainted money must therefore be laundered to remove any trace of its criminal origins.

Minor criminals have few problems; their profits tend to be minimal and they seldom have to resort to anything complicated. They simply pay in cash for their living expenses and their diversions and they have few surpluses to invest. Successful organized crime groups and white-collar criminals have more complicated needs. Their profits can be substantial and they must take steps to break the connection between the crime and the money. They need as well to make it difficult to pursue the money and finally they need to have the money resurface so that it can be used. The money laundering literature describes these processes as placement, layering and integration.

Placement refers to the process of transforming the cash profits of crime into some other form, such as by purchasing vehicles or other assets directly or by getting the cash into the financial system. Since large cash purchases are suspect in most jurisdictions, if there is substantial cash involved laundering via the financial sector is common. Trafficking in drugs provides the usual example. Drugs are sold for cash and successful drug operations generate cash in great bulk. Getting this money into the financial system is essential for latter stages of the laundering process. In many countries, particularly those with cash reporting rules, this stage is the most vulnerable to detection.

The next step in the laundering cycle is layering. In this stage, a number of financial manoeuvres disguise the origins of the money. Unfortunately for those seeking to detect money laundering, nearly any legitimate business or financial arrangement can be adapted and used for laundering money. Moreover, to further complicate the task of following the money trail, the international financial system can be used to move money

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[1] The author would like to acknowledge useful comments received from Inspector Kim Clark and Detective Inspector Peter German of the Royal Canadian Mounted Police and Allan Castle ,Yvon

around to various countries, including countries that have strict bank secrecey laws, allow beneficial owners anonyimity, and allow the formation of shell companies.

Integration is the final stage in the money laundering cycle. Here criminal proceeds are used in the legitimate economy. They are used to, for example, to buy real estate, invest in the stock market, create companies and so on. If the money laundering has been successful, the investments will not arouse suspicion; they will look very much like the investments made by legitimate individuals and busnisses.

Given these processes for laundering money, how are law enforcement agencies to detect money laundering, follow the money trial, and collect evidence that will sustain successful prosecution? This paper sets out investigative opportunities and organizational strategies that may be used.

STRATEGIC JUNCTURES FOR INVESTIGATION

Criminal justice systems everywhere spend most of their time responding to street crimes and to offences like burglary and public order issues. Their efforts net large numbers of minor offenders. One has only to examine the docket of any national court system to see that the vast majority of cases represent relatively low- level crimes. The foot soldiers in the drug trade are regularly arrested. The generals who finance and direct the larger operation are much less likely to be apprehended. The foot soldiers are easily replaced and the drug trade goes on. Similarly, few white-collar criminals are arrested and convicted.

Legislation against money laundering was in great part motivated by this common observation. The generals who run the operations may not be physically close to the drugs or the act of selling them but they do tend to be close to the money. One of the principle ideas behind money laundering legislation is that it provides a way of taking the profit out of crime. It allows authorities to trace, seize and have forfeited the criminal proceeds. It also allows the law to attack those responsible for major crimes.

Dandurand, and Dan Préfontaine of the International Centre for Criminal Law Reform and Criminal Justice Policy.

Targets

Law Enforcement information

Law enforcement agencies that are just beginning to investigate money-laundering cases should not be intimidated. Much of the investigation required will be familiar. Money laundering does introduce some complexity and some techniques that are specific to such cases. Nonetheless, much of the information necessary to begin such cases will be present in the agency. The difficulty frequently is that information does not flow appropriately within law enforcement agencies.

Many law enforcement agencies have specialized drug squads that pursue drug traffickers. They will typically arrest many street-level dealers and develop intelligence on those higher up the chain of command. In many police forces, the officers that handle drug cases are not trained to carry out money laundering investigations. The skills required, ranging from accounting to computer science, are not often present in such squads.

Similarly, many agencies will have a unit devoted to commercial crime or at least have an officer or two who specialize in such cases. In the absence of money laundering legislation or legislation that allows seizure and eventual forfeiture of assets, commercial crime cases will not have been developed to the point of having the requisite evidence to proceed against the assets or those who control them. Nonetheless, much of the investigative work to support a money laundering case will have been done. Some additional investigation and analysis will be necessary but it really is a continuation of sound police work. There may be a need to have accountants and legal experts assist with analysis and provide advise on the evidence required, but what is required is an extension of good police work, not something completely different.

At the same time, successful cases are more likely to be developed by multi-disciplinary teams. This point is discussed below. The point to be stressed here is that police forces should start their investigations of money laundering cases with the information and intelligence in their own departments. Most successful investigations leading to forfeiture of assets under money laundering legislation start with investigations

of the predicate crimes, such as drug selling or financial fraud. The first targets then will be those who are being (or have been) investigated for predicate crimes and the persons at higher levels of the criminal organization suspected of organizing and financing the crimes.

Criminal Intelligence

Many law enforcement agencies have criminal intelligence units or officers with this function. The idea is to gather information on individuals and groups likely to pose a serious criminal threat. Most police forces routinely keep abreast of organized crime groups. Money laundering legislation provides another good reason to develop intelligence on their activities, including financial dealings that may not be immediately linked to specific predicate crimes. In many cases, a little additional information on financial transactions will be enough to initiate a money laundering case that can get at the profits of crime and lead backward to the crimes that were the source of the assets.

Some of the information that can alert investigators to potential money laundering cases will, as noted, be present in law enforcement agencies. Unfortunately, information flow is poor in many agencies. Filing systems may be inadequate and contact between various units may be poor, with each unit or officer attending to his or her own specific tasks and not sharing information or hunches.

In addition to law enforcement information, open source information can be useful. The newspapers and other media, particularly the financial pages may contain information about those involved in business deals, including for example real estate purchases. If, as in the following example, a known drug trafficker or other person of interest, is reported to be involved in a major real estate deal, a money laundering case can be initiated.

Case One

Shell Corporations[2]

Facts

A drug trafficker used drug trafficking proceeds to purchase a property of which part was paid in cash and the remainder was obtained through a mortgage. He then sold the property to a shell corporation, which he controlled, for a nominal sum. The corporation then sold the property to an innocent third party for the original purchase price. By this means the drug trafficker concealed his proceeds of crime in a shell corporation, and thereby attempted to disguise the origin of the original purchase funds.

Results

The accused pled guilty and an order of forfeiture was granted. The property, which was part of the money-laundering scheme, is being disposed of by the authorities.

Developing contacts and informants in the financial sector is another useful method of obtaining the background information and key leads that can lead to successful investigations. Having officers who are familiar with common business practices and the many types of financial transactions is essential. It may be confusing at first but most money laundering schemes are not that complicated. Some are, and in those cases very specific resource personnel may have to be engaged. This point is discussed in more detail in the section on Organizational Options.

Money laundering investigations should, as argued above, begin as extensions of regular police work and build on the information and criminal intelligence already present in the law enforcement community. Beyond this, investigating units should be alert to other opportunities and seek opportunities at each of the three stages of money laundering briefly described in the introduction: placement, layering and integration.

[2] "Case two" from the Financial Action Taskforce 1997-1998 - Report On Money Laundering Typologies.

Placement

Money is money; an illegally acquired banknote looks just like its legal cousin. In countries with cash economies, the problem of separating the legal from the illegal will be even more difficult. If large purchases, such as for vehicles or other large consumer items, are routinely made in cash, then it will be more difficult to find the illegal funds. In most countries, however, organized crime groups and other criminals with large amounts of cash will seek to have the cash deposited in the financial system. At this, the placement stage, the proceeds are most vulnerable and it is easier to connect the cash to the predicate crimes that generated the money. Problems of detection differ with the particular legislation in each country. Reporting requirements make a difference, but even in countries that do not require reporting of cash deposits, suspicion should be aroused if very large cash deposits are made, particularly by those known to have criminal involvement. Whether or not suspicious transactions are reported clearly depends on the integrity of the financial system. If criminals are concerned about transactions being reported they can, and do, resort to smuggling. Smuggling cash across borders for deposit in other jurisdictions is still common.

Case Two

Cross border cash[3]

Facts

Three suspicious transaction reports were received relating to a number of transactions which were carried out at Danish banks whereby large amounts of money were deposited into accounts and then withdrawn shortly afterwards as cash. The first report was received in August 1994, and concerned an account held by Mr. X. Upon initial investigation, the subjects of the reports (X, Y and Z) were not known in police databases as being connected to drugs or any other criminal activity. However further investigation showed that X had imported more than 3 tonnes of hashish into Denmark over a 9-year period. Y had assisted him on one occasion, whilst Z had assisted in laundering the money.

[3] "Case three" from the Financial Action Taskforce 1997-1998 - Report On Money Laundering Typologies.

Most of the money was transported by Z as cash from Denmark to Luxembourg where X and Z held 16 accounts at different banks, or to Spain and subsequently Gibraltar, where they held 25 accounts. The receipts from the Danish banks for the withdrawn money were used as documentation to prove the legal origin of the money, when the money was deposited into banks in Gibraltar and Luxembourg. It turned out that sometimes the same receipt was used at several banks so that more cash could be deposited as "legal" than had actually been through the Danish bank accounts.

