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REVIEW OF MONEY LAUNDERING COURT CASES IN CANADA

Summary

This report contains an analysis of money laundering (ML) charges and convictions under s. 462.31 of the *Criminal Code of Canada*. FINTRAC has identified and selected a sample of 40 cases to conduct further analysis for this project. These cases included 62 individuals charged with money laundering between 2000 and 2014, resulting in 43 convictions in Canada.

Key Findings

- British Columbia, Ontario and Quebec courts prosecuted the majority of cases reviewed.
- The total value of funds laundered in cases where there was a successful money laundering conviction was \$423,703,285.57. This is a conservative value given that some cases did not provide an explicit number for amounts laundered.
- Large ML operations appeared to be the most commonly prosecuted. Only two cases in our sample included money laundering valued at less than \$100,000. The median amount laundered was \$561,235.
- The average ML offender was 48 years old, which is substantially older than the *Criminal Code* offence average.
- Male ML offenders made up 87.5 per cent of the sample. This is in line with *Criminal Code* proportions for gender involvement in criminal activity.
- Individuals convicted were most commonly identified as entrepreneurs and typically use their businesses to facilitate money laundering. Lawyers, truck drivers, and individuals that were unemployed made up the other sizable occupations.
- Out of 43 individuals convicted for laundering proceeds of crime, twelve were either professional money launderers or individuals providing a money laundering service for the criminal operation to which they were linked.
- In the cases reviewed, the sources of proceeds of crime were almost entirely generated by drug-related offences or fraud offences.
- In the case of drug offences, the substances were mostly marijuana or cocaine. In the case of fraud offences, a wide variety of schemes was used to generate proceeds such as loan-back schemes, investment fraud, etc.
- The most frequently used vehicles or financial instruments for ML were: electronic funds transfers, companies (often used for comingling proceeds or as shells/fronts), and foreign exchange transactions. The use of cheques and bank drafts was also noted.
- Electronic transfers were used in more than half of the ML cases related to fraud. Funds were commonly wired offshore, particularly to locations in the Caribbean.
- The average sentence for individuals convicted of ML was 4.6 years, or 7.7 years if they were subjects of an undercover law enforcement operation.

s.21(1)(a)



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Introduction

As part of its mandate to increase awareness of money laundering and terrorist financing, FINTRAC has undertaken an in-depth review of money laundering cases prosecuted under s. 462.31 of the *Criminal Code of Canada* between 2000 and 2014. The objective of this Research Report is to share some of the key characteristics relevant to understanding the nature of money laundering offences in Canada in circumstances where they have been examined having regard to the applicable law and evidentiary standards. To that end, this report will review the demographics of convicted individuals, elaborate on enabling factors that contributed to their involvement in money laundering, identify various methods used to launder proceeds of crime, and highlight some of the challenges of convicting an individual for money laundering in Canada.

In total, 40 cases were analyzed in detail for the purpose of this report. Those cases are comprised of 62 individuals charged with laundering the proceeds of crime, 43 of which were convicted in Canada for that offence. Information on these cases was collected from court documentation made available through the Canadian Legal Information Institute (CanLII). A detailed annex summarizing each case is also provided at the end to supplement the references throughout this report. To ensure that this report is accessible to a broader audience, only public sources of information were used.

By the Numbers: A Broad Overview of the Case Sample

Sample Reviewed	
Total court cases reviewed	40
Total court cases with at least one individual convicted	33
Total individuals charged with ML	62
Total upheld ML convictions	43
Total not guilty verdicts or acquittals	15
Total unknown or pending verdicts	4

Please note that this is not an exhaustive review of all Canadian court cases with a money laundering component. While every effort was taken to identify a substantial list of cases for analysis, not all court documents are accessible through public repositories such as CanLII. In addition, cases without adequate details were excluded from the sample.

Amounts

The average amount of money laundered in court cases where at least one individual was convicted is \$16.29 million. However, this average is greatly skewed by three specific cases and is therefore not representative of the typical amounts laundered. The median of \$561,235 is a more accurate measure.

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Most of the court cases containing a conviction for money laundering are valued at over \$100,000. Exceptions include the case of *R. v. Lefebvre* (2007), in which a businessman laundered \$46,000 for a drug trafficking organization, and the case of *R. v. Hallé* (2012), in which a businessman created fake insurance contracts in order to collect premiums, subsequently laundering \$77,000.

Provincial Distribution

The numbers below represent the dollar amounts attached to the 33 cases containing money laundering charges that resulted in a guilty outcome within various provincial jurisdictions.¹ They should not be interpreted as volume of money laundering in each province given that proceeds did not necessarily originate or stay within provincial boundaries, based on the facts outlined in the court documentation.

Province	Funds Laundered	Number of Cases
Ontario	\$15,589,617	13
Quebec	\$206,309,995	11
British Columbia	\$201,042,438.28	5
Alberta	\$561,235.29	1
Newfoundland and Labrador	Unknown	1
New Brunswick	Unknown	1
Yukon	\$200,000.00	1
Total	\$423,703,285.57	33

It should be noted that some provincial totals are heavily skewed by individual cases. For example, the *R. v. Tran* case involved more than \$200 million, which represents the bulk of British Columbia's total.

R. v. Tran (2004): Frank Tran and his wife, Kim Phan, laundered over \$200 million through their currency exchange in British Columbia, as well as through several legitimate currency exchanges in their region. The proceeds of crime were derived from a large-scale cross-border marijuana and cocaine trafficking operation. This ML case is believed to be one the largest in recent Canadian history. Tran pled guilty in exchange for the charges to be dropped against his wife, and was sentenced to 10 years in prison.

Similar circumstances are observed in Quebec, where the Vincent Lacroix (*R. v. Lacroix* 2008) and Chun (*R. v. Chun* 2014) cases account for \$95 million and \$100 million, respectively.

¹ The totals do not account for seven cases where the volume of money laundered was not explicitly provided in public court documentation.

The totals in the chart should not be interpreted as definitive, but rather as a conservative point of reference. Where cases involved USD, the totals were converted to \$0.85 USD to \$1.00 CAD.



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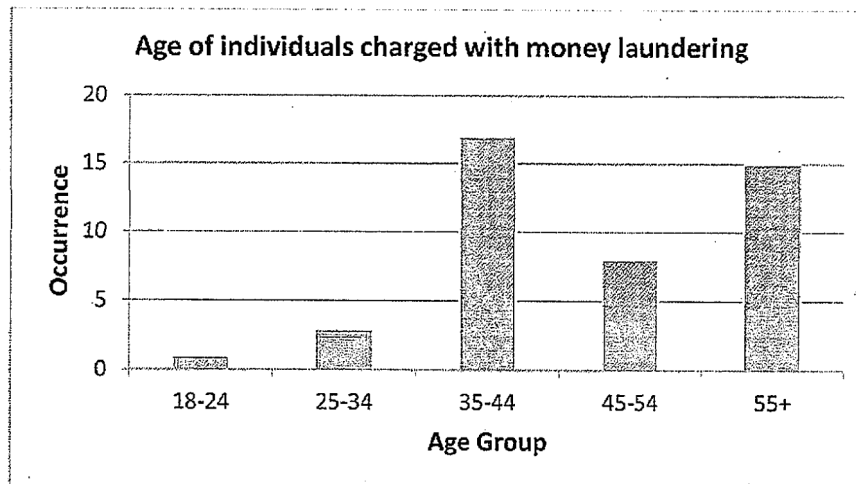
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Demographics

Age

The average known age of individuals in the sample is 48, which is significantly higher than the average for *Criminal Code* offences. The great majority of these individuals (over 90%) were above the age of 35 years. In comparison, the highest concentration of *Criminal Code* offenders is between 18 years and 24 years of age. The youngest individual in the sample charged under 462.31 was 22 years of age, while the oldest was 77 years of age. Only 3 individuals were below the age of 35, suggesting that money laundering is a crime more commonly committed by mature individuals.



