

SOC 3290 Deviance
Lecture 27: Organized Crime:

Today we will review organized crime in Canada. Specifically, we will review two interrelated topics:

- (1) The changing nature of fraud in Canada;
- (2) Organized crime and money laundering;

(1) The Changing Nature of Fraud in Canada:

Fraud can be defined as any attempt through deceit or falsehood to obtain goods, services, or financial gain without legitimate rights. It includes a wide array of criminal activities ranging from simply writing bad cheques or credit card theft to complex electronic money transfer schemes and personal identity scams. While it may involve individuals acting alone (such as employees), in recent years it has become increasingly sophisticated, greatly developing the use of telemarketing scams, insurance fraud, debit card copying, and much computer crime, often linked to organized crime.

When we look at the statistics on fraud in this country, the following patterns emerge:

- * In 1996, there were approximately 101,000 frauds reported by the police, accounting for 7% of all property crimes. This represented a rate of 337 per 100,000 population, the lowest rate in 20 years. This downward trend is largely due to significant decreases in reporting cheque frauds (p.287). The downward trend has continued, and 1999 (with a rate of 297/100,000 population) was the 8th straight year of decline.
- * Much of this was driven by a decline in cheque frauds (in the late 1970's, this made up 70% of fraud; in the late 1990's only about 40%). However, credit card and "other" frauds have increased substantially (143%) in the same period.
- * Saskatchewan reported the highest provincial/territorial fraud rate for the fifth consecutive year in 1996 (540/100,000). Quebec, Newfoundland, Ontario and the Northwest Territories recorded rates below the national average of 337/100,000.
- * Compared to most property crimes, frauds are more likely to be solved by the police. In 1996, nearly 2 in 3 (63%) of fraud were solved by the police, while B+E (16%), motor vehicle theft (12%), theft \$5000 and under (20%) all demonstrated clearance rates well below this proportion.
- * Persons accused of fraud offences are generally older than those accused of other property crimes. The median age of those accused of fraud was 29 years, compared to a median age of 21 for other property offenders.

* Probation was the most common sentence for fraud offences. The median length of a probation sentence was 450 days; the median length of a prison term was 60 days; and the median fine amount was \$200.

* In 53% of cases known to police, fraud incidents were aimed against a commercial enterprise, and in another 28%, the target was a bank or financial institution.

(2) Organized Crime and Money Laundering:

The term “organized crime” indicates a *process* or *method* of committing crimes, not a distinct type of crime nor a distinct type of criminal. There is a distinctive harm that organized criminals can deliver, stemming from this process. The crimes committed for profit are, in themselves, less serious than the fear stemming from the group’s reputation for violence, corrupting officials and infiltrating legitimate businesses.

Any good description of organized crime must capture the essential features of this process. Whatever the differences are between organized crime activities, they generally have the following in common:

- * A political organization with the capability to use political corruption and/or the potential for violence;
- * A structure that allows the individual criminals to be removed and substituted without jeopardizing the visibility of the criminal activity; and
- * Criminal activity committed via continuing criminal conspiracies (i.e. ongoing, repetitive, rather than 1 or 2 criminal acts for profit).

A formal hierarchy is not necessary among such criminals, although there usually is a structure of varying formality. However, rather than get into the fruitless debate about how structured these organizations are, it is better to focus on the range of activities included in these criteria (e.g. international economic crimes, international corporate crimes, drug trafficking and terrorism funded through organized crime compete with domestic organized crime under the above).

Organized crime evolves over time, and does not remain static. The history and economics unique to specific commodities, various links between criminal activities and groups, and political agreements have all played a role in the creation of distinct criminal organizations. Criminals operating in the above manner evolve as markets change, as public demands change, as technology provides new options, and as law enforcement and regulatory efforts creates new opportunities. Taking this processual approach, it becomes clear that the specific crimes and the groups involved are very diverse, and theory must take this diversity into account. Otherwise, you begin with a fixed idea of the supposed organized crime groups, find what you are looking

for, and miss the rest. Moreover, accelerating globalization and technological change mandates that our understanding of the organized criminal process must continually evolve, keeping in mind that the one constant is the pursuit of *profit*.