Results

X and Y were arrested, prosecuted and convicted for drug trafficking offences and received sentences of six and two years imprisonment respectively. A confiscation order for the equivalent of US$ 6 million was made against X. Z was convicted of drug money laundering involving US$ 1.3 million, and was sentenced to one year nine months imprisonment.

Many criminals place their cash in financial institutions by making many, relatively small deposits in a number of accounts. They may employ many people[4] to make these deposits to reduce suspicion and to make it more difficult to trace the money back to the principals. The full range of financial institutions is used, from banks and commodity and securities dealers, to currency exchanges and remittance agencies.

Alternatively, bulk cash may be deposited directly if employees of banks, security dealers or other deposit taking institutions can be corrupted or otherwise controlled. Some organized crime groups have achieved the ultimate technique by owning banks.

Another very common method is to co-mingle licit with illicit proceeds. Any cash intensive business will serve. The term "money laundering" allegedly is due to American gangsters making use of coin laundries to mingle profits from crimes involving drugs, gambling and prostitution. Restaurants, bars, hotels, and stores or other businesses dealing in cash are prime candidates for money laundering. Deposits which are excessive in relation to the nature of the business are suspect but this is frequently difficult to gauge without the kind of audit that tax officials carry out. Tax officials, as noted below, are another important resource in anti-money laundering efforts.

Casinos and other gambling establishments provide another means of placing large amounts of cash. One technique is to purchase gambling chips with large amounts

[4] "Smurfs", in United States slang.

of cash, gamble minimally, then cash the chips in for a cheque that can be deposited as any other cheque. One case reported by the Hong Kong police used this technique. Eight million US dollars was taken to Atlantic City casinos. The "gamblers" would buy approximately one million in chips, and then cash the chips in for cheques that were deposited in Hong Kong bank accounts and then transferred to Australia to buy real estate. Casinos can also sometimes directly facilitate international transfers of funds. Many large casinos have offices in other countries for the convenience of their foreign clients, offices where they can make reservations and deposit money to be wired back to the casino in aggregate transfers between casino accounts. This is anonymous and effective. Regulators may notice large amounts of foreign currency or other negotiable instruments and become suspicious but this seems to happen infrequently.

Where legislation provides for reporting by financial institutions of suspicious cash deposits, investigators have an advantage, but even in the absence of such a reporting system, leads can be developed, informants recruited and voluntary reports solicited. It is important to try to get at the money as early in the cycle as possible. Following the next stage, layering, the trial gets more difficult to follow.

Layering

Layers of financial transactions interrupt the audit trial and make tracing the proceeds of crime more difficult. Once cash is successfully deposited, it can be converted to any number of financial instruments, for example, traveller's cheque's money orders, letters of credit, cashier's checks, stocks and bonds.

Money can also be transferred domestically or internationally to any account designated by the account holder or anyone authorised to sign for the account. Funds can be sent to shell corporations at home or abroad who can then sent the funds on to accounts in a third country with bank secrecy laws. The permutations are nearly limitless and some schemes involve several jurisdictions, dozens of accounts and shell corporations and repeated transformations of the money into a variety of forms and into a variety of assets.

Electronic transfers of funds around the world are very common. They are low cost, very fast, and leave a limited audit trail with virtual anonymity amid the volume of

transfers carried out each day. Moreover, investigators trying to follow the money trial will run into problems of bank secrecy, language, differing legal systems, shell companies whose beneficial owners cannot be ascertained and frequently an additional layer of security provided by attorney/client privilege.

Indeed, the Financial Action Task Force has reported an increase in the use of professionals to launder money[5]. As the simple laundering techniques are more frequently exposed through reporting requirements and the diligence of law enforcement, more complicated schemes are devised, most often by lawyers and accountants. The "Spaghetti Case" provides one such example.

Case Three

The Spaghetti Case[6]

A Toronto lawyer, Donovan Blakeman, handled the finances for an international drug ring in the 1980s. He called his structure "the Spaghetti Jungle". It involved eleven shell companies in the Channel Islands; fifteen other shell companies in the Cayman Islands, Switzerland, the Netherlands Antilles, Liberia, and the British Virgin Islands; fourteen secret bank accounts in the Channel Islands, Liberia, and other places. Blakeman himself would carry currency or monetary instruments to the offshore bank accounts.

Eventually the drug profits would be used to purchase real estate. The real estate developments were in West Palm Beach, Florida; Barrie, Ontario; and Kitchener, Ontario.

The money for the purchases would come from "offshore investors"—one of the many "Spaghetti Jungle" shell companies ultimately owned by the same drug ring.

The Financial Action Task Force provides another example of lawyers laundering money. In this case, (Lawyers) the illegal proceeds were generated by fraud. The lawyer assured his clients that, in the event of enquires from law enforcement, they could claim lawyer/client privilege. This may work, but in many countries attorney/client privilege does not apply if the lawyer and his or her client were together involved in illegal activity.

[5] The Financial Action Taskforce 1997-1998 - Report On Money Laundering Typologies. Paragraph 47.

[6] Royal Canadian Mounted Police case files.

Case Four

Lawyers[7]

Facts

A prominent attorney operated a money-laundering network that used sixteen domestic and international financial institutions, many of which were in offshore jurisdictions. The majority of his clients were law abiding citizens, however a number of clients were engaged in various types of fraud and tax evasion, and one client had committed an US$ 80 million insurance fraud. He charged his clients a flat fee to launder their money and to set up annuity packages to hide the laundering activity. In the event there were to be any inquiries by regulators or law enforcement officials, the attorney was prepared to give the appearance of legitimacy to any withdrawals from the "annuities".

One of the methods of laundering was for him to transfer funds from a client into one of his general accounts in the Caribbean. This account was linked to the attorney in name only, and he used it to commingle various client funds, before moving portions of the funds accumulated in the general account via wire transfers to accounts in other countries in the Caribbean. When a client needed funds, they could be transferred from these accounts to a U.S. account in the attorney's name or the client's name. The attorney indicated to his clients that they could "hide" behind the attorney-client privilege if they were ever investigated.

Another method of laundering funds was through the use of credit cards. He arranged for credit cards in false names to be issued to his clients, and the credit card issuer was not aware of the true identity of the individuals issued the cards. When funds were needed the client could use the credit card to make cash withdrawals at any

[7] "Case four" from the Financial Action Taskforce 1997-1998 - Report On Money Laundering Typologies.

automated teller machine in the United States. Once a month the Caribbean bank would debit the attorney's account in order to satisfy the charges incurred by his clients. The attorney knew the recipients of the credit cards.

Results

The attorney pleaded guilty to money laundering.

The case also illustrates the laxity of financial institutions in issuing credit cards to the lawyer, for further distribution to his clients. "Know your customer" rules were ignored.

Integration

If the placement and layering stages have been successful, the funds will appear to be legitimate and can be introduced into the regular economy. The owners are now free to invest or consume routinely. At this stage, laundering is seldom detected without infiltration of the organized crime group or through the assistance of an informant knowledgeable about the operation. Criminal intelligence may alert law enforcement agencies to investments by persons known to have criminal histories in legitimate businesses and this may lead to further investigation. Greater success is likely to result form investigations at the placement and layering stage. Much depends, however, on what a country's legislation allows by way of financial investigations. In some countries it will be possible to get banking and financial records and to carry out an in-depth investigation of assets and their sources. In other countries it will not be possible to get such information.

The next section provides several examples of money laundering legislation to illustrate the range of investigative and prosecutorial action possible under various regimes.

ASIA-PACIFIC MODELS

THE UNITED STATES[8]

The United States has led the world in proceeds of crime legislation and enforcement action. The array of legal instruments and powers is equalled in no other country. The United States legislative regime is covered in some detail here since the United States has more experience than any other nation in combatting money laundering.[9] Since the goal of money laundering legislation is to take the profit out of crime the section begins with forfeiture.

In American law, the term "forfeiture" covers situations where the government takes property illegally used or acquired, without compensating the owner. Forfeiture, in the United States, can be achieved either through a civil procedure or through a criminal procedure. This provides a degree of flexibility and power to American prosecutors enjoyed by their counterparts in few other countries, and as we will see, greater powers than those conferred by Canadian legislation.

Civil and Criminal Forfeiture

A civil forfeiture is achieved through an *in rem.* proceeding against the property itself and is independent of any criminal charges against the owner of the property. The *in rem.* proceeding depends on the legal fiction that the property is guilty of the offense of being used illegally.

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[8] The sections on the United States and Canada draw on the author's article "International Money Laundering: Enforcement Challenges and Opportunities." Southwestern Journal of Law and Trade in the Americas, Volume III, Spring, 1996, Number 1, pp. 195-221.

[9] For a full treatment of forfeiture and related laws in the United States see Baldwin, Jr., Fletcher N. and Munro, Robert J. (1993) *Money Laundering, Asset Forfeiture and International Financial Crimes*. New York: Oceana Publications.

There are many civil forfeiture laws in the United States[10]. Among the most significant in the context of organized crime are the civil forfeiture provisions in the *Controlled Substances Act (CSA).* These provisions were initially limited to property directly involved in the drug trade - vehicles, equipment and raw materials. The *CSA*, however, did not include the power to confiscate the proceeds of trafficking.