Gender

There is a significantly larger portion of males than females charged with money laundering. This is a common trend across most violations of the *Criminal Code*. In our sample, males represented 87.5 per cent of the individuals charged with money laundering. This is slightly greater than the *Criminal Code* gender proportions, where 83.9 per cent of convicted individuals in Canada are male.

Occupation

A significant demographical feature in understanding how people launder funds is an individual's occupation. For example, approximately one third of individuals charged in the cases reviewed can be classified as entrepreneurs or business owners. These individuals typically made use of their company to aid in laundering funds, as will be discussed in the section on methods and techniques below.

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The second largest profession in the sample are lawyers, representing 15 per cent of the individuals charged in the cases reviewed. Based on court documentation, lawyers convicted of money laundering were willing to exploit reporting exemptions in order to launder funds. An example is the case of *R. v.*

R. v. Rosenfeld (2005)

Canadian lawyer Simon Rosenfeld came to the attention of authorities during an undercover RCMP investigation. Looking for assistance in laundering large amounts of cash, supposedly proceeds from a large Colombian drug operation, an undercover officer met with Rosenfeld in March 2002 to discuss terms. Rosenfeld encouraged the officer to conduct his laundering in Canada as "there was little police oversight," (*R. v. Rosenfeld*, 2009 ONCA 307 pp. 4), and agreed to launder the funds for an 8% commission fee. Solicitor-client privilege was assured when Rosenfeld received a token one dollar bill from the officer. In an attempt to avoid detection, Rosenfeld set up various bank accounts in different jurisdictions in the names of corporate shells. These were then used to funnel proceeds to a final account in Florida belonging to the supposed Colombian drug cartel. Rosenfeld was convicted for laundering \$250,000 CAD and \$190,000 USD, and was initially sentenced to 3 years in prison. The Ontario Court of Appeal increased the sentence to 5 years in April 2009. Rosenfeld's status and position as a lawyer was noted as one of the significant aggravating factors in the court's decision.

Rosenfeld (2005), where wiretaps confirmed Simon Rosenfeld's use of solicitor-client privilege to enhance his money laundering services. Legal professionals in Canada are exempt from Part 1 of PC(ML)TFA regulations and are not required to adhere to reporting requirements.

From the money laundering cases reviewed, the other two notable occupations are truck drivers and unemployed individual, which each account for 13 per cent of the sample. In almost all instances, the individuals characterized as unemployed derived all of their income from illegal activities such as fraud or drug trafficking.

The remaining individuals held various occupations including that of bank teller, police officer, teacher, and waitress. They were commonly used as nominees or provided a money laundering service, and the illicit funds earned from those roles supplemented their legitimate income.

Origins of Proceeds of Crime in ML Cases

Of the 40 cases reviewed in our sample, 33 involved the conviction of one or more individuals for money laundering activity. The proceeds of crime from these cases were generated from three types of criminal activity:

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Origin of Proceeds of Crime	Number of Cases
Drug Related	21
Fraud	10
Theft	2

Drug Offences

Marijuana and cocaine were the most commonly occurring drugs that generated proceeds of crime in money laundering cases reviewed. Manufacturing and/or distribution of ecstasy appeared in two cases, while ephedrine appeared in one case. Fifteen of the 21 convicted drug related cases involved schemes with an international aspect. In most of these cases, the schemes involved the crossing of international borders, with 11 cases involving movement between Canada and the U.S.

Fraud Offences

No two fraud schemes in the sample were the same. They ranged from simple ones such as cashing in/depositing fraudulent cheques, to more complex schemes, such as claiming fraudulent GST returns using shell companies set up for that purpose. No significant difference was observed in the average dollar amounts involved between fraud and drug related cases, nor was there a significant difference in the average sentence of individuals convicted in either type of case.

R. v. Drakes (2006)

Anthony Drakes and Richard Brewster were the masterminds behind an advance-fee payment scam. Through unsolicited messages they sent to victims, the fraudsters claimed to be Nigerian civil servants, government officials, or businessmen with access to a large sum of money from an over-invoiced government contract. They offered some of that money to individuals on the condition that victims paid a service fee first. They then claimed that additional service fees were required, forcing victims to continually pay for unforeseen expenses. Some victims lost tens of thousands of dollars before realizing they were being defrauded. Drakes and Brewster laundered the profits of their fraud scheme through accounts in Antigua. They were sentenced to 4 and 5 years in prison, respectively.

Other

For the two remaining cases, proceeds were derived from theft, specifically a bank robbery and the theft of Canadian bonds.

Co-Occurring Offences and Previous Convictions

As mentioned above, the money laundering offences in the sample resulted from individuals moving, converting or attempting to legitimize proceeds derived from drug trafficking, fraud or theft. The

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following offers a more detailed breakdown of co-occurring offences that featured alongside the money laundering charges:

Top 10 Most Common Co-Occurring Offences with ML Charge	
Possession of proceeds of crime	16
Fraud over \$5,000	13
Possession for the purpose of trafficking	9
Conspiracy to commit fraud	7
Conspiracy to traffic	7
Possession of property obtained by commission of a crime	7
Commission of criminal acts for the benefit of a criminal organization	6
Attempted fraud over \$5,000	4
Being a member of a criminal organization	3
Filing a false/misleading income tax statement	3

In all but one instance not reflected in the chart above, the co-occurring charges are non-violent offences. This is likely a factor that contributed to shorter sentences received by the individuals in the money laundering trials reviewed. It is also worth noting that over 30 per cent of individuals who were convicted for ML in our sample had a history of previous convictions.

Identified Money Laundering Methods and Techniques

Use of wire transfers

Wire transfers were a central instrument used in over 38 per cent of cases where one or more individuals were convicted. Cash and wire transfers were often used in conjunction (e.g. large cash deposits immediately followed by a wire transfer, or a wire transfer followed by a cash withdrawal). Other types of wire transactions included online payments through services like PayPal, sending money to relatives acting as nominees, and wiring offshore.

Wiring Offshore

In this context, wiring money offshore refers to the transfer of funds anywhere outside of Canada. Over 33 per cent of the cases involved wiring funds offshore, often in tax havens, for purposes of concealment.²

² One additional case, R. v. Lacroix (2008), may also qualify. Lacroix entered a guilty plea a day before his trial by jury and much of the details regarding the final destination of the funds he embezzled were not confirmed in court documentation, despite speculation by the media that offshore accounts were used.



