A RESOURCING OVERVIEW OF MAJOR MONEY LAUNDERING INVESTIGATIONS IN BRITISH COLUMBIA

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OVERVIEW

Police investigations require secrecy, and therefore the subject of a great deal of speculation and inference by the general public. Police must balance the public's right to be informed against the rights of suspects or the accused to individual privacy and the need to safeguard the integrity of investigations and protect covert techniques, assets, and personnel. Media releases on police investigations tend to be simplified and condensed for public consumption. This is done intentionally to protect investigative techniques, and thereby the integrity of future investigations, as well as ensure that the public is not unduly swayed by evidence not yet tested in court.

Fiscal responsibility and other forms of oversight and accountability for investigative units are managed through a Board of Governance and ministerial oversight at a Provincial level for CFSEU-BC, and through BC RCMP Criminal Operations, Federal Investigative Services and Organized Crime (CROPS FISOC) and RCMP National Headquarters (NHQ) for RCMP Federal Serious Organized Crime (FSOC). Yet, public discourse regarding police activity tends to center around investigative *outputs* (e.g., arrests, seizures, recommended charges) and, to some extent, *outcomes* (e.g., crime trends). Little public attention is paid to *inputs* or *activities*. That is, the resourcing and energy that lead to investigative outputs and outcomes. This lack of attention is especially true of organized crime, and perhaps the most poignant example within organized crime policing is with respect to the offense of money laundering (ML).

ML investigations are time- and resource-intensive, even if the ML method itself is simple. To prove the offence of ML, police must not only prove the concealed or converted funds originated from crime, but also that the suspect had knowledge or belief it originated from crime. Financial information is subject to robust privacy protections. However, financial crimes tend to hover on the cusp of licit and illicit financial activity, meaning some elements of an offense may be obfuscated by legitimate privacy protections. The ripple effect is that the investigative steps in a financial crime investigation – particularly ML – are more complex and resource-intensive than they would be for a drug investigation. In a drug investigation, offense-related money is often found together with other offense-related property, including drugs, weapons, and drug transaction records (i.e., "score sheets"). Money launderers are often far removed from the predicate offense. Consequently, lengthy and detailed judicial authorizations are required to lawfully obtain information and evidence of the offence. This often engages an intersecting network of caselaw and privacy protections that add complexity to the applications, the investigation, and the prosecution.

The volume of evidence required to progress these investigations is also exceptional[1], making disclosure an enormous and time-consuming task for the investigative team that inevitably conflicts with the principles set out in *R v. Jordan* (2016). The impact of *R v. Jordan* on charge approval policies exacerbates delays between arrest and charge/re-arrest, further prolonging the period that is perceived to be part of the "investigative" phase of the file. Files undergo an iterative process with Crown and the police, sometimes lasting months or even years before charges are approved. Accused persons in ML investigations may have the means and seemingly legitimate reasons to travel. Therefore, they may have left the jurisdiction prior to charge approval, leading to challenges and delays in successful prosecution.

These challenges should by no means dissuade efforts to investigate and prosecute ML offenses. ML is an integral element of organized criminal activity. Laundered funds provide the financial backing

[1] The evidence yielded in an ML investigation varies based on the characteristics of the investigation and the preferences and behaviours of the targets; however, disclosure for a ML file could run as high as 20,000 documents, 35,000+ intercepts, dozens-to-hundreds of devices for analysis, and possibly video or other types of evidence. Language requirements for these items (e.g., the need for translators) also vary considerably from file to file.

for further illicit activity, allowing organized crime groups to expand their criminal operations while offering them a veil of legitimacy through which to conduct those operations. Furthermore, the ML process necessarily distorts markets, placing legitimate businesses at a significant disadvantage. Disrupting the movement of this money through seizure and forfeiture is important for a number of additional reasons, including maintaining public trust, and establishing deterrence against the use of BC and Canada as a jurisdiction for ML. ML enforcement serves to combat criminal enterprises' ability to carry out business, to safeguard our economy and ensure that legitimate enterprises have an opportunity to thrive.