This power was, however, provided in the same year, 1970, by two criminal forfeiture statutes: The *Racketeer Influenced and Corrupt Organizations Act (RICO)*[11] and the *Controlled Substances Act, Continuing Criminal Enterprise Offense (CCE)*[12]. Also, in 1970, Congress enacted The *Currency and Foreign Transactions Reporting Act* as Title II of the *Bank Secrecy Act*[13]. This act imposes reporting and record keeping requirements upon various financial institutions handling monetary instruments of $10,000 or more in value. In addition to these statutes, the *Money Laundering Control Act*[14] *(MLCA)* of 1986 provided both a criminal and a civil forfeiture provision. The *MLCA* has been strengthened in each election year since its enactment. The MCLA is as a result powerful legislation. It includes all forms of financial transactions and all types of monetary instruments, not just cash. Although the desire to control drug trafficking was the dominant rationale for the legislation it is not limited to drugs and drug dealers. Moreover, laundered money is, under this legislation, never clean. Thus, for example, the equity from the sale of a house whose purchase was facilitated by drug money may be forfeited.[15]

These statutes (*CSA, RICO, CCE, BSA, MLCA*) provide the most significant weapons in the legal arsenal and there are more than two hundred other federal civil and criminal forfeiture statutes that can be called into play if warranted. Other statutes that are frequently used are those dealing with the transportation of gambling devices[16], illegal

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[10] Over 200 according to William J. Snider. See his paper *The Forfeiture (Confiscation) of the Proceeds of Crime by the United States Government.* Paper prepared for the 1994 Conference of the Society for the Reform of the Criminal Law: Hong Kong.

[11] 18 U.S.C. 1963

[12] 21 U.S.C. 848

[13] 12 U.S.C. 1829b,1951-1959 (1982).

[14] 18 U.S.C. 1956

[15] *United States vs. Cota*, 953 F2d 753 (2d Cir. 1992)

[16] 15 U.S.C. 1177

gambling businesses[17], motor vehicle thefts[18], sexual exploitation and other abuses of children[19], and the illegal exportation of war materials.[20]

The range and power of these statutes provide an unprecedented ability to take the profit out of crime, to get at the proceeds. The statutes allow anything to be seized and forfeited if it was used to facilitate the commission of a range of crimes or if the asset is shown to have been acquired through the proceeds of crime.

Facilitation

Consider first the facilitation theory, most commonly used in drug cases. Under United States law there is a way to seize and forfeit virtually anything that is used to help or facilitate a drug deal. Thus conveyances (cars, boats, planes, etc.) used to transport drugs, or drug dealers, are commonly forfeited. Real property used to facilitate certain felonies[21] can also be forfeited. The facilitation must be substantial in the case of real property. If it is, as for example with a drug dealer growing marijuana on a small portion of a larger farm, the entire property is subject to forfeiture. Similarly, money, negotiable instruments and securities used or intended to be used to facilitate a felony can be forfeited. Essentially, most assets can be forfeited either through a civil procedure or through a criminal procedure or both. Moreover, often a prosecutor can proceed civilly if the evidence will not sustain a criminal burden of proof.

Proceeds

Frequently, assets used to facilitate crime can be shown to have been purchased with the proceeds of previous crimes. Thus, when a drug dealer drives his luxury automobile to a drug buy, both the facilitation and the proceeds arguments can be advanced. The prosecution may be able to show, for example, that he has not reported sufficient income to have purchased the car through legitimate income. Prosecutors, of course, will advance as many grounds for forfeiture as the facts will allow. But in the typical civil forfeiture case the government does not need very much to win. The prosecutor has to show that the

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[17] 18 U.S.C. 1955
[18] 18 U.C.S. 512
[19] 18 U.C.S. 2254.
[20] 22 U.S.C. 401.
[21] 21 U.S.C. 881(a)(7).

property was used in an illegal act or that it was acquired with the proceeds of an illegal transaction. In drug cases the government can show probable cause using hearsay evidence from police informants that would not be admissible in most other cases.

To keep the property, the owner or a party having an interest in the property must prove "innocent owner" status. That is, the owner must prove that he or she did not know about any illegality in the use or acquisition of the property. Moreover, hearsay evidence is insufficient; the owner "must prove [his or her] innocence by a preponderance of the evidence, using the rules of evidence that have stood up to the test of admissibility and reliability."[22]

United States Supreme Court

Recently, the courts, including the Supreme Court, have begun to show that they are troubled by the degree of latitude the government has had. Consider, for example, the following from the United States Supreme Court:

> We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in these statutes. The district courts, in order to preserve some modicum of due process to criminal defendants (and civil forfeiture claimants) should be vigilant in approving seizures *ex parte* only upon a showing of the most extraordinary or exigent circumstances . . . until the criminal conduct underlying the claimed forfeiture can be established in the context of a proper criminal proceeding with its attendant constitutional protection to the accused. In addition, because of troublesome fifth amendment problems potentially generated by the government's use of the civil forfeiture statutes, district courts - absent some sort of extraordinary situation - should exercise their discretion to stay civil forfeiture statutes pending the completion of related criminal proceedings against the claimants. Through such courageous and sensitive application of their discretionary powers the district courts can then ensure that "due process" remains a reality and is not reduced to some encomium.[23]

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[22] Stanley A. Beiley in Focus on Money Laundering and Asset Forfeiture: An International Perspective Volume 1, Number 1, page 13, July 1993.

[23] *U.S. v. All Assets of Statewide Auto Parts,* 971 F.2d 896 (2d Cir. 1992).

While the Supreme Court will require that more attention be paid to due process and restrain the zeal of prosecutors, the fact remains that the United States has the most impressive set of legal tools to take the profit out of crime. The United States may also have the greatest need for such measures. The Bureau of International Narcotics Matters of the United States Department of State has for example estimated that one hundred billion dollars of illegal income is laundered each year in the United States. This represents a third of the amount they estimate is laundered world wide.[24]

CANADA

In 1990 a United States Senate report[25] named Canada along with Switzerland, the Bahamas, Luxembourg, Hong Kong and Panama among the jurisdictions most used to launder drug money from the United States. Canada may deserve the distinction, but not for reasons of bank secrecy that characterize some other nations named. Canada shares a very long border with the United States and even before the *North American Free Trade Agreement* there was free trade in crime. Canada also has a large and efficient banking system with branches located around the world. The two nations also have the largest bilateral trade relationship in the world and the growing integration of the two economies provides increasing opportunities for legal and illegal transactions.

Canada has its own crime problems and its recognition that money laundering is an important issue has led to significant legislative and enforcement action. The development of a legislative response to organized crime and money laundering started with a recognition that deficiencies in the criminal law made it exceedingly difficult to get at the proceeds of crime. First, there was an almost exclusive focus on single crimes by individual offenders. Second, there were inadequate provisions for the confiscation of the proceeds of crime. Third, assets could not be frozen prior to conviction and therefore could be sold, transferred out of the jurisdiction or otherwise hidden before judgment could be rendered.

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[24] *International Narcotics Control Strategy Report* 335-36 (March 1991)Bureau of International Narcotics Matters, United States Department of State.

CANADIAN PROCEEDS OF CRIME LEGISLATION

Canadian Proceeds of Crime Legislation came into force on January 1, 1989. The legislation amended the *Criminal Code*,[26] the *Narcotic Control Act*,[27] the *Food and Drugs Act*,[28] and the *Income Tax Act.*[29] As a consequence of the legislation, criminal courts can order the pre trial restraint of suspected proceeds of crime, order the forfeiture of proceeds of certain criminal activities, and authorize the search for intangible property and realty. The legislation also created new "designated drug offences"(now desingnated substance offences) and enterprise crime offences. In 1997 the *Controlled Drug and Substances Act*[30] *(CDSA)* replaced the *Narcotic Control Act* and parts of the *Food and Drugs Act.*

Designated substance offences

A designated substance offence is a contravention of specified provisions of the *Controlled Drug and Substances Act.* Included are: trafficking in controlled substances or; possession of controlled substances for the purpose of trafficking; importation; exportation; production of controlled substances; possession of property obtained by certain offences and laundering the proceeds of trafficking in controlled substances. Included as well are the inchoate acts of conspiracy, attempts, accessories to, and counselling of the above offences.

Enterprise Crime Offences

The legislation also defines twenty four provisions of the *Criminal Code* as "enterprise crime offences." The list includes most of the economically motivated crimes: bribery, frauds, breach of trust by public officers, corruption of foreign officials, corrupting morals, child pornography, keeping gaming or betting houses, bookmaking, keeping a common bawdy-house, procuring, murder, theft, robbery, extortion, forgery and uttering forged documents, secret commissions, arson, counterfeiting, laundering proceeds of crime

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[25] United States Senate. Senator Kerry Report: *Drug Money Laundering, Banks and foreign Policy, A Report on Anti-Money Laundering Law Enforcement and Policy.* Released February 1990.
[26] R.S.C. 1985, c. C-46.
[27] R.S.C. 1985, c.N-1.
[28] R.S.C. 1985, c. F-27.
[29] R.S.C. 1985, c. 1(5th. Supp.).

and possession of the proceeds of an enterprise crime, and participation in a criminal organization. As with designated substance offences, conspiracies, attempt to commit, accessory after the fact and counselling any enterprise crime, are also enterprise crime offences.

Proceeds of Crime

"proceeds of crime" means any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of

(a) the commission in Canada of an enterprise crime offence or a designated substance offence, or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated drug offence[31].