Many countries have evolved legal definitions of organized crime. While this term does not appear in the Canadian Criminal Code, proceeds of crime legislation refers to “enterprise crime,” including 24 offences deemed to be enterprise/ organized crimes and designated drug offences. Several additional pieces of legislation deal with organized crime, including bills against tobacco smuggling (1993), and “criminal organizations” (1997). The latter allows for enhanced police investigative powers if there is evidence of membership in a criminal organization, and enhanced sentences if the suspect is convicted. Taken together, Canadian legislation against organized crime includes:

- * 1988 - Bill C-58 The Mutual Legal Assistance in Criminal Matters Act
- * 1989 - Bill C-61 The Proceeds of Crime Legislation
- * 1993 - Bill C-9 The Proceeds of Crime Money Laundering Act
- * 1993 - Bill C-123 The Seized Property Management Act
- * 1997 - Bill C- 95 An Act to Amend the Criminal Code (Criminal Organizations)
- * The new Anti-Terrorist Act

Together these acknowledge that building a case can be difficult, and, since much of the above involves international crime, this requires that diverse enforcement jurisdictions work together to deprive criminal operations of their illicit proceeds.

To truly understand organized crime, one must understand the globalization of financial markets is paralleled by the globalization of certain criminal activities. New laws and procedures that encourage legitimate international business provide new opportunities for international crime as well. Indeed, attempts to facilitate international trade while curbing organized crime may result in contradictory pressures - especially since these crimes are often inextricably intertwined with the activities of legitimate businesses.

Politics are also intertwined with organized criminal activity. No better example could be how organized criminals have taken advantage of the political collapse of Eastern Europe to further their profits, but opportunities can also be found in political decisions to open up borders, create free trade zones, broaden the international representation on stock markets, etc. These provide opportunities for drug smuggling, money laundering, international credit card fraud, etc., supplementing more traditional domestic activities such as prostitution rings, illicit gambling, protection, etc.

Moreover, organized crime groups are increasingly cooperating (e.g. the Russian mob and the Italian Mafia). There is an increased sophistication, violence, and diversity of organized crime resulting from such collaboration. Control agents cannot treat these groups as separate entities, but must be increasingly aware of networks, linkages, and conduct market analysis to

continually assess shifting demand for commodities. Such a marketing mindset would match that of many involved in corporate crime, who themselves actively change markets and commodities to reach a wider buying public (e.g. the introduction of crack as a “lower price special”; initially cheap cocaine to break into the Russian market).

In Canada, organized crime activities involve all of the major forms, including:

- * Narcotics
- * Extortion
- * Loan sharking
- * Organized frauds and scams
- * Smuggling (e.g. weapons, booze, smokes)
- * Illegal immigration
- * Pornography/prostitution
- * Credit card theft/ frauds
- * Murder/ contract killings
- * Gambling
- * Environmental crimes
- * Motor vehicle theft
- * Money laundering

While it is necessary to discuss the involvement of ethnic groups in organized crime activities, literally all ethnic groups are involved to some extent, and nobody is immune from the lure of illicit profit (e.g. Mennonites smuggling pot). This is not to suggest that certain ethnic groups as a whole are more inclined to become involved in organized crime. The reason it is important to talk of specific ethnic groups is that there is a very real advantage to be gained from creating a closed and loyal criminal operation, and one way of doing this is to tie loyalty to something that extends beyond simply making money. Moreover, this makes it harder for police to penetrate the group through undercover operations, increases loyalty further if families are involved, may facilitate international crimes, and assist in controlling criminal activity in a seamless operation from production to distribution. Thus, while all racial and ethnic groups are involved in organized crime to some extent, there are advantages to working together with one’s own in the pursuit of profit - it’s just that some are more visible than others.