Economic evaluations of such investigations frequently focus on a simple return on investment calculation, comparing the cost of an investigation to the cost recovery through asset seizures. However, this fails to account for the multiplying effect cash has on organized criminal activity and on society. It is essential to take a more macroeconomic approach to valuation, accounting for the associated harms of criminal behaviour and the cost avoidance benefits of disrupting that behaviour. The benefits of AML measures, including enforcement, extend beyond immediate cash returns. Research conducted by the Australian Federal Police (AFP) in partnership with Queensland University Institute for Social Science Research produced several performance indicators that estimate the benefits of their investigative activities. These include the Drug Harm Index (DHI) and the Estimated Financial Return (EFR). Of interest here is the EFR, which represents the potential revenue lost to the economy from fraud and other economic crime that was identified, investigated, and successfully prosecuted. Their calculation estimates that for every dollar invested in a financial crime investigation in Australia, there is a significant return of "profit" to the community.[2]

The CFSEU-BC's Strategic Research Office (SRO) aims to conduct further research and expand on the work of the AFP, with the expectation that components, such as proceeds of crime (POC) and ML, will be incorporated into an Economic and Cost of Crime Model in the future. Economic and Cost of Crime Models provide useful information to assist in future planning and budget forecasts for different types of investigative costs, determine the return on investment in dollar value terms for an investigation, and assist in target comparison and target selection for law enforcement actions for cost-of-crime consideration.

The first step in this process is to ensure we have a thorough understanding of resource utilization for these investigations. This Overview Report presents some preliminary insights on this ongoing initiative. We have prepared this report to provide the Commission with the best possible understanding of the level of investment required to conduct a ML investigation in the Province of British Columbia. We hope that this will give life to the ML and POC data already provided by the RCMP and offer some insight into the level of coordination and collaboration required for those investigations classed as "major" within that data set.

[2] For the formulae for the EFR, the DHI, and Transnational ROI, please see:
Australian Federal Police. (2020). *AFP Annual Report 2019/2020*, p.47. Retrieved from: https://www.transparency.gov.au/annual-reports/australian-federal-police/reporting-year/2019-20-0; Australian Federal Police. (2017). *Corporate Plan 2016/2017: Covering 2016/2017 to 2019/2020.* p.14. Retrieved from: https://www.afp.gov.au/corporateplan; Australian Federal Police. (2016). *AFP Annual Report 2015-16.* Retrieved from: https://www.afp.gov.au/afp-annual-report-2015-16

MONEY LAUNDERING INVESTIGATIONS IN BRITISH COLUMBIA

The Commission has engaged a variety of experts to give evidence on the scope and nature of the ML problem in British Columbia; therefore, it is not useful to reiterate that body of evidence here. The CFSEU-BC's SRO and the RCMP will continue to extend our knowledge of quantification methods used by police agencies around the world, and seek to adapt and apply those methods here; however, one of the most useful contributions we can make to the Commission's understanding of ML investigations is to explain the time and resource allocation involved.

The Commission has requested data on the number of ML and POC investigations conducted in the province in recent years. That data has been provided.[3] But it is important to qualify what those investigations represent. To that end, we offer this resource utilization report, which will demonstrate the "typical" demands of a ML investigation. The reader should be aware that there are significant challenges associated with retroactively collecting data that does not normally form a part of the standard performance metrics framework. The RCMP team assigned to respond to the Cullen Commission reached out to investigators requesting as much detail as was reasonably and readily accessible in the time available, for a number of investigations from both the CFSEU-BC and Federal RCMP. The responses were reviewed for data quality. Extreme outliers, ongoing investigations, and those with insufficient data points were excluded. Consequently, most ML data in this report is an average calculated from 3 case studies which were relatively complete and not subject to unusual delays or disruptions.