Parliament clearly intended the definition of proceeds to be as broad as possible to allow the greatest possible scope to what could be considered a criminally acquired asset.

Laundering the proceeds of crime is defined in the *Criminal Code* as follows*:*

462.31

(1) Every one commits an offence 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, knowing or believing 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 offence or a designated substance offence; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated substance offence.

Punishment

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) is guilty of an offence punishable on summary conviction.

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[30] R.S.C. 1996, c. 19, in force on May 14, 1997.

[31] *Criminal Code*, R.S.C. 1985, c. C-46, s.462.31.

Exception

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under subsection (1) if the peace officer or person does any of the things mentioned in that subsection for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

The wording of this provision is very broad but the Crown must prove beyond a reasonable doubt that the accused intended to convert or conceal property that he/she knew or believed to be the proceeds of an enterprise crime offence or a designated substance offence.[32]

Special Search Warrants and Restraint Orders

Before the proceeds of crime legislation the courts would not allow the seizure of realty and intangibles (deposits in financial institutions). The new special search warrant must be sought by the Attorney General from a judge of a superior court of criminal jurisdiction[33]. Such a warrant is sought when property needs to be found and seized to ensure its availability should forfeiture be ordered. A restraint order[34] may then be obtained on application to a superior court to prevent the dissipation, concealment, removal or further encumberance of the real property or intangibles.

While special search warrants and restraint orders can be applied for *ex parte,* the court can require that notice be given to anyone who may have a valid interest in the property. Innocent third parties are further protected by the requirement that the Attorney General make an undertaking[35] to indemnify any innocent party adversely affected by the special search warrant or restraint order.

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[32]There are similar provisions in the *Controlled Drugs and Substances Act.*
[33]*Criminal Code,* R.S.C. 1985,c. C-46, ss. 462.32, 462.32.
[34]*Criminal Code,* R.S.C. 1985,c. C-46, ss. 462.32, 462.33.
[35]*Criminal Code,* R.S.C. 1985,c. C-46, ss. 462.32, 462.32(6)and 462.33(7).

Methods of Forfeiture

Forfeiture of the proceeds of crime can occur where there is a conviction for an enterprise crime or designated substance offence.[36] If there is a conviction the court may make a forfeiture order if it is satisfied on a balance of probabilities[37] that the assets are proceeds of crime. Consider, for example, *Regina v. Nayanchandra Shah*. Following a conviction on a charge of forgery of Pharmacare[38] Claim forms and Pharmacare Prescription Invoices, the Crown prosecutor applied for forfeiture of the proceeds of crime. In brief, the Crown alleged that at least $635,000 was illegally obtained, that these funds were moved through 36 bank accounts in Canada and then transferred offshore, some to England, some to the Isle of Man and some to the Channel Islands; and that the illegal funds were co-mingled with legitimate funds, making it impossible to determine exactly what was legitimate and what was not. The defense responded by an application that, among other things, challenged the appropriateness of using civil standards of proof in criminal court.

In refusing the defense application Judge W. J. Kitchen addressed the standard of proof:

> The objective of the lower standard of proof is to resolve the difficulty of proving matters of which only the criminal likely has knowledge. The Crown must prove beyond a reasonable doubt the fact of the crime and the quantum of proceeds. But proof of the identification of the proceeds of crime is a different matter. The disposition of the proceeds by the accused will have been a manipulation of the property when it was likely well beyond the control and observation of others. Such surreptitious activity is becoming easier with the increasing sophistication of commercial transactions and the capability to make computer and electronic dispositions of property on a national and international level. [39]

Further, Judge Kitchen observes at page 23 that:

> The accused has a correlative burden - to prove on the balance of probabilities that the subject property is <u>not</u> the proceeds of crime. If such is not done, the facts are "presumed." Placing a burden on the accused to prove

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[36] *Criminal Code*, R.S.C. 1985,c. C-46, ss. 462.37(1).
[37] *Criminal Code*, R.S.C. 1985,c. C-46, ss. 462.37(1).

[38] A provincial government plan subsidizing prescription drugs.
[39] *Regina v. Nayanchandra Shah*, Provincial Court of British Columbia, November 30, 1992.Vancouver Registry No. 40437T3, p.22.

this furthers the objective of not putting a burden on the Crown which is virtually impossible to meet.

There will no doubt be further constitutional challenges to the use of a lesser burden of proof in criminal proceedings. Thus far Canadian courts have not had difficulty in accepting a lower standard as provided for by the proceeds of crime legislation. The Supreme Court of Canada has not yet considered a case on the issue.[40]

Forfeiture may also be ordered if there is no conviction but the court is satisfied beyond a reasonable doubt that the property is the proceeds of crime.[41]

The court can also impose a fine in an amount equal to the value of the property in lieu of forfeiture when an offender has been convicted of a designated drug offence or an enterprise crime offence but the property in question is unavailable.[42] Should the fine not be paid there is a term of imprisonment specified for each level of fine, culminating in a term of between five and ten years where the amount of the fine exceeds one million dollars.

In Rem. Forfeiture

Unlike the United States, Canada does not make use of *in rem.* forfeiture. In part, this stems from a philosophical aversion to mixing civil and criminal procedures. Perhaps more significant is the structural consideration that Canada has one *Criminal Code* that applies across the country and is federal. That is, the federal government has exclusive power to enact criminal legislation. The provinces have exclusive power over civil law, and these vary by province. The federal government therefore could not have included civil forfeiture procedures in the proceeds of crime legislation. There is nothing preventing the provinces from enacting civil forfeiture statutes, although none has done so. At least one province is exploring the question.

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[40] *R.. v. Tortone*, (1993) 23 C.R.(4th) does not call into question the proceeds of crime legislation. Rather, the case turned on the question of whether or not the trial judge should have ordered a mistrial because of comments he had made about the difficulty in appreciating the evidence in the case.

[41] *Criminal Code*, R.S.C. 1985,c. C-46, ss. 462.37(2).

[42] *Criminal Code*, R.S.C. 1985,c. C-46,ss. 462.37(3). The property is not available for forfeiture if it
(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.

There are, however, limited circumstances under which a quasi *in rem.* procedure can be used. Under the proceeds of crime legislation all actions are commenced *in personam* but where the accused dies or absconds from the jurisdiction,[43] the action can be continued against the property. The provision also deems a person to have absconded in circumstances where a warrant has been issued and reasonable attempts to execute it have been unsuccessful for six months.

Consider *R. v. Clymore.*[44] Here the accused and his father brought approximately one million dollars in currency into Canada and were in the process of converting it to treasury bills when they were arrested for impersonation. They were using several false names in the conversion process. They were released on bail and they returned to the United States before money laundering proceedings commenced in Canada. The accused was subsequently arrested in the United States when he attempted to import a large quantity of marihuana from Mexico into the United States. He was incarcerated in the United States.

The Crown applied for forfeiture based on having established, beyond a reasonable doubt, that the property was proceeds of crime. The court held that, while the Crown had to prove beyond a reasonable doubt that the money was the proceeds of crime, there is no requirement to prove that the seized assets were the proceeds of any specific illegal act. Moreover, the court held that proof of abscondment need be established on the balance of probabilities. Although the fact that the accused was incarcerated in the United States was known, the court held that he absconded and there was no need to bring the accused before the court through extradition proceedings.[45]

Inference from Unexplained Increase in Net Worth

The proceeds of crime legislation provides that, for the purposes of forfeiture, the court may infer that property was obtained or derived from the commission of an enterprise crime or designated substance offence where there is evidence that:

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[43] *Criminal Code*, R.S.C. 1985,c. C-46,ss. 462.38.

[44] (1992) 74 C.C.C. (3d) 217, 16 W.C.B (2d) 538 (B.B.S.C.).

[45] Clymore was not present in court but was represented by counsel. In another case where an accused had been deemed to have absconded, his counsel appeared and sought leave to appeal a forfeiture order. The court held that the accused must submit to the authority of the court in order to assert any right of appeal. See *Pich*é *v. Canada* (Mar. 18, 1994), 23 W.C.B. (2d) 535 (Que. C.A.).

(i) the values of all of the property of the offender exceeds the value of his property before the commission of the offence, and

(ii) the court is satisfied that the income from the offender's sources unrelated to enterprise crime offences or designated substance offences committed by that person cannot reasonably account for such an increase in value.[46]

Disclosure Provisions

The proceeds legislation contains provisions[47] to protect from criminal and civil liability any person who provides the authorities with information that certain property is the proceeds of crime or that any person has committed, or is about to commit, an enterprise crime or a designated substance offence. Note that there is no duty to make such disclosures; there is protection should a person make a disclosure. The protection is particularly important to employees of financial institutions who have a duty of confidentiality to their customers.

The proceeds amendments also allow a limited exception to the *Income Tax Act's*[48] stipulation that information obtained under the authority of the Act can only be used for the administration and enforcement of the Act. The proceeds legislation contains a provision[49] that permits the Attorney General to apply for the disclosure of books, records, writings, returns, or other documents held on behalf of the Minister of National Revenue for income tax purposes. The provision is limited to designated substance offences.

Further Amendments

The Canadian Government has announced that further legislative changes will be made soon. Mandatory reporting of suspicious transactions and mandatory reporting of cross border currency movements are likely. The government is also likely to create a Financial Analysis Centre to collect and analyse financial data and disseminate results to law enforcement.