Groups operating as organized criminals in Canada are often listed as follows:

- * Traditional Italian organized crime families
- * Asian Triads/ Vietnamese gangs
- * Aboriginal organized crime groups
- * Outlaw motorcycle gangs
- * Colombian cartels
- * Russian organized crime groups
- * Nigerian groups

- *Eastern European groups
- * Jamaican organized crime
- * Japanese Yakuza

The traditional Italian Mob makes a lot of money from the drug trade, but are also involved in many other activities (e.g. loan sharking, counterfeiting, extortion). Of great concern is their extensive involvement in legitimate businesses (e.g. the construction and food supply industries) to act as cover, invest and launder their profits. Moreover, the Mafia has been quite willing to work with other criminal organizations to further each others' profits (e.g. Bikers, Colombian Cartels in the drug trade).

Asian Triads activity is concentrated in B.C., Ontario and Quebec. Police are concerned about their level of violence and use of automatic weapons. These organizations make a lot of money, using a combination of intimidation and force, and are involved in a vast array of crimes including extortion, illegal gambling, smuggling, drug trafficking, prostitution, home invasions, and sophisticated frauds including credit card fraud and forgery. They are more difficult than any other type of organized crime to police due to extortion, language and cultural differences in the Asian community - who are more often than not their victims. It has taken police time to gain trust, and recruit Asian officers to deal with these groups.

Aboriginal organized crime has largely involved cigarette smuggling from St. Pierre/Miquelon and the three reserves straddling the U.S. border (Akwasasne, Kahnawake, and St. Regis). Offenders make use of their legitimate group status in order to facilitate such smuggling, but are also involved in smuggling alcohol and running illegal gaming operations. These are essentially opportunistic crimes where a significant profit making opportunity is taken advantage of, rather than sought out. The ambiguity surrounding the self-government rights of reserve members, moreover, contribute to the justifications for committing these acts.

Outlaw motorcycle gangs are involved in a wide variety of crimes, including drug trafficking and manufacturing, extortion, contract killings, prostitution, fraud, fencing of stolen property, and money laundering. Bikers have begun to link themselves with both the influence networks of the Mafia and those of the legitimate economic and social establishment (e.g. using spouses and partners to gather information). There are over 41 clubs in Canada, the most noteworthy being the Hell's Angels. Policing biker gangs is difficult because of strict membership/initiation rites, fearfulness of informants, and their increasing use of sophisticated counter-surveillance equipment. They increasingly exhibit the education and specialized skills that enable them to orchestrate complex frauds and money laundering schemes. This, along with the Quebec "biker war," was instrumental in the government passing the 1997 criminal organizations law.

Colombian cartels must be mentioned in specific reference to their significant role in drug trafficking, particularly in cocaine. They are increasingly prepared to work with other groups, such as the Mafia, and to broaden their range of commodities to include heroin. Other similar

groups involved in the drug trade include Nigerian operations, Japanese Yakuza, and Jamaican “Posses.”

Russian organized crime has become as much a problem for Canada as for other countries. They are involved in a wide range of criminal activity, and are noted for using excessive violence, including seemingly haphazard retaliation and murder. Their degree of organization varies, but authorities in many countries are becoming concerned about their links with other countries, and their potential to be involved in the smuggling and sale of nuclear materials.

Now that we have reviewed the major players in organized crime, we must again reiterate that few operate in so separate and insular a manner. In reality, few organized crime activities are the turf of any one group, and one organized group is usually involved in more than one form of criminal activity. There is much overlap and interdependence between most groups, and newer “independent” groups are becoming integrated over time.

At this point, it is important to note that organized crime could not flourish without the assistance of “facilitators” on the fringes. As criminal activities become increasingly sophisticated and widespread, criminal organizations must recruit or hire services such as accountants, lawyers, computer specialists, financial advisors, and others with relevant expertise. Indeed, the public is the most valued segment of this fringe group when members agree to buy the illegal commodities, consent to participate in laundering schemes, and in numerous ways elevates the position of criminal to that of a respected member of society. Any analysis of organized crime must capture these interconnections.