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Each of the money laundering operations involved at least one individual with a “white collar” profession. The same trend was observed amongst those providing money laundering as a service, meaning those who were not directly involved in the offence that generated the proceeds:

Case	Subject's Occupation	Destination of funds wired
R. v. Boivin ³ (Quebec)	Lawyer	Bahamas
R. c. Chicoine (Quebec)	Businessman	Unspecified tax havens
R. c. Chun (Quebec)	Owner of MSB	Cambodia
R. v. Drakes (Ontario)	Co-accused, Brewster, was a lawyer	Antigua
R. v. Feuerwerker (Ontario)	Co-accused, Pouliot, was a retired teacher	Europe
R. v. Grmovsek (Ontario)	Lawyer	Bahamas & Cayman Islands
R. v. Lefebvre (Quebec)	Businessman	Algeria
R. v. Rosenfeld (Ontario)	Lawyer	Unspecified jurisdictions
R. v. Shoniker ⁴ (Ontario)	Lawyer	United States
R. v. Tran (British Columbia)	Owner of MSB	United States

Shell or front companies

In money laundering schemes, the primary purpose of shell companies is to facilitate layering of funds and legitimize unexplained sources of income by masking them as profits from business operations. While it is possible for shell companies to have a legitimate purposes, those featured in the court cases reviewed were used nearly exclusively to move or help legitimize the proceeds of crime. The types of entities widely varied, as did their locations.

Case	Types of companies used and their location
R. v. Dastani (2013)	Funnelled money through various corporate shell companies (unspecified jurisdictions)
R. c. Halle (2012)	Issued fake insurance contracts from a sham insurance company (Canada)
R. v. Feuerwerker (2011)	Issued fraudulent invoices on behalf of a sham practitioner management company (Canada)
R. v. Black (2009)	Hydroponics Supply Store and Lounge that did not operate during regular business hours. When it was open, the store saw very little traffic (Canada)
R. v. Boivin (2008)	Set up shell companies through which money was funnelled (Bahamas)

³ Boivin set up multiple shell corporations in the Bahamas to launder the proceeds from various criminal operations, including the fraud scheme orchestrated by Ronald Chicoine (R. v. Chicoine 2012).

⁴ Shoniker was the subject of an undercover operation and was instructed to wire the funds to an account in Florida by covert law enforcement.

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R. v. Drakes (2006)	Had fraud victims make payments to several fake financial service and foreign exchange companies (Antigua and Canada)
R. v. Rosenfeld (2005)	Funnelled money through offshore shell corporations (unspecified jurisdictions and types of companies)

Comingling

In addition to the use of shell companies, six cases featured the use of businesses to comingling proceeds of crime with profits from legitimate activity:

Name of Case	Type of Businesses
R. v. Chicoine (2012) - Quebec	Financial service: Provided loans to legitimate clients with money derived from the drug trade; also perpetrated fraud of over \$12 million using his company Speedo Ltée.
R. v. Dastani (2013) – Ontario	Online Nutritional Supplements: Illegally sold and exported ephedrine alongside nutritional supplements, claiming proceeds were from the sale of legitimate medicinal products.
R. v. Kanagarajah et al (2012) - Ontario	Gas station: The property was held in the name of the wife of one of the individuals convicted of money laundering. The property was purchased with proceeds of crime and served to launder funds associated to the group's a large-scale fraud operation.
R. v. Lefebvre (2007) – Quebec	Tobacco Exporting Company: Used a loan made up of proceeds of the drug trade to set up his company. Operated legitimately while also trading proceeds of crime against stocks of the company.
R. v. Rathor (2011) – British Columbia	Currency Exchange: Laundered proceeds that he believed to be derived from the drug trade, but were actually supplied by an undercover law enforcement agent.
R. v. Tran (2004) – British Columbia ⁵	Currency exchange: According to media reports, Tran claimed to conduct \$300,000 worth of business daily, only \$2,000 of which was legitimate.

⁵ Vancouver Sun. "Canada's money-laundering king." Published May 21, 2006



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The R. v. Lefebvre case is unique amongst this group in that Lefebvre did not know that the initially loan he received to set up his tobacco exportation business was made up of proceeds of crime. However, Lefebvre continued to accept money from drug traffickers Alain Thibault and Marc-Andre Cusson once he became aware of the fund's origin, which led to his conviction.

Foreign Exchange Transactions (FOREX)

Foreign currency exchange is often used to further distance the proceeds of crime from their illicit source or to help remit proceeds from the drug trade when the operation spans multiple countries. Approximately 28 per cent of the cases in our sample used currency exchange as a central mechanism in their operation.⁶ Three types of functions can be observed in the use of foreign exchange transactions or businesses:

Function of FOREX	Number of Cases
Providing FOREX as a service	5
Transportation of foreign currencies in cash	5
Using FOREX as a service	1

Of the five cases of individuals providing FOREX as a service to drug traffickers, three were individuals who owned or operated MSBs. The other two, Rosenfeld and Gingras, were both subjects of undercover law enforcement operations and were asked to convert USD to CAD and deliver the funds to a specific location. One case, that of R. c. Chun (2014), was counted in both the first and second categories as the individuals provided both services for the late drug trafficker Daniel Muir.

R. v. Chun (2014)

Spouses Sy Veng Chun and Leng Ky Lech's principal client was the organized crime figure and international drug trafficker Daniel Muir, who was murdered in Montreal in 2004. The couple laundered money through their currency exchange in Montreal, as well as through another exchange they owned in Phonm Penh, Cambodia. The two are believed to have laundered over \$100,000,000 in their operation. Chun and Lech were each sentenced to 8 years in prison in March 2015.

Each of these cases was drug-related or was purported to involve proceeds of drug trafficking. Additionally, all of these cases involved the exchange between USD to CAD, or vice versa. Finally, four of the individuals physically moving currencies were arrested at or in close proximity to the U.S.-Canada border.

⁶ See R. v. Chun (2014), R. v. Tran (2004), R. v. Gingras (2012), R. c. Borris (2013), R. v. Rathor (2011), R. v. Rosenfeld (2005), R. v. Bui (2004), and R. v. Butler (2011)



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Nominees

Criminals use third parties in an attempt to distance themselves from the proceeds of crime or to avoid drawing suspicion to their financial activity. As such, nominees are used by criminals for transactions such as conducting deposits, making large purchases, and buying real estate. In the majority of the 17 court cases where nominees played a pivotal role, immediate family members were used.

Of interest is the fact that only one individual who acted as a nominee, 77-year-old Josephine Black in *R. v. Black* (2009), was charged under 462.31 of the *Criminal Code*. She was charged on the basis of being wilfully blind to her son's marijuana cultivating operation. Ms. Black's other children expressed concerns over her coherence due to her advanced age. In contrast, Battista of *R. v. Battista* (2010) used his sisters as nominees for large portions of his proceeds of crime, and Halle of *R. v. Halle* (2012) hid all of his proceeds under his father's name, but none of those secondary individuals seem to have faced charges.

High value purchases

Whether to facilitate money laundering or to advance a certain lifestyle, high value goods offer an attractive way for criminals to place their proceeds of crime. From the court cases reviewed, *R. v. Kanagarajah et al* (2012) offers a good example of money launderers who made big ticket cash purchases. The assets acquired included Land Rovers, luxury watches, televisions, cellphones, and other expensive commodities.

A similar case is that of Grmovsek (2009), who had been unemployed since 1997 and is said to have lived off the earnings of his insider stock market trading. Court documents also show that Rosenfeld (*R. v. Rosenfeld* 2005) bragged frequently of the luxuries he purchased by evading taxes and laundering proceeds of crime, however the specific items acquired were not identified in court documentation on CanLII. A further five cases involved high value purchases as a means of laundering the proceeds of crime. These purchase items included vehicles, precious stones, jewellery, and boats, among others.

