PROCEEDS OF CRIME - THE CANADIAN EXPERIENCE

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Special session II of the Arab forum on asset recovery
11th of June 2013
Part XII.2 Criminal Code of Canada– Proceeds of crime [sec. 462.3 - 462.5]

Sec. 462.3 (1) Definitions
Proceeds of crime: any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of:

- The commission in Canada of a designated offence, or

- An act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence
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Sec. 462.31(1) Laundering proceeds of crime

Every one commits an offence who uses, transfers the possession of, sends or deliver to any person or place, transport, 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:
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(a) the commission in Canada of a designated offence; or

(b) An act or omission **ANYWHERE** that, if it had occurred in Canada, would have constituted a designated offence.
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FINTRAC : Financial Transactions and Reports Analysis Centre of Canada.

Mandate : To detect and deter money laundering by providing financial intelligence to support the investigation and prosecution of money laundering and terrorist financing activities.

(FINTRAC 2008 annual report)
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Freezing Assets of Corrupt Foreign Officials Act:

An Act to provide for the taking of restrictive measures in respect to the property of officials and former officials of foreign states and of their family members;

Administrative freeze for a period of 5 year which can extended upon an official request from the victim country;

The victim country MUST provide evidence that will be admissible in Canadian Courts.
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Politically exposed foreign person, means a person who holds or has held one of the following offices or positions in or on behalf of a foreign state and includes any person who, for personal or business reasons, is or was closely associated with such a person, including a family member:

(a) head of state or head of government;

(b) member of the executive council of government or member of a legislature;

(c) deputy minister or equivalent rank;

(d) ambassador or attaché or counselor of an ambassador;

(e) military officer with a rank of general or above;
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(f) president of a state-owned company or a state-owned bank;

(g) head of a government agency;

(h) judge;

(i) leader or president of a political party represented in a legislature;

(j) holder of any prescribed office or position.
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The Canada evidence act:

An Act respecting witnesses and evidence;

Applies to all criminal proceedings and to all civil proceedings and other matters whatever respecting which Parliament has jurisdiction;

N.B. REASONNABLE GROUNDS VS ADMISSIBLE IN COURT
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International Assistance Group (IAG):

MLAT: Can only be applied in relation to requests submitted to Canada under a treaty;

NO TREATY: A specific arrangement entered between Canada and the requesting state or entity with respect to a person or persons in a particular case

N.B. Canada requires incoming requests for assistance to be provided, in writing, in either French or English. (MLAT or Rogatory letter)
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For the most common types of assistance; such as production orders and search and seizure, a Canadian court must be satisfied before it will issue an order that:

1. There are grounds to believe that an offence has been committed and;

2. That evidence of the commission of the offence will be found in Canada.

The request for assistance should set out sufficient information for the Canadian judge to be satisfied on these two points.
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Request for assistance to Canada should include:

A summary of the allegations under investigation or prosecution, including the grounds on which the allegations are based and a clear indication of how the assistance requested is relevant to the alleged offence;

The text of the offences under investigation or prosecution in the requesting state or entity;
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Request for assistance to Canada should include:

A description of the evidence sought, including any specific procedures to be applied during the process (e.g. list of questions; form for certification of documents, if required by the requesting state or entity), whether and to what extent the foreign authorities wish to participate in the evidence gathering process;

Time limits facing the requesting state or entity and any special confidentiality requirements;

Any other information that might allow Canadian officials to identify and provide the evidence requested or to render the assistance sought.
The Charter does not generally apply to searches and seizures in other countries. Rather, the only reasonable approach is to apply the law of the state in which the activities occur, subject to the Charter’s fair trial safeguards and to the limits on comity that may prevent Canadian officers from participating in activities that, although authorized by the laws of another state, would cause Canada to be in violation of its international obligations in respect of human rights.

Canadian law, including the Charter, cannot be enforced in another state’s territory without the other state’s consent. This conclusion is consistent with international law and is also dictated by the words of the Charter itself. Section 32(1) puts the burden of complying with the Charter on Parliament, the Government of Canada, the provincial legislatures and the provincial governments.
International considerations

Liaison officers must be implicated at all times during investigation;

Use of Interpol;

Rules of evidence and local laws;

Asset sharing agreements;

Ensure that investigators participating in international meetings have the authority to make decisions.
Questions ?