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## Money Laundering and Corporate Governance from a Canadian Perspective

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German: Money Laundering and Corporate Governance from a Canadian Perspective  
**MONEY LAUNDERING AND CORPORATE GOVERNANCE  
FROM A CANADIAN PERSPECTIVE**

*Peter M. German\**

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I. INTRODUCTION

Florida is a beautiful state and a favorite for Canadians, who share the stress which the United States currently faces as it liberates Iraq from dictatorship. On Friday, our Prime Minister offered the use of the Royal Canadian Mounted Police (RCMP), to assist with the policing of post-War Iraq. Having policed many hot spots around the world in the past, including Namibia, Bosnia, Serbia, and Haiti, I am confident that we will meet whatever challenge is presented.

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\* Director General, Financial Crime, Royal Canadian Mounted Police, 1200 Vanier Parkway, Ottawa, Ontario K1A 0R2, peter.german@rcmp-grc.gc.ca. This was based on an address given at the 4th Annual Conference on Legal & Policy Issues in the Americas at the Levin College of Law, University of Florida, April 14, 2003. I wish to thank the University of Florida and the Levin College of Law for the invitation to attend and speak and to compliment them on an excellent job in organizing this international conference. My special thanks to Professor Fletcher Baldwin and his lovely wife, Dr. Nancy Baldwin, for their wonderful hospitality, this year and in the past. I would be remiss if I did not also thank Ms. Jody Brian of the Office of the RCMP Commissioner, for her able assistance in the drafting of this presentation.

My intent in this work is to examine money laundering and corporate governance from a Canadian perspective and to ask the question: Where to from here? Let me begin with the following: legislation is important; financial intelligence units are important; financial compliance systems are important; international bodies — the Financial Action Task Force, its Regional Groups, the International Monetary Fund, the United Nations, the World Bank, the Wolfsberg Group, the Basle Committee, and all the others — are important; the Mutual Legal Assistance Treaties (MLAT), and sharing treaties also are important. Despite all of that which is important, despite legislation being important, despite FIUs being important, despite financial compliance systems being important, despite international bodies being important, and despite MLAT and sharing treaties being important, what really matters is making use of these tools through effective enforcement. Effective enforcement means possessing the political will to do something with the tools at one's disposal, as well as the need to provide adequate and proper resourcing of law enforcement. The role of the police is not to become involved with compliance, not to become a regulator, but criminal enforcement — bringing effective cases before the courts, putting offenders in jail and forfeiting the proceeds of crime.

My intent is to describe how we believe this can be accomplished in a manner which draws upon the collective resources of law enforcement and of the greater community and leverages these resources to the greatest benefit. We in the RCMP are celebrating a historic milestone in 2003, as we celebrate 130 years of keeping Canada and Canadians safe in their homes and communities. While the world has changed in 130 years, our *raison d'être* has not. In 2003, as in 1873, our sole purpose is to serve and protect Canadians. Of course, as society has evolved, so have we. The way we carry out our mandate has certainly changed, and the challenges we face are much more sophisticated.

Central to this change is a concept that we are passionate about: integrated policing. You might infer from this that we are focused mainly on issues inside the RCMP and the law enforcement community, but in fact the essence of integrated policing is embedded in the idea of integration across jurisdictions, across sectors, across borders. Integrated policing is transforming our understanding of the role of the RCMP, and the challenges that go with breaking new ground and applying radical concepts to day-to-day experience.

## II. THE CHALLENGES OF TODAY'S SECURITY ENVIRONMENT

Globalization, the advent of technology, and terrorism are but three factors that have changed the society in which we work and live. These developments are so pervasive that I think we can safely say that our world — and it is now our world, not our country, or our community — will never be the same.

Globalization has created a borderless and boundary-less world. The advent of technology has changed the way we access, receive, interpret, and use information. It has given us new capabilities, but also many new challenges as it is used for criminal purposes as well as economic and cultural development.

Terrorism has created a new sphere of activity that sits somewhere between warfare and crime. The reality of worldwide terrorism has challenged domestic and international law enforcement at both the policy and practical levels like nothing we have ever encountered before.

As we reflected on the challenges that emerge from this new environment, we have become convinced that it is only with an integrated response that we can hope to move forward as effectively and quickly as circumstances require.

As you know, the events of September 11, 2001 threw everything I have described into stark relief. More than any recent event, it underscored that working together and using a collaborative approach is the only way to detect, deter, and destabilize terrorist and other criminal entities. Around the world, we quickly saw the importance of ensuring good policing across jurisdictions, across borders, and across continents. The community policing model that many jurisdictions have developed so effectively must now be applied to the global community to combat more global criminal activity. In this global environment, we are committed to ensuring that the RCMP is a strong proponent of integrated policing, not only to channel the wave of an international movement towards integration, but to lead the way in navigating these uncharted waters.