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[46] *Criminal Code*, R.S.C1985,c. C-46,ss. 462.39..
[47] *Criminal Code*, R.S.C. 1985,c. C-46,ss. 462.47.
[48] R.S.C. 1985, c.1 (5th Supp),s.241.
[49] *Criminal Code*, R.S.C. 1985,c. C-46,ss. 462.48.

AUSTRALIA

Australia has robust legislation dealing with money laundering. An excellent source, current to 1992, is the book, "The Money Trail".[50] This paper will not review the Australian legislation, but will provide an overview of the system that Australia has established to gather and analyze financial data and suspicious transaction reports[51].

AUSTRAC

The Australian Transaction Reports and Analysis Centre, known as AUSTRAC, was established under the *Financial Transaction Reports (FTR) Act 1988*[52]. AUSTRAC collects analyses and disseminates FTR information and provides advice and assistance to the Commissioner of Taxation in relation to FTR information. AUSTRAC is the agency charged to oversee compliance with the legislative requirements of the *Financial Transaction Reports Act 1988.*

Unlike similar agencies in other countries, AUSTRAC has managed to use technology to implement its tasks. The Australian system receives over 90% of its data electronically and has developed computerized means of flagging suspicious transactions. The Australian legislation targets both tax evasion and money laundering. Its currency reporting system and suspicious transaction reporting systems have brought to light numerous cases that would not likely have been detected previously. For example, over 8,000 suspect transactions were identified in the first 18 months of the requirement for reports. Of these

> ...the majority involve low to medium tax cheats under $50,000.00, 1,881 cases involved money laundering. There are more than 20 cases which appear to involve high level corporate tax cheating and fraud worth more than $30 million and also 30 to 40 transactions at the organized

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[50] Fisse, Brent; Fraser, David; Coss, Graeme, eds. (1992) The Money Trail: Confiscation of Proceeds of Crime, Money Laundering and Cash Transaction Reporting. Sydney: The Law Book Company Limited.
[51] The description here is drawn from materials on the Internet at http://www.austrac.gov.au/
[52] The act was amended in 1997. See *the Financial Transaction Reports Amendment Act 1997,* No.33 of 1997, which came into effect on 15 May 1997.

crime end of the scale indicating major tax evasion and significant drug money laundering[53].

AUSTRAC has done an impressive job of working in partnership with the financial sector and specified organisations in the non-financial sector, to get voluntary agreement to download financial data to AUSTRAC'S computers. AUSTRAC has also developed computer software to flag suspicious transactions. This is essential since there are millions of transactions each day and there has to be efficient software tools to sort the legitimate from potentially illegal. This computerized system allows AUSTRAC to monitor financial transactions and to identify money laundering related to serious crime and major tax evasion. AUSTRAC then is able to act as a source of financial information and financial intelligence that it disseminates to the Australian Taxation Office and specific law enforcement agencies.

AUSTRAC also watches for money laundering techniques that seek to avoid the formal reporting and identification regime of the *Financial Transaction Reports Act 1988.* AUSTRAC has powers to take court action for injunctive remedies to secure compliance with the requirements. Criminal sanctions are also available for non-compliance.

AUSTRAC provides the tax office and specified law enforcement agencies with both general and specific access to the financial information it collects. Memoranda of understanding govern general access and AUSTRAC provides controlled on-line (computer) access to the data and, where appropriate, extracts of parts of the data holdings. The specific access includes referrals of information initiated by AUSTRAC or by the cash dealers that suggest new instances of money laundering. There are also other special referrals of data summaries such as those requested for task force operations.

AUSTRAC Clients

The client agencies involved are:

- Australian Taxation Office

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[53] Pinner, Graham (1992) Cash Transaction Reporting and Money Laundering Legislation in The Money Trail, edited by Brent Fisse, David Fraser and Graeme Coss. Sydney: The Law Book Company Limited, 1992.

- Australian Federal Police
- Australian Securities Commission
- Australian Customs Service
- National Crime Authority
- State and Territory police forces of Australia
- Criminal Justice Commission (Queensland)
- Independent Commission Against Corruption (New South Wales)
- New South Wales Police Integrity Commission
- Australian Bureau of Criminal Intelligence
- State and Territory revenue authorities

The AUSTRAC model is well worth examination, particularly for countries that have a limited number of financial institutions and other cash dealers. The system depends, however, on these institutions being computerized and their willingness to work in partnership to develop and maintain a suspicious reporting system.

HONG KONG

Legislation

The *Drug Trafficking (Recovery of Proceeds) Ordinance* together with *the Organised and Serious Crimes Ordinance* are the main legislative tools used to trace, restrain and confiscate proceeds of drug trafficking and to stop drug traffickers retaining their illicit profits through different forms of money laundering[54]. *The Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP)* came into force in September 1989. It provides for the tracing, freezing and confiscation of the proceeds of drug trafficking and creates a criminal offence of money laundering in relation to such proceeds. *The Organized and Serious Crimes Ordinance (OSCO)*, which was modelled on the DTROP,

[54] This section is adapted from information found on the Government of Hong Kong World Wide Web site. See http://www.info.gov.hk/sb/bound/launder.htm.

was brought into operation in December 1994. It extends the money laundering offence to cover the proceeds of indictable offences in addition to drug trafficking.

In 1995, these two ordinances were amended to make it more difficult for drug traffickers and other offenders to launder and retain their illicit profits from drug trafficking and other organised crimes. Specifically, the legislative amendments:

(a) permit the Court of First Instance to make a confiscation order where proceedings in respect of a drug trafficking offence or an organised crime have been instituted but not concluded because the defendant has died or absconded;

(b) permit authorised officers to detain specified property which is being imported into or exported from Hong Kong and which represents the proceeds of drug trafficking;

(c) include a money laundering offence of dealing with property knowing or believing it to represent the proceeds of drug trafficking or an indictable offence; and

(d) impose a duty on persons to report suspicious transactions.

From the introduction of the Drug Trafficking (Recovery of Proceeds) Ordinance in 1989 to 1997, assets valued US$41.4 million have been ordered confiscated, of which US$27.7 million have been paid to the Government. Further assets amounting to US$21.6 million are under restraint, pending confiscation proceedings.

Regulations and Guidelines

Other than these comprehensive legislative measures, the banking, securities, insurance, futures and leveraged foreign exchange sectors also have systems in place to counter money laundering. Financial regulators, such as the Hong Kong Monetary Authority, the Insurance Authority and the Securities and Futures Commission, have issued guidelines on money laundering to the industries they supervise. These guidelines require the industries to observe the standards and procedures in record keeping, customer identification and reporting of suspicious transactions. The guidelines are updated regularly to reflect the revised Recommendations of FATF and to be in line with any relevant legislative changes.

Moneychangers and remittance agents will also soon be regulated. The proposed amendments are scheduled for introduction to the Legislative Council on 21 April 1999. The draft guidelines advise money changers and remittance agents to establish anti-money laundering measures such as those adopted by banks or the other financial sectors.

As noted above, since September 1995 there has a clear statutory obligation to disclose knowledge or suspicion of money laundering transactions.

The banking supervisory agency in Hong Kong, the Hong Kong Monetary Authority, has issued guidelines[55] for banks which spell out the law governing money laundering and provide specific guidelines on procedures to be followed in a number of areas including:

- Verification of identity of applicants for business
- Remittance
- Record Keeping
- Recognition of Suspicious Transactions
- Reporting of Suspicious Transactions
- Feedback from the investigating authorities
- Self-education and training.

The Monetary Authority Guidelines are clear and comprehensive. Similar guidelines have been issued by the Insurance Authority and the Securities and Futures Commission. They are worthwhile documents for any Country considering introducing or enhancing anti-money laundering measures.

ORGANIZED CRIME AND FINANCIAL INVESTIGATIONS

Many financial frauds and other white-collar crimes such as stock market manipulation yield large illegal profits and contribute substantially to money laundering. Nonetheless, the great bulk of illegal gains are from organized crime. Success in the detecting and ultimately forfeiting the proceeds of crime depends on success against organized crime. Indeed, money-laundering legislation was designed to allow the

authorities to get further up the hierarchy of organized crime and to take the profit out of crime. Investigations must therefore be aimed at both the predicate crimes and the organizations responsible for them and the financial base of the organization.

Investigations of any kind obviously depend on the governing legislation, provided by specific statues and by codes of criminal procedure. The models presented above provide varying powers and procedures for investigative authorities. Some of the specific techniques used in common law jurisdictions, such as the United States, have been effective against organized crime. The Americans have, for example, had considerable success in recent years in convicting the bosses of crime families in major American cities. The investigative strategy that has guided FBI work against organized crime is called the enterprise theory of investigation[56]. In this approach the focus is on identifying the hierarchy. Investigative techniques that seem routine to North Americans are essential, including the use of co-operating witnesses, sometimes requiring the use of a witness protection program; informants; undercover agents; and, particularly important, court approved electronic surveillance. These techniques, coupled with the power of the United States Racketeer Influenced and Corrupt Organizations Statute, have led to significant success in prosecuting crime bosses.