Similar data was collated for major drug investigations (n=12), and comparisons are shown wherever possible. However, due to advancements in how we collect and access data over time, and because the drug investigation data was not initially collated for this purpose, comparisons were not available for all data points. Furthermore, these investigations were conducted across various time periods. An important limitation when comparing different time periods is that case law and technology change over time. The effects of globalization and emerging technology amplify resourcing demands, and it takes time and training to adapt to those conditions. Nonetheless, we believe this is a useful demonstration of the differences between investigations according to offense type. ML investigations are inherently complex, often requiring more extensive resources and investigative tools than a drug investigation, meaning they can be multi-million-dollar investments. When investing at that level, senior managers must continually assess whether the file remains viable, sustainable, and within their team's mandate and capacity. Additionally, senior managers also need to assess and compare opportunity costs of remaining on the current file, versus other files which are continually emerging. Investigators must be responsive to external controls on information, in order to obtain the necessary approvals within the parameters set out in regulatory controls, privacy legislation, and other relevant case law.

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[3] Royal Canadian Mounted Police. (2020). *Cullen commission request regarding money laundering and proceeds of crime statistics…: Item 11 of the Cullen Commission's (herein Commission) May 4, 2020 Request.* [Unpublished Report].
Royal Canadian Mounted Police. (2020). *Cullen commission request regarding money laundering and proceeds of crime statistics…: Item 2(d) of the Cullen Commission's (herein Commission) May 4, 2020 Request.* [Unpublished Report].

SUMMARY OF INVESTIGATIVE RESOURCES

The following tables are provided to demonstrate the difference in person hours and associated costs of those hours required for major ML investigations as compared to major drug investigations.

Table 1

UNIT	ML FILE TOTAL HOURS	DRUG FILE COMPARISON
Investigative Team[4]	68,080	Data not analyzed separately.
Support Units (Various Types)	43,790	
TOTAL	**111,870 hours**	**11,000 hours**

Table 2

UNIT	ML FILE TOTAL HOURS COST	DRUG FILE COMPARISON
Investigative Team	$2,308,161	Data not analyzed separately.
Support Units (Various Types)	$2,919,680	
TOTAL	**$5,227,841 CDN**	**$1,286,792 (CDN, 2019)[5]**

With respect to Table 2, it is worth noting that the costs associated with various support units will depend in part on the behaviours and sophistication of the subjects, but also on the structure and capacity of the investigating agency. Resources that are co-located and shared between units are more cost-effective than external resources.

Another factor not captured in any of the available data is the impact technology has on the file's duration. For example, if evidence is contained within many encrypted devices, this can delay the file for months to years. It is not possible to significantly mitigate potential delays from one file to the next, as criminals tend to acquire new forms of encryption as soon as older ones are solved. Financial means are one of the factors which can increase the likelihood that a subject owns sophisticated technology, and therefore this is an important factor to consider in ML investigations.

[4] Based on the specific needs of the file, an investigative team and their associated support units may include one or more: analysts, affiants, agent handler team(s), transcribers, translators, installers, accountants, subject matter experts, wire room monitors, undercover operators, and experts in the extraction of evidence from electronic devices.

[5] Some values are missing, meaning the total omits costs of some covert support units. Original average costs have been converted to 2019 Canadian dollars, based on the Bank of Canada's Inflation Calculator to allow for relatively equal comparison. Totals are rounded to the nearest dollar.

SUMMARY OF JUDICIAL AUTHORIZATIONS BY FILE TYPE

Table 3

	MONEY LAUNDERING FILE	DRUG FILE COMPARISON
Average # Judicial Authorizations per File	Average of 85 Judicial Authorizations per file (range of 66-109).	Average of 40 Judicial Authorizations per file.
Average Total Page Volume for Judicial Authorizations per File	There is insufficient data to provide a definitive average; however, a conservative estimate[6] is a range of approximately 4,250-12,750 pages.	1,600 pages