Real Estate

Real estate purchases directly linked to proceeds of crime were explicitly mentioned in eight of the court cases. Examples include the following: Peloso of *R. v. Battista* (2010) purchased real estate in the name of his co-accused's sister and other family members. Individuals in *R. v. Kanagarajah* (2012) purchased a gas station and condos. The subject in *R. v. Goulet* (2008) purchased a building. Grmovsek (2009) purchased his matrimonial home, while in *R. v. Black* (2009), the purchase was a hydroponics store and a house. In *R. v. Lacroix* (2009), Vincent Lacroix used funds embezzled through Norbourg Financial Services to finance acquisitions of both movable and immovable property. In *R. v. Chun* (2014), the accused acted as nominees for a large-scale drug trafficker and purchased property in Quebec.

Structuring

The purpose of this common method of money laundering is to divide proceeds of crime so they may be deposited in increments below reporting thresholds. Only one of the court cases reviewed provided a clear example of structuring. In *R. v. Dawson-Jarvis* (2013), three individuals organized a staged bank

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robbery at an institution where one of the co-accused was a teller. Following the robbery, each of the individuals took an equal portion of the proceeds and conducted a series of transfers and deposits over a period of seven months in an attempt to avoid triggering suspicion.

Casinos

Casinos did not feature prominently in the sample reviewed. In the case of Grmovsek (2009), media reports and proceedings from the Investment Industry Regulatory Organization of Canada claimed the lawyer used casinos in Las Vegas and in the Bahamas to launder his proceeds. Aside from that, the reference to casinos or gambling was only mentioned in R. v. Hoang (2006), where three individuals were stopped at the U.S.-Canada border with large amounts of cash. They tried to claim the funds were winnings from casino gaming, but failed to provide any evidence of such. This explanation was rejected in court, and all three were charged under 462.31.

Professional or Opportunistic Money Laundering Service Providers (MLSP)

Twelve subjects out of the 43 individuals convicted of money laundering were not directly involved in the schemes that generated the proceeds of crime. Instead, this subset of individuals can be considered as having provided a money laundering service for the criminal operation with which they were linked. The majority of that group are individuals who were more opportunistic in their involvement, being drawn into providing a money laundering service based on their personal relationships with the individuals engaged in the criminal operations. A smaller subset included individuals fitting the characteristics of professional launderers, i.e. individuals who are sought out for ability to facilitate movements of money due primarily to their business connections, knowledge or access to financial institutions.⁷ Based on the court cases reviewed, the majority of MLSPs had some level of post-secondary education and/or a career that contributed to their involvement in the money laundering schemes:

Occupation of MLSPs	
MSB Owner	4
Lawyer	3
Entrepreneur	2
Police Officer	1
Teacher (also business owner)	1
Truck Driver	1

In return for their expertise, MLSPs usually charge a commission. This sum can vary greatly: Pierre Goulet took a 2 per cent profit that amounted to \$70,000, Simon Rosenfeld claimed an 8 per cent

⁷ See Malm and Bichler in Trends in Organized Crime (2013) 16:365–381 for a more detailed description of the differences between professional and opportunistic money laundering.



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service fee, Robin Rathor was paid \$16,000 for his involvement, and Peter Shoniker retained \$55,000 for his laundering services.⁸

On average, MLSPs were sentenced to 3.2 years in prison, which is lighter than the average sentence given to money launderers who also participated in drug trafficking or fraud schemes (that average is 4.6 years). The most common sentence handed down to MLSPs was 2 years unless there was a significant aggravating factor requiring more severe punishment. For example, Pierre Goulet received a sentence of 3.5 years because he took advantage of his position as a police officer for the Service de Police de la Ville de Montreal to evade close inspection at the CAN-US border.

Organized Crime

Under s. 467.1 of the *Criminal Code*, a criminal organization is a group of three or more individuals with a main purpose of facilitating crime for the benefit of the group. Out of our sample, 21 court cases met this legal definition; however, most were not explicitly associated to well-known organized crime groups. Only 5 of the 40 court cases mentioned notable organized crime groups such as the Hells Angels, Italian organized crime, or South American organized crime. In cases where the courts did not make a determination of organized criminal activity, the illicit schemes still typically relied on multiple individuals to generate or launder funds.

Sentencing

On average, individuals convicted for money laundering in the court cases reviewed were sentenced to 4.6 years in prison.⁹ The heaviest sentence was 12 years less one day given to Vincent Lacroix, who masterminded the Norbourg scandal that defrauded thousands of Canadians out of their life savings. However, upon appeal in August 2009, this initial sentence was reduced to 5 years less one day. The lightest sentence was one year of house arrest given to Josephine Black (*R. v. Black* 2009). This sentence is based on Black's advanced age of 77 years, and the fact that her role in her son's marijuana grow operation was limited to acting with willful blindness.

R. v. LaCroix (2008)

Vincent LaCroix is the former CEO of the Groupe Norbourg, which defrauded 9,200 victims out of \$115,268,233.76. At least \$95,000,000 of this fraud was laundered by LaCroix. LaCroix embezzled client funds into several personal accounts while issuing false invoices to hide the money's absence. The Norbourg scandal is the biggest financial crime in Quebec's history, and one of the biggest in Canadian history. Lacroix was released into a halfway house in 2011 after serving one-sixth of his sentence, and was released on parole in February 2014.

⁸ *R. v. Goulet* (2008), *R. v. Rosenfeld* (2005), *R. v. Rathor* (2011), and *R. v. Shoniker* (2006)

⁹ Missing from these calculations are the sentences for Benoit Lacroix (*R. v. Cleroux* 2012), Daniel Barna (*R. v. Barna* 2014), Van Phat Hoang (*R. v. Hoang* 2006), and The Phan (*R. v. Hoang* 2006), which were unavailable.



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Sentences under 462.31 tend to be served concurrently with those received for other charges related to the same events. Out of the cases reviewed, three individuals were allowed to serve their sentences on house arrest due to significant mitigating factors including age, level of involvement, public shame already endured, community involvement, and already having spent time in prison for different charges linked to the same event.

Examining the sentence for individuals charged only with a 462.31 offence is also useful. Out of 43 convicted individuals, 23 were charged only with laundering the proceeds of crime. The average sentence on the 462.31 charge alone is 2.05 years in prison, which is two years less than the average for the overall sample. This finding is also consistent with the sentence of 2 years commonly handed to opportunistic or professional money laundering service providers with few or no aggravating factors.

Finally, money laundering cases that included law enforcement undercover operations had a vastly higher average sentence of 7.67 years in prison.

s.21(1)(a)

Elements of the money laundering offence

For a money laundering conviction to be reached, the Crown must prove that an individual dealt with, in any manner and by any means, property or proceeds known or believed to be derived from crime. It is not enough to establish that an individual is in possession of an amount of money significantly exceeding reported income or other legitimate sources. For example, in *R. v. Nguyen et al.* (2014), despite the fact that the defendants were unable or unwilling to justify the source of \$24,000,000 in suspicious funds, the court was not satisfied beyond a reasonable doubt that the funds were obtained from crime.¹⁰ A similar situation occurred in *R. v. Bath* (2011), where two men were acquitted of money laundering charges in relation to a large GST fraud scheme. In that case, the evidence presented did not convince the court that substantial fund transfers moving through various corporate accounts associated to the individuals were necessarily proceeds of the fraud activity for which they were convicted.¹¹

¹⁰ Duhaime's Anti Money Laundering Law in Canada. "Canadian court dismisses charges against 3 jobless people over \$24 million in unexplained cash they exchanged at MSB". Published May 29, 2014. For the Reasons for Judgement, please consult *R. v. Nguyen et al*, 2014 BCPC 95