Civil Law Countries

Although the investigative techniques listed above are common in some jurisdictions, their use is forbidden in others. Most civil law countries do not allow such investigative techniques. A notable exception is Italy,[57] which has passed legislation providing greater investigative powers. These new powers, with the strong sense of public outrage against crime and corrupt politicians, have led to dramatic improvements in the anti-mafia, anti-corruption, crusade.

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[55] See "Prevention of Money Laundering: A Guideline issued by the Monetary Authority under section 7(3) of the Banking Ordinance. Updated on October 17, 1997.

[56] See United States, Department of Justice (1988) Wanted by the FBI: The Mob. (FBI Organized Crime Report- 25 years After Valachi). Washington, D.C.: Department of Justice.

[57] Papa, Michele (1993) La Nouvelle Législation Italienne en Matière de Criminalité Organisée. Revue de Sciences Criminelles et de Droit Pénal Comparé (4) Oct-Déc. p.725. Also see Turone, Giuliano, "Investigating and Prosecuting the Proceeds of Crime: A Civil Law Experience," Chapter 7 in Responding to Money Laundering: International Perspectives, Ernesto U. Savono (editor), Harwood Academic Publishers, 1997.

The general point here is that success against the leaders of criminal enterprises requires the skilful use of intrusive investigative techniques. As Italy has shown, the fact that some powers have not traditionally been part of the legal arsenal in civil-law jurisdictions, does not mean that they cannot be introduced.

Financial Leads and Investigative Techniques

Financial Leads

Another lesson from successful law enfocement agencies is simply to start following the financial leads. As was noted above under "Targets", begin with leads from within the department. Other sources of leads may (depending on legislation) include[58]:

- Open source materials, e.g., newspapers, the financial press, other media
- Suspicious Activity Reports From Banks and Other Non-Bank Financial Institutions
- Currency Transaction Reports
- Referrals From Bank Regulators and Bank Examiners
- Information From Other Law Enforcement or
- Regulatory Agencies
- Narcotic Enforcement Agencies
- Customs Agencies
- Currency Control Agencies
- Informants
- Cooperating Defendants
- Financial Intelligence Units (e.g., FINCEN in the United States; AUSTRAC in Australia)

[58] This list, and the next one, are adapted from the United States Internal Revenue Service, Criminal Investigation, International Money Laundering Training - Lesson 4 - Investigative Techniques in Money Laundering Investigations.

Investigative Techniques

Once it is determined that there is something worth investigating, authorites have a number of methods to advance the case. These include, depending on the country:

- Financial Interviews (Defendants, Witnesses, Informants)
- Financial Search Warrants (Business Location, Residence, Financial Institutions)
- Surveillance (Moving, Stationary,Video)
- Trash Pickups
- Wire taps (Consensual Monitoring, Telephone recording)
- Undercover Operations
- Analysis of Bank and Other Financial Records
- Analysis of Suspicious Activity Reports and Currency Reports

Asset Investigation

Investigations of organized crime and of money laundering should include careful asset investigation. Asset investigations are, unfortunately, not routine. They can be expensive and they frequently call for resources that law enforcement does not have "in house". Frequently asset investigations are pursued only until sufficient evidence is acquired to proceed to prosecution of a specific predicate crime. They are then abandoned when, instead, they should be pursued to broader enqueries into the economic activities of the organized crime group. It is not only the individuals and their crimes that should be under investigation, but the wealth the group has accumulated, with a view to eventual forfeiture. Assest investigations should be routine and become an integral part of normal investigative practice. The use of specific techniques may be dependant on the legislative paramaters, but asset investigations can be done in most legal systems.

If the investigative methods listed above begin to generate clues to illegal assets, then financial investigators can begin to follow the money trial. In some cases they will be able to detail the movement of money through bank accounts and business records and books. In other cases they may have to use more indirect methods to develop a profile of an individual's, or an organization's, financial circumstanes. This profile should include

accounts of what is owned, owed, earned and spent. The profile should also sources of funds and how they were used.

Additional accounting techniques, such as net-worth analysis, can then be used to support inferences about unknown or illegally acquired funds. This kind of analysis is very important since States that have ratified the Vienna Convention will have placed in their legislation a provision which allows an inference to be made. Canada's provision is as follows:

Inference from Unexplained Increase in Net Worth

The proceeds of crime legislation provides that, for the purposes of forfeiture, the court may infer that property was obtained or derived from the commission of an enterprise crime or designated substance offence where there is evidence that:

> (i) the values of all of the property of the offender exceeds the value of his property before the commission of the offence, and
>
> (ii) the court is satisfied that the income from the offender's sources unrelated to enterprise crime offences or designated drug offences committed by that person cannot reasonably account for such an increase in value.[59]

Organizational Options

Many jurisdictions have found it useful to have specialized proceeds of crime units. This is the recommended organizational structure. It is obviously partly a question of resources, but there is little doubt that successful cases are more often developed by law enforcement agencies that have experienced investigators who are familiar with the investigative techniques discussed above and who have good advice from lawyers with prosecutorial experience and from forensic accountants. Computer specialists and other specialized expertise will also be required from time to time. Some of this expertise can be hired on an as-needed basis, but it is essential to have a core staff of knowledgeable investigators who can develop the leads and carry out the investigations. Investigators must know the financial area and know the rules of evidence that apply in their jurisdiction for money laundering and organized crime cases.

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[59] *Criminal Code*, R.S.C. 1985, C-46,ss. 462.39..

It is worth noting that experience in some countries, including Canada, shows that simply adding an officer to a drug unit and assigning him or her proceeds of crime duties does not seem to work. Proceeds of crime officers in these circumstances tend to be extensions of the drug squad, but few proceeds cases result. A much more successful strategy is to have a small pool (six seems to be a minimum number) of officers who are dedicated to developing money laundering cases. There can be some overlap with commercial crime units to achieve greater efficiency[60].

For small jurisdictions, building and maintaining a specialized proceeds of crime unit may be difficult, but such units do not have to be large and it may be feasibile to join with other jurisdictions in many cases and share expertise and resources.

Inter-departmental Co-operation

Successful money laundering cases depend as well on good inter-departmental co-operation and joint training. In most jurisdictions a number of departments should be involved. Depending on the country, these may include:

- All law enforcement agencies
- Customs,
- Taxation
- Drug Control Agencies
- Financial Intelligence Units
- Currency Control Units
- Securities and bank regulators.

This range of agencies is necessary to develop leads, to detect money-laundering activities, to carry out investigations, and handle prosecutions, both with respect to the predicate crimes and to confiscate and forfeit accumulated wealth. Agencies that are involved also have the opportunity to fulfil their mandates, for example, to pursue tax evaders, to regulate securities trading, to move against customs violations, and so on.

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[60] The author would like to thank Inspector Kim Clark of the RCMP for this insight.

Unfortunately, the tendency in most jurisdictions is for investigators in one agency to hoard information and not to involve other agencies at the most opportune time. Instead, a team or task force approach is required. Criminal groups tend to have specialists working on their side and a division of labour that makes it difficult to investigate the entire operation unless the authorities are co-ordinated and working in concert. Moreover, since criminal groups routinely use the international financial system to move money around the world, international co-operation is most often necessary as well.

INTERNATIONAL CO-OPERATION[61]

Criminal organizations rely on international connections and on the international financial system. The vast majority of major criminal operations have international dimensions. Frequently, the illicit drugs, arms, fake pharmaceuticals, or whatever else the group is handling, will come from other jurisdictions. International connections are even more likely once money laundering begins. As most countries[62] have learned and as FATF[63]has documented, there is a tendency for more professional service providers to be involved in money laundering. Criminal organizations and individual criminals frequently employ lawyers, accountants, company formation agents and other specialists to assist in laundering the proceeds of crime. These specialists will often make use of offshore financial centres that have features that make it difficult for investigators anywhere to follow the money trial. These financial havens[64] offer a range of features

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[61] Parts of this section draw on the author's "International Efforts to Contain Money Laundering," presented at the Seminar "Money Laundering: Joining Forces to Prevent it", Bankers Club, Mexico City, April 8, 1997.

[62] For example, see United States of America, Department of State, International Narcotics Control Strategy Report (March1997). "Professional money-laundering specialists sell high quality services, contacts, experience and knowledge of money movements, supported by the latest electronic technology, to any trafficker or other criminal willing to pay their lucrative fees. This practice continues to make enforcement more difficult, especially through the commingling of licit and illicit funds from many sources, and the worldwide dispersion of funds, far from the predicate crime scene."

[63] See Financial Action Taskforce 1997-1998 - Report On Money Laundering Typologies.

[64] See "Financial Havens, Banking Secrecy and Money-Laundering." Double Issue 34 and 35 of the Crime Prevention and Criminal Justice Newsletter, Issue 8 of the UNDCP Technical Series. United Nations,

ideally suited to money laundering. In addition to the features listed in the box "Features of an ideal financial haven", it helps the money laundering operation if nominees or other middlemen can be used to set up corporations and if the jurisdiction allows bearer bonds and other instruments that disguise beneficial owners.

Features of an ideal financial haven

- No deals for sharing tax information with other countries
- Availability of instant corporations
- Corporate secrecy laws
- Excellent electronic communications
- Tight bank secrecy laws
- A large tourist trade that can help explain major inflows of cash
- Use of a major world currency, preferably the United States dollar, as the local money

Clearly, if money-laundering schemes make use of such financial havens, investigators will have great difficulty in getting information. Financial havens provide models of international non co-operation and the community of nations will no doubt find methods to secure better compliance with what are becoming international norms[65].