## III. THE FUNDAMENTALS OF INTEGRATED POLICING

Simply put, a collaborative approach is the only way to detect, deter, and destabilize global criminal entities. This collaboration is at the heart of our vision for integrated policing. Our vision is of sustained integration in the security, intelligence and law enforcement communities, where our strategic priorities are shared, our resources are devoted towards achieving common goals, and our actions are based on the highest standards of transparency and accountability, where we take advantage of economies of

scale that maximize the utility of our individual and collective resources; where intelligence flows freely at all levels, within and between our organizations, where our systems are interoperable, enabling real-time communications across organizations, across borders, and across continents, and where our service delivery is seamless, and we have eliminated duplication, fragmentation, and turf wars.

We are operationalizing this commitment in new and exciting ways. Let me tell you about two examples of how we are integrating more in areas that I am sure are of particular interest to this audience: money laundering enforcement and corporate governance.

Canada is a country of over thirty million residents, with the second largest land mass of any country in the world. Canada spans the length of North America and is bordered by the Atlantic Ocean to the east, the Pacific Ocean to the west, and the Arctic Ocean to the north. Its southern border, the forty-ninth parallel, is shared with the United States of America; the longest unguarded border in the world. Both countries share their largest bilateral trade relationship with each other. For various reasons, including America's position as a mega-power in the political and military arenas, its huge market for products (including illegal drugs), and the opportunity which it presents for employment, and for the entry of products and persons, our proximity to the United States is both a bonus and a dilemma for Canada. We must continually strive to ensure that Canadian borders facilitate the movement of goods and persons for legal purposes, but not for illegal ones. Unfortunately, what makes Canada strong also makes it vulnerable to criminal elements.

In addition to its geographic proximity to the United States, Canada is blessed with a strong economy, stable political system, large cities (Toronto, Montreal, Vancouver), financial institutions with branches around the world, international ports and airports, and a robust, well educated workforce. It also has relatively mild criminal sanctions, established organized crime groups and large ethnic populations with ties to their respective homelands. Although Canada is a country of immigrants, and they are what has made Canada strong, allegiance to foreign causes and ethnocentric financial systems, such as underground banking networks, is the cause of anxiety to law enforcement.

In terms of organized crime, Canada has traditional Sicilian-born organized crime families, networks of outlaw biker gangs, Asian organized crime gangs and triad offshoots, West African organized crime, and Eastern European crime syndicates. The existence of these organizations creates a complex environment for law enforcement with a landscape which changes with great regularity.

#### IV. MONEY LAUNDERING

In 1996, the RCMP created thirteen integrated Proceeds of Crime Units, one in each large city of the country. These units are composed of police investigators, Department of Justice legal counsel, forensic accountants, and others, led by an RCMP commissioned officer. The program has been very successful, and that continues to the present. Large seizures and property restraints have been made and forfeitures ordered by the courts. Canada created a Seized Property Management Directorate as well, to manage all seized, restrained, and forfeited property.

In 2000, the Canadian federal government instituted its National Strategy to Combat Money Laundering. That strategy was accompanied by legislation which created a Financial Intelligence Unit called FinTRAC, and also created the framework for suspicious transaction, large cash transaction, electronic funds transfer, cross-border currency, and terrorist financing reporting. From 2001 through 2003, each of those devices has been implemented and has made Canada's reporting scheme complete. In addition, the Criminal Code was amended to extend the applicability of the proceeds of crime and money laundering legislation to virtually all serious criminal offences.

#### V. CORPORATE GOVERNANCE

As we all know, the well-being of our entire society is intricately tied to the strength of our economy, and our economic health depends on good corporate governance. We have seen and felt the fallout from scandals like WorldCom, Enron, and Arthur Andersen. This is crime on a different scale than what our front-line officers deal with on a day-to-day basis; but criminals are criminals, and they deserve to be brought to justice.

Recognizing this, the government of Canada provided up to thirty million dollars a year in last month's federal budget to fund an integrated national approach to the investigation and prosecution of serious corporate frauds and market irregularities. In keeping with this funding, the RCMP and our partners will create Integrated Market Enforcement Teams to deal with corporate fraud in Canada's major financial centers. This integrated approach will ensure that the RCMP and our partners can continue the work we already do to keep Canada's financial markets secure, and in fact will strengthen our efforts to detect, deter, and disrupt corruption in all its forms. This all comes back to the issue of public confidence and organizational responsibility, which are major considerations in how well our communities and our countries function. We believe the public expects

and deserves nothing less than our best efforts. In this and all other cases, our best efforts come about when we tackle shared priorities by maximizing our resources and adopting an integrated approach.