¹¹ See *R. v. Bath*, 2011 BCSC 1726



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The nature of the money laundering offence also involves the intent to conceal or convert property or proceeds obtained (or believed to have been obtained) by the commission of a designated offence. Even in cases where the court is satisfied that proceeds are derived from illegitimate activity and that the defendants were aware of such, a decision of “not guilty” can still be reached. Such was the case in *R. v. Toozhy*, where the court remained unconvinced that the perpetrator of a false invoicing scheme intended to “hide or transform” his proceeds as opposed to distributing them to “enrich himself and or others”.¹²

Willful blindness versus actual ignorance

In *R. v. Sansregret*, the Supreme Court upheld the definition of willful blindness as follows:

“... the rule is that if a party has his suspicions aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge.”¹³

Actual ignorance is used as a defence to have clients acquitted of money laundering charges on the basis that they did not know the money or property they were dealing with were proceeds of crime. There was only one case in which this defense was accepted in our sample, namely that of Hariharan Nesarajah, implicated in the *R. v. Kanagarajah et al.* case (2012). Nesarajah was acquitted of all charges in the credit card fraud operation led by his brother-in-law and brother-in-law’s friend. The remaining individuals who pled ignorance were declared to be acting in willful blindness, which equates to actual knowledge and therefore proof of intention.

Alleged Charter Violations

In many cases that did not include a guilty plea, defense counsel argued for the omission of key pieces of evidence based on violation of s. 8 of the Charter protections against unlawful search and seizure. Of interest is the case of *R. v. Nguyen et al* (2012), where a police officer was able to justify stopping a vehicle and detaining an individual based on his knowledge of money laundering practices. The defendant was observed walking into a foreign exchange business with a bulky and weighted bag, and approximately 30 minutes later, re-emerged from the foreign exchange with a significantly lighter bag. Believing that such a large cash transaction would be unusual for a legitimate customer, the officer deduced that the subject may have been using the foreign exchange business to launder the proceeds of crime, and as such, stopped and detained the subject. Previous money laundering investigations, FINTRAC disclosures, and anecdotal information obtained from employees and owners of other currency exchanges were all factors considered by the judge in determining that the officer had requisite grounds to stop and detain the subject without breaching her rights.¹⁴

¹² See *R. v. Toozhy* 2013 CanLII 14202 (ON SC)

¹³ See *Sansregret v. The Queen* 1985 CanLII 79 (SCC)

¹⁴ For more details, see *R. v. Bich Nguyen et al*, 2011 BCPC 515 or *R. v. Nguyen et al*, 2014 BCPC 95



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Entrapment in Undercover Law Enforcement Operations

Entrapment was pressed in *R. v. Gingras* (2012) and *R. v. Rosenfeld* (2005). Both accused claimed to have been unfairly investigated by law enforcement because there was no proof that they had previously engaged in criminal activity. As a result, their counsel claimed that law enforcement was guilty of entrapping their clients into committing acts that they would not normally commit. This argument was rejected and both individuals were convicted.

Conclusion

This report has provided an overview of the characteristics of a sample of money laundering cases prosecuted under s.462.31 of the *Criminal Code of Canada*. The results from this study suggest that money laundering charges and convictions in Canada are primarily associated with older males linked to large-scale drug trafficking and fraud operations. In almost half of the cases, individuals convicted for money laundering were entrepreneurs, business owners or lawyers. Prosecution seem to have been most commonly pursued in instances where at least \$100,000 was suspected to be laundered. Finally, some challenges in achieving a conviction pursuant to s. 462.31 of the *Criminal Code of Canada* relate to the nature and elements of the offence, namely establishing the defendant's knowledge or belief that funds were obtained by the commission of a designated offence, and proving the defendant's intent to convert or conceal the property or proceeds. Other challenges, such as defending against allegations of entrapment or Charter rights violations, can also arise.

This study is intended to help develop a better understanding of the actors and activities related to money laundering activity in Canada. While a great degree of insight is routinely obtained by FINTRAC from intelligence and investigative documents, this study has focused on a review of public court material in order to deal with facts that have met rigorous evidentiary standards. This report captures only a portion of the money laundering activity in Canada, but it is an important piece to consider in refining the AML/CFT regime. Given the sample size of 40 cases, results discussed herein are not necessarily generalizable to all money laundering prosecutions in Canada, although they do seem consistent with what we know to date about this offence. Further analysis and collaboration with regime partners is needed to ensure that the key actors within the Canadian Anti-Money Laundering community have the necessary knowledge and tools to continue pursuing this form of crime in the future.



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APPENDIX – CASES REVIEWED¹⁵

Case	Convicted Under 462.31	Sentence	Value of Money Laundered	Summary
R. v. Chun (2014) Quebec	Chun: Yes Lech: Yes	Chun: 8 years Lech: 8 years	\$100,000,000+	Spouses Chun and Lech laundered the proceeds of crime that Daniel Muir acquired from international drug trafficking. Muir was killed before charges could be laid against him. Chun and Lech accepted over \$100,000,000 of Muir's proceeds into their currency exchanges, transferring it to Cambodia and/or other offshore accounts. The couple also acted as nominees for Muir.
R. v. Parent (2014) Quebec	Parent: Yes Couturier: Yes	Parent: 4.5 years Couturier: 3 years	\$175,000 USD	Proceeds gained from exporting ecstasy by boat to Maine through Quebec and New Brunswick, and smuggling the cash back into Canada. Parent also conspired to export large quantities of marijuana along the same route. The two were caught in the same undercover operation as Borris of R. v. Borris (2013). Both pled guilty to charges.
R. v. Barna (2014) Ontario	Barna: Yes Vettese: Unknown	Unspecified Unspecified	Unspecified	Subjects deposited three fraudulent cheques (valued at approximately \$1,500,000) at various financial institutions. The funds were then immediately withdrawn and distributed between Barna and his associate, Vettese. The outcome of Vettese's charge is unclear at time of writing.
R. v. Breton (2014) Ontario	Yes	9 years	\$1,327,220	Proceeds of crime gained from the sale of marijuana, ecstasy and cocaine. Police found more than \$1 million in cash under Breton's garage floor. Breton also used his mother and friend as nominees, and purchased large ticket items such as ATVs, a seadoo and a boat.
R. v. Borris (2013) Quebec	Yes	10.5 years	\$250,000 USD	Obtained proceeds of crime by smuggling various types of contraband, including drugs, by boat into Maine via Quebec and New Brunswick. Borris also conspired to import cocaine from Colombia into Canada,

¹⁵ Cases with unknown/pending outcomes or where the ML charges were dropped were not included in the final sample analyzed, even though they may still feature in the appendix of cases reviewed.