The response of the criminal justice system to organized crime has been to go after the profits: a concerted focus on money laundering. The current focus recognizes the importance of following and seizing the illicit proceeds of the organized crime network, thereby hurting the organization, rather than arresting specific individuals. This, in many ways, is the Achilles Heel of many organized crime operations: the need to turn their illicit proceeds into some non-suspicious, spendable form that has the appearance of legitimate earnings. Known as money laundering, this practice recognizes that detection, seizure, and forfeiture of profits from illicit activity is likely otherwise (e.g. it was accountants at the IRS that brought down Al Capone, not the police). Often, expert advice is sought by organizations to avoid this fate.

Money laundering is defined as follows:

- * The conversion of illicit cash to another asset, often involving the ‘placement’ of the funds into a financial institution;
- * The concealment of the true source or ownership of the illegally acquired proceeds, possibly through a technique known as “layering” whereby a series of otherwise legitimate transactions are carried out creating a paper trail that is hard or impossible to follow; and

* The creation of the perception of legitimacy of source and ownership. By this stage the funds may be integrated into the legitimate economy.

Of course, the more money is involved, in the less time, the more sophisticated is the scheme that must be developed. Indeed, Canada's experience is similar to other countries in this regard, with over 80% of laundering cases having an international dimension.

Similarly vulnerable financial and business institutions are used by money launderers in a number of countries. Sometimes this involves the nature of their legitimate operation; in others a regulatory or enforcement gap. Institutions generally targeted include:

- * Deposit-taking institutions
- * Currency exchanges
- * The securities industry
- * The insurance industry
- * Real estate
- * Casinos
- * Lawyers and accountants
- * The travel industry
- * Luxury goods industries
- * The incorporation and operation of companies
- * The gold market/ precious gems/ jewelry stores

Laundering schemes range from simply adding cash to the till of a local business (where the difference between the real profit and the claimed profit is the amount laundered), through price-fixing conspiracies using false invoices and payoffs, to complex international webs of transactions mixing licit and illicit funds (e.g. using offshore tax havens, shell companies, smuggling, wire-transfers, sales from legitimate businesses, and invoice manipulation). In the really complex international cases, undercover agents posing as facilitators must coordinate their efforts with a variety of police agencies from different countries in order to gather evidence, seize assets, and make arrests.

Not surprisingly, most of the notorious laundering schemes have had a lawyer involved in both the creation and the implementation of these schemes - either as knowing accomplices or innocent facilitators. Indeed, many knowing facilitators hide behind solicitor-client privilege to keep these details confidential. Laundering services provided by lawyers, who can often act on behalf of, and in the name of the client, include:

- * Providing a nominee function
- * Incorporating companies
- * Conducting commercial and financial transactions
- * Managing and physically handling illicit cash
- * Coordinating international transactions

* Buying and selling real estate

While lawyers are a powerful lobby group who have been granted special privileges of confidentiality necessary to protect the legitimate relationship with their clients, they have been targeted for failure to provide details about cash-paying clients in both the U.S. and Canada. Indeed, there is the question of when lawyers become criminals themselves, and, owing to the difficulty of building cases against lawyers, sting operations and electronic surveillance have even been advocated. As well, there has been questions about whether lawyers fees paid to defend organized criminals should be exempt from the seizure/forfeiture provisions of the anti-crime legislation (the U.S. does not exempt the fees/ Canada does).

In conclusion, organized crime activity is market driven and socially, politically and economically defined. No one ethnic group has a monopoly on looking for and finding opportunities to profit by the existence of desirable, illegal commodities. The answers to organized crime are varied, ranging from the potential legalization of some commodities to raising the risks for criminal operations.

Most popular presently is the enforcement practice of targeting the proceeds of organized crime, which must be carefully regulated and monitored by clear policies. However, the main difficulty in addressing organized crime is its inherent complexity, and its interweaving with the legitimate political, economic and social fabric of society. Not only that, separate police forces may resist effective collaboration, and different countries have different enforcement priorities - all of which simply play into the hands of organized crime.