Whether through the use of financial havens or simply by using regular financial institutions in a variety of countries, criminals can operate in a border-less world. In contrast, law enforcement immediately runs up against national sovereignty. A variety of international mechanisms have been established to try to ease restrictions on gathering information and following criminals and their money. Case illustration four, below, illustrates graphically why there needs to be international co-operation to follow the money trail.

1998. The text box on the ideal features of an ideal financial haven is taken from page 17 of that report and the Franklin Jurado case 1990–1996 is taken from page 41.

Case Four

The Franklin Jurado case 1990–1996

One of the most fascinating convictions in the United States in recent years for money-laundering was that of Franklin Jurado, a Colombian economist and Harvard graduate who not only laundered significantly amounts for Jose Santacruz Londono of the Cali cartel but also developed an explicit and well thought out scheme for cleaning money. Jurado was arrested in 1990 in Luxembourg, where law enforcement officials also seized computer disks with records of 115 bank accounts in 16 locations "from Luxembourg to Budapest" and details of a vast money-laundering scheme. The five stages of the scheme were designed to clean the proceeds of drug trafficking and make them immune from seizure. In many ways, they are no more than a variant on the classic money-laundering cycle…. In Jurado's view, however, the phases were carefully designed so that the assets would "move from a higher to a lower level of risk". The five stages were as follows:

- *The initial deposit, which is the riskiest stage because the money is still close to its origins and therefore still tainted. Panama was used at this stage.*
- *Transfer of the funds from Panama to Europe. "Over a three-year period, Jurado co-ordinated the transfer of U.S. dollars from the Panamanian banks into more than one hundred accounts in sixty-eight banks in nine countries. Austria, Denmark, the United Kingdom, France, Germany, Hungary, Italy, Luxembourg, and Monaco" with deposits from $50,000 to $1 million.*
- *Transfer to an account in the name of European individuals. As one commentator observed, the purpose of this phase was to obscure "the nationality of the account holders by transferring assets into new accounts opened under European names such as 'Peter Hoffman' and 'Hannika Schmidt'. Assigning accounts to fictitious Europeans removed the 'political' barrier—the heightened surveillance generally given to Colombian or Hispanic-surnamed accounts."*
- *Transfer to European front companies that would not arouse suspicion and provide no reason, "geographic, legal, political or psychological to investigate the assets".*
- *The return of funds to Colombia through investments by the European front companies in Santacruz's "legitimate" businesses such as restaurants, construction companies, pharmaceutical enterprises and real estate. The initial deposit, which is the riskiest stage because the money is still close to its origins and therefore still tainted. Panama was used at this stage.*

[65] The British Government for example is offering citizenship to those living in Britain's dependent territories but one of the conditions imposed will be a requirement to clean up the banking system. See the Economist, March 20, 1999, p. 78.

According to one report, Jurado laundered 30 million French francs through accounts in large French banks. He had noted that, in the "Blue Book" of laundering countries, France was worth a detour and had identified French financial institutions that were particularly accessible to laundering. In Jurado's assessment, however, there were higher ratings for Austria, which he observed was "extremely open to our type of deposits" and offered "extraordinary facilities in terms of confidentiality and banking discretion", for Hungary, which desperately wanted Western capital, and the Channel Islands, which was a "financial paradise". Switzerland, in contrast, he believed should be avoided because United States pressure was creating a "lack of trustworthiness in reference to confidentiality". In spite of his research and his carefully phased strategy, Jurado was arrested in Luxembourg in 1990, apparently before funds were transferred to the European front companies. His arrest was accompanied by the seizure of $46 million from 140 bank accounts in Europe and Panama and this was followed closely by the seizure of funds in several New York bank accounts including $3.4 million held by a Panamanian company, Siracusa Trading Corporation.

In April 1996, Jurado was sentenced to seven and a half years in prison.

THE UN 1988 CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

This Convention, frequently referred to as the Vienna Convention, was a major international response to concern about the growth in illicit drugs and the corresponding concentrations of wealth and power among criminal organizations. The Convention came into force On November 11, 1990 after the minimum twenty governments had ratified it. The focus of this new international instrument is clearly on drugs and it seeks to enhance law enforcement effectiveness in the suppression of drug trafficking. It recognizes that drug offences must include those who direct, finance, manage and profit from the criminal networks but who never actually handle the drugs soldiers of the criminal network. The Convention embraces the idea of taking the profit out of crime by allowing authorities to get at the hierarchy and the money. Many States had already passed proceeds of crime legislation designed to yield forfeitures of criminal profits. The Convention gave this idea a powerful boost and set a new standard for anti-money laundering efforts by governments.

The Convention requires that signatories make money laundering a criminal offence. States are also required to eliminate legislative bars to effective investigation and especially international co-operation in investigation. Thus the Convention stipulates that States who are party to the agreement must facilitate the identification, tracing, seizure, and forfeiture of the proceeds of drug trafficking and money laundering. Such facilitation would include mutual legal assistance in all aspects of investigation, prosecution and judicial proceedings.

MUTUAL LEGAL ASSISTANCE[66]

As noted above, an additional order of complexity is introduced when jurisdictional considerations enter the picture. Consider, for example, a drug-trafficking operation conceived of by citizens of two or more countries, with financing and direction coming from players in a third jurisdiction, and the execution of the crime using associates in supplying countries, with couriers to transport the drugs to one or more additional countries. Add to this the distribution and money laundering operations, which will almost certainly involve additional jurisdictions. If the organized crime group is at all skilful, associates at each stage of the operation will know just enough to do their part, but not enough to betray other parts of the operation.

Leaving aside for the moment questions of cost, and assuming a solid basis for suspecting a particular group, investigators are going to face problems of co-operation with police and regulatory bodies, and bank secrecy laws. They will have to cope with delays, language barriers, and perhaps corrupt police or other officials. If they manage to overcome these difficulties and collect evidence they may face even more serious problems. In most common-law jurisdictions, for example, only evidence that can be tested through cross examination before the court is admissible. Many expensive, and time consuming, investigations have foundered on this offshore rock.

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[66] This section draws on the author's "Investigating and Prosecuting the Proceeds of Crime: A Common Law Experience," Chapter 6 in Responding to Money Laundering: International Perspectives, Ernesto U. Savona (Editor), Harwood Academic Publishers, 1997.

There has been progress, however. Informal co-operation among police forces and regulatory bodies continues and is being strengthened. This kind of co-operation depends, however, on personal contacts, which can be effective, but are frequently short-term due to personnel changes. As invaluable as the informal arrangements are, they can also lead to procedures being short-circuited, resulting in, for example, evidence being collected that is inadmissible. Beyond informal co-operation, letters rogatory and commission evidence provide modest and slow assistance in many jurisdictions.

Given the growth in international crime and the many difficulties of international investigations, many bilateral and multilateral mutual legal assistance treaties have been negotiated and ratified in recent years. The United Nations has developed model treaties that can be used by Member States in negotiating such arrangements[67]. The Model Treaty on Mutual Assistance in Criminal Matters contains provisions that deal with, among other things: the scope of application; the designation of competent authorities, the contents of requests; refusal of assistance; the protection of confidentiality; service of documents; obtaining of evidence; availability of persons in and out of custody to give evidence; safe conduct; search and seizure; certification and authentication; and costs. Treaties based on this model will contribute to improvements in international investigations.

It is worth emphasizing the importance of mutual legal assistance treaties. If letters rogatory and informal arrangements lend themselves to processes that frequently cannot be concluded and result in cases that must be abandoned, those authorities responsible for assigning resources will not support what they will increasingly see as international adventures and a waste of scarce resources. This is precisely the opposite reaction to that required to deal with the increasing internationalization of criminal enterprises.

More treaties are being negotiated which will provide additional incentive to pursue difficult international crime cases that are not now considered or have to be abandoned after significant expenditure of time and money. This, in turn, corroborates the tacit decision to

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67 See https://www.imolin.org/model.htm. The models available are: Organization of American States - CICAD Model regulations concerning laundering offences connected to illicit drug trafficking and related offences; United Nations Model Law on Money Laundering, Confiscation and International Cooperation in Relation to Drugs (1995) (for civil law systems); United Nations Model Bill on Money Laundering and Proceeds of Crime (1998) (for common law systems); United Nations Model Mutual Assistance in Criminal Matters Bill (1998) (for common law systems); United Nations Model Foreign Evidence Bill (1998) (for common law systems); United Nations Model Extradition (Amendment) Bill (1998) (for common law systems)

avoid investing resources in international cases unless there is significant national self interest and a set of circumstances that make it more likely that further investigation will succeed. This elusive combination of circumstances will have to include the following: good intelligence, likely involving an inside informant; co-operation from all the relevant authorities; the right personal contacts; the appropriate Mutual Legal Assistance Treaty; extradition agreements; appropriate budgets; and management willing to authorize international investigations and travel.

Given all this it is not surprising to find that so few international cases are pursued. Moreover, without sustained and meaningful international pursuit, we should not be surprised to find criminal enterprises becoming increasingly international. If the growth in international crime is to be contained, more cases must be investigated and prosecuted, even if the odds are long. This is fundamental to preserving trust in the international financial and economic structures. Because the odds of success are long, the interntional community is devising new instruments to help in the effort to control organized crime. Significant among these efforts is the development of a new convention against Transnational and Organized Crime.