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R. v. Dastani (2013) Ontario	Yes	2 years less a day	\$8,900,000+	through the U.S. This case is linked to R. v. Parent (2014). Dastani ran an e-commerce business purporting to sell health supplements. In reality, he was trafficking in ephedrine tablets were repackaged, relabeled and shipped internationally. Dastani created several enterprises and opened 3 bank accounts through which money was laundered. He was allegedly helped by Kenneth James (See R. v. Kenneth James 2013, outcome still pending at time of writing). Dastani pled guilty to all charges.
R. v. Dawson-Jarvis (2013) Ontario	Yes	3.5 years	\$126,000	The subject, a bank teller, organized a staged robbery on his bank. Along with two accomplices, they attempted extortion and conducted fraud. The stolen funds were divided amongst the three and deposited into financial institutions over a period of seven months.
R. v. Kenneth James (2013) Ontario	James: Unknown Cremer: Unknown	Unspecified	Unspecified	James was charged in 2012 with fraud, possession of property obtained by crime and money laundering (approximately CA\$3 million) in relation to an ephedrine operation linked to Afshin Dastani. The latter owned and operated an online nutrition supplement business that sold and unlawfully exported the drug. It is alleged that Dastani provided James with a number of bank drafts, which were then deposited into various bank accounts held by or associated to James. The funds were then distributed in cash to Dastani or to third parties. The outcome of this case is still pending at time of writing.
R. v. Toozhy and Siddiqi (2013) Ontario	Siddiqi : No	N/A	\$0	Mr. Siddiqi fraudulently raised funds by obtaining loans backed by grossly inflated invoices. Siddiqi used a bank account to transfer the funds to a company under his ownership, and then dispersed the money to a bank in Iran and to numerous other individuals. Siddiqi was found not guilty of ML charges because the judge believed that the transactions were not an attempt at concealing profits, but were rather intended to enrich himself and others.
R. v. Chicoine (2012) Quebec	Yes	7 years	~ \$8,000,000	Using his company (Speedo Financial Corp) and professionals such as lawyers and accountants, Chicoine masterminded a large-scale scheme involving fraud, money laundering, and tax evasion. As part of the

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R. v. Hallé (2012) Quebec	Yes	18 months house arrest	\$77,000+	Hallé was accused of fraud, creating fake insurance contracts, and money laundering. The premiums he collected from his fake insurance policies totalled \$144,918.07. He hid all of his assets under his father's name to conceal the proceeds of crime.	scheme, money from criminal activity was sent to shell companies in Europe. Those companies then sent the money to Speedo Financial Corp., which would then lend the money to legitimate borrowers at a legal rate of 18 per cent. Chicoine also used Speedo to help launder funds from drug trafficking using a fake invoice scheme. He was arrested as part of project Dorade I and II.
R. v. Dixon & Westover (2012) Ontario	Dixon: Yes Westover: No	6 years	Unknown	Dixon and Westover were accused of laundering proceeds of a cocaine importation network, and conspiring to traffic illicit substances. One of their plans involved the use of a Medivac plane to import cocaine from Colombia to Canada. The second plan was for Dixon to broker the sale of cocaine in Madrid to an individual from the Netherlands. Dixon entered into an agreement to launder the money gained from the second plan for a 15% fee. Both plans fell through. Dixon was convicted on the basis of intent to launder. Westover was convicted on trafficking charges but was not found to be involved in the ML scheme.	
R. v. Gingras (2012) British Columbia	Yes	10 years	\$125,000 USD	Gingras' involvement in a cocaine trafficking ring was uncovered as part of an undercover operation. On two separate occasions, Gingras was instructed to launder large amounts of US currency purportedly from drug trafficking. The cash was exchanged and returned in Canadian currency.	
R. v. Kanagarajah et al (2012) Ontario	Kenegarajah : Yes Neshan : Yes Kanagarajah : No Neeranjen : No	Kenegarajah : 6 years Neshan : 5.5 years	Unspecified	This "bust out" credit card fraud operation was carried out between 1997 and 2010, principally by Neshan and Kenegarajah. The fraud also involved extended family members. Proceeds were laundered through the purchase of luxury items, five properties in the Greater Toronto Area, and a gas station in Oshawa. Nesarajah was acquitted of all charges, while Neeranjen and Kanagarajah were acquitted of ML charges but found guilty of fraud-related charges. Kenegarajah and	

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Nesarajah : No		Neshan were found guilty of ML.	
R. v. Nguyen et al (2012)	H. Nguyen : No	N/A	\$0
British Columbia	B. Nguyen : No		
	T. Nguyen : No		
R. v. Zanolli (2012)	Yes	10 years	~\$200,000
Yukon			
R. v. Cleroux (2012)	Lacroix : Yes	Unspecified	Unspecified
Quebec	Cleroux : No		
	Derainville : No		
	Lesage : No		
R. v. Feuerwerker (2011)	Feuerwerker : Yes	7 years	\$620,867.61+
Ontario	Pouliot : Yes	Pouliot : 4 years	
R. v. Rathor (2011)	Yes	2 years less one day house arrest	\$560,000 USD
British Columbia			

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R. v. Butler (2011) Alberta	Yes	2 years	\$477,050 USD	charged, Rathor immediately pled guilty. His light sentence was notably attributed to his otherwise outstanding reputation as a productive member of the community. While returning to Canada from the United States, Butler transported large amounts of cash on behalf of a criminal organization. He knew the proceeds were the result of drug trafficking in the United States. Butler was arrested at the Coutts border crossing in Alberta. The proceeds were discovered inside a secret compartment in the truck he was driving, which was not registered under his name.
R. v. Bath (2011) British Columbia	Bath: No Khangura: No	N/A	\$0	The accused set up 13 shell companies to defraud the GST system by falsely claiming to provide an exporting service. Both subjects were convicted of fraud, but were acquitted of the ML charges because the Crown was not able to prove beyond a reasonable doubt that the two individuals were connected to the account they allegedly used for the purpose of money laundering.
R. v. Battista (2010) Ontario	Battista: Yes Peloso: Yes	Battista: 2.5 years Peloso: 2 years less a day	\$500,000	Peloso and Battista were accused of laundering proceeds of drug trafficking between January 2006 and 2007. Peloso moved the proceeds for Battista using certified checks, four accounts at several banks in Canada, and down payments on properties in the name of Battista's relatives.
R. v. Thompson (2010) Ontario	No	N/A	N/A	Thompson successfully appealed his 2010 conviction on methamphetamine-related charges and one money laundering charge. The money laundering charge was overturned based on a lack of evidence.
R. v. Rosenfeld (2009) Ontario	Yes	3 years	\$250,000 CAD \$190,000 USD	Rosenfeld met in Florida with an undercover agent who was portrayed as the front man for a cocaine trafficking organization. Rosenfeld agreed to help the organization launder funds through Canada and took advantage of solicitor-client privileges resulting from his professions as a lawyer. He also used shell companies to facilitate his transactions. Rosenfeld received an 8% return for his role in the scheme.

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Canada c. Plata (2009) Quebec	No (was to face the ML charges in the United States)	N/A	N/A	Plata headed the Canadian portion of a large marijuana trafficking operation, which brought hundreds of pounds of marijuana from Canada to the US between 2007 and 2008. He was charged and pled guilty in 2009 to conspiracy to traffic marijuana, possession for the purpose of trafficking and exporting. Two days after the Canadian sentencing, officials in the US issued an arrest warrant against Plata and asked for his extradition to face multiple charges in relation to drug trafficking, possession of property obtained by crime and conspiracy to launder money. Plata filed an appeal on grounds of being prosecuted twice for the same offences in separate jurisdictions. His application was dismissed by the Quebec Court of Appeal in 2011.
R. v. Grmovsek (2009) Ontario	Yes	39 months	\$2,700,000	Grmovsek, a Toronto-based lawyer, was convicted on charges of fraud, insider trading, and money laundering. He used insider knowledge to buy or sell shares in advance of a merger or acquisition event that had not yet been made public. The combined proceeds of 46 illegal trading transactions exceeded \$8 million USD and \$1 million CAD. Proceeds were laundered through corporate brokerage accounts in the Bahamas and the Cayman Islands. Grmovsek was disbarred by the Law Society of Upper Canada after he was convicted.
R. v. Black (2009) New Brunswick	D. Black: Yes J. Black: Yes	D. Black: 4.5 years J. Black: 1 year house arrest	Unspecified	The RCMP discovered a hydroponic marijuana grow operation in multiple New Brunswick rental properties managed by David Black. Black enlisted the help of his elderly mother Josephine to launder the profits by paying cash for large purchases and real estate, and by registering assets (e.g. cars, houses) under her name. Josephine was found to be acting with wilful blindness regarding the sources of her son's income, which resulted in her conviction. Black's operation was active from 1995 until 2005.
R. v. Lacroix (2009) Quebec	Yes	13 years less one day	\$95, 000,000	Vincent Lacroix, CEO of Norbourg Financial Group, orchestrated one of the largest financial crimes in Canadian history. LaCroix embezzled funds from 9,200 clients and diverted funds into several personal accounts while creating false documents to hide the money's absence.