Warrants could include any combination of: general warrants; tracking warrants; sealing orders; unsealing orders; production orders; search warrants; or various other judicial authorizations specific to the context of a given investigation. Some orders (e.g., sealing orders) are frequently submitted within omnibus applications, rather than as standalone applications and may require renewal over the life of a file. Moreover, while there is consistency in the types of authorizations sought in each type of investigation, the specific type of evidence sought (and therefore the level of detail required in the application) varies. For example, a production order will vary greatly in length and complexity depending on the type of entity it engages. A production order on a bank typically exceeds 100 pages and will produce up to 300 pages of disclosure. It will take several months to receive the evidence. Each set of bank records will take an investigator approximately 35 hours to review. There may be multiple bank production orders in a single investigation. While the production orders themselves may be written as omnibus applications, the disclosure volume and time required to review each disclosure is cumulative.

SUMMARY OF TAKEDOWN DAY(S) RESOURCES

Takedown days vary greatly between investigations. Examples of the variables which increase or decrease resource requirements for the operation include the number of jurisdictions engaged, the number of suspects, the number of search locations (residences, businesses, vehicles, etc), the degree of risk the target(s) pose to the public, the number of languages represented in the criminal network, and the specific behaviours of the suspects. Roles assigned to the various personnel involved in takedown days include: evidence collection and preservation; arrest team(s); scene security and/or protection of the public (neighbours, through traffic, etc); officer safety; prisoner transport; and various support resources, including analysts and translators. Translation requirements on a file can range from 0 (all documents and intercepts are in English) to 15 (English, plus 14 additional languages or dialects). It is not known to what extent (if any) this is amplified in ML investigations; however, it is reasonable to assume that in some circumstances, language requirements on a ML file could require more sophisticated types of translation, such as business and financial records, and more technical communication mediums than what are typically seen in drug investigations. Further research on this issue could be helpful to better anticipate staffing and resourcing requirements early on.

[6] This is based on estimates from experienced ML investigators, as well as actual page counts where available.

CONCLUSION

Financial crime, particularly ML, has a harmful and adverse effect on the economy, government, and the social well-being of communities. ML damages a country's reputation; produces market distortion that harms legitimate businesses; attracts corruption and bribery in industry and government; increases the risk of bank and financial institution failures; and fuels drug trafficking and its associated violence and social harms, such as loan sharking, firearms trafficking, human trafficking, fraud, tax evasion, illegal exports of luxury products, and other criminal activities.

At present, there are no academically sound financial estimates of social impact as a result of ML. Some estimates factor in only direct returns on investment (e.g., the cost of the file compared to the total value of the assets forfeited), but this underestimates an investigation's true value. A robust estimate should also consider harm reduction and cost avoidance value to taxpayers.[7] It is those benefits enjoyed across the broader community that reflect the true value of a ML investigation. In order to accurately estimate the scope of this problem, and to support proper cost-benefit analyses and similar studies, it is crucial that agencies - including law enforcement – capture the necessary business intelligence and data during the course of financial crime investigations. This supports evidence-based and intelligence-led decision making for future investigations and provides a foundation for sound strategic planning and investment. It is expected that once the social, economic, and political impact of ML can be adequately enumerated and made available, the total return on investment for ML investigations, accounting for cost avoidance, should far exceed the cost of the investigations themselves. ML investigations are a critical and effective component in ensuring the safety of British Columbians, the integrity of our markets and financial systems, and are an important tool in disrupting organized criminal activity in the province.

[7] Cost avoidance realized through preventing a gang-related homicide, for example, should factor in the cost of the attending ambulance; the treatment, staffing, and bed allocation costs to the receiving hospital; the cost of a hospital lockdown; and impacts on businesses and real estate values near the shooting scene. For ML, those costs would instead be reflected in market distortion; private and public sector countermeasures; lost investment opportunities; lost revenues for legitimate businesses or financial institutions; lost tax revenue; and public sector opportunity costs. An additional layer of impact is realized through the disruption of the associated predicate offense. If organized criminals are unable to launder funds in British Columbia, they are less able to reinvest in the predicate offenses that produce the criminal funds, and the jurisdiction becomes less attractive to them overall.