That said, we are not near the level of integration we need to attain to be effective against the sophisticated criminal world we are dealing with today. If I can use an analogy, we have established a good foundation, but there are significant challenges to be faced in the construction of a solid structure that would enable us to better share information freely, achieve interoperability, deliver our services seamlessly, maximize economies of scale and do so under a framework of shared strategic priorities.

As I noted earlier, there is a difference between creating new ideas — and advocating for them — and the realities of application of the ideas to real time, day-to-day situations. In bringing the vision of integrated policing to reality, we have to consider issues like establishing an overarching framework to focus our efforts, and dealing with the lack of interoperability between partner organizations. We have to meet head-on the challenges of resourcing in an era where we are all doing more with less.

Then there is the issue of shifting the culture of law enforcement institutions to encourage more flexibility and cross-jurisdictional collaboration. Last but certainly not least, we must dialogue with the public to enhance their understanding and confidence in what we are doing. This last point — encouraging greater understanding and fostering confidence in the work we do — is very topical. These days, we face many questions and challenges related to the all-important balance of national security versus individual privacy rights. I would like to share some thoughts with you about this multifaceted debate.

## VI. POST-SEPTEMBER 11 MEASURES

In addition to the foregoing examples of integrated policing, the horror of September 11 forced governments around the world to reassess how they delivered policing and security services. In Canada, an infusion of federal government funds permitted the purchase and development of various devices and systems to facilitate anti-terrorist work. The RCMP relied on its belief in an integrated approach to policing to create Integrated Border Enforcement Teams to police our common border; Integrated Market Enforcement Teams to investigate cases of terrorism; and a Financial Intelligence Unit, which works closely with foreign partners, to follow the trail of terrorist financing.

## VII. PRIVACY: ONE CHALLENGE TO AN INTEGRATED APPROACH

As I mentioned previously, some of the building blocks of integrated policing are a free flow of intelligence and more interoperable systems, so police services can access each other's databases. This is necessary to share information and intelligence that affect the safety and security of citizens. When crime was contained to the village or within neighborhoods, law enforcement stayed within the same parameters. Dealing with a global phenomenon like terrorism changes both the environment we work in and the methods we employ.

Police work has always depended upon a bedrock of information that is gathered, organized, and analyzed to create intelligence. Things have changed, however — our spiral notebook has turned into a computer, the computers are hooked up to each other and central databases, and those databases have now been linked, in our country and even internationally. Intelligence-led policing results in more effective crime prevention strategies, risk and threat assessment systems, and the ability to prioritize resource allocation and utilization.

A new debate has emerged from this evolution. It is a debate between two possibly contradictory concepts. The first concept is about the fundamental rights of citizens to privacy, autonomy and freedom, rights that form the very essence of our proudly held tradition of democratic and social development. The second concept is about the responsibility of the state to protect citizens. It is about the ability of the state to exercise certain powers and strategies that seek out information in a new and potentially invasive fashion. The heart of the issue is to find the right balance: to find a way to protect the viability of law enforcement to be able to achieve intended results, versus the viability of the state to protect citizens from unnecessary or even dangerous infringements to their fundamental rights. As you can probably imagine, the RCMP is often brought into this debate. There are significant concerns about the powers given to us post-September 11.

These are complex issues and it is too easy to move immediately to the concrete, rather than facing the philosophical, and ultimately more important, question of how we can work together to create an integrated approach. When the potential contradiction between privacy rights versus national security is raised we are the first to admit that these are sensitive and important concerns. I think it is important that these discussions occur in context. Just as information-gathering and intelligence systems form only part of the evolution of police work, the question of privacy versus

protection should be considered in light of the current social, economic, and justice environment.

The existence of vital, rigorous safeguards is essential to protecting civil liberties. Not surprisingly, technological advances have introduced even more complexity to these issues. As criminals and terrorists are using increasingly sophisticated means to carry out their activities, we find that current laws do not facilitate the legal interception of various types of private, electronic communications. Clearly the ground is shifting beneath our feet. We face change at a pace and at a level of complexity such as never before. It is not always easy, but as these kinds of issues emerge I find myself forced to ponder the bigger questions: What kind of society do we want? What values and standards will never be compromised? What changes and modifications must be made?

I am sure you have considered these questions yourselves. In fact, I think we should keep them at the forefront of our minds in everything we do. After all, every one of us has a stake in ensuring the well-being of our respective societies.

### VIII. CONCLUSION

As you can see, moving from vision to reality when it comes to integrated policing is not an easy task. There are many challenges, not the least of which involves ensuring the appropriate balance between individual rights and freedoms and the need to protect the greater good in an enhanced security environment.

We are proud to be part of the movement towards a better, integrated form of policing — a movement that challenges us to rethink old ways of doing business; become more intelligence-led in all our activities; and consider a new approach to keeping people, their homes, their communities and their economy safe.