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R. v. Goulet (2008) Quebec	Yes	2.5 years	\$1,000,000+	<p>He used the funds to purchase real estate, luxury items, and issue bonuses to favoured employees. Lacroix pled guilty to the charges on the eve of his trial. He was paroled in 2011 and released from a halfway-house in 2014 after serving one sixth of his sentence.</p> <p>Between February 2000 and February 2002, Goulet transported over one million dollars in cocaine trafficking proceeds from Montreal to Miami, Florida. He received approximately 2% in commission for his services. Goulet became progressively involved in laundering the proceeds of his friend Mondou's drug operation: at the beginning, he was just allowing Mondou to store large amounts of cash in his house. Later on, Goulet acted as a nominee for the purchase of a house for Mondou and used his father's information when purchasing a cottage for Mondou. Goulet was a police officer when the offences were committed.</p>
R. v. Boivin (2008) Quebec	Yes	3.5 years	\$624,700 USD \$297,000 CAD	<p>The subject used his position as a lawyer specializing in fiscal law to launder marijuana trafficking proceeds from Jamaica to Canada. He set up offshore accounts and had third-parties submit payments using drug money, while creating fake invoices to justify the transactions.</p>
R. v. Lefebvre (2007) Quebec	Yes	2 years less one day	\$46,000	<p>Lefebvre wanted to set up a company that exported cigarettes to Algeria but was lacking adequate funding. After being introduced to Marc-André Cusson (who also appears in R. v. Larche), Lefebvre traded 50% of his company stocks in exchange for \$67,000. At the time of the initial transaction, Lefebvre was unaware that the money came from Cusson's marijuana trafficking operation. Once the source of the funds came to light, Lefebvre nonetheless continued accepting the money for a period of five months. The funds were passed to Lefebvre in small denomination bills for a total sum of approximately \$85,000. The disbursements consisted of multiple smaller payments, generally ranging between \$2,000 and \$6,000. He was convicted and sentenced to 2 years less a day in addition to a fine of \$46 000..</p>

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R. v. Martin (2007) British Columbia	Yes	2.5 years	\$119,695.93 CAD \$10,000 USD	The subject, along with his family and a close associate, were responsible for preparing and transporting marijuana across uncontrolled border crossings into the US. He was charged and convicted in Canada, and was sought for extradition by the US.
R. v. Larche (2006) Quebec	No (was to face the ML charges in the United States)	N/A	N/A	Larche was part of an operation that exported marijuana from Canada to Vermont, USA. The proceeds were then repatriated back to Canada on behalf of the criminal organization headed by Marc-André Cusson. In total, Larche brought back between US\$500,000 and US\$600,000 to Canada. He was arrested and faced charges in Canada related to drug trafficking and possession of proceeds of crime, while also being indicted in the United States on charges of having attempted to launder the proceeds of crime.
R. v. Hoang (2006) Ontario	Hoang: Yes Nguyen: Unknown Phan: Yes	Unspecified	\$192,000+	The men traveling in a two vehicle convoy were flagged at the US-Canada border. Upon crossing into the US, they proceeded to U-turn and return back to Canada. The cars were found to contain approximately \$200,000 in cash and equipment to set up a grow op. Hoang and Phan were both convicted of ML, while a new trial was ordered for Nguyen.
R. v. Drakes (2006) Ontario	Drakes : Yes Brewster : Yes	Drakes : 5 years Brewster : 4 years	Unspecified	The subjects operated a Nigerian advanced-fee payment scam. They sent unsolicited messages claiming to be Nigerian civil servants, government officials, or businessmen with access to a large sum of money from an over-invoiced government contract. They offered some of that money to individuals on the condition that victims paid a service fee first. They then claimed that additional service fees were needed, requiring victims to continually pay for unforeseen expenses. Some victims lost tens of thousands of dollars before realizing they were being tricked. Drakes and Brewster laundered the profits of their fraud scheme through accounts in Antigua.
R. v. Sharpe (2006) Newfoundland	Yes	14 months house arrest	Unspecified	In 1998, Sharpe was investigated and later convicted for conspiring to traffic marijuana and possessing marijuana for the purposes of trafficking. Following the convictions, Sharpe was charged with four

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& Labrador				counts of money laundering, which was reduced to one count of money laundering upon plea bargain. The money laundering charges were laid in 2004, a plea bargain was agreed upon in 2006, and a sentence was imposed in 2010.
R. v. Shoniker (2006) Ontario	Yes	15 months	\$750,000	The former crown prosecutor was caught in an undercover RCMP operation. He laundered \$750,000 in proceeds he believed to be skimmed out of a union pension. Shoniker transferred the funds to an account in NYC covertly controlled by the RCMP. Alcoholism, prescription pill abuse and chronic sleep deprivation were used as a defense for his impaired judgement.
R. v. Bui (2004) British Columbia	Bui: Yes Vu: Yes	Bui: 18 months Vu: 18 months	\$96,860 CAD \$7,000 USD	Subjects landed in Vancouver with a suitcase that smelled strongly of marijuana. Upon conducting a search, authorities discovered both individuals had unreported cash on their person: Muoi Thi Vu was carrying \$83,500.00 CAD and \$7,000.00 USD, while Duc Ngoc Bui carried \$13,360.00 CAD. Suspicions were raised that Bui and Vu might have been acting as nominees for a larger organization, though this was never proven. Both were convicted for money laundering.
R. v. Tran (2004) British Columbia	Tran: Yes Phan: No	Tran: 10 years	\$200,000,000+	The couple was investigated during Project Exchange Rate. The proceeds were believed to be drug-related funds belonging to Silva Rivas and another individual by the name of Piotr Sperka. Cocaine was sold in Canada, and the Canadian funds were then exchanged into American dollars to buy cocaine in the US. The amount laundered exceeded \$200,000,000. Tran agreed to plead guilty if the charges were dropped against his wife so she could care for their children.
R. v. Demers (2000) Quebec	Demers : Yes Laporte : Yes	Demers : 2 years less a day Laporte : 3 years	\$859,000	Demers and Laporte co-owned an art gallery and carried out a fraud scheme that involved selling one painting to multiple individuals. Owners who had just purchased a painting would be asked to loan the piece so it could be part of a traveling exhibit. In reality, Demers and Laporte would repossess the painting and sell it to other customers, repeating the scheme. The two laundered funds simply by claiming the extra money to be the profits from the sale of art.