CONVENTION AGAINST TRANSNATIONAL AND ORGANIZED CRIME

An ad hoc committee of the United Nations has been working to develop a new convention. The objectives of the exercise are:

Statement of objectives[68]

1. The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. Each State Party shall take effective measures to promote and monitor within its territory the implementation of the object and aims of the Convention.

3. Each State Party may adopt more strict or severe measures than those provided for by the Convention for the prevention and control of transnational organized crime.

Crimes Included

The Convention against Transnational and Organized Crime will supplement and extend the UN 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Significantly, it will cover many more crimes than drug offences. The range is being debated but it is likely to cover many serious crimes, particularly when there is money laundering involved and the crimes involve more than one nation. Crimes being considered for inclusion include[69]**:**

(a) Illicit traffic in narcotic drugs or psychotropic substances and money laundering as defined in the 1988 Convention;

(b) Traffic in persons;

(c) Counterfeiting currency;

(d) Illicit traffic in or stealing of cultural objects;

(e) Stealing of nuclear material, its misuse or threats to misuse or harm the public;

(f) Acts contained in the United Nations conventions against terrorism;

(g) Illicit manufacture of and traffic in firearms, their parts and components, ammunition, or explosive materials or devices;

(h) Illicit traffic in or stealing of motor vehicles, their parts and components; and (I) Corruption of public officials and officials of private institutions.

States that have not yet ratified the Vienna Convention but intend to do so, may consider whether they wish to expand the crimes covered by anti-money laundering legislation. States that already have legislation in accordance with the Vienna convention will need to consider amendments if the new Convention is supported by the General Assembly.

Other Measures

The draft Convention also contains, among others, provisions to make participation in a criminal organization a crime; a detailed set of requirements for anti-money laundering legislation and other measures to combat money laundering; measures against corruption; and proposals for introducing corporate criminal liability.

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[68] United Nations Document, A/AC.254/4Rev.1, February 10, 1999.

[69] The February 1999 draft of the proposed convention surprisingly leaves out what Canadians would call "enterprise crime offences." Financial frauds and many other serious national and international crimes are missing from the list. Perhaps a subsequent draft will be more inclusive.

Investigative Techniques

The draft Convention contains as well proposals to improve co-ordination generally and to improve judicial processes between States. The draft also urges the use of special investigative techniques, such as controlled delivery, surveillance, including electronic surveillance, and undercover operations for the purpose of gathering evidence and taking legal action against persons involved in an offence. As noted above, some of these techniques have not been available in many countries, particularly in civil law jurisdictions. However, as Italy and other countries have demonstrated, many innovative investigative approaches can be introduced.

Mutual Legal Assistance and Extradition

The draft Convention also stresses the importance of co-operation in legal matters generally and there are extensive draft provisions to improve law enforcement and prosecutorial co-operation generally and to facilitate appropriate treaties for mutual legal assistance and extradition.

The ad hoc committee working on the draft is meeting regularly and the documents produced are posted on the Internet so that all interested parties can follow the process[70].

SUMMARY CONCLUSIONS AND SUGGESTIONS FOR TECHNICAL ASSISTANCE

Summary Conclusions

Money laundering is one powerful tool against organized and white-collar crime. It allows authorities to work further up the criminal hierarchy and to gather evidence allowing prosecution of those who control the criminal organization and to have criminal wealth confiscated and forfeited. Developing cases that actually do this, however, depends on a number of factors.

Effective legislation that makes money laundering a crime is obviously essential. States that have ratified the Vienna Convention will have such legislation. Moreover,

[70] See http://www.ifs.univie.ac.at/~uncjin/dcatoc.htm

legislation that is consistent with the Vienna Convention will have a number of features that are designed to allow authorities greater scope in attacking the proceeds. States that are party to the convention must eliminate legislative barriers to effective investigation and especially international co-operation in investigation. Thus the Convention stipulates that States who are party to the agreement must facilitate the identification, tracing, seizure, and forfeiture of the proceeds of drug trafficking and money laundering. Such facilitation would include mutual legal assistance in all aspects of investigation, prosecution and judicial proceedings. It also includes effective extradition arrangements. Effective legislation is, then, a prerequisite for mounting effective measures against money laundering. The process now underway to draft a new Convention against Transnational and Organized Crime will likely provide an opportunity for States to strengthen their legislation and improve international co-operation.

Effective investigations are also essential. Although some money laundering operations are complex, most are not beyond the capability of even medium-sized law enforcement agencies. The techniques used to launder criminal wealth are common and law enforcement agencies can make a good beginning by working with the information already available in their own agencies and related enforcement and regulatory organizations. Continuing training and specialization in following the money trail through financial institutions will be required, but departments that make it a priority can successfully develop money-laundering cases.

More complicated cases and those that involve other jurisdictions will require additional training and effective mutual assistance treaties. Again, some degree of specialization will be required. Knowing what to look for and how to get the information takes both training and experience. So too does the ability to develop and maintain the extensive range of national and international contacts that will facilitate developing the case and collecting evidence that will be admissible in domestic courts or in courts in other jurisdictions. Complicated cases will also require that law enforcement agencies have access to advice from other professionals, including lawyers, accountants, computer and communication professionals. This means that, wherever possible, specialized proceeds of crime units be established. Developing and maintaining the expertise

required can seldom be done without dedicated units. This applies both to police and prosecutors.

While many instances of money laundering will be (or could be) detected by following leads based on information routinely available to law enforcement, many cases will be missed. Financial information can sometimes uncover money laundering, and the predicate crimes that generated the money. Several countries have developed Financial Intelligence Units to collect and analyze financial information and disseminate information of suspicious activity to the authorities, including the police, the tax department, and other regulators of important institutions. Austrac, the Australian financial intelligence unit, was presented above. Several other countries have such organizations, including the United States, France and others. Although it appears that only a small percentage of cases are developed from intelligence from such units, the ability to spot suspicious activity is improving with experience. Nations without such capability may wish to consider establishing some method of examining general financial information. Smaller nations may wish to consider establishing such a unit in conjunction with like-minded nations in their regions.

Many criminals operate in a border-less world. Indeed they exploit the international financial system and they have learned that investigators will have great difficulty in following them and their money if they transfer it around the world. They take advantage of the fact that differing legal systems, different languages, and the slowness of criminal justice will insulate them reasonably well. Many take the additional precaution of using financial haven jurisdictions with bank secrecy, the legal use of nominees, off-the-shelf companies, and so on. Faced with such international criminals, nations have no choice but to improve their ability to co-operate with other jurisdictions. Mutual legal assistance and extradition treaties go some distance to narrowing the gap in speed and versatility between criminals and those who pursue them. International organizations can also assist, including the United Nations, Interpol, the Commonwealth, and a variety of regional bodies. None of this works well, however, without individuals in each country who have the resources, the training and the time to develop and maintain international contacts and who can therefore use informal networks as well as the formal mechanisms provided by such instruments as mutual legal assistance treaties.

States that are either beginning to address money laundering or those who wish to substantially improve their ability to get at the proceeds of crime may wish to consider seeking technical assistance in a number of areas. The list below parallels the points made in the paragraphs above and in the paper generally.

Potential Areas for Technical Assistance

Legislative development and drafting.

States wishing to develop legislation consistent with the Vienna Convention and the developing Convention Against Transnational and Organized Crime, can get assistance in developing the policies, and the legislative language that would allow them to fulfil international obligations while respecting their own domestic legal traditions. This is a general point that will have been made elsewhere. It is included here to emphasise that investigators should be involved in the drafting. Appropriate investigative techniques must be included in legislation.

Treaty Development and Drafting

Many countries will need mutual legal assistance and extradition treaties, particularly with those other jurisdictions that are routinely involved in criminal cases going beyond domestic boundaries. The United Nation models[71] provide a useful place to start. Technical assistance could accelerate the development of such treaties.

Effective Investigations

Several countries and international organizations have a good deal of experience in conducting money-laundering investigations. Many of the techniques can be used in

71 See https://www.imolin.org/model.htm.

nearly any jurisdiction. Others can be adapted. Technical assistance could be offered on developing financial leads, conducting financial investigations, handling money-laundering cases, collecting admissible evidence, working effectively with other agencies and other countries, and related issues. Technical assistance to train personnel to carry out effective money laundering investigations can be tailored to the needs of particular countries or regions. At the same time, there are many common procedures that can be taught and that apply in most legal systems.

Organizational Options

Assistance could be provided in tailoring law enforcement and prosecution units to the particular needs and resources of individual countries. Organizational schemes cannot simply be imported but new units can benefit from others' experience with what works and what does not in anti-money laundering units. It is significant, for example, that simply adding an officer with responsibilities for money laundering does not seem to work. A properly trained and funded unit of investigators and prosecutors is required if successful cases are to be developed.

Similarly, Financial Intelligence Units may or may not be feasible, but the experience of those that have years of operational experience should be invaluable. Particularly important here is special expertise, such as computer software to flag suspicious financial transactions.

Technical assistance can be effective but it is essential that the objectives for such training are clear and that the assistance is designed to respond to the particular needs of the countries in the region.