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Financial Transactions and
Reports Analysis Centre
of Canada

Centre d'analyse des opérations
et déclarations financières
du Canada

FINANCIAL INTELLIGENCE REPORT

Ref: FIR/2015/535437

June 2015

PROFESSIONAL MONEY LAUNDERING IN CANADA

1. Professional money launderers engage in the transfer of funds on behalf of individuals involved in illicit activities. They are sophisticated and capable of supporting complex, sustainable and long-term money laundering operations that are challenging to detect. Professional money launderers are distinguished from other money launderers in the larger scale and scope in which they operate. Their services are provided for a fee, and are sought after by transnational organized crime groups for their specialized money laundering skills. According to a variety of sources, they can be involved in one or all stages of the money laundering cycle (placement – deposits, currency conversion; layering and integration) as well as related tasks, such as setting up companies, document forgery, cyber expertise, etc. Professional money launderers can also operate on behalf of multiple criminal organizations involved in a variety of criminal offences. In some cases, professional money launderers occupy positions such as accountants, bankers, lawyers and MSB owners, and use their occupation, business infrastructure and knowledge to facilitate money laundering for criminal clients, providing a veneer of legitimacy to criminals and criminal organizations.
2. The money laundering activities of professional money launderers are supported by domestic and international networks: other professional money launderers and contacts “on the ground” in certain key locations. Collaboration between professional money launderers diversifies the channels through which illicit funds may pass, thereby reducing the risk of detection and seizure. According to a variety of sources, professional money launderers are skilled at managing and moving money around the world, and play an important role in facilitating global connections among illicit markets. Although they are not involved in the underlying predicate offence, their activities facilitate and support the continuation of criminal enterprise: targeting professional money launderers could therefore have a significant effect on law enforcement efforts to disrupt the activities of transnational organized crime.
3. FINTRAC’s study to date of suspected professional money launderers has shown that offshore financial centres appear to be the predominant locations where financial activities occur. Further analysis has identified several of their activities to include, the establishment of shell

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PROTECTED A

companies and shelf companies,¹ the maintenance and creation of financial institution accounts held offshore, [REDACTED] The purpose of this report is to highlight three (3) money laundering methods which FINTRAC has observed in relation to suspected professional money launderers.

Use of Trade-Based Money Laundering

4. The Financial Action Task Force (FATF) defines trade-based money laundering (TBML) as "the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illicit origin."² There are various TBML schemes that can be employed, for example:

- a. The purchase of high-value goods using the proceeds of crime, followed by the shipment and re-sale of the goods overseas;
- b. The transfer of funds which purport to be related to trade (i.e. the purchase of goods) but for which no goods are shipped/received (known as "phantom shipments");
- c. Falsifying the number and/or value of goods being shipped to be higher or lower than the corresponding payment, allowing for the transfer/receipt of the value of proceeds of crime (known as over/under-invoicing); and
- d. Using the proceeds of crime to purchase goods for legitimate re-sale, with payment for goods made to drug traffickers/distributors by legitimate business owners (i.e. the Black Market Peso Exchange (BMPE)).

Professional money launderers are suspected of employing TBML techniques, such as facilitating trade transactions, including the creation and use of false documentation, layering related financial transactions and establishing shell and/or shelf companies to facilitate purported trade transactions.

5. In its study of professional money launderers suspected of employing TBML methods and techniques, FINTRAC has observed:
- a. Funds, suspected of being derived from the sale of narcotics in Canada and abroad, sent (via electronic funds transfer or "EFT") to import/export and trade companies located primarily [REDACTED] (see text box on page 3);
 - b. EFTs to [REDACTED] (high turnover goods are appropriate products for a TBML scheme). This scheme appears similar to one identified by US Law Enforcement in which transactions to electronics exporters operating in Miami may be tied to trade-based money

¹ A shell company is an entity that is formed for the purpose of holding property or funds and does not itself engage in any significant business activity. Similar to a shell company, a shelf company is an entity that is formed and set aside for several years; the length of time that the company appears to have been in business adds to its legitimacy.

² Financial Action Task Force. "Trade-based Money Laundering." June 2006.

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laundering schemes laundering the illicit proceeds of drug cartels, such as the Sinaloa and the Los Zetas.³ According to FinCEN, "law enforcement investigations reveal that many of these businesses are exploited as part of a sophisticated TBML scheme in which drug proceeds in the US are converted into goods that are shipped to South America and sold for local currency which is ultimately transferred to drug cartels."⁴

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6. In addition to the aforementioned suspected schemes, FINTRAC is studying EFTs suspected of being related to TBML, ordered to the benefit of companies located in [REDACTED]

Use of Money Services Businesses

7. The vulnerability to money laundering in the money services business (MSB) sector is assessed by FINTRAC as very high, in part due to the nature of the products and services MSBs offer, as well as their geographic reach. Moreover, entry into the money services business (MSB) sector in Canada is relatively easy, increasing the risk of exploitation by criminal organizations. Certain Canadian MSBs are suspected, by a variety of sources, of knowingly facilitating money laundering activity, including currency conversions, cash-based transactions, and/or EFTs.
8. In some cases, suspected complicit-MSBs report transactions to FINTRAC. Analysis of some of these transaction reports alone and in conjunction with reports from other sectors such as banks suggest, that EFTs associated with suspected money laundering activity are funded by:
- Cash purchases of EFTs at the MSB;

³ "ICE issues Geographic Targeting Order to 700 Miami-based businesses", April 21, 2015. Accessed on May 12, 2015: <https://www.ice.gov/news/releases/ice-issues-geographic-targeting-order-700-miami-based-businesses>

⁴ "FinCEN Targets Money Laundering Infrastructure with Geographic Targeting Order in Miami", April 21, 2015. Accessed on May 12, 2015: http://www.fincen.gov/news_room/nr/html/20150421.html

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- b. Large cash deposits (of USD and CAD) to the accounts of Canada-based individuals and businesses followed by a domestic transfer to the account of an MSB, or the purchase of bank drafts payable to an MSB;
- c. The purchase of bank drafts to the benefit of individuals and businesses which are negotiated at MSBs to fund the purchase of EFTs.

9.

Therefore, MSBs involved in illicit activities might also be in non-compliance with their legislative and regulatory obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). In these instances, non-compliance voluntary information provided to FINTRAC may trigger a compliance examination that could prove to be both an effective deterrent, in that government officials would be onsite at the money services business' premises, and a means to a more deterring outcome in terms of fines and potential prosecutions. As part of FINTRAC's legislative authority, it can also issue administrative monetary penalties (AMPs) to MSBs that are in non-compliance with the PCMLTFA or alternatively, if the findings are of a criminal nature, they may be forwarded to an appropriate police service. Law enforcement investigations of non-compliance with obligations under the PCMLTFA (criminal penalties) may be the preferred course of action for investigators. It should also be noted, both courses of action (investigations of non-compliance and investigations of money laundering) can be undertaken simultaneously by law enforcement, within certain limitations.⁵

Use of Payment Processing/Telemarketing Companies

10. Payment processing companies are financial institution customers that provide payment services to merchants and other business entities, such as credit card processing, or payroll processing services. Typically, bank accounts held by payment processors are used to facilitate payments on behalf of their clients. Some services provided by payment processing companies fall outside of the PCMLTFA⁶. In certain circumstances, payment processing companies essentially act as "flow-through" accounts – there is no requirement for them to divulge the identities of their clients to financial institutions.

⁵ Both criminal penalties and administrative monetary penalties cannot be issued with respect to the same instances of non-compliance.

⁶ FINTRAC's current position is that persons or entities solely providing services of utility payment, payroll and commission services, although engaged in "remitting or transmitting of funds by any means or through any person, entity or electronic funds transfer network," are not engaged in the business of remitting and/or transferring funds for the sake of those service, because those transfers of funds are a corollary of their actual service of processing these payments. Therefore, FINTRAC's position is that those specific categories of payment processing are not MSB activities.